

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Laurens County

Frank R. Addy, Circuit Court Judge

TYRONE SHUMPERT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000579

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

COURT OF GENERAL SESSIONS

02-GS-30-1018

THE STATE)

vs.)

TYRONE SCHUMPERT)

TRANSCRIPT OF RECORD

APRIL 28, 2003

LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES W. JOHNSON, JR., JUDGE; and a jury.

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

JERRY PEACE, SOLICITOR
ATTORNEY FOR THE STATE

BILL MAYER, ESQ.
ATTORNEY FOR THE DEFENDANT

JOY HOLSTON
Official Court Reporter

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

APRIL 28, 2003

JURY QUALIFIED 5

JURY SELECTED 12

WITNESSES(SW) PAUL CAGLE

DIRECT EXAMINATION BY MR. PEACE: 42

CROSS-EXAMINATION BY MR. MAYER: 47

REDIRECT EXAMINATION BY MR. PEACE: 51

(SW) JENNIFER SATTERFIELD

DIRECT EXAMINATION MR. PEACE: 53

CROSS-EXAMINATION BY MR. MAYER: 57

(SW) DEREK MOSLEY

DIRECT EXAMINATION BY MR. PEACE: 63

CROSS-EXAMINATION BY MR. MAYER: 71

REDIRECT EXAMINATION BY MR. PEACE: 79

RECROSS-EXAMINATION BY MR. MAYER: 84

CHARGE OF THE COURT 113

VERDICT OF THE JURY 140

CERTIFICATE OF REPORTER 150

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STATE'S	DESCRIPTION	ID	EVD	PAGE #

1	STATEMENT		X	84

2	STATEMENT		X	84

3	STATEMENT		X	84

COURT'S	DESCRIPTION	ID	EVD	PAGE #

1	JURY NOTE	X		149

2	JURY NOTE	X		149

3	JURY NOTE	X		149

4	JURY NOTE	X		149

1 THE COURT: ALL RIGHT. SOLICITOR, YOU READY
2 TO PROCEED?

3 MR. PEACE: YES, YOUR HONOR. THE STATE'S
4 READY.

5 THE COURT: MR. MAYER, YOU'RE READY TO
6 PROCEED?

7 MR. MAYER: YES, YOUR HONOR. WE ARE.

8 THE COURT: ALL RIGHT. SOLICITOR, CALL YOUR
9 NEXT CASE.

10 MR. PEACE: THANK YOU, YOUR HONOR. IF IT
11 PLEASE THE COURT THE STATE NEXT CALLS INDICTMENT
12 NUMBER 02-GS-30-1018. THE STATE VERSUS TYRONE
13 SCHUMPERT. MR. SCHUMPERT'S CHARGED WITH CONSPIRACY TO
14 COMMIT ARMED ROBBERY; TWO COUNTS OF ARMED ROBBERY AND
15 POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION
16 OF A VIOLENT CRIME.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
18 THIS IS INDICTMENT 02-GS-30-1018, STATE VERSUS TYRONE
19 SCHUMPERT. MR. SCHUMPERT IS PRESENT. HE'S
20 REPRESENTED BY MR. MAYER. IF YOU'LL INTRODUCE
21 YOURSELF, MR. MAYER AND YOUR CLIENT TO THE JURY PANEL
22 PLEASE.

23 MR. MAYER: I'M WILLIAM MAYER OF THE LAURENS
24 COUNTY BAR. THIS IS MR. SCHUMPERT, HE'S THE DEFENDANT
25 IN THIS CASE. MR. SCHUMPERT WOULD YOU STAND AND TURN

1 TO THE JURY?

2 THE COURT: ALL RIGHT. THANK YOU, MR. MAYER.
3 LADIES AND GENTLEMEN, I HAVE EXPLAINED TO YOU EARLIER
4 THAT THE INDICTMENT THAT I'M HOLDING IN MY HAND
5 CONTAINS THE CHARGES OR THE ALLEGATIONS IN THIS CASE.
6 IT IS NOT EVIDENCE OF THOSE CHARGES AND CAN NOT BE
7 CONSIDERED BY THE JURY AS EVIDENCE OF THE CHARGES THAT
8 IT CONTAINS. IN THIS CASE THE DEFENDANT, MR.
9 SCHUMPERT, IS CHARGED OR ALLEGED TO HAVE COMMITTED THE
10 OFFENSES OF CONSPIRACY TO COMMIT ARMED ROBBERY, TWO
11 COUNTS OF ARMED ROBBERY AND POSSESSION OF A FIREARM OR
12 A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME. IT
13 IS ALLEGED THAT THESE OFFENSES OCCURRED IN LAURENS
14 COUNTY ON OR ABOUT MAY THE 27TH OF 2002. POTENTIAL
15 WITNESSES IN THE CASE AND I'M GOING TO ASK IF ANY OF
16 THESE PEOPLE ARE PRESENT THAT THEY STAND WHEN I READ
17 THEIR NAMES OUT. JUST STAND AND FACE THE JURY PANEL
18 SO THAT THE JURY CAN, CAN TAKE A LOOK AT YOU. PAUL
19 BENJAMIN CAGLE, YOU CAN HAVE A SEAT. JENNIFER
20 SATTERFIELD; DEREK MOSLEY; MARCUS BROWN; OFFICER K.
21 J., IS IT RITTER?

22 MR. PEACE: RITTER. YES, SIR.

23 THE COURT: RITTER. IS HE WITH THE LAURENS
24 CITY POLICE DEPARTMENT?

25 MR. PEACE: YES, SIR. HE IS.

1 THE COURT: OFFICER WILLIAM DUBOSE, WHO I
2 GUESS IS WITH LAURENS CITY, ALSO?

3 MR. PEACE: YES, SIR.

4 THE COURT: DEPUTY JIM BURNS, WHO I GUESS IS
5 WITH THE LAURENS SHERIFFS OFFICE?

6 MR. PEACE: YES, SIR.

7 THE COURT: LIEUTENANT TONY LYNCH, WHO IS
8 WITH, I BELIEVE THE CITY OF LAURENS. MAURICE SUBER,
9 MARCUS BROWN, KENNY ROBINSON, BRANDON PHILLIPS, OSCAR
10 TAYLOR. THOSE ARE POTENTIAL WITNESSES IN THE CASE.
11 NOW, LADIES AND GENTLEMEN, I'VE GOT SEVERAL QUESTIONS
12 TO ASK YOU ABOUT THIS PARTICULAR CASE. IF THERE IS
13 ANYONE ON THE JURY PANEL WHO IS RELATED BY BLOOD OR
14 CONNECTED BY MARRIAGE EITHER TO THE DEFENDANT, MR.
15 SCHUMPERT, OR TO ANY OF THESE POTENTIAL WITNESSES IN
16 THE CASE. IF YOU'RE RELATED BY BLOOD OR CONNECTED BY
17 MARRIAGE TO ANY OF THESE INDIVIDUALS, WOULD YOU PLEASE
18 STAND.

19 (NO RESPONSE.)

20 THE COURT: IS THERE ANYONE ON THE JURY PANEL
21 WHO HAS ANY TYPE OF BUSINESS, PERSONAL OR SOCIAL
22 RELATIONSHIP EITHER WITH MR. SCHUMPERT OR WITH ANY OF
23 THE POTENTIAL WITNESSES WHOSE NAMES I HAVE READ. NOW,
24 I'VE BEEN ASKED SOMETIMES WHAT DO YOU MEAN BY PERSONAL
25 OR SOCIAL RELATIONSHIP. I THINK BUSINESS RELATIONSHIP

1 IS SELF-EXPLANATORY. PERSONAL RELATIONSHIP, IF YOU'RE
2 CLOSE PERSONAL FRIENDS WITH ANY OF THESE FOLKS. IF
3 YOU BELONG TO THE SAME CHURCH, SAME CIVIC
4 ORGANIZATIONS, ANYTHING ALONG THOSE LINES. AGAIN, ANY
5 TYPE PERSONAL, BUSINESS OR SOCIAL RELATIONSHIP EITHER
6 WITH THE DEFENDANT OR ANY OF THE POTENTIAL WITNESSES
7 WHOSE NAMES HAVE BEEN READ TO YOU, WOULD YOU PLEASE
8 STAND?

9 AND YOUR NAME PLEASE, MA'AM.

10 JUROR: TIFFANY MORSE.

11 THE COURT: LAST NAME.

12 JUROR: MORSE.

13 THE COURT: LET ME FIND YOU, DO YOU REMEMBER
14 YOUR NUMBER?

15 MADAM CLERK: 80.

16 JUROR: 80.

17 THE COURT: 80?

18 MADAM CLERK: YES.

19 THE COURT: MS. MORSE, I NEED TO KNOW WHO
20 AND THE NATURE OF THE RELATIONSHIP, PLEASE.

21 JUROR: JENNIFER SATTERFIELD AND BENJI CAGLE,
22 TWO OF THE WITNESSES, GOOD FRIENDS.

23 THE COURT: THEY ARE VERY GOOD FRIENDS?

24 JUROR: YES.

25 THE COURT: IS THAT RELATIONSHIP CLOSE ENOUGH

1 SO THAT IT WOULD EFFECT YOUR ABILITY TO BE FAIR AND
2 IMPARTIAL?

3 JUROR: NO, I'LL BE FAIR.

4 THE COURT: PARDON?

5 JUROR: I'LL BE FAIR EITHER WAY.

6 THE COURT: I CAN'T REALLY UNDERSTAND WHAT
7 YOU'RE SAYING.

8 MADAM CLERK: SHE'D BE FAIR EITHER WAY.

9 THE COURT: OKAY. YOU THINK YOU CAN BE FAIR
10 EITHER WAY.

11 JUROR: YES.

12 THE COURT: ALL RIGHT. IT'S NOT YOUR
13 TALKING, IT'S MY HEARING. WHEN I GET OLD, I CAN'T
14 HEAR.

15 ALL RIGHT. LET ME ASK AGAIN. YOU THINK YOU
16 COULD BE FAIR AND IMPARTIAL BOTH TO THE DEFENDANT AND
17 TO THE STATE IN THIS CASE IF YOU ARE SELECTED?

18 JUROR: YES, SIR.

19 THE COURT: ALL RIGHT. BASED ON THAT
20 RESPONSE JUST HAVE A SEAT THERE WHERE YOU ARE. THAT'S
21 MS. MORSE, NUMBER 80.

22 YOUR NAME PLEASE, MA'AM?

23 JUROR: TINA BRIGGS.

24 THE COURT: LAST NAME AGAIN.

25 JUROR: BRIGGS. 15.

1 THE COURT: MS. BRIGGS, IF YOU CAN TELL ME
2 WHO AND THE NATURE OF THE RELATIONSHIP PLEASE.

3 JUROR: WELL, IT'S HIS MOTHER, MS. HENRIETTA
4 BROWN IS RELATED TO A WITNESS, SUBSTITUTE WHERE I
5 WORK.

6 THE COURT: ALL RIGHT. IS THAT RELATIONSHIP,
7 IS IT OF SUCH A NATURE THAT, THAT IT WOULD EFFECT YOUR
8 ABILITY TO BE FAIR AND IMPARTIAL? YOU THINK YOU COULD
9 BE FAIR TO BOTH SIDES?

10 JUROR: YES, SIR.

11 THE COURT: THANK YOU, MS. BRIGGS. THAT'S
12 NUMBER 15. ANYONE ELSE?

13 (NO RESPONSE.)

14 THE COURT: IS THERE ANYONE ON THE JURY
15 PANEL WHO HAS SEEN OR READ OR FROM ANY SOURCE AT ALL
16 KNOWS ANYTHING ABOUT THE ALLEGATIONS IN THIS CASE? IF
17 SO, WOULD YOU PLEASE STAND.

18 (NO RESPONSE.)

19 THE COURT: IS THERE ANYONE ON THE JURY PANEL
20 WHO IS SENSITIVE TO OR AWARE OF ANY BIAS OR PREJUDICE
21 THAT YOU MIGHT HAVE THAT WOULD PREVENT YOU FROM BEING
22 A FAIR AND IMPARTIAL JUROR? IF SO, WOULD YOU PLEASE
23 STAND.

24 (NO RESPONSE.)

25 THE COURT: IS THERE ANYONE ON THE JURY

1 PANEL WHO HAS FORMED OR EXPRESSED AN OPINION AS TO THE
2 GUILT OR THE INNOCENCE OF THE DEFENDANT, MR. SCHUMPERT
3 IN THIS CASE. IF SO, WOULD YOU PLEASE STAND.

4 (NO RESPONSE.)

5 THE COURT: IS THERE ANY MEMBER OF THE JURY
6 PANEL WHO IS EITHER CURRENTLY OR IN THE PAST BEEN
7 REPRESENTED BY EITHER OF THE ATTORNEYS INVOLVED IN THE
8 CASE, AND I FAILED TO INTRODUCE MR. PEACE TO YOU. YOU
9 CAN INTRODUCE YOURSELF TO THE JURY PANEL AT THIS TIME,
10 MR. PEACE.

11 MR. PEACE: THANK YOU, YOUR HONOR. THANK
12 YOU. JERRY PEACE, IT'S BEEN MY HONOR AND PRIVILEGE TO
13 BE THE DEPUTY SOLICITOR FOR LAURENS COUNTY FOR THE
14 PAST FIVE YEARS.

15 THE COURT: THANK YOU. IF ANYONE IS EITHER
16 CURRENTLY OR IN THE PAST BEEN REPRESENTED EITHER BY
17 MR. PEACE OR MR. MAYER, OR IF YOU HAVE ANY OTHER TYPE
18 OF PERSONAL, BUSINESS RELATIONSHIP WITH EITHER OF THE
19 ATTORNEYS, OR ANY OF THE ATTORNEYS INVOLVED IN THE
20 CASE, WOULD YOU PLEASE STAND?

21 YES, SIR. YOUR NAME PLEASE, SIR?

22 JUROR: HENRY CROCKER.

23 THE COURT: MR. CROCKER. WHICH ATTORNEY?

24 JUROR: MR. MAYER.

25 THE COURT: MR. MAYER. IS IT SOMETHING

1 THAT'S ONGOING OR SOMETHING IN THE PAST?

2 JUROR: SOMETHING IN THE PAST.

3 THE COURT: WOULD THAT IN ANY WAY EFFECT YOUR
4 ABILITY TO BE FAIR AND IMPARTIAL?

5 JUROR: NO.

6 THE COURT: ALL RIGHT. THANK YOU. THAT'S
7 MR. CROCKER, NUMBER 24. ANYONE ELSE?

8 (NO RESPONSE.)

9 THE COURT: NOW IS THERE ANYONE ON THE JURY
10 PANEL WHO FOR ANY REASON AT ALL, WHETHER IT'S
11 SOMETHING I'VE GONE OVER OR SOMETHING I'VE COMPLETELY
12 MISSED. IF THERE'S ANY JUROR ON THE JURY PANEL WHO
13 KNOWS OF ANY REASON THAT YOU COULD NOT GIVE BOTH MR.
14 SCHUMPERT, THE DEFENDANT AND THE STATE OF SOUTH
15 CAROLINA A FAIR AND IMPARTIAL TRIAL. IF YOU WOULD NOT
16 BE ABLE TO DO THAT WOULD YOU PLEASE STAND?

17 (NO RESPONSE.)

18 THE COURT: MR. PEACE, ANYTHING FURTHER?

19 MR. PEACE: NOTHING FROM THE STATE, YOUR
20 HONOR.

21 THE COURT: MR. MAYER, ANYTHING FURTHER?

22 MR. MAYER: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. NOW WE'RE GOING TO GO
24 THROUGH THE PROCESS I DESCRIBED TO YOU EARLIER. THE
25 CLERK OF COURT IS GOING TO READ YOUR NAMES OUT ONE AT

1 A TIME. IF YOUR NAME IS READ OUT, COME UP HERE TO THE
2 FRONT OF THE COURTROOM. MR. EDWARDS WILL SHOW YOU
3 WHERE TO STAND, JUST TURN AND FACE THE ATTORNEYS AND
4 THEN THEY WILL BE ASKED WHETHER THEY WOULD LIKE TO
5 SEAT YOU OR TO EXCUSE YOU FROM THIS PARTICULAR TRIAL.
6 BRING WHATEVER PERSONAL BELONGINGS YOU BROUGHT WITH
7 YOU. BRING THEM WITH YOU UP HERE TO THE FRONT OF THE
8 COURTROOM.

9 ALL RIGHT. MADAM CLERK, TEN AND FIVE.

10 MADAM CLERK: JUROR 91, RICKY E. POLSON.

11 (THE JUROR, A WHITE MALE, STOOD.)

12 WHAT SAYS THE STATE?

13 MR. PEACE: PLEASE SWEAR MR. POLSON.

14 MADAM CLERK: WHAT SAYS THE DEFENSE?

15 MR. MAYER: PLEASE SEAT MR. POLSON.

16 (JUROR SEATED.)

17 MADAM CLERK: JUROR 100, MARK A. SIMMONS.

18 (THE JUROR, A WHITE MALE, STOOD.)

19 WHAT SAYS THE STATE?

20 MR. PEACE: PLEASE SWEAR MR. SIMMONS.

21 MADAM CLERK: WHAT SAYS THE DEFENSE?

22 MR. MAYER: PLEASE SEAT MR. SIMMONS.

23 (JUROR SEATED.)

24 MADAM CLERK: JUROR 81, DENNIS A. NABORS.

25 (THE JUROR, A WHITE MALE, STOOD.)

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WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MR. NABORS. *white excused*

MADAM CLERK: WHAT SAYS THE DEFENSE?

MR. MAYER: PLEASE EXCUSE MR. NABORS.

(JUROR EXCUSED.)

MADAM CLERK: JUROR 120, TOBY WALDROP.

(THE JUROR, A WHITE MALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MR. WALDROP.

MADAM CLERK: WHAT SAYS THE DEFENSE?

MR. MAYER: PLEASE SEAT MR. WALDROP.

(JUROR SEATED.)

MADAM CLERK: JUROR 119, DOUGLAS K. VOLAVKA.

(THE JUROR, A WHITE MALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE EXCUSE MR. VOLAVKA.

(JUROR EXCUSED.)

MADAM CLERK: JUROR 73, GEORGE E. MARSHALL.

(THE JUROR, A WHITE MALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MR. MARSHALL.

MADAM CLERK: WHAT SAYS THE DEFENSE? *white excused*

MR. MAYER: PLEASE EXCUSE MR. MARSHALL.

(JUROR EXCUSED.)

MADAM CLERK: JUROR 53, DAVID JACKSON.

1 *AM* (THE JUROR, A BLACK MALE, STOOD.)

2 *ex by 501* WHAT SAYS THE STATE?

3 MR. PEACE: PLEASE EXCUSE MR. JACKSON.

4 (JUROR EXCUSED.)

5 MADAM CLERK: JUROR 6, WALTER AMOS.

6 (THE JUROR, A WHITE MALE, STOOD.)

7 THE COURT: BEFORE HE'S PRESENTED, I'M GOING

8 TO ASK MR. AMOS TO COME UP BASED ON SOMETHING WE

9 TALKED ABOUT EARLIER.

10 (CONFERENCE AT THE BENCH.)

11 GO AHEAD.

12 MADAM CLERK: WHAT SAYS THE STATE?

13 MR. PEACE: PLEASE SWEAR MR. AMOS.

14 MADAM CLERK: WHAT SAYS THE DEFENSE?

15 *white* MR. MAYER: EXCUSE MR. AMOS.

16 (JUROR EXCUSED.)

17 MADAM CLERK: JUROR 113, DAVID M. TOLLISON.

18 (THE JUROR, A WHITE MALE, STOOD.)

19 WHAT SAYS THE STATE?

20 MR. PEACE: PLEASE SWEAR MR. TOLLISON.

21 MADAM CLERK: WHAT SAYS THE DEFENSE?

22 MR. MAYER: PLEASE SEAT MR. TOLLISON.

23 (JUROR SEATED.)

24 MADAM CLERK: JUROR 118, LINDA VAUGHAN.

25 (THE JUROR, A WHITE FEMALE, STOOD.)

1 WHAT SAYS THE STATE?

2 MR. PEACE: PLEASE SWEAR MS. VAUGHAN.

3 MADAM CLERK: WHAT SAYS THE DEFENSE?

4 MR. MAYER: PLEASE SEAT MS. VAUGHAN.

5 (JUROR SEATED.)

6 MADAM CLERK: JUROR 76, BARBARA B. MCJUNKIN.

7 (THE JUROR, A WHITE FEMALE, STOOD.)

8 WHAT SAYS THE STATE?

9 MR. PEACE: PLEASE SWEAR MS. MCJUNKIN.

10 MADAM CLERK: WHAT SAYS THE DEFENSE?

11 MR. MAYER: PLEASE SEAT MS. MCJUNKIN.

12 (JUROR SEATED.)

13 MADAM CLERK: JUROR 132, THOMAS K. TRAYNHAM.

14 (THE JUROR, A WHITE MALE, STOOD.)

15 WHAT SAYS THE STATE?

16 MR. PEACE: PLEASE SWEAR MR. TRAYNHAM.

17 MADAM CLERK: WHAT SAYS THE DEFENSE?

18 MR. MAYER: PLEASE SEAT MR. TRAYNHAM.

19 (JUROR SEATED.)

20 MADAM CLERK: JUROR 130, SHIRLEY D. MORGAN.

21 (THE JUROR, A WHITE FEMALE, STOOD.)

22 WHAT SAYS THE STATE?

23 MR. PEACE: PLEASE SWEAR MS. MORGAN.

24 MADAM CLERK: WHAT SAYS THE DEFENSE?

25 MR. MAYER: PLEASE SEAT MS. MORGAN.

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(JUROR SEATED.)

MADAM CLERK: JUROR 54, CHARLES J. JENKINS.

(THE JUROR, A WHITE MALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MR. JENKINS.

MADAM CLERK: WHAT SAYS THE DEFENSE?

MR. MAYER: PLEASE EXCUSE MR. JENKINS.

(JUROR EXCUSED.)

MADAM CLERK: JUROR 22, DEBORAH M. CRADDOCK.

(THE JUROR, A WHITE FEMALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MS. CRADDOCK.

MADAM CLERK: WHAT SAYS THE DEFENSE?

MR. MAYER: PLEASE SWEAR THE JUROR.

(JUROR SEATED.)

MADAM CLERK: JUROR 69, CHARLES E. LONG.

(THE JUROR, A WHITE MALE, STOOD.)

WHAT SAYS THE STATE?

MR. PEACE: PLEASE SWEAR MR. LONG.

MADAM CLERK: WHAT SAYS THE DEFENSE?

MR. MAYER: PLEASE EXCUSE MR. LONG.

(JUROR EXCUSED.)

MADAM CLERK: JUROR 47, SANDRA M. HIETTE.

(THE JUROR, A WHITE FEMALE, STOOD.)

WHAT SAYS THE STATE?

*white
ex-Δ*

*white
ex-Δ*

1 MR. PEACE: PLEASE SWEAR MS. HIETTE.

2 MADAM CLERK: WHAT SAYS THE DEFENSE?

3 MR. MAYER: PLEASE SWEAR THE JUROR.

4 (JUROR SEATED.)

5 MADAM CLERK: JUROR 17, LINDEN C. BURLESON.

6 (THE JUROR, A WHITE MALE, STOOD.)

7 WHAT SAYS THE STATE?

8 MR. PEACE: PLEASE SWEAR MR. BURLESON.

9 MADAM CLERK: WHAT SAYS THE DEFENSE?

10 MR. MAYER: PLEASE EXCUSE MR. BURLESON.

11 (JUROR EXCUSED.)

12 MADAM CLERK: JUROR 33, GREGORY FIELDER.

13 (THE JUROR, A BLACK MALE, STOOD.)

14 WHAT SAYS THE STATE?

15 MR. PEACE: PLEASE EXCUSE MR. FIELDER.

16 (JUROR EXCUSED.)

17 MADAM CLERK: JUROR 117, MATTHEW V. VARNUM.

18 (THE JUROR, A WHITE MALE, STOOD.)

19 WHAT SAYS THE STATE?

20 MR. PEACE: PLEASE SWEAR MR. VARNUM.

21 MADAM CLERK: WHAT SAYS THE DEFENSE?

22 MR. MAYER: PLEASE SWEAR MR. VARNUM.

23 (JUROR SEATED.)

24 MADAM CLERK: JUROR 30, ANTHONY L. DICKSON.

25 (THE JUROR, A WHITE MALE, STOOD.)

1 WHAT SAYS THE STATE?

2 MR. PEACE: PLEASE SWEAR MR. DICKSON.

3 MADAM CLERK: WHAT SAYS THE DEFENSE?

4 MR. MAYER: PLEASE SEAT MR. DICKSON.

5 (JUROR SEATED.)

6 THE COURT: WE WILL HAVE AN ALTERNATE. THE
7 STRIKES WILL BE TWO AND ONE ON THE ALTERNATE.

8 MADAM CLERK: JUROR 66, MELISSA A. LEE.

9 (THE JUROR, A WHITE FEMALE, STOOD.)

10 WHAT SAYS THE STATE?

11 MR. PEACE: PLEASE SWEAR MS. LEE.

12 MADAM CLERK: WHAT SAYS THE DEFENSE?

13 MR. MAYER: PLEASE SEAT MS. LEE.

14 (ALTERNATE SEATED.)

15 THE COURT: ALL RIGHT. ANY MATTERS OR
16 MOTIONS CONCERNING THE STRIKING OF THE JURY? ANYTHING
17 FROM THE STATE?

18 MR. PEACE: NOTHING FROM THE STATE, YOUR
19 HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. MAYER: YOUR HONOR, MAY I HAVE ONE MOMENT
22 TO SPEAK WITH OPPOSING COUNSEL?

23 THE COURT: SURE.

24 MR. MAYER: NO MOTIONS FROM THE DEFENSE, YOUR
25 HONOR.

1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
2 THOSE OF YOU WHO HAVE BEEN SELECTED IN THIS CASE, THE
3 FIRST THING WE'RE GOING TO DO I'M GOING TO SEND YOU
4 BACK TO YOUR JURY ROOM. MR. EDWARDS WILL TAKE YOU
5 BACK AND HE'S GOING TO GIVE YOU A PAD AND A PEN. IN
6 SOUTH CAROLINA, THERE ARE TWO DIFFERENT WAYS OF HAVING
7 A JURY FOREMAN OR FORELADY APPOINTED OR SELECTED. ONE
8 IS FOR ME TO SIMPLY PICK ONE OF YOU. THE OTHER IS TO
9 LET YOU DISCUSS AMONG YOURSELVES AND DECIDE WHO YOU
10 WANT THAT PERSON TO BE. NOW YOUR FOREMAN OR YOUR
11 FORELADY'S VOTE IS NO MORE IMPORTANT THAN ANYBODY
12 ELSE'S IS, BUT THAT PERSON WILL PRESIDE IN THE JURY
13 ROOM AND WILL BE THE SPOKESPERSON FOR THE JURY HERE IN
14 THE COURTROOM. I STARTED BACK IN ABOUT '96, LETTING
15 THE JURY'S DECIDE WHO THEY WANT THEIR FOREMAN OR THEIR
16 FORELADY TO BE. THAT'S GOING TO BE THE FIRST DECISION
17 YOU'RE ASKED TO MAKE. I'M GOING TO SEND YOU BACK TO
18 YOUR JURY ROOM, ASK YOU TO TALK AMONG YOURSELVES AND
19 DECIDE WHO YOU WANT YOUR FOREPERSON TO BE. WRITE THAT
20 NAME ON A SLIP OF PAPER AND HAND IT OUT TO THE
21 BAILIFF. ONCE YOU HAVE DONE THAT YOU ARE EXCUSED
22 UNTIL AFTER LUNCH. WE'RE GOING TO ACTUALLY, WE'RE
23 STARTING TO PUSH THE LUNCH HOUR, I'M GOING TO LET YOU
24 GO GET LUNCH AND WE'LL COME BACK AND START THE TRIAL
25 AT 2:30. AND YOU'LL NEED TO COME STRAIGHT BACK TO

1 YOUR JURY ROOM. THAT WILL GIVE US ENOUGH TIME TO DEAL
2 WITH WHATEVER PRETRIAL MATTERS I NEED TO DEAL WITH
3 HERE IN THE COURTROOM, GIVE YOU TIME TO GET A NICE
4 LEISURELY LUNCH AND COME BACK REFRESHED AT 2:30. SO,
5 GO BACK TO THE JURY ROOM, DECIDE WHO YOU WANT YOUR
6 FOREPERSON TO BE, GIVE THAT NAME TO THE BAILIFF AND
7 THEN YOU'RE EXCUSED UNTIL 2:30. LET ME AGAIN CAUTION
8 YOU, DON'T DISCUSS THE CASE EITHER AMONG YOURSELVES OR
9 WITH ANYONE ELSE. I USED TO, ALSO LET ME JUST TELL
10 YOU, I USED TO PROHIBIT JURORS FROM TAKING NOTES
11 DURING THE COURSE OF A TRIAL. I'VE BACKED OFF OF THAT
12 A LITTLE BIT, IF YOU DECIDE YOU WANT TO TAKE NOTES,
13 I'LL LET YOU DO THAT. BUT YOU'RE NOT PERMITTED TO
14 SHARE THEM WITH ANY OTHER JUROR, THEIR ONLY FOR YOUR
15 PERSONAL USE AND YOU CAN'T TALK ABOUT YOUR NOTES BACK
16 IN THE JURY ROOM. IF YOU WANT TO DO THAT, THEN I WILL
17 PERMIT YOU TO DO THAT. BUT ANY WAY, IF YOU WILL MAKE
18 THAT DECISION. NOW WHEN YOU COME BACK THIS AFTERNOON,
19 WHOEVER YOU SELECT AS YOUR FOREMAN OR YOUR FORELADY,
20 THEY'LL TAKE THE FIRST SEAT ON THE FRONT ROW WHERE THE
21 GENTLEMAN IN THE BLUE SHIRT IS RIGHT NOW AND KEEP THAT
22 SEAT THROUGHOUT THE TRIAL. MS. LEE, YOU'RE MY
23 ALTERNATE JUROR AND I NEED YOU TO KEEP THAT END SEAT
24 ON THE FRONT ROW THROUGHOUT, NO, JUST RIGHT WHERE YOU
25 ARE. MY ALTERNATE, MY FOREMAN OR FORELADY NEED TO

1 KEEP THE SAME SEATS THROUGHOUT THE TRIAL. THE REST OF
2 YOU AS YOU COME AND GO IN THE COURTROOM, YOU CAN SIT.
3 AT ANY OF THE SEATS THERE IN THE JURY BOX THAT YOU
4 WOULD LIKE TO SIT. SO, GO DECIDE WHO YOU WANT YOUR
5 FOREPERSON TO BE, GIVE THAT NAME TO THE BAILIFF AND
6 THEN HAVE A GOOD LUNCH AND BE BACK IN THE JURY ROOM AT
7 2:30 IF YOU WOULD PLEASE. EVERYONE ELSE STAY SEATED.
8 YOU FOLKS ARE EXCUSED, FOLLOW MR. EDWARDS BACK TO YOUR
9 JURY ROOM.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM
11 OPEN COURT.)

12 THE COURT: THOSE OF YOU WHO WERE NOT
13 SELECTED IN THIS CASE, I FAILED TO TELL YOU ABOUT, MS.
14 WASSON MAY HAVE ALREADY TOLD YOU ABOUT THE CALL-IN
15 SYSTEM THAT WE HAVE. PROBABLY THE MOST IMPORTANT
16 THING THAT I FORGOT TO TELL YOU THIS MORNING. IT USED
17 TO BE VERY COMMON IF YOU HAD JURY SERVICE YOU HAD TO
18 COME TO COURT EVERY DAY AND SIT HERE ALL DAY LONG
19 WHETHER YOU WERE PICKED ON A JURY, WHETHER THE JURY
20 WAS EVEN SELECTED. AND SEVERAL YEARS AGO WE MADE A
21 CHANGE THAT HAS MADE JURY SERVICE HOPEFULLY A LITTLE
22 BIT LESS INCONVENIENT FOR YOU. AND WHAT WE DO IS IN A
23 SITUATION LIKE THIS THE ATTORNEYS ARE PRETTY GOOD
24 ABOUT ESTIMATING HOW LONG A CASE MAY TAKE TO TRY, BUT
25 SOMETIMES THEY MISS IT. SOMETIMES THEY TELL ME IT'S

1 GOING TO BE A THREE DAY TRIAL, WE GET THROUGH IN ONE
2 DAY. SOMETIMES THEY TELL ME IT'S GOING TO BE A ONE DAY
3 TRIAL AND IT TAKES THREE OR FOUR DAYS TO TRY. WHAT WE
4 HAVE INSTITUTED IS A CALL-IN SYSTEM, THAT LITTLE CARD
5 THAT YOU GOT HAS A VERY IMPORTANT PHONE NUMBER FOR
6 YOU, 984-8800. YOU NEED TO CALL THAT TELEPHONE NUMBER
7 TONIGHT AFTER SIX O'CLOCK. YOU'RE GOING TO GET A
8 RECORDING AND IT'S GOING TO TELL YOU WHETHER YOU NEED
9 TO COME BACK TOMORROW, WHAT TIME YOU NEED TO COME BACK
10 TOMORROW OR WHETHER TO SIMPLY CALL BACK TOMORROW
11 NIGHT. NOW IF YOUR MESSAGE TONIGHT IS TO CALL BACK
12 TOMORROW NIGHT AFTER SIX, THAT TELLS YOU, YOU CAN GO
13 TO WORK TOMORROW, YOU CAN GO FISHING, YOU CAN DO
14 WHATEVER YOU WANT TO DO, BUT CALL THAT NUMBER TOMORROW
15 AND JUST COMPLY WITH THE INSTRUCTIONS AND COME BACK UP
16 HERE WHEN, WHEN YOU'RE TOLD TO DO SO ON THAT MESSAGE
17 MACHINE. THAT SYSTEM HAS WORKED VERY WELL. THE
18 PROBLEM WE SOMETIMES RUN INTO, THAT ALL OF YOU, BUT
19 MAYBE ONE OR TWO WILL COME BACK AND THOSE TWO, WE HAVE
20 TO SEND FOR AND WE FINALLY GET THEM BACK UP HERE AND I
21 SAY WHY DIDN'T YOU COME BACK? AND THEY CLAIM THEY
22 DIDN'T GET THE SAME MESSAGE, BUT WE ONLY GOT ONE
23 MACHINE, WITH ONE MACHINE, IT'S GOT TO BE THE SAME
24 MESSAGE FOR EVERYBODY. JUST LISTEN TO IT AND COME BACK
25 WHEN YOU'RE INSTRUCTED TO COME BACK. SO CALL THAT

1 NUMBER AFTER SIX O'CLOCK, YOU CAN DO WHATEVER YOU WANT
2 TO DO FOR THE REST OF THE DAY. I APPRECIATE YOUR
3 PATIENCE. YOU'VE BEEN HERE WHAT, TWO AND ONE-HALF
4 HOURS, BUT YOU HAVE BEEN PATIENT, WE'VE ALREADY GOT
5 OUR FIRST JURY SELECTED. I APPRECIATE THAT, I'M GOING
6 TO LET YOU GO. EVERYONE ELSE STAY SEATED. YOU'RE
7 EXCUSED, BE SURE YOU'VE GOT YOUR PHONE NUMBER AND CALL
8 IT TONIGHT AFTER SIX. YOU'RE EXCUSED.

9 (WHEREUPON, THE JURY PANEL WAS EXCUSED
10 FROM OPEN COURT.)

11 THE COURT: ALL RIGHT. PRETRIAL, I KNOW YOU
12 TOLD ME WE'VE GOT AN ISSUE ABOUT A MISSING TAPE. ANY
13 OTHER PRETRIAL MATTERS THAT WE NEED TO TAKE UP?

14 MR. MAYER: NOTHING.

15 THE COURT: YA'LL WANT TO DEAL WITH THE TAPE
16 NOW?

17 MR. PEACE: YES, SIR.

18 THE COURT: ALL RIGHT.

19 MR. MAYER: YOUR HONOR, I CALL THE COURT'S
20 ATTENTION THAT THE DEFENSE HAS FILED A RULE 5 MOTION
21 REQUESTING THE DISCLOSURE MATERIAL FROM THE STATE,
22 RULE 5 AND BRADY. THE STATE HAS RESPONDED WITH
23 REQUESTED MATERIAL AND AS WELL AS A RETURN RULE 5 OF
24 THEIR OWN. IT HAS COME TO MY ATTENTION THIS WEEKEND
25 WHILE TALKING TO AND INTERVIEWING THE WITNESSES THAT

1 THE DEFENSE INTENDS TO CALL THAT THERE IS SOME
2 VARIANCE BETWEEN THINGS WITNESSES HAVE SAID
3 PARTICULARLY AROUND THE STOPPING OF THE CAR. THAT'S
4 INFORMATION THAT I WOULD LIKE TO KNOW BECAUSE IT GOES
5 TO WHO IS TELLING THE TRUTH AND WHO ISN'T. IT JUST
6 GOES TO THE VERACITY OF THE WITNESSES. AND ONE OF
7 THOSE INVOLVED IS A STATEMENT WRITTEN BY THE POLICE
8 OFFICER WHO STOPPED THE CAR. I LEARNED THIS WEEKEND
9 THAT THERE IS A VIDEO TAPE THAT WAS MADE OF THE STOP
10 THAT SHOULD PROVIDE ME WITH ALL THE INFORMATION I WANT
11 TO KNOW AS FAR AS WHICH WITNESSES ARE SUPPORTED AS
12 BEING, BECOMING HONEST AND TELLING ME THE TRUTH PRIOR
13 TO THIS TRIAL. AND ALSO WHAT I CAN EXPECT TO PUT UP
14 AT TRIAL. SHOULD ALSO SHOW THAT THERE ARE STATEMENTS
15 THAT HAVE BEEN MADE THAT ONE OF THE PEOPLE IN THE CAR
16 TURNED AND RAN. AND IF SO I WOULD LIKE TO KNOW WHAT
17 HE HAD ON BECAUSE I'VE HEARD TWO DIFFERENT VERSIONS
18 AND ALSO WHAT, IF ANYTHING, WAS IN HIS HANDS. THERE
19 ARE STATEMENTS MADE TO INVESTIGATORS AS TO THERE BEING
20 THREE WEAPONS INVOLVED IN THIS ROBBERY; HOWEVER, I
21 BELIEVE ONLY TWO WERE RECOVERED FROM THE CAR. I WOULD
22 LIKE TO SEE WHAT'S ON THAT TAPE, YOUR HONOR. THE LAW
23 ENFORCEMENT ADMITS THAT THEY TOOK IT, ADMITS THAT THEY
24 HAVE IT, BUT ALL OF A SUDDEN IT COMES TIME FOR ME TO
25 SEE IT NOBODY CAN FIND IT. I WOULD LIKE AT BEST THIS

1 BE CONTINUED UNTIL IT CAN BE FOUND. I DON'T WANT TO
2 TRY THIS CASE WITHOUT HAVING SEEN THAT TAPE.

3 THE COURT: AND WHEN, WHEN DID YOU DISCOVER,
4 WHEN WERE YOU MADE AWARE THAT A TAPE EXISTED?

5 MR. MAYER: I WAS MADE AWARE OF IT THIS
6 WEEKEND, YOUR HONOR. AND I WAS MADE AWARE OF IT BY
7 MR. SUBER WHO PLED GUILTY FRIDAY.

8 THE COURT: YOU WERE MADE AWARE THROUGH A
9 CODEFENDANT?

10 MR. MAYER: YES, SIR.

11 THE COURT: AND NOT THROUGH THE STATE?

12 MR. MAYER: NO, YOUR HONOR. NOT THROUGH THE
13 STATE. I DON'T BELIEVE THE SOLICITORS OFFICE EVEN
14 KNEW THE TAPE EXISTED UNTIL I ASKED FOR IT THIS
15 MORNING.

16 THE COURT: ALL RIGHT. MR. PEACE.

17 MR. PEACE: YOUR HONOR, AS USUAL THE STATE IS
18 THE LAST TO KNOW. I FIRST LEARNED OF THIS TAPE WHEN
19 MR. MAYER ASKED ABOUT IT THIS MORNING. I ASKED THE
20 OFFICER WHO MADE THE CAR STOP IF HE HAD A VIDEO TAPE.
21 HE SAID YES, THAT HE DID. IT SHOULD BE IN EVIDENCE
22 AND THAT WAS PROBABLY AT 9:30 THIS MORNING. I
23 UNDERSTAND THAT THEY'VE BEEN LOOKING FOR THE TAPE
24 SINCE THAT TIME AND THEY HAVE NOT FOUND THE TAPE. ONE
25 QUESTION IS WHETHER THE TAPE'S EXCULPATORY. MR.

1 SCHUMPERT WASN'T PRESENT IN THE CAR AT THE TIME IT WAS
2 STOPPED. THE CAR WAS STOPPED.

3 THE COURT: WAS OR WAS NOT?

4 MR. PEACE: WAS NOT. WAS NOT IN THE CAR AT
5 THE TIME IT WAS STOPPED. THE CAR WAS STOPPED AT, A,
6 PROBABLY THIRTY TO FORTY-FIVE MINUTES AFTER THE
7 ROBBERY OCCURRED, AFTER THE DEFENDANTS WENT TO SOME
8 OTHER LOCATION AND GOT IN THE CAR AND LEFT. SO, THE
9 STATE'S ARGUMENT WOULD BE, I WOULD LIKE, I WOULD LIKE
10 NOTHING MORE THAN TO PRODUCE THE TAPE AND I'M HOPING
11 THAT BETWEEN NOW AND 2:30 THAT THEY DO FIND THE TAPE
12 IN EVIDENCE. AND IF THEY DO, OF COURSE, I'LL FURNISH
13 IT OR MAKE IT AVAILABLE TO MR. MAYER. HOWEVER, IF WE
14 DON'T FIND THE TAPE, IT WOULD BE THE STATE'S POSITION
15 THAT IT'S NOT EXCULPATORY. IT'S NOT SOMETHING THAT
16 THE STATE PLANNED TO USE AND BECAUSE MR. SCHUMPERT WAS
17 NOT PRESENT IN THE CAR, AND IT WOULD NOT BE, IT WOULD
18 BE EXCULPATORY IN THE SENSE THAT HE WAS NOT THERE. BUT
19 THE STATE IS WILLING TO STIPULATE, MAKE A FACTUAL
20 STIPULATION THAT MR. SCHUMPERT WAS NOT THERE WHEN THE
21 AUTOMOBILE WAS STOPPED.

22 MR. MAYER: MAY I RESPOND, YOUR HONOR?

23 THE COURT: IN JUST A SECOND. YOU DISCOVERED
24 THE TAPE WHEN MR. MAYER TOLD YOU?

25 MR. PEACE: YES, SIR.

1 THE COURT: SO, THIS IS A LAURENS P.D. CASE?

2 MR. PEACE: YES, SIR.

3 THE COURT: AND THEY HAD NOT MADE YOU AWARE
4 OF THIS TAPE?

5 MR. PEACE: NO, SIR. THERE IS A FIVE PAGE
6 REPORT WRITTEN BY THE OFFICER INVOLVED AND THERE'S NOT
7 THE FIRST MENTION OF A VIDEO TAPE. I WAS ACTUALLY
8 SURPRISED TO LEARN THAT THEY HAD CAMERAS IN LAURENS
9 CITY POLICE CARS.

10 THE COURT: LET ME ASK YOU THIS. YOU LEARNED
11 IT FROM MR. SUBER, WAS THAT RIGHT?

12 MR. MAYER: YES, YOUR HONOR.

13 THE COURT: HAD HE OR HIS COUNSEL SEEN THE
14 TAPE?

15 MR. MAYER: YOUR HONOR, I WAS NOT ALLOWED TO
16 TALK TO MR. SUBER UNTIL HE PLED FRIDAY. HE TELLS ME
17 THIS WEEKEND, HE HAS TOLD ME SOME THINGS WHICH HE
18 BELIEVES ARE ON IT. I DID NOT ASK HIM IF HE HAD
19 ACTUALLY SEEN IT. I WAS VERY SURPRISED TO BELIEVE IT
20 EXISTED AND I DID NOT KNOW FOR SURE THAT IT DID UNTIL
21 LAW ENFORCEMENT CONFIRMED THIS MORNING THAT IT DID.

22 THE COURT: WELL, YOU WOULD HAVE BEEN
23 INVOLVED, I MEAN YOU WOULD HAVE KNOWN ABOUT THE TAPE
24 IF SUBER AND/OR HIS COUNSEL HAD SEEN IT THROUGH YOU?

25 MR. PEACE: YES, SIR. I CAN TELL YOU THEY

1 DID NOT SEE IT, SEE IT THROUGH ME. AND IN MY
2 EXTENSIVE NEGOTIATIONS WITH MS. JACKSON WHO
3 REPRESENTED MR. SUBER, THERE WAS NO MENTION OF THE
4 VIDEO TAPE.

5 MR. MAYER: MAY I NOW RESPOND TO MR. PEACE'S
6 STATEMENTS?

7 THE COURT: SURE. YEAH.

8 MR. MAYER: YOUR HONOR, THIS GOES A LITTLE
9 BIT MORE THAN JUST WAS TYRONE SCHUMPERT IN THE CAR.
10 THE, I KNOW YOUR HONOR IS NOT AWARE OF THE FACTS OF
11 THIS CASE, BUT TO COME DOWN TO AN ARMED ROBBERY, NO
12 ONE IDENTIFIES ANYBODY IN THE BUILDING. THE
13 IDENTIFICATIONS ARE MADE SOLELY BASED UPON SOMEBODY
14 WITNESSING A CAR IN THE AREA THAT WAS SUBSEQUENTLY
15 PULLED OVER. THIS IS THE STOP I'M TALKING ABOUT. BUT
16 AS I HAVE BEEN ABLE TO DETERMINE FROM WHAT'S BEEN
17 PROVIDED TO ME, THE ONLY THING WHICH BRINGS MY CLIENT
18 INTO THIS AT ALL IS THE STATEMENT OF ONE OF THE PEOPLE
19 WHO IS, WHO ROBBED THIS PLACE, WHO HIS OWN STATEMENT
20 SAYS HE WAS THERE. THERE WERE THREE PEOPLE IN THE
21 ROBBERY, TWO OF THE PEOPLE WHO ARE ROBBERS HAVE
22 CONFESSED AND SAID THERE WERE THREE. ONE SAYS THERE'S
23 FOUR AND IMPLICATES MY CLIENT. I THINK THE
24 CREDIBILITY OF THE WITNESSES IN THIS CASE IS PARAMOUNT
25 TO THE DEFENSE BEING ABLE TO PRESENT IT'S DEFENSE.

1 MR. SUBER, WHO I SPOKE TO THIS WEEKEND TOLD ME SOME
2 THINGS IN THE JAIL WHICH ARE DIFFERENT FROM THE
3 STATEMENT WRITTEN BY THE ONE INDIVIDUAL THAT I NEED TO
4 IMPEACH. I BELIEVE THAT IF THIS TAPE EXISTS, IT WILL
5 HAVE ON IT THINGS I NEED TO SHOW WHICH ONE OF THESE
6 TWO PEOPLE IS BEING HONEST.

7 THE COURT: ALL RIGHT. THIS IS WHAT WE'RE
8 GOING TO DO. OF COURSE, THE CASE ISN'T GOING TO START
9 TILL 2:30. SO THAT'S TWO MORE HOURS THAT THEY'VE GOT.
10 I'M GOING TO GIVE YOU TIME ASSUMING THAT THEY DISCOVER
11 THE TAPE, FIND THE TAPE. I'M GOING TO GIVE YOU TIME
12 TO VIEW IT.

13 MR. MAYER: THANK YOU, YOUR HONOR.

14 THE COURT: IF THAT MEANS POSTPONING THE
15 BEGINNING OF THE TRIAL, WE'LL DO THAT. AT 2:30, IF
16 THEY HAVE NOT DISCOVERED THE TAPE, THEN THE CASE WILL
17 BE CONTINUED. I'LL DECIDE AT THAT TIME HOW LONG AND
18 AT SOME POINT IN TIME IF THE TAPE IS NOT DISCOVERED I
19 WANT TESTIMONY. I WANT TESTIMONY FROM PEOPLE WHO TOOK
20 IT AND WHO SUPPOSEDLY TOUCHED IT ALL THE WAY UP THE
21 CHAIN OF CUSTODY AND WHERE IT MIGHT HAVE GONE AND WHEN
22 IT MIGHT HAVE DISAPPEARED. WE'LL DO THAT, HOPEFULLY
23 IT'LL TURN UP BY 2:30 AND WE WON'T HAVE TO DO THAT.
24 BUT THAT'S WHAT WE'LL DO. SO I'M DELAYING RULING ON
25 YOUR MOTION FOR CONTINUANCE AT LEAST UNTIL 2:30. IF

1 THE TAPE SHOWS UP BY THEN, I'LL GIVE YOU SUFFICIENT
2 TIME TO LOOK AT IT BEFORE WE START.

3 MR. MAYER: THANK YOU, YOUR HONOR.

4 MR. PEACE: THANK YOU, YOUR HONOR.

5 THE COURT: ANYTHING ELSE RIGHT NOW,
6 SOLICITOR?

7 MR. PEACE: YOUR HONOR, IF YOU WILL ENTERTAIN
8 I UNDERSTAND THAT THERE ARE A FEW PLEAS.

9 THE COURT: GET THEM OUT HERE.

10 (WHEREUPON, THE COURT, DURING THE LUNCH
11 RECESS, DECIDED TO START THE TRIAL THE NEXT MORNING AT
12 10:00 A.M.)

13 APRIL 29, 2003

14 THE COURT: DEFENSE READY?

15 MR. MAYER: YES, YOUR HONOR, WE ARE.

16 THE COURT: ANY OTHER PRETRIAL MATTERS BEFORE
17 WE GET STARTED?

18 MR. PEACE: NONE FROM THE STATE.

19 MR. MAYER: NONE FROM THE DEFENSE, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. LET'S GET THE JURY IN
22 HERE PLEASE.

23 BAILIFF: YES, SIR. ALL THE JURORS ARE
24 PRESENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. LET ME FIRST

1 APOLOGIZE TO YOU FOLKS FOR TAKING SO LONG TO GET
2 STARTED. SEEMS LIKE EVERY TIME WE WERE READY SOME
3 OTHER LITTLE SNAFU CAME UP, BUT I THINK WE'VE GOTTEN
4 EVERYTHING TAKEN CARE OF. NOTHING WAS ANYBODY'S
5 FAULT, BUT WE'VE DEALT WITH WHAT WE HAD TO DEAL WITH.
6 I WILL APPOINT MS. VAUGHAN AS YOUR FOREPERSON. AGAIN,
7 YOUR VOTE WILL NOT COUNT ANY MORE THAN ANYONE ELSE'S
8 WILL, BUT YOU WILL PRESIDE IN THE JURY ROOM AND YOU'LL
9 BE THE SPOKESPERSON FOR THE JURY HERE IN THE
10 COURTROOM. NOW THAT YOU'VE GOTTEN IN HERE, YOU'VE
11 GOTTEN SETTLED I NEED TO ASK YOU TO STAND AND RAISE
12 YOUR RIGHT HAND. THE CLERK WILL ADMINISTER YOUR OATH
13 AS JURORS IN THIS CASE. MADAM CLERK.

14 MADAM CLERK: IF YOU'LL RAISE YOUR RIGHT
15 HANDS AND AFTER I'VE ADMINISTERED THE OATH IF YOU'LL
16 RESPOND BY SAYING I WILL.

17 YOU SHALL WELL AND TRULY TRY THE CASE OF THE
18 STATE VERSUS TYRONE SCHUMPERT BEING CASE NUMBER
19 2002-GS-30-1018, AND A TRUE VERDICT RENDER ACCORDING
20 TO THE EVIDENCE AND THE LAW SO HELP YOU GOD.

21 JURORS: I WILL.

22 MADAM CLERK: YOU MAY BE SEATED.

23 THE COURT: NOW, MADAM FORELADY, LADIES AND
24 GENTLEMEN, WHAT I'M GOING TO SAY AT THIS TIME IS NOT
25 INTENDED TO SERVE AS THE SUBSTITUTE FOR THE DETAILED

1 INSTRUCTIONS OF LAW THAT I WILL GIVE YOU AT THE END OF
2 THE CASE. THIS IS SIMPLY AN INTRODUCTION TO THE TRIAL
3 OF THE CASE. AGAIN, THIS IS A CRIMINAL CASE THAT HAS
4 BEEN COMMENCED BY THE STATE, I MAY REFER TO THE STATE
5 AS THE PROSECUTION. THE CASE IS AGAINST TYRONE
6 SCHUMPERT, WHO HAS BEEN INTRODUCED TO YOU. THE CASE
7 IS BASED ON THIS INDICTMENT. I'VE EXPLAINED TO YOU
8 THAT THE INDICTMENT DOES CONTAIN THE CHARGES IN THIS
9 CASE. THERE IS A CHARGE OF CONSPIRACY TO COMMIT ARMED
10 ROBBERY. THERE ARE TWO CHARGES OF ARMED ROBBERY.
11 THERE'S A CHARGE OF POSSESSION OF A FIREARM OR A KNIFE
12 DURING THE COMMISSION OF A VIOLENT CRIME. THE
13 INDICTMENT CONTAINS THOSE CHARGES, BUT THE INDICTMENT
14 IS NOT EVIDENCE OF THOSE CHARGES AND IT CAN NOT BE
15 CONSIDERED BY THE JURY OF THE EVIDENCE THAT IT, CAN
16 NOT BE CONSIDERED BY THE JURY AS EVIDENCE OF THE
17 CHARGES THAT THE INDICTMENT CONTAINS. AGAIN, IT'S THE
18 DOCUMENT THAT IS PROCESSED THIS CASE INTO THIS COURT.
19 AND TO THESE CHARGES IN THE INDICTMENT THE DEFENDANT
20 HAS PLED NOT GUILTY AND THEREFORE THE STATE DOES HAVE
21 THE BURDEN OF PROVING EACH OF THE ESSENTIAL ELEMENTS
22 OF THE CHARGES BEYOND A REASONABLE DOUBT. AND THE
23 PURPOSE OF THIS TRIAL IS TO DETERMINE WHETHER THE
24 STATE HAS MET THAT BURDEN. YOUR PURPOSE AS JURORS IN
25 THIS CASE IS TO DETERMINE WHAT THE FACTS ARE. UNDER

1 OUR SYSTEM OF CRIMINAL PROCEDURE, YOU ARE THE SOLE
2 JUDGE OF THE FACTS. AGAIN, I DON'T HAVE AND WON'T HAVE
3 AN OPINION AS TO WHAT THE FACTS ARE, YOU HAVE TO MAKE
4 THAT DETERMINATION BASED ON THE EVIDENCE THAT'S
5 PRESENTED TO YOU HERE AT THE TRIAL. THE SAME LAW THAT
6 MAKES YOU THE JUDGE OF THE FACTS DOES MAKE ME THE
7 JUDGE OF THE LAW. UNDER THE OATH THAT YOU HAVE JUST
8 TAKEN YOU'VE AGREED TO ACCEPT AND APPLY THE LAW
9 PRECISELY AS I WILL EXPLAIN TO YOU AT THE END OF THE
10 CASE. YOU MAKE YOUR DETERMINATION AS TO WHAT THE
11 FACTS ARE BASED ON THE EVIDENCE THAT IS PRESENTED HERE
12 IN THE COURTROOM. AGAIN, UNTIL THE CASE HAS BEEN
13 SUBMITTED TO YOU YOU'RE NOT PERMITTED TO DISCUSS IT
14 WITH ANYONE, NOT EVEN WITH YOUR FELLOW JURORS. AND
15 AFTER IT IS SUBMITTED TO YOU, YOU MUST DISCUSS IT ONLY
16 WITH YOUR FELLOW JURORS IN THE JURY ROOM. I'M GOING
17 TO ASK YOU TO PLEASE PLAY CLOSE ATTENTION TO ALL THE
18 WITNESSES WHO TESTIFY, TO BOTH ATTORNEYS AS THE TRIAL
19 PROCEEDS. DURING THE COURSE OF THE TRIAL THE ATTORNEYS
20 MAY OBJECT TO CERTAIN QUESTIONS, THEY MAY OBJECT TO
21 CERTAIN EXHIBITS THAT MIGHT BE OFFERED INTO EVIDENCE.
22 DON'T HOLD THAT AGAINST THE ATTORNEY OR THE ATTORNEY'S
23 CLIENT. IF AN OBJECTION IS MADE, THAT IS SIMPLY THE
24 LAWYERS WAY OF LETTING ME KNOW THAT A RULE OF EVIDENCE
25 HAS COME INTO PLAY AND I'LL BE REQUIRED TO MAKE A

1 RULING ON THE OBJECTION. IF THE OBJECTION IS
2 SUSTAINED, YOU'RE NOT PERMITTED TO TRY TO GUESS AT
3 WHAT THE ANSWER MIGHT HAVE BEEN OR GUESS AT WHAT THE
4 EXHIBIT MIGHT HAVE BEEN. AGAIN, THE ONLY EVIDENCE YOU
5 CAN CONSIDER IS THAT, THAT IS ADMITTED INTO THE RECORD
6 IN THE CASE. DURING THE TRIAL THE ATTORNEYS FROM TIME
7 TO TIME IN SOME CASES, THEY WILL ASK TO PUBLISH
8 CERTAIN EXHIBITS TO THE JURY THAT SIMPLY MEANS WHILE
9 THE TRIAL IS GOING ON PASS EXHIBITS AROUND AMONG THE
10 JURY. IF AN EXHIBIT COMES INTO EVIDENCE THEY WOULD
11 ASK THAT IT BE PASSED AMONG THE JURY WHILE THE TRIAL
12 IS CONTINUING. THERE'S NOTHING WRONG WITH THAT, BUT
13 LET ME CAUTION YOU IF WE GET TO THAT POINT, PLEASE
14 CONTINUE TO LISTEN TO THE TESTIMONY THAT'S GOING ON
15 WHILE THAT'S OCCURRING. I'VE HAD JURORS EXPRESS
16 CONCERN TO ME THAT THEY DID NOT HAVE ENOUGH TIME
17 DURING THE TRIAL TO LOOK AT SOMETHING AS LONG OR AS
18 CLOSELY AS THEY WANTED TO. ALL THE EXHIBITS THAT COME
19 INTO EVIDENCE WILL BE WITH YOU IN THE JURY ROOM WHEN
20 YOU'RE DELIBERATING, SO YOU CAN TAKE AS LONG AS YOU
21 WANT TO AT THAT POINT IN TIME TO OBSERVE THE EXHIBITS.
22 AGAIN, I TOLD YOU I'LL BE WATCHING YOU FOLKS, WE'LL BE
23 TAKING A BREAK ABOUT EVERY HOUR, HOUR AND FIFTEEN
24 MINUTES. IF YOU NEED TO TAKE ONE AND IT DOESN'T LOOK
25 LIKE I'M ABOUT TO AT THAT POINT, JUST RAISE YOUR HAND.

1 I WANT TO BE SURE YOU CAN SEE AND HEAR ALL THE
2 TESTIMONY THAT'S PRESENTED TO YOU ALSO. IF YOU'RE NOT
3 ABLE TO SEE OR HEAR, AGAIN JUST RAISE YOUR HAND AND
4 GET MY ATTENTION, I'LL BE SURE THAT THE WITNESSES
5 SPEAK LOUDLY AND CLEARLY ENOUGH FOR YOU TO BE ABLE TO
6 HEAR. AGAIN, PLEASE GIVE BOTH ATTORNEYS, NOW WHAT'S
7 GOING TO HAPPEN, I'M GOING TO RECOGNIZE THE ATTORNEYS
8 FOR VERY BRIEF OPENING STATEMENTS. NOW THE ATTORNEYS
9 DON'T TESTIFY. WHAT THEY SAY IS NOT TESTIMONY. THE
10 OPENING STATEMENTS WILL SIMPLY, THEY'LL BE GIVEN AN
11 OPPORTUNITY TO PRESENT AN OUTLINE OF WHAT THEIR
12 POSITION IS IN THE CASE. THE STATE WILL GO FIRST
13 BECAUSE THE STATE DOES HAVE THE BURDEN OF PROOF AND
14 I'LL EXPLAIN THAT IN MORE DETAIL AT THE END OF THE
15 CASE. AFTER THE SOLICITOR MAKES HIS OPENING
16 STATEMENT, DEFENSE COUNSEL IS GIVEN THAT SAME
17 OPPORTUNITY. THEN WE'LL PROCEED WITH THE TESTIMONY
18 AND OTHER EVIDENCE. WHEN ALL OF THAT HAS BEEN
19 PRESENTED TO YOU, THE ATTORNEYS WILL COME BACK AND
20 MAKE ARGUMENTS TO YOU AND THEN I'LL INSTRUCT YOU IN
21 THE LAW. AND THEN YOU'LL BE SENT BACK TO DELIBERATE
22 AND TO REACH A VERDICT. AGAIN, PLEASE GIVE BOTH
23 ATTORNEYS AND ALL THE WITNESSES YOUR FULL ATTENTION.
24 ALL RIGHT. MR. PEACE.

25 MR. PEACE: THANK YOU, YOUR HONOR. IF IT

1 PLEASE THE COURT.

2 THE COURT: ALL RIGHT.

3 MR. PEACE: MR. MAYER. LADIES AND GENTLEMEN
4 OF THE JURY, MADAM FORELADY, JERRY PEACE, I'M THE
5 DEPUTY SOLICITOR. IT'S MY JOB TO PRESENT THE STATE'S
6 CASE. WHAT I WANT TO DO RIGHT NOW IS JUST TAKE A FEW
7 MINUTES AND TALK ABOUT WHERE WE ARE RIGHT NOW, WHERE
8 WE'RE GOING AND HOW WE GET FROM WHERE WE ARE NOW TO
9 WHERE WE'RE GOING. WHERE ARE WE? YOU'VE GOT A
10 DEFENDANT. THE DEFENDANT'S TYRONE SCHUMPERT. HE'S
11 GOT CHARGES AND HE'S GOT CHARGES IN THE INDICTMENT
12 THAT THE JUDGE TALKED ABOUT YESTERDAY. HE'S CHARGED
13 WITH CONSPIRACY TO COMMIT ARMED ROBBERY; TWO COUNTS OF
14 ARMED ROBBERY; AND POSSESSION OF A WEAPON DURING THE
15 COMMISSION OF A VIOLENT CRIME BECAUSE ARMED ROBBERY IS
16 A VIOLENT CRIME. WHAT DOES ALL THAT MEAN? YOU'VE GOT
17 TO KNOW WHAT THAT MEANS BEFORE YOU CAN DECIDE WHETHER
18 THE DEFENDANT'S GUILTY OF IT. LET'S TAKE IT OUT OF
19 ORDER. ARMED ROBBERY, WHAT IS THAT? THAT'S THE
20 TAKING AND CARRYING AWAY OF THE PROPERTY OF ANOTHER
21 WITHOUT THE PERSON'S PERMISSION AND BECAUSE IT'S
22 ROBBERY WITH FORCE, FEAR OR INTIMIDATION. AND BECAUSE
23 IT'S ARMED ROBBERY A WEAPON HAS TO BE USED AND IN THIS
24 CASE THE WEAPON WILL BE PISTOLS, GUNS. THAT'S ARMED
25 ROBBERY, THE TAKING AND CARRYING AWAY OF PERSONAL

1 PROPERTY OF ANOTHER WITHOUT PERMISSION PUTTING THE
2 PERSON EITHER IN FEAR OR DOING IT THROUGH FORCE OR
3 INTIMIDATION AND BECAUSE IT'S ARMED ROBBERY USING SOME
4 TYPE OF WEAPON. THAT'S ARMED ROBBERY. CONSPIRACY TO
5 COMMIT ARMED ROBBERY MERELY MEANS THAT THERE WAS SOME
6 TYPE OF AGREEMENT BETWEEN DEFENDANTS THAT THEY WERE
7 GOING TO COMMIT THIS ARMED ROBBERY. AS YOU'LL FIND
8 OUT THE AGREEMENT DOESN'T HAVE TO BE IN WRITING. IT
9 DOESN'T HAVE TO BE HAMMERED OUT WEEKS BEFORE. IT CAN
10 BE RIGHT BEFORE THE OCCURRENCE. AND THE POSSESSION OF
11 A WEAPON, IF THEY POSSESSED A WEAPON DURING THE
12 COMMISSION OF A VIOLENT CRIME, THAT'S IT. SO THAT'S
13 WHERE WE ARE. THE STATE HAS TO SHOW THOSE ELEMENTS,
14 THEY HAVE TO PROVE THAT TO YOU IN ORDER FOR YOU TO
15 FIND THIS DEFENDANT GUILTY. NOW WHERE ARE WE GOING?
16 WE'RE GOING SO WHEN YOU GO BACK IN TO THE JURY ROOM
17 AND YOU MAKE THE DECISION, YOU DECIDE WHETHER THE
18 DEFENDANT'S GUILTY OR NOT GUILTY. I DON'T DECIDE IT.
19 MR. MAYER DOESN'T DECIDE IT. THE JUDGE DOESN'T DECIDE
20 IT. YOU DECIDE IT. SO THAT'S WHERE WE'RE GOING.
21 WELL, HOW DO WE GET FROM HERE TO THERE? AS I SAID THE
22 STATE HAS THE BURDEN OF PROOF. WE'RE GOING TO PRESENT
23 EVIDENCE. WE'RE GOING TO HAVE WITNESSES COME UP HERE
24 AND TESTIFY. AND I'M NOT GOING TO GO OVER WHAT EACH
25 WITNESS IS GOING TO SAY IN DETAIL, BUT I DO WANT TO

1 GIVE YOU A GUIDE, KIND OF A ROAD MAP SO AS THE
2 WITNESSES TESTIFY YOU'LL BE ABLE TO FOLLOW ALONG AND
3 YOU'LL BE ABLE TO KNOW WHERE WE'RE GOING. THIS ARMED
4 ROBBERY OCCURRED ON MAY 27TH, 2002, AT A LAUNDROMAT
5 OVER IN WESTERN SQUARE, OVER WHERE BI-LO IS. THERE
6 WERE, THERE WERE TWO VICTIMS IN THERE, BENJI CAGLE AND
7 JENNIFER SATTERFIELD WERE IN THERE LATE, LIKE AFTER
8 MIDNIGHT, BETWEEN MIDNIGHT AND ONE O'CLOCK WASHING
9 CLOTHES. THEY WERE WASHING CLOTHES, GUYS CAME IN WITH
10 GUNS, HELD THE GUNS ON THEM, TOLD THEM TO LOOK AT THE
11 FLOOR, SO THEY'RE NOT GOING TO BE ABLE TO IDENTIFY ANY
12 OF THESE GUYS. THEY WON'T BE ABLE TO IDENTIFY
13 ANYBODY. NOT MR. SCHUMPERT, NOT ANY OF THE
14 CODEFENDANTS. HELD GUNS ON THEM AND TOLD THEM TO LOOK
15 DOWN, PROCEEDED TO TAKE MONEY, RINGS, NECKLACES AND
16 OTHER JEWELRY. PUT THEM IN THE BATHROOM AND TOLD THEM
17 TO COUNT TO A HUNDRED. AFTER THEY COUNTED TO 54, THEY
18 WENT OUT AND CALLED 911. THEY SAW A CAR DRIVE BY AND
19 THEY'D SEEN A CAR EARLIER THAT EVENING. SAW THE SAME
20 CAR DRIVE BY AND THEN AFTER THE POLICE CAME AND
21 THEY'RE TALKING TO THE POLICE THEY SEE THIS SAME CAR
22 DRIVE BY AND THEY SAID WELL, THAT'S THE CAR. BASED ON
23 THAT THE CAR WAS STOPPED AND THERE WERE SEVERAL
24 DEFENDANTS WHO WERE ARRESTED AND AS PART OF THE
25 INVESTIGATION MR. SCHUMPERT'S NAME CAME UP AS A

1 PARTICIPANT IN THE ARMED ROBBERY. SO THAT'S WHERE WE
2 ARE, WHERE WE'RE GOING AND THAT'S HOW WE'RE GOING TO
3 GET THERE. NOW WHAT DO YOU DO ONCE YOU GET THERE?
4 WELL, AS I SAID YOU DECIDE WHETHER HE'S GUILTY OR NOT
5 GUILTY. AND YOU DO THAT BASED ON THE INSTRUCTIONS
6 THAT THE JUDGE GIVES YOU. AND HE'S GOING TO TELL YOU,
7 HE'S GOING TO TALK ABOUT REASONABLE DOUBT, HE'S GOING
8 TO TELL YOU WHAT THAT IS. HE'S GOING TO DEFINE IT FOR
9 YOU. SO I JUST WANT TO LEAVE YOU WITH THIS THOUGHT.
10 REGARDLESS OF HOW THE JUDGE DEFINES REASONABLE DOUBT,
11 REGARDLESS OF WHAT HE TELLS YOU THAT IS, WHEN YOU GO
12 BACK INTO THE JURY ROOM BASED ON THE STATE'S EVIDENCE
13 YOU WON'T HAVE ANY PROBLEM FINDING THIS DEFENDANT
14 GUILTY OF TWO COUNTS OF ARMED ROBBERY, CONSPIRACY TO
15 COMMIT ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
16 THE COMMISSION OF A VIOLENT CRIME. I APPRECIATE YOUR
17 PATIENCE, I KNOW BETWEEN YESTERDAY AND TODAY IT'S
18 TAKING US A LONG TIME TO GET TO THIS POINT. I
19 APPRECIATE YOU DOING YOUR DUTY AS CITIZENS OF LAURENS
20 COUNTY AND I LOOK FORWARD TO PRESENTING THE STATE'S
21 CASE. THANK YOU VERY MUCH.

22 THE COURT: ALL RIGHT. THANK YOU, MR. PEACE.
23 MR. MAYER.

24 MR. MAYER: MAY IT PLEASE THE COURT. MR.
25 PEACE. GOOD MORNING. MY NAME IS BILL MAYER, I'M AN

1 ATTORNEY HERE IN LAURENS. WHAT MR. PEACE HAS TOLD YOU,
2 I DON'T BELIEVE THIS JURY'S GOING TO FIND TYRONE
3 GUILTY OF ANYTHING IN THIS TRIAL. MR. PEACE HAS TOLD
4 YOU A ROAD MAP AND THAT'S A GOOD DESCRIPTION OF WHAT'S
5 GOING TO HAPPEN. PEOPLE ARE GOING TO TAKE THAT STAND,
6 THEY'RE GOING TO TESTIFY UNDER OATH. THEY'RE GOING TO
7 ANSWER QUESTIONS THAT MR. PEACE ASK AND THAT I ASK.
8 I, FIRST OF ALL, I CAN'T TELL YOU WHAT THEY'RE GOING
9 TO SAY YET, THAT REMAINS TO BE SEEN. BUT MR. PEACE
10 SAID SOME THINGS WHICH ARE ABSOLUTELY TRUE THAT THE
11 VICTIMS CAN'T IDENTIFY WHO WAS THERE THAT DAY. THAT
12 THE VICTIMS ARE GOING TO TESTIFY THAT SOME MEN CAME IN
13 AND ROBBED THEM. ONE OF THINGS THAT MR. PEACE SAID
14 THAT PARTICULARLY CAUGHT MY INTEREST IS NOT THAT WHEN
15 THIS CAR WAS PULLED OVER THAT MR. SCHUMPERT WAS IN IT,
16 BUT IN THE COURSE OF PURSUING THIS MR. SCHUMPERT'S
17 NAME CAME UP. WHAT YOU'RE GOING TO FIND WITH THE
18 PROSECUTION OF THIS TRIAL IS THE ONLY THING THAT LINKS
19 MR. SCHUMPERT TO THIS ROBBERY, BECAUSE WE DON'T
20 CONTEST THAT THE ROBBERY HAPPENED, IT DID. THE ONLY
21 THING THAT LINKS MR. SCHUMPERT TO THIS ROBBERY IS THE
22 FACT THAT INDIVIDUALS WHO WERE CAUGHT AND MADE
23 STATEMENTS, ONE OF THEM WROTE IN HIS STATEMENT THAT
24 MR. SCHUMPERT WAS THERE, THE OTHER DID NOT. THE THIRD
25 DIDN'T MAKE A STATEMENT. IT'S THE ONLY THING THAT

1 LINKS MR. SCHUMPERT TO THIS CASE. LISTEN TO WHAT THE
2 WITNESSES SAY. KEEP YOUR MIND OPEN BECAUSE THAT MAN
3 OVER THERE IS NOT GUILTY RIGHT NOW. BECAUSE THE ONLY
4 THING THAT CAN MAKE HIM GUILTY IS A UNANIMOUS VERDICT
5 OF THE TWELVE JURORS ON THIS TRIAL. IF YOU ALL ARE
6 SHOWN BY THE STATE BEYOND A REASONABLE DOUBT, BEYOND
7 ANY REASONABLE DOUBT THAT MAN'S A PART OF THIS, THEN
8 YOU RENDER YOUR VERDICTS ACCORDINGLY. WE DON'T THINK
9 THAT'S SO. I'M ASKING YOU TO DO ONE THING IN THE
10 COURSE OF THIS TRIAL, THAT IS TO KEEP YOUR MIND OPEN.
11 I'LL CALL YOUR ATTENTION TO ONE LITTLE FACET OF BEING
12 A HUMAN BEING, WE ALL SUFFER FROM SOMETHING CALLED
13 PRIMACY. THAT'S THE NATURAL BENT TOWARDS BELIEVING
14 WHAT YOU HEAR FIRST. WELL, IN THIS CASE ACCORDING TO
15 THE RULES THE STATE WILL PUT UP THEIR CASE FIRST. I
16 ASK YOU NOT TO BOW TO PRIMACY. KEEP YOUR MIND OPEN
17 UNTIL YOU HEAR ANY TESTIMONY THAT COMES FROM THE
18 DEFENSE. HE'S NOT REQUIRED TO PUT UP A DEFENSE AT
19 ALL. HE'S NOT REQUIRED TO DO ANYTHING TODAY. THE
20 BURDEN IS ENTIRELY UPON THE STATE TO PROVE TO YOU THAT
21 THIS MAN WAS THERE. LISTEN TO THE TESTIMONY. USE
22 YOUR DISCRETION THAT YOU ALL USE IN YOUR DAY-TO-DAY
23 LIVES TO MAKE DECISIONS ABOUT WHAT IS OR IS NOT
24 POSSIBLE OR PROBABLE OR LIKELY. THE STATE WILL CALL
25 WITNESSES. THE DEFENSE MAY OR MAY NOT. IN THE END MR.

1 PEACE AND I WILL GIVE YOU CLOSING ARGUMENTS. THAT'S
2 WHERE WE POINT OUT TO YOU THINGS THAT WERE SAID IN THE
3 TRIAL, EVIDENCE THAT WAS PRESENTED IN THE TRIAL AND
4 THINGS THAT YOU CAN USE AS JURORS TO DETERMINE WHETHER
5 SOMEBODY'S CREDIBLE. WHETHER SOMEBODY HAS SOMETHING
6 TO GAIN BY TESTIFYING A CERTAIN WAY OR NOT. WHETHER
7 PEOPLE HAVE CHANGED THEIR TESTIMONY FROM ONE TIME TO
8 ANOTHER. USE THAT IN WEIGHING WHAT IS OR IS NOT
9 BELIEVABLE TO YOU. SO USE YOUR HEAD AT THE BEGINNING
10 AND END OF THIS TRIAL. I'LL ASK DID YOU PAY
11 ATTENTION, KEEP AN OPEN MIND.

12 THE COURT: THANK YOU, MR. MAYER. SOLICITOR,
13 CALL YOUR FIRST WITNESS PLEASE.

14 MR. PEACE: THANK YOU, YOUR HONOR. IF IT
15 PLEASE THE COURT THE STATE WOULD CALL PAUL BENJAMIN
16 CAGLE TO THE STAND.

17 THE COURT: COME AROUND AND BE SWORN PLEASE.

18 PAUL BENJAMIN CAGLE, HAVING BEEN FIRST DULY SWORN
19 BY THE COURT, TESTIFIED AS FOLLOWS:

20 MADAM CLERK: WOULD YOU STATE YOUR FULL NAME
21 FOR THE RECORD.

22 A PAUL BENJAMIN CAGLE.

23 DIRECT EXAMINATION:

24 BY MR. PEACE:

25 Q MR. CAGLE, WERE YOU AT THE LAUNDROMAT ON MAY 27TH OF

PAUL CAGLE - DIRECT BY MR. PEACE

1 2002 OVER ON WESTERN SQUARE?

2 A YES, SIR.

3 Q WHO WERE YOU WITH ON THAT DATE?

4 A JENNIFER SATTERFIELD.

5 Q WHAT TIME WAS IT WHEN YOU WERE THERE?

6 A AROUND MIDNIGHT.

7 Q DID ANYTHING OUT OF THE ORDINARY OCCUR WHILE YOU
8 WERE AT THE LAUNDROMAT?

9 A YES, SIR.

10 Q AND WHAT WAS THAT?

11 A SOME GUYS, I HAD LOOKED OUTSIDE SOME GUYS WERE ABOUT
12 TO COME IN. THEY HAD A WHITE MASK OVER THEIR FACES.

13 Q OKAY. WHAT, DID THE GUYS COME IN?

14 A YES, SIR.

15 Q AND WHAT HAPPENED AFTER THE GUYS CAME IN?

16 A THEY WERE, I THINK THREE THAT CAME IN, I DON'T KNOW
17 IF THERE WAS ONE OUTSIDE OR NOT, BUT THEY HAD WHITE
18 SHIRTS OVER THEIR FACE AND THEY TOLD US TO LOOK AT THE
19 GROUND AND GIVE UP ANY OF THE MONEY.

20 Q OKAY. DID YOU LOOK AT THE GROUND?

21 A YES, SIR.

22 Q OKAY. DID YOU SEE THE FACES ON ANY THESE GUYS?

23 A NO, SIR.

24 Q ARE YOU ABLE TO RECOGNIZE ANY OF THESE GUYS?

25 A NO, SIR.

PAUL CAGLE - DIRECT BY MR. PEACE

1 Q OKAY. AND WHAT HAPPENED AFTER THEY TOLD YOU TO LOOK
2 AT THE GROUND?

3 A WE GIVE UP THE MONEY AND I TOLD THEM, I GAVE THEM
4 WHAT I HAD AND THEY TOLD ME NO, I MUST HAVE LIED.
5 THEY KNOW I HAD MORE.

6 Q OKAY. HOW MUCH MONEY DID YOU GIVE THEM?

7 A IT WAS \$100.00 DOLLARS AND THEN THERE WAS CHANGE
8 LAYING ON THE TABLE AND THEY SNATCHED THE CHANGE UP.
9 AND I HAD GAVE THEM THE NECKLACE THAT I HAD AROUND MY
10 NECK.

11 Q I'M SORRY. I DIDN'T UNDERSTAND IT.

12 A THEY GOT THE NECKLACE OFF MY NECK AND GOT SOME
13 CHANGE ON THE TABLE WHERE I HAD JUST DEPOSITED SOME
14 MONEY IN THE DRYER.

15 Q AND HOW MUCH MONEY WOULD YOU ESTIMATE THAT WAS?

16 A NOT OVER \$2.00 DOLLARS.

17 Q ALL RIGHT. WHAT HAPPENED AFTER YOU GAVE THEM THE
18 MONEY AND THE NECKLACE?

19 A THEY KEPT SAYING I WAS LYING. THEY WAS ALL GOING TO
20 SHOOT US. AND I HAD EMPTIED ALL MY POCKETS OUT TO TELL
21 THEM I DIDN'T HAVE NOTHING.

22 Q OKAY. NOW, THE THREE INDIVIDUALS INSIDE, DID THEY
23 HAVE WEAPONS?

24 A YES, SIR.

25 Q OKAY. DID EACH ONE HAVE A WEAPON?

PAUL CAGLE - DIRECT BY MR. PEACE

1 A I KNOW THE ONE THAT HAD ME HAD A WEAPON.

2 Q ALL RIGHT. LET ME REPHRASE THAT. HOW MANY PEOPLE
3 DO YOU RECALL HAVING WEAPONS?

4 A TWO.

5 Q OKAY. ALL RIGHT. DID THEY POINT THE WEAPONS AT
6 YOU?

7 A ONE OF THEM POINTED THE WEAPON AT ME AND THEN ONE OF
8 THEM HAD JENNIFER SATTERFIELD.

9 Q ALL RIGHT. AND WHAT HAPPENED AFTER YOU GAVE THEM
10 THE MONEY AND THE NECKLACE?

11 A I HAD, I HAD LOOKED AND I SAID THERE'S THE POLICE,
12 BUT THEY WASN'T BUDGING, THEY WERE STILL COMING AT US
13 AND THEY TOLD, THEY TOLD US TO GET IN THE BATHROOM.

14 Q ALL RIGHT. NOW, DID YOU TELL THEM THERE'S THE
15 POLICE TO TRY TO GET THEM TO RUN?

16 A YES.

17 Q OKAY. DID, THAT DIDN'T WORK?

18 A NO.

19 Q OKAY. WHAT HAPPENED AFTER THAT?

20 A I WAS STANDING THERE AND THEY KEPT SAYING I HAD MORE
21 MONEY AND JENNIFER HAD GRABBED ME BY THE ARM AND TOLD
22 ME TO COME ON, PLEASE GO TO THE BATHROOM BECAUSE THEY
23 SAID THEY WAS GOING TO SHOOT US. AND SHE HAD TOLD
24 THEM THAT SHE AIN'T GOT NO MORE MONEY, THAT SHE HAD A
25 KID AT HOME AND SHE NEEDS TO GET HOME TO HER KID. AND

PAUL CAGLE - DIRECT BY MR. PEACE

1 HE SAID HE DON'T CARE IF YOU'VE GOT A MF'ING KID AT
2 HOME. AND IF HE DIDN'T GIVE ME THE MONEY SHE WAS
3 GOING TO DIE.

4 Q OKAY. AND WHAT HAPPENED AFTER THAT?

5 A WE HAD WENT TO THE BATHROOM. HE HAD MADE US GO IN
6 THE BATHROOM WITH A GUN POINTED TO THE BACK OF HER
7 HEAD. AND WHEN WE GOT TO THE BATHROOM, HE CLOSED THE
8 DOOR AND TOLD US TO SIT ON THE FLOOR. WELL, HE HAD
9 THE DOOR OPEN AT THAT TIME. HE TOLD US TO SIT ON THE
10 FLOOR AND COUNT TO A HUNDRED.

11 Q OKAY. AND WHAT DID YOU DO?

12 A I SAT ON THE FLOOR AND JENNIFER DONE STARTED
13 COUNTING. AND WHEN JENNIFER STARTED COUNTING, SHE
14 COUNTED TO ABOUT 5, HE WAS STILL STANDING OUTSIDE AND
15 HE SAID COUNT LOUDER, AND THEN HE SAID, THEN HE CALLED
16 HER A BITCH.

17 Q OKAY. AND WHAT HAPPENED AFTER THAT?

18 A WELL, WE COUNTED A FEW AND THEN WE COME OUT OF THE
19 LAUNDROMAT AND WHEN WE COME OUT OF THE LAUNDROMAT, WE
20 WAS IN THE LAUNDROMAT, WHEN WE WAS IN THE BATHROOM, I
21 HEARD SOME KEYS. THEY HAD TOOK HER KEYS IN THE PROCESS
22 OF TAKING HER MONEY AND I HEARD THE KEYS HIT THE BACK
23 OF THE BUILDING BECAUSE THERE'S A GATE BACK THERE.

24 Q OKAY. DID YOU HEAR ANYONE SAY ANYTHING WHEN THE
25 KEYS HIT?

PAUL CAGLE - DIRECT BY MR. PEACE

1 A NO, I JUST HEARD PEOPLE RUNNING.

2 Q OKAY. AND WHAT HAPPENED AFTER THAT?

3 A WE HAD COME OUT OF THE BATHROOM AND CALLED 911.

4 Q OKAY. AND THEN DID THE POLICE COME?

5 A THE POLICE COME, BUT WHEN THE POLICE COME I HAD SEEN

6 A CAR RIDE BY AND I HAD POINTED OUT THE CAR. AND THAT

7 WAS THE CAR THAT RODE BY EARLIER WHEN WE WAS GETTING

8 OUR LAUNDRY OUT OF THE CAR.

9 Q OKAY. ALL RIGHT. OKAY. THANK YOU MR. CAGLE.

10 PLEASE ANSWER ANY QUESTIONS THAT MR. MAYER MAY HAVE.

11 THE COURT: CROSS-EXAMINE.

12 CROSS-EXAMINATION

13 BY MR. MAYER:

14 Q BENJI, THE POLICE SHOWED UP THAT NIGHT, RIGHT?

15 A YES, SIR.

16 Q AND YOU WROTE A STATEMENT, DIDN'T YOU?

17 A YES, SIR.

18 Q IS THAT IT?

19 A YES, SIR.

20 Q AND YOU WROTE THIS ON THE 27TH, RIGHT AFTER IT

21 HAPPENED, RIGHT?

22 A YES, SIR.

23 Q YOU MENTION ANYTHING IN THIS STATEMENT ABOUT BEING

24 TOLD TO LOOK AT THE GROUND, DID YOU?

25 A I DON'T THINK I DID.

PAUL CAGLE - CROSS BY MR. MAYER

1 Q YOU REMEMBER TALKING TO ME THIS WEEKEND?

2 A YES, SIR.

3 Q DID YOU TELL ME THAT YOU COULD IDENTIFY ONE OF THE
4 PEOPLE THAT ROBBED YOU?

5 A YES, SIR.

6 Q WHO WAS THAT?

7 A IT WAS MAURICE SUBER BY HIS SHOES.

8 Q YOU KNOW TYRONE?

9 A NO, SIR.

10 Q EVER MET HIM BEFORE?

11 A NO, SIR.

12 Q DID YOU SAY, YOU SAID THERE WERE TWO GUYS IN THERE
13 WITH GUNS. DID YOU GET A LOOK AT THE SECOND ONE?

14 A NO, SIR. WE WAS LOOKING AT THE GROUND. I MEAN, I
15 KNOW THAT THERE WAS ONE THAT WAS IN THE CAR, BUT CAUSE
16 ONE WAS GOING TO THE CAR LOOKING FOR STUFF IN THE CAR.

17 Q YOU SAID THEY HAD T-SHIRTS OVER THEIR HEAD. IS THAT
18 PULLED COMPLETELY OVER THEIR HEADS OR UP OVER THEIR
19 NOSE OR WHAT?

20 A JUST UP THEIR NOSE. JUST UP TO THEIR NOSES.

21 Q LIKE THOSE OLD WESTERN MOVIES WHERE THEY PULL
22 SOMETHING UP OVER THEIR NOSE?

23 A YES, SIR.

24 Q AND THAT'S HOW YOU COULD SEE MR. SUBER'S EYES?

25 A. I NEVER SAID I SEEN MR. SUBER'S EYES.

PAUL CAGLE - CROSS BY MR. MAYER

1 Q OH, SHOES.

2 A SHOES.

3 Q SHOES. YOU CAN'T IDENTIFY OTHER THAN MR. SUBER'S
4 SHOES, YOU CAN'T IDENTIFY EITHER OF THE OTHER TWO?

5 A NO, SIR. ONLY THING THAT I CAN IDENTIFY, I KNOW WHO
6 WAS DRIVING THE CAR WHEN THEY RODE THROUGH THE PARKING
7 LOT THE FIRST TIME.

8 Q WHO WAS DRIVING THE CAR WHEN THEY RODE THROUGH?

9 A MARCUS BROWN.

10 Q MARCUS BROWN. NOW WHEN YOU WENT OUT AND CALLED 911
11 WHERE WERE YOU?

12 A ON A PAY PHONE OUTSIDE THE LAUNDROMAT.

13 Q HOW LONG AFTER THIS HAPPENED? HOW LONG AFTER YOU
14 WERE PUT IN THE BATHROOM AND THE ROBBERS FLED, DID YOU
15 CALL 911?

16 A MAYBE FIVE MINUTES. JUST LONG ENOUGH TO COUNT AND
17 GET OUT THERE AND GET ON THE PHONE.

18 Q BASICALLY YOU JUST OPENED THE DOOR, THEY WERE GONE,
19 YOU RAN RIGHT OUTSIDE AND CALLED?

20 A YES, SIR.

21 Q WHO CALLED, YOU OR JENNIFER?

22 A JENNIFER.

23 Q AND WHILE YOU WERE ON THE PHONE YOU SAW THE CAR?

24 A YES, SIR. NO, SIR. THE CAR RODE BY AFTER THE
25 POLICE HAD GOT THERE.

PAUL CAGLE - CROSS BY MR. MAYER

1 Q AFTER THE POLICE GOT THERE. ON WHAT ROAD AND IN
2 WHAT DIRECTION?

3 A IT WAS COMING FROM TOWARDS THE HIGH SCHOOL. LIKE
4 FROM THE HIGH SCHOOL.

5 Q FROM THE HIGH SCHOOL. ON WHAT ROAD?

6 A I DON'T KNOW THE NAME OF THAT HIGHWAY.

7 Q THE ONE THAT RUNS BY THE HIGH SCHOOL?

8 A THE ROAD THAT RUNS IN FRONT OF BI-LO. THEY WAS
9 COMING FROM THE OTHER WAY.

10 Q THE POLICE TAKE OFF AFTER IT?

11 A YES, SIR.

12 Q DID THE OTHER ROBBER SAY ANYTHING?

13 A LIKE WHAT YOU'RE SAYING?

14 Q YOU TALK ABOUT THE ROBBER THAT POINTED THE GUN AT
15 YOU. IS HE THE ONE THAT DID MOST OF THE TALKING?

16 A YES, SIR. THE GUY THAT HAD HAD ME, YEAH, HE DID
17 MOST OF THE TALKING.

18 Q IS THAT THE ONE WHOSE SHOES YOU RECOGNIZED?

19 A YES, SIR.

20 Q DID THE OTHER ROBBER SAY ANYTHING?

21 A I DON'T KNOW IF HE HAD SAID ANYTHING TO HER OR NOT,
22 BECAUSE WE WAS A GOOD FEET AWAY.

23 Q BUT YOU DIDN'T HEAR HIM SAY ANYTHING?

24 A NO.

25 Q OKAY. THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

PAUL CAGLE - CROSS BY MR. MAYER

1 THE COURT: ANY REDIRECT?

2 MR. PEACE: JUST A COUPLE OF QUESTIONS, YOUR
3 HONOR.

4 REDIRECT EXAMINATION:

5 BY MR. PEACE:

6 Q MR. CAGLE, MR. MAYER ASKED YOU ABOUT THE STATEMENT
7 THAT YOU MADE.

8 A YES, SIR.

9 Q DO YOU RECALL WHEN YOU MADE THAT STATEMENT?

10 A YES, SIR.

11 Q WHAT TIME WAS IT WHEN YOU MADE THAT STATEMENT?

12 A IT WAS 3 A.M.

13 Q OKAY. WAS THAT THIS SAME MORNING THAT YOU WERE
14 ROBBED IN THE LAUNDROMAT?

15 A YES, SIR.

16 Q WERE YOU UNDER DURESS AT THE TIME YOU MADE THAT
17 STATEMENT?

18 A NO, SIR.

19 Q WERE YOU FEELING THE EFFECTS OF THE ROBBERY WHEN YOU
20 MADE THAT STATEMENT?

21 A YES, SIR.

22 Q NOW, YOU SAID YOU SAW SOMEONE IN THE CAR?

23 A YES, SIR.

24 Q OKAY. WHOSE CAR WAS THAT?

25 A JENNIFER SATTERFIELD'S.

PAUL CAGLE - REDIRECT BY MR. PEACE

1 Q ALL RIGHT. WHERE WAS THAT CAR PARKED?

2 A RIGHT AT THE DOOR OF THE LAUNDROMAT.

3 Q OKAY. AND HOW MANY PEOPLE DID YOU SEE IN THE CAR?

4 A I SEEN ONE, BUT MAYBE IT COULD HAVE BEEN TWO BECAUSE
5 THE CAR HAD GOT, THE CAR WAS FOGGED UP.

6 Q I'M SORRY.

7 A I SEEN ONE, BUT IT MAY COULD HAVE BEEN TWO BECAUSE
8 THE CAR WAS FOGGED UP IN THAT LITTLE LENGTH OF TIME.

9 Q OKAY. DID ANYBODY GET THE KEYS TO GET IN THAT CAR?

10 A NO. THE DRIVER'S SIDE WINDOW, THEY HAD SNATCHED IT
11 DOWN AND THE DOOR WAS ALREADY UNLOCK.

12 Q OKAY. SO YOU THINK THEY GOT IN THE CAR THROUGH THE
13 WINDOW?

14 A YES, SIR.

15 Q ALL RIGHT. THANK YOU. I HAVE NO FURTHER QUESTIONS.

16 THE COURT: ANY RECROSS?

17 MR. MAYER: ONE MOMENT, YOUR HONOR. NONE,
18 YOUR HONOR.

19 THE COURT: YOU CAN STEP DOWN. NEXT WITNESS.

20 MR. PEACE: THANK YOU, YOUR HONOR. THE STATE
21 WOULD NEXT CALL JENNIFER SATTERFIELD TO THE STAND.

22 JENNIFER SATTERFIELD, HAVING BEEN FIRST DULY
23 SWORN BY THE COURT, TESTIFIED AS FOLLOWS:

24 MADAM CLERK: WOULD YOU STATE YOUR FULL NAME
25 PLEASE.

1 A JENNIFER AMANDA SATTERFIELD.

2 DIRECT EXAMINATION:

3 BY MR. PEACE:

4 Q MS. SATTERFIELD, WERE YOU AT THE LAUNDROMAT IN
5 WESTERN SQUARE ON MAY 27TH OF 2002?

6 A YES, SIR.

7 Q NOW THIS MAY SOUND LIKE A STUPID QUESTION, BUT IS
8 THAT IN LAURENS COUNTY?

9 A YES, SIR.

10 Q THANK YOU. WHAT, IF ANYTHING UNUSUAL HAPPENED AT
11 THE LAUNDROMAT ON MAY 27TH?

12 A WE GOT ROBBED.

13 Q WHO GOT ROBBED?

14 A ME AND BENJI.

15 Q OKAY. WHAT TIME WAS THIS?

16 A IT WAS AROUND 12:30, 12:45.

17 Q OKAY. IS THAT A.M. OR P.M.?

18 A A.M. YES, SIR.

19 Q ALL RIGHT. WOULD YOU TELL THE JURY WHAT HAPPENED?

20 A I WAS FOLDING CLOTHES AND BENJI WAS LOOKING OUTSIDE
21 AND HIS FACE GOT REAL WHITE. I SAID WHAT'S WRONG AND
22 HE DIDN'T SAY ANYTHING AND I LOOKED AND THERE WAS, I
23 SAW THREE GUYS WITH WHITE SHIRTS OVER THEIR FACE COME
24 IN THE LAUNDROMAT. AND I ONLY SAW TWO WITH GUNS, ONE
25 HAD ME. AND AT FIRST I TRIED TO GET OUT AND THEY

1 GRABBED ME.

2 Q IS THERE A WAY OUT?

3 A THERE WAS, I WAS RIGHT THERE AT THE DOOR.

4 Q OKAY.

5 A AND I TRIED TO GET OUT OF THE DOOR AND THEY GRABBED
6 ME. AND WHEN I LOOKED OUTSIDE THERE WAS ONE IN MY
7 CAR. HE HAD PUSHED MY DRIVER WINDOW DOWN IN MY CAR.
8 AND THEY WOULDN'T LET ME LOOK AT THEM, I RECOGNIZED
9 THEIR SHOES THE NEXT DAY WHEN I HAD TO GO TO THEIR
10 BOND HEARING. I KNEW THEIR SHOES. I NOTICED THEIR
11 SHOES. I COULDN'T SEE THEIR FACE. I DIDN'T RECOGNIZE
12 ANY OF THEM. BUT, THEY WERE CUSSING AND WAVING A GUN
13 IN MY FACE. THEY TOOK MY RINGS, MY NECKLACES. I ONLY,
14 I THINK IT WAS LIKE \$3.00 DOLLARS AND SOMETHING IN
15 CHANGE THAT WAS ON THE TABLE THAT THEY GOT FROM ME.

16 Q OKAY.

17 A AND THEN THEY TOLD US TO GO TO THE BATHROOM AND WE
18 WALKED BACK TO THE BATHROOM, HAD A GUN IN MY BACK
19 PUSHING ME BACK IN THE BATHROOM. WHEN WE GOT IN THE
20 BATHROOM, I SAT DOWN, THEY CLOSED THE DOOR. THEY TOLD
21 ME TO COUNT. I COUNTED TO LIKE A FEW NUMBERS AND THEN
22 THEY YELLED AT ME, TOLD ME TO COUNT LOUDER. AND I
23 COUNTED TO EXACTLY 54 AND BENJI TOLD ME TO GO CAUSE WE
24 HEARD, I DID HEAR SOMETHING HIT THE GATE. I DIDN'T
25 KNOW WHAT IT WAS BECAUSE THEY HAD MY KEYS, WERE

1 SITTING ON THE TABLE AND THEY HAD GRABBED MY KEYS WHEN
2 THEY GRABBED MY CHANGE. AND WHEN I HEARD THE KEYS HIT
3 THE DOOR, HE TOLD ME TO GO AND WE RAN OUT AND I WENT
4 TO THE PAY PHONE. AND WHEN I WAS COMING AT THE PAY
5 PHONE, THERE'S SOME APARTMENTS BEHIND THE LAUNDROMAT,
6 MEADOWBROOK APARTMENTS. I SAW THAT SAME CAR, WHEN I
7 WAS GETTING MY CLOTHES OUT OF MY CAR EARLIER I SAW
8 THAT CAR, A CHAMPAGNE HONDA RIDE THROUGH THE PARKING
9 LOT. BUT I NEVER SAW THEM LEAVE THE PARKING LOT.

10 THIS WAS LATE, THEY WAS IN THE PARKING LOT. WHEN I
11 WAS ON THE PAY PHONE CALLING THE POLICE I SAW THAT
12 SAME EXACT CAR BECAUSE IT HAD A RED PAPER TAG ON THE
13 BACK COMING OUT FROM BEHIND THE APARTMENTS DOWN THAT
14 ROAD BESIDE BI-LO. AND I SAID THAT'S GOT TO BE THEM
15 BECAUSE I SAW FOUR BLACK MALES IN IT THEN.

16 Q NOW THIS WAS WHILE YOU WERE CALLING THE POLICE?

17 A THIS WAS WHILE I WAS ON THE PHONE WITH THE POLICE.
18 I HADN'T, I HAD JUST PICKED UP THE PHONE.

19 Q OKAY. SO THE POLICE WERE NOT THERE WHEN YOU SAW
20 THEM?

21 A NO. IT WAS ABOUT FIVE MINUTES, THE POLICE GOT THERE
22 AND I WAS GIVING THEM MY INFORMATION. AND WHEN THEY
23 HAD, WHEN I WAS ON THE PHONE WITH THE POLICE THEY HAD
24 TURNED RIGHT GOING UP BY THE HIGH SCHOOL, THE ROAD
25 BESIDE BI-LO GOING TOWARDS THE HIGH SCHOOL. AND I

1 TOLD THE POLICE A DESCRIPTION OF THE CAR. AND WHEN
2 THE POLICE GOT THERE IT WAS ABOUT TEN MINUTES, I WAS
3 GIVING THEM MY INFORMATION. I WAS STILL, YOU KNOW,
4 REAL SCARED AND STUFF. AND I SAW THAT SAME EXACT CAR
5 GO BACK BY COMING LIKE TOWARDS TOWN FROM THE HIGH
6 SCHOOL. AND I TOLD THEM THAT IS THEM, THAT IS THAT
7 CAR. AND WHEN THEY PULLED THEM OVER, THEY PULLED THEM
8 OVER AT THE LITTLE CRICKET ON CHURCH STREET.

9 Q SO IS THIS THE SECOND TIME YOU HAD SEEN THE CAR?

10 A I SAW THE CAR THREE TIMES.

11 Q OKAY. YOU SAW, YOU SAW THE CAR IN THE PARKING LOT
12 WHEN YOU WERE GETTING YOUR CLOTHES OUT?

13 A THEY RODE THROUGH, RIGHT. AND IT WAS JUST ONE
14 PERSON IN THE CAR. IT WAS ONLY ONE PERSON DRIVING THE
15 CAR WHEN THEY RODE THROUGH THE PARKING LOT, WHEN I WAS
16 GETTING MY CLOTHES OUT.

17 Q OKAY. AND THEN YOU SAW THE CAR AGAIN WHILE YOU WERE
18 ON THE PHONE CALLING THE POLICE?

19 A WHEN I PICKED UP THE PHONE TO CALL THE POLICE THEY
20 RODE BACK BY. AND THEN WHEN THE POLICE WERE THERE, I
21 WAS GIVING THE INFORMATION, THEY RODE BACK BY AND
22 THAT'S WHEN THEY PULLED THEM OVER.

23 Q DID YOU RECOVER ANY OF YOUR, ANY OF YOUR PROPERTY?

24 A NO, SIR.

25 Q OKAY. HAVE YOU SEEN ANY OF YOUR PROPERTY SINCE IT

1 WAS TAKEN?

2 A NO, SIR.

3 Q YOU HAVEN'T SEEN ANY OF YOUR PROPERTY SINCE IT WAS
4 TAKEN?

5 A NO, SIR. THEY TOLD ME THEY HAD FINALLY GOT TWO OF
6 MY RINGS.

7 Q YOU HAVEN'T SEEN THESE RINGS?

8 A BUT I HAVEN'T SEEN ANYTHING.

9 Q ALL RIGHT. THANK YOU. NO FURTHER QUESTIONS.
10 PLEASE ANSWER ANY QUESTIONS MR. MAYER MAY HAVE.

11 THE COURT: ALL RIGHT. MR. MAYER.

12 CROSS EXAMINATION:

13 BY MR. MAYER:

14 Q JENNIFER, YOU WROTE A STATEMENT THAT NIGHT,
15 RIGHT?

16 A YES, SIR.

17 Q AND IN THAT STATEMENT YOU TESTIFIED THAT YOU SAW
18 THREE ROBBERS, NOT FOUR, CORRECT?

19 A YES, SIR.

20 Q THIS WAS ABOUT 12:45 IN THE MORNING WHEN THIS
21 HAPPENED?

22 A YES, SIR. AS FAR AS I KNOW I'M NOT EXACT OF THE
23 TIME.

24 Q AND YOU RECOGNIZED THE ROBBER'S SHOES?

25 A YES.

1 Q AT THE BOND HEARING?

2 A YES, SIR.

3 Q WAS MR. SCHUMPERT AT THAT BOND HEARING?

4 A NO, SIR.

5 Q YOU KNOW TYRONE, DON'T YOU?

6 A I KNOW OF HIM.

7 Q YOU KNOW HIM TO SEE HIM?

8 A I KNOW OF HIM. YES.

9 Q ONE ROBBER IN THE LAUNDROMAT THAT NIGHT WAS PRETTY
10 MUCH FOCUSING HIS ATTENTION ON BENJI, RIGHT?

11 A YES, SIR.

12 Q AND THE OTHER ON YOU?

13 A YES, SIR.

14 Q DID YOU EVER GET TO LOOK AT HIM?

15 A NO, SIR.

16 Q YOU DIDN'T NEVER LOOK AT HIM AT ALL?

17 A NO, SIR. WHEN THEY FIRST WALKED IN, BUT I COULDN'T
18 TELL BECAUSE THEY HAD THE SHIRTS OVER IT AND I WASN'T
19 THAT CLOSE UP TO THEM. BECAUSE WHEN THEY WALKED IN
20 THEY IMMEDIATELY TOLD ME TO LOOK DOWN.

21 Q WITH SHIRTS UP TO THEIR NOSE?

22 A YES, SIR.

23 Q WHEN YOU LOOKED AT THAT SECOND ROBBER GOING IN, DID
24 YOU GET THE SORT OF IMMEDIATE IMPRESSION ABOUT HIM?

25 A NO, SIR.

1 Q IF ANYTHING WAS UNUSUAL ABOUT HIM, ABOUT HIS EYES,
2 YOU THINK YOU WOULD HAVE NOTICED IT?

3 A I PROBABLY WOULDN'T BECAUSE I COULDN'T, I DIDN'T
4 LOOK AT THEM. I HAD TO LOOK DOWN AND WHEN THEY WALKED
5 IN I WAS SO FRIGHTENED BECAUSE THEY HAD GUNS IN THEIR
6 HANDS, YOU KNOW YOU DON'T PAY ATTENTION TO STUFF LIKE
7 THAT.

8 Q AT THE BOND HEARING, YOU'VE TESTIFIED AT MR.
9 SCHUMPERT'S BOND HEARING, CORRECT?

10 A. YES.

11 Q SPOKE TO THE JUDGE? AND YOU GOT HIM RELEASED ON A
12 PERSONAL RECOGNIZANCE BOND?

13 A NO, SIR.

14 Q BECAUSE YOU SAID--

15 A I DIDN'T KNOW HIM. I DIDN'T KNOW ANY OF THEM.

16 Q WHEN YOU WENT TO THE PAY PHONE AND YOU SAW THE CAR
17 COME OUT FROM MEADOWBROOK?

18 A YES, SIR. THAT IS BEHIND BI-LO.

19 Q EXCUSE ME. MAY I PULL THE EASEL OUT FROM THE BACK
20 ROOM?

21 THE COURT: SURE.

22 Q MS. SATTERFIELD, I WOULD LIKE FOR YOU TO GIVE ME A
23 BRIEF DESCRIPTION WITH THE WASHERETTE RIGHT THERE,
24 THIS BEING BI-LO SHOP, IS THAT A FAIR REPRESENTATION
25 THERE'S A DOOR HERE AND A DOOR BACK HERE?

1 A OKAY. THE FRONT DOORS AT THE TOP RIGHT OR THE
 2 BOTTOM?
 3 Q YES, THIS IS THE FRONT DOOR. BECAUSE THE BACK DOORS
 4 ON THE, ON THE SIDE.
 5 A OKAY.
 6 Q AND THIS BEING BI-LO AND THOSE OTHER STORES.
 7 A OKAY.
 8 Q AND THIS IS THE ROAD DOWN TO MEADOWBROOK
 9 A YES.
 10 Q AND THE APARTMENTS ARE DOWN HERE?
 11 A YES.
 12 Q THIS IS NOT TO SCALE. THIS IS THE ROAD TO THE HIGH
 13 SCHOOL AND THIS IS ALL PARKING IN HERE?
 14 A YES.
 15 Q AND THERE'S AN ACCESS RIGHT THERE?
 16 A YES.
 17 Q IS THAT A FAIR REPRESENTATION THOUGH SOMEWHAT ROUGH?
 18 A YES, SIR.
 19 Q WHAT WE'RE TALKING ABOUT. LET ME SHOW THAT TO THE
 20 COURT, SO THE COURT CAN SEE WHAT WE'RE TALKING ABOUT.
 21 THE PAY PHONES?
 22 A IS RIGHT BESIDE THE DOOR.
 23 Q IS RIGHT ABOUT HERE?
 24 A YES, SIR.
 25 Q OKAY. SO YOU CAME OUT AND WENT TO THAT PAY PHONES?

1 A YES, SIR.

2 Q AND YOU MADE THE CALL, BENJI WAS WITH YOU?

3 A YES, SIR.

4 Q IS YOUR TESTIMONY THAT WHILE YOU DID THAT YOU SAW
5 THE CAR COME UP FROM--

6 A YES, SIR.

7 Q MEADOWBROOK, THAT WAS THE SECOND TIME THAT YOU SAW
8 IT?

9 A YES, SIR.

10 Q YOU CALLED THE POLICE, THE POLICE COME, YOU SAW IT
11 COMING AND TURNED RIGHT, YOU SAID?

12 A YES, SIR.

13 Q YOU SAW IT COMING BACK THAT WAY?

14 A YES, SIR.

15 Q JUST TRYING TO GET THIS INTO SOME SORT OF
16 GEOGRAPHICAL PERSPECTIVE. AND WHEN YOU SAW THE CAR
17 COME BACK UP HERE, YOU ORIGINALLY SAW IT GOING THROUGH
18 THE PARKING LOT, IT ONLY HAD ONE PERSON IN IT?

19 A ONE PERSON DRIVING.

20 Q DID YOU RECOGNIZE THAT PERSON?

21 A NO.

22 Q DO YOU KNOW MARCUS BROWN?

23 A NO.

24 Q AND THEN IT CAME DOWN, CAME BACK UP HERE AND YOU
25 RECOGNIZED IT WITH THE--

1 A I RECOGNIZED WHEN--

2 Q YOU RECOGNIZED THE CAR--

3 A TWO PEOPLE IN THE BACK. AND I KNEW THAT IT HAD A
4 RED PAPER TAG.

5 Q OKAY.

6 A I KNEW THAT THAT WAS THE CAR. AND IT HAD, I GUESS
7 THERE WERE TWO PEOPLE IN THE FRONT.

8 Q YOU TESTIFIED THERE WERE FOUR PEOPLE?

9 A YES.

10 Q AND IT TURNED RIGHT AND CAME DOWN HERE?

11 A YES.

12 Q AND WHEN IT CAME BACK, COULD YOU TELL FROM THIS FAR
13 AWAY HOW MANY PEOPLE WERE IN IT WHEN IT CAME BACK?

14 A NO, SIR.

15 Q OKAY. THANK YOU VERY MUCH. I HAVE NO FURTHER
16 QUESTIONS, YOUR HONOR.

17 THE COURT: ANY REDIRECT?

18 MR. PEACE: NO REDIRECT, YOUR HONOR.

19 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

20 MR. PEACE: YOUR HONOR, THE STATE WOULD NEXT
21 CALL DEREK MOSLEY TO THE STAND.

22 THE COURT: ALL RIGHT.

23 MR. PEACE: MR. MOSLEY, PLEASE COME FORWARD
24 AND TAKE THE STAND.

25 DEREK MOSLEY, HAVING BEEN FIRST DULY SWORN

1 BY THE COURT, TESTIFIED AS FOLLOWS:

2 MADAM CLERK: WOULD YOU STATE YOUR FULL
3 NAME FOR THE RECORD.

4 A DEREK MARCUS MOSLEY.

5 DIRECT EXAMINATION:

6 BY MR. PEACE:

7 Q MR. MOSLEY, DID YOU PARTICIPATE IN AN ARMED ROBBERY
8 AT THE LAUNDROMAT IN WESTERN SQUARE ON MAY 27TH OF
9 2002?

10 A YES, SIR.

11 Q ALL RIGHT. WOULD YOU TELL THE JURY WHAT HAPPENED ON
12 MAY 27TH OF 2002?

13 A ME AND A COUPLE OF GUYS HAD A COOKOUT, THERE'S SOME
14 APARTMENTS BEHIND THE--

15 Q WHO WENT TO, WHERE WAS THIS COOKOUT?

16 A IN LYONS DEN.

17 Q OKAY. YOU NEED TO SPEAK INTO THE MICROPHONE SO
18 EVERYBODY CAN HEAR YOU. WHERE WAS THE COOKOUT?

19 A IN THE LYONS DEN ON BOYD ROAD.

20 Q OKAY.

21 A IN LAURENS.

22 Q WHO WENT TO THE COOKOUT?

23 A ME, LAMAR TODD, MAURICE SUBER, AND MARCUS BROWN.

24 Q ALL RIGHT. AND HOW LONG WERE YOU AT THE COOKOUT?

25 A TO LIKE 10 P.M.

1 Q WHAT DID YOU DO AFTER YOU LEFT THE COOKOUT?

2 A WE LEFT, WENT TO THE APARTMENTS BEHIND BI-LO.

3 Q OKAY. DO YOU KNOW THE NAME OF THOSE APARTMENTS?

4 A MEADOWBROOK.

5 Q OKAY. AND WHAT DID YOU DO AT THOSE APARTMENTS?

6 A WE WAS STAYING OUT THERE DOING A LITTLE DRINKING,
7 SMOKING.

8 Q ALL RIGHT. WHO WAS SITTING OUT THERE?

9 A ME, MAURICE SUBER, LAMAR TODD, AND MARCUS BROWN.

10 Q OKAY. ANYONE ELSE?

11 A MR. SCHUMPERT CAME UP LATER ON.

12 Q I'M SORRY.

13 A MR. SCHUMPERT CAME UP LATER ON IN THE EVENING--

14 Q MR. SCHUMPERT CAME?

15 A YES, SIR.

16 Q DO YOU SEE MR. SCHUMPERT IN THE COURTROOM?

17 A YES, SIR.

18 Q OKAY. AND WHERE IS MR. SCHUMPERT?

19 A RIGHT HERE.

20 Q OKAY. IS HE THE GENTLEMAN IN THE CHECKED SHIRT?

21 A YES, SIR.

22 Q OKAY. PLEASE LET THE RECORD REFLECT THAT MR. MOSLEY
23 HAS IDENTIFIED THE DEFENDANT, MR. SCHUMPERT. OKAY.

24 MR. SCHUMPERT CAME TO MEADOWBROOK APARTMENTS?

25 A YES, SIR.

1 Q OKAY. AND WHAT DID YOU DO?
2 A AFTER THAT--
3 Q AFTER WHAT?
4 A MAURICE SUBER, WHILE WE WERE STANDING OUT THERE,
5 MAURICE SUBER LEFT AND WENT AROUND TO BI-LO TO GET
6 SOME CIGARETTES. AND HE CAME BACK AND HE SAID MY MAN
7 AROUND THERE AT THE STORE. HE WAS LIKE, WOULD YA, LT
8 WALK WITH ME AROUND--
9 Q DID YOU KNOW WHAT HE WAS TALKING ABOUT WHEN HE SAID
10 MY MAN WAS AROUND AT THE STORE?
11 A NO, SIR.
12 Q OKAY. DID YOU KNOW WHO HE WAS TALKING ABOUT?
13 A NO, SIR.
14 Q OKAY. AND WHAT HAPPENED NEXT?
15 A THEN ALL OF US WALKED AROUND THERE, WE STILL SMOKING
16 AND DRINKING.
17 Q OKAY. WHO WALKED AROUND THERE?
18 A ME, MARCUS BROWN, MR. SCHUMPERT AND SUBER.
19 Q OKAY. MR. SCHUMPERT, IS THAT THE MR. SCHUMPERT
20 PRESENT IN THE COURTROOM?
21 A YES, SIR.
22 Q OKAY. AND WHAT HAPPENED AFTER YOU WALKED AROUND
23 THERE?
24 A WE GET AROUND THERE, MR. SUBER, HE WAS LIKE MAN, YOU
25 GO IN FIRST, YOU GO IN FIRST. I WAS LIKE FOR WHAT?

1 Q IS HE TALKING TO YOU WHEN HE SAYS THAT?

2 A YEAH, HE'S TALKING TO ME.

3 Q OKAY. AND WHAT DID HE SAY?

4 A LIKE MAN, YOU GO IN FIRST, YOU GO IN FIRST.

5 Q OKAY.

6 A AND THEN--

7 Q AND WHAT DID YOU THINK THAT HE MEANT?

8 A I DIDN'T KNOW. I DIDN'T KNOW IF HE WANTED TO GO
9 FIGHT THE MAN OR WHAT.

10 Q OKAY.

11 A SO I WAS LIKE NO, YOU GO AHEAD, MAN, YOU GO AHEAD.

12 SO HE WAS LIKE ALL RIGHT. HE PUT A WHITE T-SHIRT.

13 OVER HIS HEAD. THEN ONE MORE PERSON PULLED A WHITE
14 T-SHIRT OVER HIS HEAD.

15 Q ALL RIGHT. WHAT DID YOU THINK THEN?

16 A I WAS LIKE MAN, THEY EITHER FIXING TO JUMP THE MAN,
17 SCARE THE MAN, KILL HIM OR SOMETHING. THEN MR. SUBER
18 PULLED OUT A GUN.

19 Q OKAY. DID YOU THINK THEY WOULD ROB HIM?

20 A NOT AT THAT MOMENT I DIDN'T TILL HE PULLED OUT THE
21 GUN.

22 Q OKAY. AT THE MOMENT HE PULLED OUT THE GUN DID YOU
23 THINK THAT THEY WOULD ROB HIM?

24 A I WAS THINKING THEY WERE EITHER GOING TO SHOOT HIM
25 OR ROB HIM.

1 Q OKAY. ALL RIGHT. WHAT HAPPENED NEXT?

2 A THEN HE LIKE RAN IN. MR. SCHUMPERT AND BROWN RAN IN
3 BEHIND HIM, THEN I HEARD, HEARD THEM IN THERE ARGUING.
4 AND MR. CAGLE, HE WAS LIKE GIVE IT UP, GIVE IT UP.

5 THEN I DON'T KNOW IF HE SWUNG THE GUN, I DON'T KNOW IF
6 HE HIT MR. SCHUMPERT OR MR. CAGLE. SO I WAS STANDING
7 OUT THERE STILL WAITING. ONE OF THE GENTLEMAN RAN OUT
8 THERE AND GAVE ME SOME KEYS. HE WAS LIKE GET IN THE
9 CAR, GET IN THE CAR. I WAS LIKE MAN, WHAT AM I GOING
10 TO DO WITH THIS, I'M FIXING TO GO.

11 Q WHO RAN OUT AND GAVE YOU THE KEYS?

12 A MR. BROWN.

13 Q. OKAY.

14 A SOMEBODY HANDED HIM THE KEYS.

15 Q ALL RIGHT. AND WHAT DID YOU DO WITH THE KEYS?

16 A I LOOKED AT THE KEY, I TURNED AROUND AND STARTED
17 WALKING OFF. AS I WAS WALKING OFF EVERYBODY RAN PAST
18 ME. THEN I WAS, I WAS STANDING BACK THERE AND I
19 LOOKED BACK AT THE DOOR, THERE'S A BACK DOOR ON THE
20 LAUNDROMAT. AND I HEARD THEM, THEY WAS LIKE IN THE
21 BATHROOM. AND THEY WERE LIKE AND MR., AND MR. SUBER
22 WAS LIKE MAN, SHUT UP, SHUT UP. THEN I TURNED AROUND
23 AND THREW THE KEYS BACK AT THE DOOR AND TOLD MR.
24 CAGLE, ALL RIGHT, MAN, I'M SORRY WHAT THESE BOYS DID
25 TO YOU. BUT I DIDN'T HAVE NOTHING TO DO WITH IT AND

1 WE LEFT.

2 Q DID YOU KNOW MR. CAGLE?

3 A YEAH, I DONE SEEN HIM A COUPLE OF TIMES.

4 Q DID YOU GET IN THE CAR WHILE YOU WERE OUTSIDE?

5 A NO, SIR.

6 Q ALL RIGHT. AND WHAT HAPPENED AFTER, AFTER YOU GUYS

7 RAN OFF?

8 A WENT HOME. I WENT, WELL, WE RAN BACK TO THE

9 APARTMENTS, THEY DROPPED ME OFF, THEY TOOK ME HOME.

10 Q ALL RIGHT. WHO RAN BACK TO THE APARTMENTS?

11 A ME, MR. SCHUMPERT, MARCUS BROWN AND SUBER.

12 Q OKAY. WHAT DID YOU DO ONCE YOU GOT BACK TO THE

13 APARTMENT?

14 A NOTHING. WE JUST GOT IN THE CAR AND LEFT.

15 Q OKAY.. WHO GOT IN THE CAR AND LEFT?

16 A ME, SUBER, BROWN AND TODD.

17 Q OKAY. WHAT HAPPENED TO MR. SCHUMPERT?

18 A I DON'T KNOW.

19 Q WHERE DID YOU GO?

20 A I WENT HOME.

21 Q ALL RIGHT. HOW DID YOU GET HOME?

22 A TODD.

23 Q ALL RIGHT. YOU WERE IN HIS CAR?

24 A YES, SIR.

25 Q WERE THERE FOUR PEOPLE IN HIS CAR?

1 A YEAH, INCLUDING ME.

2 Q OKAY.

3 A I WAS THE FOURTH PERSON.

4 Q OKAY. WHICH WAY DID YOU GO HOME?

5 A WE LEFT LIKE, WE RODE RIGHT PAST, RIGHT PAST THE
6 STORE.

7 Q ALL RIGHT. LET'S, LET ME--

8 A TO THE RIGHT.

9 Q LET ME, IF MR. MAYER DOESN'T MIND UTILIZING HIS
10 DIAGRAM. DO YOU MIND MR. MAYER?

11 MR. MAYER: NOT A BIT.

12 Q ALL RIGHT. MR. MOSLEY, LET ME ASK YOU TO, YOUR
13 HONOR, IF YOU DON'T MIND ASKING THE WITNESS TO STEP
14 DOWN.

15 THE COURT: AS LONG AS HE KEEPS HIS VOICE UP
16 SO THE COURT REPORTER CAN HEAR HIM.

17 MR. PEACE: ALL RIGHT.

18 THE COURT: MR. MAYER CAN HEAR HIM.

19 MR. PEACE: MR. MOSLEY, IF YOU'LL STEP DOWN.
20 AND YOU'LL NEED TO TALK LOUD BECAUSE THE COURT
21 REPORTER HAS TO TAKE DOWN WHAT YOU SAY.

22 THE COURT: GET HIM ON ONE SIDE OR THE OTHER
23 SO THE JURORS CAN SEE.

24 MR. PEACE: STAND ON THIS SIDE.

25 Q LET ME ASK YOU IF YOU RECOGNIZE THIS DIAGRAM WITH

1 BI-LO BEING HERE AND THE LAUNDROMAT BEING HERE AND THE
2 APARTMENTS BEING HERE. DO YOU RECOGNIZE THAT AS AN
3 ACCURATE DEPICTION OF THE AREA WHERE YOU WERE?

4 A YES, SIR.

5 Q OKAY. NOW, IF YOU'LL PLEASE TAKE THIS POINTER. NOW
6 WHEN YOU SAY THAT YOU LEFT FROM THE LAUNDROMAT TO GO
7 BACK TO THE APARTMENTS, WHERE DID YOU GO?

8 A LEFT FROM THE APARTMENTS, WENT TO THE RIGHT THIS
9 WAY.

10 Q ALL RIGHT. NOW, IF YOU'LL JUST TAKE THE POINTER AND
11 GO ALONG THE ROUTE THAT YOU TOOK.

12 A WE LEFT THE APARTMENTS, WENT ALL THE WAY OUT THIS
13 WAY.

14 Q OKAY. AND THIS WAS YOU--

15 A TODD, BROWN AND SUBER.

16 Q OKAY. ALL RIGHT. AND THEN WHAT DID YOU DO?

17 A I WENT HOME CAUSE I WAS, I WAS, I WAS SICK. I WAS
18 THROWING UP.

19 Q OKAY. SO YOU GOT OUT OF THE CAR AT THAT POINT?

20 A YES, SIR.

21 Q OKAY. ALL RIGHT. WHAT HAPPENED AFTER THAT? YOU
22 CAN RETURN TO YOUR SEAT, PLEASE. WHAT HAPPENED AFTER
23 THAT?

24 A WELL, THEY DROP, THEY DROPPED ME OFF AT THE HOUSE.

25 I DON'T KNOW WHAT HAPPENED AFTER THAT.

1 Q WELL, WHAT HAPPENED TO YOU AFTER THAT?

2 A I WAS AT HOME TILL THE NEXT MORNING, SOMEBODY, THEN
3 THE POLICE CAME AND PICKED ME UP.

4 Q ALL RIGHT. WHAT HAPPENED AFTER THE POLICE PICKED
5 YOU UP?

6 A THEN I WENT TO THE CITY.

7 Q AND THEN WHAT HAPPENED?

8 A WE WAS IN THERE TALKING. I COULDN'T REALLY REMEMBER
9 WHAT WAS GOING ON. AND THEY WERE TELLING ME ALL THAT
10 HAD HAPPENED. MR. TODD WAS TELLING ME HOW SOMETHING
11 HAPPENED. AND I WAS REALIZING HOW HE KNOW, HE WASN'T
12 EVEN AROUND.

13 Q ALL RIGHT. OKAY. NOW, WHEN THE ARMED ROBBERY WAS
14 COMMITTED ON MAY THE 27TH, IS IT YOUR TESTIMONY THAT
15 MR. SCHUMPERT WAS THERE?

16 A YES, SIR.

17 Q IS IT YOUR TESTIMONY THAT HE PARTICIPATED?

18 A YES, SIR.

19 Q ALL RIGHT. THANK YOU. I HAVE NO FURTHER QUESTIONS.
20 PLEASE ANSWER ANY QUESTIONS MR. MAYER MAY HAVE.

21 THE COURT: ALL RIGHT. CROSS-EXAMINE.

22 CROSS-EXAMINATION:

23 BY MR. MAYER:

24 Q MR. MOSLEY, YOU MADE AND SIGNED SEVERAL STATEMENTS
25 IN THE COURSE OF THE POLICE TALKING TO YOU, DIDN'T

- 1 YOU?
- 2 A YES, SIR.
- 3 Q YOU MADE THAT ONE, RIGHT?
- 4 A YES, SIR.
- 5 Q IS THAT STATEMENT YOURS? THAT STATEMENT YOURS?
- 6 A YES, SIR.
- 7 Q I HAVE A VOLUNTARY STATEMENT THAT YOU SIGNED, WAS
- 8 MADE THE NEXT DAY? THIS IS WHERE YOU FIRST MENTIONED
- 9 THAT TYRONE WAS WITH YOU?
- 10 A YES, SIR.
- 11 Q IS THIS THE STATEMENT YOU MADE WHEN YOU WERE BEING
- 12 INTERROGATED BY THE POLICE THAT NEXT MORNING?
- 13 A YES, SIR.
- 14 Q WHEN YOU SAID THAT, LET ME QUOTE, YOU SAID THAT THEY
- 15 WERE TELLING YOU WHAT HAPPENED?
- 16 A YES, SIR.
- 17 Q YOU SIGNED ANOTHER STATEMENT, DIDN'T YOU, FOR THE
- 18 POLICE?
- 19 A YES, SIR.
- 20 Q YOU DIDN'T WRITE THIS STATEMENT OUT, DID YOU?
- 21 A NO, SIR.
- 22 Q THIS WAS WRITTEN OUT BY ONE OF THE POLICE OFFICERS,
- 23 RIGHT?
- 24 A YES, SIR.
- 25 Q YOU REMEMBER WHEN YOU SIGNED THIS?

1 A I THINK SO.

2 Q WHEN?

3 A AFTER THEY GOT FINISHED ASKING ME ALL THE QUESTIONS.
4 SAID HE WAS GOING TO WRITE IT THE WAY I TELL IT.

5 Q SO THEY WROTE THIS OUT FOR YOU AND YOU SIGNED IT?

6 A YES, SIR.

7 Q IN THESE STATEMENTS THAT YOU TALK ABOUT, YOU TALK
8 ABOUT THERE WERE THREE GUNS INVOLVED IN THIS, RIGHT?

9 A YES, SIR.

10 Q AND ONE OF THEM WAS YOURS?

11 A YES, SIR.

12 Q BUT YOU DIDN'T HAVE IT?

13 A NO, SIR.

14 Q YOU SAID IN YOUR STATEMENT THAT MR. SCHUMPERT HAD
15 IT?

16 A YES, SIR.

17 Q HOW DID HE GET IT?

18 A I GUESS HE GOT IT OUT OF THE CAR.

19 Q WHAT CAR?

20 A MR. SUBER GAVE IT TO HIM.

21 Q HOW DID MR. SUBER GET TO YOUR GUN?

22 A HE WAS RIDING IN THE CAR WITH US.

23 Q WHY WAS YOUR GUN IN THE CAR?

24 A CAUSE I AIN'T HAVE NO BUSINESS WITH IT ANYWAY. I
25 WASN'T GOING TO DO NOTHING WITH IT.

1 Q SO YOU'RE TELLING THIS JURY THAT YOU LEFT WITH MR.
2 SUBER AND PEOPLE TO GO SOMEWHERE, BUT YOU DIDN'T KNOW
3 THAT THERE WAS GOING TO BE A ROBBERY?

4 A NO, SIR.

5 Q AND YOU DIDN'T KNOW THERE WAS GOING TO BE TROUBLE?

6 A NO, SIR. I KNEW IT WAS GOING TO BE SOMETHING. I
7 KNEW IT WAS GOING TO BE SOMETHING GOING ON, WHEN WE
8 WENT AROUND.

9 Q BUT YOUR GUN ENDED UP THERE?

10 A YES, SIR.

11 Q BUT ACCORDING TO YOUR STATEMENT, YOU DIDN'T HAVE
12 ANYTHING TO DO WITH THIS?

13 A WELL, I HAD SOMETHING TO DO WITH IT BECAUSE I WALKED
14 AROUND.

15 Q BUT YOU WALKED AROUND? BUT ACCORDING TO YOUR
16 STATEMENT YOU WENT THERE WITH THESE PEOPLE, BUT YOU
17 DIDN'T GO IN. YOU DIDN'T GO IN THE WASHER ROOM,
18 RIGHT?

19 A YES, SIR.

20 Q YOU DID OR YOU DIDN'T?

21 A I DIDN'T. I DID NOT.

22 Q YOU DID NOT. AND YOU DIDN'T GET ANY KEYS?

23 A YES, SIR. SOMEBODY HAD HANDED ME THE KEYS.

24 Q BUT YOU DIDN'T GO GET THEM? SOMEBODY HANDED YOU
25 KEYS?

1 A YES, SIR.

2 Q AND YOU JUST THREW THEM AT THE BACK DOOR?

3 A WELL, I PUT THEM THERE AT THE BACK DOOR AND SAID
4 HERE GO YOUR KEYS AND I RAN.

5 Q YOU SAID HERE GO YOUR KEYS?

6 A YES, SIR.

7 Q WAS ANYBODY THERE TO SAY THAT TO?

8 A. THEY WAS IN THE BATHROOM, WAS RIGHT BY THE DOOR.

9 Q SO YOUR PARTICIPATION IN THIS WAS BASICALLY YOU JUST
10 WATCHED?

11 A I AIN'T WATCHED. I DON'T KNOW WHAT HAPPENED THE
12 WHOLE TIME, I STILL JUST STANDING OUT THERE.

13 Q YOU GOT CHARGES PENDING ON YOU NOW, RIGHT?

14 A YES, SIR.

15 Q WHAT?

16 A ARMED ROBBERY AND CONSPIRACY TO ARMED ROBBERY AND
17 POINTING AND POSSESSING, PRESENTING PISTOL AT A
18 PERSON.

19 Q IT'S UP TO THE STATE TO PROSECUTE YOU ON THESE,
20 RIGHT?

21 A SAY WHAT NOW?

22 Q THE STATE HAS CALLED YOU AS A WITNESS TODAY, IT'S
23 THEIR JOB TO PROSECUTE YOU ON THESE CHARGES, RIGHT?

24 A I DON'T KNOW WHAT THAT MEANS, I GUESS.

25 Q. THE CHARGES ARE PENDING?

1 A YES, SIR.

2 Q NOthings BEEN DONE WITH THEM?

3 A OH, NO, SIR.

4 Q THE STATE CAN TRY YOU ON THEM OR OFFER YOU A DEAL TO
5 PLEAD YOU TO SOMETHING LESS, WHATEVER THE STATE WANT'S
6 TO DO, RIGHT?

7 A YES, SIR.

8 Q AND THE STATE HAS CALLED YOU TO TESTIFY IN THIS CASE
9 TODAY.

10 A YES, SIR.

11 Q YOU KNOW WHAT YOU'RE FACING ON THESE CHARGES?

12 A NOT REALLY.

13 Q YOU HAVE A LAWYER?

14 A NOT A PAID LAWYER.

15 Q YOU HAVE A--

16 A PUBLIC DEFENDER.

17 Q ATTORNEY HASN'T TOLD YOU WHAT KIND OF PENALTIES
18 YOU'RE FACING ON THOSE CHARGES?

19 A WELL, YEAH, IT'S SOME TIME.

20 Q HOW MUCH?

21 A AT LEAST 7 TO 20 YEARS.

22 MR. MAYER: BEG THE COURT'S INDULGENCE ONE
23 MOMENT.

24 Q MR. MOSLEY, I'M GOING TO ASK YOU A COUPLE MORE
25 QUESTIONS. YOU SAY THAT YOU WERE AT THE LYONS DEN

1 EARLIER WITH MR. TODD, MR. BROWN, MR. SUBER AND
2 YOURSELF, BEFORE?

3 A YES, SIR.

4 Q YOU SAY YOU CAME BACK TO THE APARTMENTS, YOU FOUR?

5 A YES, SIR.

6 Q YOU SAY MR. SCHUMPERT SHOWED UP LATER ON?

7 A YES, SIR.

8 Q WHAT DID HE DO WHEN HE GOT THERE?

9 A WE JUST STANDING AROUND AND TALKING.

10 Q HE WAS TALKING WITH YOU?

11 A MAINLY TO MR. SUBER BECAUSE THEY KNOW EACH OTHER
12 CLOSER.

13 Q OH, THEY DO. HOW LONG WAS HE TALKING WITH YA'LL
14 OVER THERE?

15 A IT WASN'T, IT WASN'T TOO LONG, LONGER THAN FIFTEEN
16 MINUTES I DON'T THINK.

17 Q SO HE GOT THERE AND TALKED TO YOU FOR FIFTEEN
18 MINUTES. AND THEN YOU, YA'LL RUN OFF AND DID THIS?
19 THAT'S YOUR TESTIMONY?

20 A WELL, AFTER WE RAN OFF AND DID THAT, THAT'S WHEN
21 SUBER CAME BACK.

22 Q WAIT A SECOND. I'M LOSING YOU ON THE TIME LINE
23 HERE. YOU SAID HE TALKED TO MR. SUBER FOR ABOUT
24 FIFTEEN MINUTES AND THEN MR. SUBER LEFT AND WENT TO
25 GET CIGARETTES?

- 1 A YES, SIR.
- 2 Q HOW LONG WAS HE GONE GETTING CIGARETTES?
- 3 A IT WASN'T, IT WASN'T TOO LONG, IT WASN'T OVER, IT
- 4 WASN'T PAST TEN, EIGHT MINUTES.
- 5 Q HOW DID HE GO?
- 6 A HE WENT IN LAMAR TODD'S CAR.
- 7 Q HE WENT IN TODD'S CAR. AND WHEN HE CAME BACK, HOW
- 8 LONG WAS HE BACK BEFORE YOU SUPPOSEDLY LEFT?
- 9 A WE LEFT, WE LEFT RIGHT AFTER HE GOT BACK THERE.
- 10 WHEN HE GOT BACK HE WAS LIKE, MY MAN AROUND THERE AT
- 11 THE STORE, LET'S GO GET HIM AND WE LEFT.
- 12 Q HOW DID YOU GO? DID YOU GO THERE ON FOOT OR DID YOU
- 13 GO THERE IN THE CAR?
- 14 A ON FOOT.
- 15 Q HOW LONG DOES IT TAKE YOU GET THERE FROM THE
- 16 APARTMENT?
- 17 A ABOUT TWO MINUTES.
- 18 Q WHOSE APARTMENT WERE YOU AT?
- 19 A WE WASN'T AT NOBODY'S APARTMENT, WE JUST WAS OUT
- 20 THERE.
- 21 Q HOW DO YOU KNOW MR. SCHUMPERT?
- 22 A SEEN HIM AROUND EVERY NOW AND THEN.
- 23 Q JUST SEEN HIM AROUND. YOU NEVER WENT IN THE
- 24 WASHERETTE?
- 25 A NO, SIR.

1 Q FROM WHERE YOU WERE STANDING IN THE PARKING LOT,
2 COULD YOU SEE INTO IT THROUGH THE BIG GLASS WINDOWS?

3 A AT ONE TIME, I LIKE STEPPED AND LOOKED AT THE GLASS.

4 MR. MAYER: BEG THE COURT'S INDULGENCE, YOUR
5 HONOR.

6 ONE MORE QUESTION FOR YOU, MR. MOSLEY.

7 Q YOU SAID THAT MR. SUBER AND MR. SCHUMPERT KNEW EACH
8 OTHER. HOW?

9 A THEY JUST KNEW EACH OTHER BETTER MORE THAN I KNOW
10 HIM. I DON'T SEE HIM, SEE THEM TOGETHER BEFORE.

11 Q SO YOU JUST KNOW THAT THEY KNEW EACH OTHER MORE THAN
12 YOU KNEW HIM?

13 A YES, SIR.

14 Q THANK YOU. NO FURTHER QUESTIONS.

15 THE COURT: REDIRECT?

16 MR. PEACE: THANK YOU, YOUR HONOR.

17 REDIRECT EXAMINATION:

18 BY MR. PEACE:

19 Q NOW MR. MOSLEY, DO YOU HAVE ANY DEALS WITH THE
20 STATE?

21 A NO, SIR.

22 Q OKAY. SO YOU DON'T HAVE AN AGREEMENT IF YOU TESTIFY
23 THAT SOMETHING'S GOING TO HAPPEN?

24 A NO, SIR.

25 Q NOW MR. MAYER ASKED YOU ABOUT THIS STATEMENT THAT

1 YOU MADE. COULD YOU READ THAT STATEMENT?

2 A YES, SIR.

3 Q WILL YOU READ IT PLEASE?

4 A YESTERDAY, YESTERDAY, I WAS WITH A COUPLE OF BOY'S
5 AND I WAS WITH MAURICE SUBER, TYRONE SCHUMPERT, MARCUS
6 BROWN AND WE WENT TO MEADOWBROOK'S APARTMENT. THEN
7 MARCUS BROWN AND MAURICE SUBER WENT TO BI-LO AND GET
8 SOME CIGARETTES. THEN THEY CAME BACK AND MAURICE SAID
9 MY MAN IS AROUND THERE. SO WE WALKED AROUND THERE AND
10 MAURICE SAID GO IN. AND I SAID NO. I AM WAITING ON
11 YOU BECAUSE I REALLY DIDN'T WANT TO GO IN. SO HE SAID
12 F AND HIM AND TYRONE GOT UP IN THE LAUNDROMAT AND SAID
13 GIVE IT UP. THEN ME AND MARCUS WAS AROUND AT THE CAR
14 AND REALIZED WHO IT WAS AND I STARTED, I REALIZED WHO
15 IT WAS. AFTER MARCUS AND I STARTED LEAVING SO WE WENT
16 BACK TO MEADOWBROOK APARTMENT TO THE CAR AND LAMAR
17 TODD TOOK ME HOME. THAT'S ALL I KNOW.

18 Q OKAY. AND WHAT'S ON THE SECOND PAGE?

19 A MAURICE HAD A GUN, TYRONE SCHUMPERT HAD A GUN AND
20 MARCUS BROWN HAD A GUN. MAURICE HAD A .38 REVOLVER,
21 TYRONE HAD A .22 REVOLVER AND MARCUS BROWN HAD A .38
22 I LEFT THE .38 ON THERE.

23 Q ALL RIGHT. NOW MR. MOSLEY, WHEN DID YOU MAKE THOSE
24 STATEMENTS?

25 A WHEN DID I MAKE THESE STATEMENTS?

1 Q WHEN DID YOU MAKE THEM?

2 A AT CITY POLICE DEPARTMENT.

3 Q ALL RIGHT. AND WHAT WAS THE DATE THAT YOU MADE
4 THOSE STATEMENTS?

5 A ON THE 27TH OF MAY.

6 Q ALL RIGHT. IS THAT THE DAY THAT THIS ARMED ROBBERY
7 OCCURRED?

8 A THAT WAS THE DAY AFTER.

9 Q OKAY. THE MORNING AFTER?

10 A THE MORNING AFTER.

11 Q OKAY. ALL RIGHT. AND, AND DID YOU MAKE THOSE
12 STATEMENTS?

13 A YES, SIR.

14 Q IS THAT YOUR SIGNATURE ON THOSE STATEMENTS?

15 A YES, SIR.

16 Q NOW, I SHOW YOU A SECOND STATEMENT THAT MR. MAYER
17 QUESTIONED YOU ABOUT. WOULD YOU PLEASE READ THAT
18 STATEMENT TO THE JURY?

19 A ON SUNDAY WHEN I GOT BACK FROM THE BEACH I WENT TO
20 THE LYONS DEN FOR A COOKOUT AT LYON'S DEN FOR A COOK
21 OUT AT EB CHEEKS HOUSE. I STAYED THERE UNTIL ABOUT 10
22 P.M. AND EVERYONE STARTED TO LEAVE. I LEFT WITH LAMAR
23 TODD, MARCUS BROWN AND MAURICE SUBER IN LAMAR'S CAR, A
24 SMALL HONDA CAR. WE WENT TO MEADOWBROOK APARTMENT IN
25 LAURENS. WE STAYED THERE AT THE MEADOW, WE STAYED

1 THERE AT THE MEADOWBROOK APARTMENT FOR A WHILE AND
2 VENETEZ WATTS ALSO MECOS MADDEN, WAS WITH HIM IN A
3 SMALL BURGUNDY CAR, COLORED CAR. THEY GOT INTO A
4 FUSS. THEY GOT TO FUSSING WITH SOME BOYS AND RALPH
5 GOT INTO THE, GOT INTO THE FUSS AND PULLED OUT A GUN.
6 I THINK IT WAS A BLACK .380 PISTOL. HE TOLD EVERYBODY
7 THAT HE BETTER NOT HAVE TO COME BACK OUT THERE ABOUT
8 HIS COUSIN AND THEY LEFT. AND THEN THEY CAME BACK AND
9 STAYED AROUND FOR A WHILE. THEN MARCUS BROWN AND M
10 LEFT IN LAMAR TODD'S CAR.

11 Q AND WHO WAS M?

12 A. MR. SUBER.

13 Q OKAY.

14 A FOR JUST A FEW MINUTES AND THEN THEY CAME BACK.
15 WHEN THEY CAME BACK M SAID MY MAN IS AROUND AT THE
16 STORE. HE SAID LET'S GET HIM. HE SAID LET'S GO GET
17 HIM. AND WE ALL HEADED UP THERE. IT WAS ME, MARCUS
18 BROWN, M AND TYRONE SCHUMPERT THAT WENT UP THERE. WE
19 ALL WALKED UP TO THE WASHETERIA, M SAID GO AHEAD. I
20 SAID, I TOLD M TO DO THAT, I WAS WAITING ON HIM TO GO.
21 M HAD PULLED A WHITE SHIRT OVER HIS HEAD BEFORE HE
22 WENT INSIDE. WHEN M WENT INSIDE TYRONE SCHUMPERT RAN
23 INSIDE WITH HIM. AND ME AND MARCUS BROWN WAITED
24 OUTSIDE. THEN MARCUS BROWN WENT INSIDE TO GET THE KEYS
25 OFF THE TABLE. BOTH M, MR. SUBER AND TYRONE SCHUMPERT

1 HAD THEIR GUNS POINTED OUT. AND I THINK MARCUS BROWN
2 HAD HIS GUN OUT. M HAD A BLACK .380 CALIBER REVOLVER.
3 MARCUS HAD A .380 WITH A PIECE BROKE OUT. AND TYRONE
4 SCHUMPERT HAD A, HAD THE SMALL SHINY .22 CALIBER
5 PISTOL. THIS WAS THE PISTOL THAT I GOT FROM DAMION
6 NANCE ABOUT TWO WEEKS AGO. M HIT BENJI CAGLE IN THE
7 HEAD WITH THE PISTOL AND TOLD BENJI TO GIVE IT UP.
8 AND ME AND MARCUS WAS GOING THROUGH THE CAR. I DON'T
9 REMEMBER THIS, BUT MARCUS THREW THE KEYS TO ME WHEN I
10 WAS GOING TO THE CAR. AND WHEN, WHEN WE LEFT RUNNING,
11 I THREW THE KEYS AT THE BACK DOOR. AND HOLLERED AT
12 BENJI, I TOLD AND TOLD HIM WHERE HIS KEYS WERE. WHEN
13 WE GOT BACK TO MEADOWBROOK'S, WE ALL LEFT AND LAMAR
14 TOOK ME HOME TO BOYD ROAD.
15 Q THANK YOU.
16 A THAT'S IT.
17 Q THANK YOU. DID YOU SIGN THAT STATEMENT?
18 A YES, SIR.
19 Q IS THAT YOUR SIGNATURE ON THE STATEMENT? IS THAT
20 YOUR SIGNATURE?
21 A YES, SIR.
22 Q DID YOU MAKE THAT STATEMENT AT THE SAME TIME THAT
23 YOU MADE THESE OTHER TWO STATEMENTS?
24 A SAY WHAT NOW?
25 Q DID YOU MAKE THIS STATEMENT AT THE SAME TIME YOU

1 MADE THE OTHER TWO STATEMENTS?

2 A I DON'T REMEMBER MAKING THAT ONE AT THE SAME TIME AS
3 THAT ONE.

4 Q OKAY. DO YOU REMEMBER WHEN YOU MADE IT?

5 A NOT REALLY.

6 Q OKAY.

7 MR. PEACE: YOUR HONOR, I'VE HAD THE THREE
8 STATEMENTS MARKED AS STATE'S EXHIBITS 1, 2 AND 3 FOR
9 IDENTIFICATION AND I WOULD MOVE THAT THEY BE ADMITTED
10 AS STATE'S EXHIBITS 1, 2 AND 3.

11 THE COURT: ANY OBJECTIONS?

12 MR. MAYER: NO OBJECTION, YOUR HONOR.

13 THE COURT: THOSE STATEMENTS, STATE'S 1, 2
14 AND 3 ARE ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

15 (WHEREUPON, STATE'S NO. 1, 2, 3 WAS
16 ADMITTED INTO EVIDENCE.)

17 MR. PEACE: THANK YOU, MR. MOSLEY. NO
18 FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: ANY RECROSS?

20 MR. MAYER: YOUR HONOR, YES.

21 RECROSS EXAMINATION:

22 BY MR. MAYER:

23 Q MR. MOSLEY, WE'VE HEARD YOU READ THESE STATEMENTS.
24 CONSISTENTLY GO WITH YOUR TESTIMONY THAT YOU STAYED
25 BACK. THESE STATEMENTS ARE JUST A WHITEWASH OF YOUR

1 INVOLVEMENT, AREN'T THEY?

2 A WHAT NOW?

3 Q THESE STATEMENTS ARE JUST TO WHITEWASH YOUR

4 INVOLVEMENT, AREN'T THEY?

5 A WHAT THAT MEAN?

6 Q THESE ARE STATEMENTS YOU WROTE TO MAKE IT LOOK LIKE

7 YOU DIDN'T DO ANYTHING.

8 A NO, SIR.

9 Q YOU SAID HERE THAT YOU SAW, WHO DID YOU SEE HIT

10 BENJI IN THE HEAD WITH A GUN?

11 A I THINK MAURICE SUBER DID.

12 Q WAS THAT ONE BRIEF MOMENT WHEN YOU COULD LOOK IN THE

13 WINDOW AND SEE THE INSIDE OF THE BUILDING?

14 A YES, SIR.

15 Q HIT HIM WITH THE BUTT OF THE GUN?

16 A I DON'T KNOW WHAT HE HIT HIM WITH, WHAT PART.

17 MR. MAYER: NO FURTHER QUESTIONS, YOUR HONOR.

18 THE COURT: ANY REDIRECT?

19 MR. PEACE: NO REDIRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

21 MR. PEACE: YOUR HONOR, IT MAY BE APPROPRIATE

22 AT THIS TIME THAT WE TAKE A SHORT BREAK.

23 THE COURT: WE'LL TAKE ABOUT A TEN MINUTE

24 BREAK. MADAM FORELADY, LADIES AND GENTLEMEN JUST STEP

25 BACK TO YOUR JURY ROOM. DON'T TALK ABOUT THE CASE.

1 STRETCH YOUR LEGS A LITTLE BIT. WE'LL START BACK IN
2 ABOUT TEN MINUTES. IF YOU'LL STEP BACK TO YOUR JURY
3 ROOM. EVERYONE ELSE STAY SEATED, PLEASE.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM
5 OPEN COURT.)

6 THE COURT: TAKE TEN MINUTES.

7 MR. PEACE: THANK YOU, YOUR HONOR.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 THE COURT: ALL RIGHT. MR. PEACE, YOU
10 ADVISED THE COURT WHEN THE JURY COMES BACK IN, THE
11 STATE WILL BE RESTING, IS THAT CORRECT?

12 MR. PEACE: THAT IS CORRECT, YOUR HONOR.

13 THE COURT: LET ME GET ON THE RECORD BEFORE
14 THE JURY IS BROUGHT BACK IN THAT I'VE RECEIVED A
15 MESSAGE FROM THE FORELADY OF THE JURY INDICATED THAT,
16 INDICATING THAT SHE WORKS WITH THE MOTHER OF LAMAR
17 TODD. I BELIEVE THAT'S A NAME THAT HAS BEEN
18 MENTIONED. HE IS NOT A WITNESS IN THIS CASE. I
19 BELIEVE MAY AT ONE TIME AND MAY STILL BE CHARGED IN
20 THE CASE, BUT HE'S NOT GOING TO BE TESTIFYING IN THIS
21 CASE. AND BOTH COUNSEL SAID THAT THEY HAVE NO
22 PROBLEM. SHE HAS INDICATED THAT SHE DIDN'T KNOW
23 ANYTHING ABOUT THIS CASE BEFORE SHE WAS SEATED ON THE
24 JURY. BOTH COUNSEL INDICATED NO PROBLEM WITH THAT, IS
25 THAT CORRECT, MR. PEACE?

1 MR. PEACE: THAT IS CORRECT, YOUR HONOR.

2 THE COURT: AND MR. MAYER YOU DON'T HAVE ANY
3 PROBLEM WITH THAT, IS THAT CORRECT?

4 MR. MAYER: MAY I HAVE ONE MOMENT TO FINISH
5 TALKING WITH MY CLIENT?

6 THE COURT: SURE.

7 MR. MAYER: WE HAVE NO OBJECTION TO KEEPING
8 HER ON THE JURY.

9 THE COURT: ALL RIGHT. BRING THE JURY IN
10 PLEASE.

11 (WHEREUPON, THE JURY CAME INTO OPEN
12 COURT AT APPROXIMATELY 12:20 P.M.)

13 BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

14 THE COURT: ALL RIGHT. MADAM FORELADY,
15 BEFORE WE CONTINUE I'VE RECEIVED YOUR MESSAGE AND I
16 INTERPRET A MESSAGE AND I THINK THE ATTORNEYS DID TOO.
17 I SHARED IT WITH THEM AS INDICATING THAT WHAT YOU'VE
18 ADVISED THE COURT OF IN THIS MESSAGE WOULD NOT IMPACT
19 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE, IS
20 THAT CORRECT?

21 MADAM FORELADY: THAT'S TRUE.

22 THE COURT: OKAY. I APPRECIATE YOU ADVISING
23 THE COURT OF THAT, YOU'LL BE STAYING RIGHT WHERE YOU
24 ARE. MR. PEACE.

25 MR. PEACE: THANK YOU, YOUR HONOR. YOUR

1 HONOR, I APOLOGIZE TO THE COURT AND TO THE JURY, BUT I
2 COULDN'T DO THIS BEFORE THE BREAK BECAUSE OF SOME
3 CONSULTATIONS I HAD TO MAKE. BUT AT THIS TIME THE
4 STATE RESTS.

5 THE COURT: ALL RIGHT. NOW MADAM FORELADY,
6 LADIES AND GENTLEMEN WHEN THE STATE RESTS THAT MEANS
7 THAT THEY HAVE PUT UP THEIR CASE-IN-CHIEF. AT THIS
8 STAGE OF THE TRIAL SOMETIMES THERE ARE MATTERS OF LAW
9 THAT I'M REQUIRED TO TAKE UP OUTSIDE OF THE JURY'S
10 PRESENCE. AND RATHER THAN YOUR GOING BACK RIGHT NOW
11 AND SITTING FOR EITHER A SHORT PERIOD OR A LONG
12 PERIOD, YOU'VE SAT BACK THERE COOPED UP FOR AN
13 EXTENDED PERIOD THIS MORNING. WE'RE GOING TO GO AHEAD
14 AND BREAK FOR LUNCH. I'LL DEAL WITH WHATEVER I NEED
15 TO DEAL WITH HERE WHILE YOU GO OUT AND HAVE LUNCH.
16 AND WE'LL CONTINUE AT 2:15. IF YOU'LL BE IN YOUR JURY
17 ROOM. I DON'T KNOW OF ANY REASON IF YOU'RE HERE AT
18 2:15, WE SHOULD NOT BE ABLE TO CONTINUE WITH THE
19 TRIAL. 2:15, BE IN YOUR JURY ROOM. DON'T DISCUSS THE
20 CASE WITH ANYONE OVER LUNCH. YOU'RE EXCUSED, EVERYONE
21 ELSE STAY SEATED. WE'LL SEE YOU FOLKS AT 2:15.

22 EVERYBODY ELSE STAY SEATED PLEASE, YOU'RE EXCUSED.

23 (WHEREUPON, THE JURY WAS EXCUSED FROM
24 OPEN COURT TO GO TO LUNCH.)

25 THE COURT: ALL RIGHT. ANY MOTIONS? ANY

1 MATTERS OF LAW? MR. MAYER, ANYTHING?

2 MR. MAYER: YOUR HONOR, DEFENSE WOULD MOVE
3 FOR A DIRECTED VERDICT. THE STATE HAS FAILED TO PUT
4 UP ANY EVIDENCE IN THIS CASE. WE'VE GOT TWO VICTIMS
5 WHO TESTIFIED THAT THEY DIDN'T, THEY CAN'T IDENTIFY
6 THE PERSON WHO DID IT. SOMEBODY ELSE HAS ALREADY PLED
7 GUILTY TO BEING THE PERSON IN THE WASHETERIA WITH THE
8 GUN THAT NIGHT. THE ONLY EVIDENCE THAT'S PRESENTED IS
9 MR. MOSLEY'S STATEMENT WHICH IS UNCORROBORATED BY
10 ANYTHING. WE WOULD MOVE FOR A DIRECTED VERDICT OF NOT
11 GUILTY BASED ON THE LACK OF EVIDENCE.

12 THE COURT: FOR THE COURT TO GRANT THAT
13 MOTION I WOULD HAVE TO WEIGH THE EVIDENCE, WHICH I'M
14 NOT PERMITTED TO DO. I HAVE TO LOOK AT IT IN THE
15 LIGHT MOST FAVORABLE TO THE STATE AND BASED ON THAT
16 ANALYSIS, THERE IS SUFFICIENT EVIDENCE IF BELIEVED BY
17 THE JURY TO SUPPORT A VERDICT ON THE CHARGES THAT HAVE
18 BEEN BROUGHT AGAINST MR. SCHUMPERT. YOUR MOTION IS
19 DENIED. ANYTHING ELSE BEFORE WE BREAK FOR LUNCH?

20 MR. MAYER: NO, YOUR HONOR.

21 THE COURT: YA'LL COME UP AND LET ME TALK TO
22 YOU FOR ONE MINUTE.

23 (BENCH CONFERENCE)

24 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

25 THE COURT: ALL RIGHT. THE STATE READY?

1 MR. PEACE: THE STATE'S READY, YOUR HONOR.

2 THE COURT: DEFENSE READY?

3 MR. MAYER: YES, YOUR HONOR, WE ARE.

4 THE COURT: ALL RIGHT. IS YOUR CLIENT GOING
5 TO TESTIFY?

6 MR. MAYER: YOUR HONOR, I'VE GONE OVER THE
7 STATE'S CASE WITH MY CLIENT AS WELL AS HIS DEFENSE,
8 HIS RIGHT TO TESTIFY, HIS RIGHT NOT TO. WE HAVE OUR
9 WITNESSES IN THE BUILDING, MR. BROWN, MR. SUBER. THE
10 DEFENDANT INFORMS ME AT THIS TIME THAT HE WOULD LIKE
11 TO DECLINE TO PUT UP A DEFENSE AND EXERCISE HIS RIGHT
12 TO HAVE ME CLOSE LAST.

13 THE COURT: THAT'S FINE. OH, YOU'RE NOT
14 GOING TO PUT ANYTHING UP?

15 MR. MAYER: NO, YOUR HONOR.

16 THE COURT: WE'RE READY FOR CLOSING
17 ARGUMENTS?

18 MR. MAYER: YES, YOUR HONOR.

19 THE COURT: OKAY. DO YOU HAVE ANY REQUEST
20 FOR CHARGE, SPECIAL REQUESTS?

21 MR. MAYER: NOTHING OUT OF THE ORDINARY, YOUR
22 HONOR.

23 THE COURT: MR. PEACE, YOU HAVE ANYTHING?

24 MR. PEACE: NO, SIR. NO SPECIAL REQUESTS.

25 THE COURT: OKAY. YOU READY TO GO ON TO YOUR

1 CLOSING?

2 MR. PEACE: YOUR HONOR, IF I COULD HAVE MAYBE

3 FIVE MINUTES.

4 THE COURT: ALL RIGHT. TELL THE JURY WE'LL

5 START AT 2:30.

6 MR. MAYER: YOUR HONOR, IF WE COULD FOR THE

7 RECORD, IF THE COURT HAS ANY QUESTIONS FOR MY CLIENT

8 ABOUT HIS DECISION.

9 THE COURT: THE ONLY TIME I THINK I'M

10 REQUIRED TO, TO TALK WITH HIM ABOUT HIS RIGHT TO

11 REMAIN SILENT IS WHEN HE DECIDES TO GIVE UP THAT RIGHT

12 AND TAKE THE STAND. SINCE HE'S DECIDED NOT TO DO

13 THAT, I DON'T THINK THERE'S ANY REQUIREMENT OR

14 NECESSITY THAT I DO THAT. YOU'VE HAD ENOUGH TIME TO

15 TALK TO YOUR LAWYER?

16 DEFENDANT: YES.

17 THE COURT: ALL RIGHT. I'LL BE OUT AT 2:30

18 AND WE'LL PROCEED. TELL THE JURY THAT PLEASE,

19 BARBARA.

20 MR. PEACE: THANK YOU, YOUR HONOR.

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 THE COURT: BRING THE JURY IN PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN

24 COURT AT APPROXIMATELY 2:30 P.M.)

25 BAILIFF: ALL JUROR'S PRESENT, YOUR HONOR.

1 THE COURT: MADAM FORELADY, LADIES AND
2 GENTLEMEN, THE STATE RESTED BEFORE LUNCH. THE DEFENSE
3 HAS ALSO RESTED ON THE RECORD, THAT MEANS WE'RE TO THE
4 POINT IN THE TRIAL WHERE YOU'LL HEAR THE CLOSING
5 ARGUMENTS FROM THE ATTORNEYS AND THEN I'M GOING TO
6 INSTRUCT YOU IN THE LAW. I'LL AGAIN REMIND YOU, I'M
7 SURE THAT THE ATTORNEYS, WHEN THEY MAKE THEIR
8 ARGUMENTS TO YOU THEY WILL GO OVER WITH YOU THEIR
9 RECOLLECTION OF WHAT THE TESTIMONY HAS BEEN. THEY'VE
10 GOT A RIGHT TO DO THAT. I WOULD SIMPLY POINT OUT TO
11 YOU THAT NUMBER ONE, THEY ARE NOT TESTIFYING AND IF
12 YOUR MEMORY WERE TO DIFFER WITH THEIR'S ON WHAT THE
13 TESTIMONY HAS BEEN, YOU RELY ON YOUR MEMORY, NOT ON
14 ANYONE ELSE'S. YOU WILL FIRST HEAR FROM THE
15 SOLICITOR, THEN YOU'LL HEAR FROM THE DEFENSE COUNSEL
16 AND ONCE THEY HAVE MADE THEIR CLOSING ARGUMENTS, THEN
17 I WILL GIVE YOU THE INSTRUCTIONS OF LAW. PLEASE GIVE
18 BOTH ATTORNEYS YOUR FULL ATTENTION AS THEY MAKE THEIR
19 CLOSING ARGUMENTS TO YOU. MR. PEACE.

20 MR. PEACE: THANK YOU, YOUR HONOR. IF IT
21 PLEASE THE COURT.

22 THE COURT: ALL RIGHT.

23 MR. PEACE: MR. MAYER, LADIES AND GENTLEMEN
24 OF THE JURY, MADAM FORELADY, AN UNUSUAL SITUATION.
25 THIS IS THE ONLY TIME THAT I GET TO ADDRESS YOU IN

1 CLOSING ARGUMENTS. SO I'LL TALK A LITTLE BIT ABOUT
2 THE LAW AND A LITTLE BIT ABOUT THE FACTS IN THE CASE
3 AS I REMEMBER THEM BEING PRESENTED TO YOU.

4 THE LAW I TALKED TO YOU THIS MORNING ABOUT
5 CONSPIRACY, ARMED ROBBERY AND POSSESSION OF A WEAPON
6 DURING THE COMMISSION OF A VIOLENT CRIME, THAT'S WHAT
7 THE DEFENDANT'S CHARGED WITH. NOW, DURING MY ARGUMENT
8 TO YOU I'M GOING TO BE TELLING YOU THIS IS A FACT,
9 THIS IS A FACT, THIS IS A FACT. I ASSUME THAT MR.
10 MAYER'S GOING TO DO THE SAME THING. HE'S GOING TO
11 COME UP BEFORE YOU AND SAY OKAY, THIS IS A FACT, THIS
12 IS A FACT, THIS IS A FACT. THE TRUTH OF THE MATTER IS
13 THERE'S NOT ANYTHING IN THIS CASE. THERE'S NOT
14 ANYTHING IN THIS CASE THAT'S A FACT UNLESS YOU FIND IT
15 IS BECAUSE YOU'RE THE FINDER OF FACTS. I'M NOT, MR.
16 MAYER'S NOT, THE DEFENDANT'S NOT, THE JUDGE IS NOT.
17 IF YOU FIND MY NAME IS MR. MAYER, THEN THAT'S A FACT.
18 YOU'RE THE FINDER OF FACT. SO WHATEVER YOU FIND IS
19 WHAT EVERYBODY LIVES WITH BECAUSE YOU'RE THE FINDER OF
20 FACT.

21 ARMED ROBBERY, WHAT IS IT? THE TAKING OF
22 PROPERTY FROM THE PERSON OF ANOTHER WITHOUT
23 PERMISSION, CARRYING THAT PROPERTY AWAY, EITHER
24 THROUGH FORCE OR INTIMIDATION OR PUTTING THE PERSON IN
25 FEAR. AND TO MAKE IT ARMED ROBBERY THERE HAS TO BE A

1 WEAPON. CONSPIRACY, THE JUDGE IS GOING TO INSTRUCT
2 YOU, HE'S GOING TO TELL YOU WHAT ALL THIS STUFF IS AND
3 I ASK FOR YOU TO LISTEN TO HIM WHEN HE DOES THAT. THE
4 CONSPIRACY IS TWO PEOPLE JUST HAVE AN AGREEMENT TO
5 COMMIT A CRIMINAL ACT. DOESN'T HAVE TO BE A WRITTEN
6 AGREEMENT. IT DOESN'T EVEN HAVE TO BE A VERBAL
7 AGREEMENT. YOU CAN LOOK AT THE FACTS AND CIRCUMSTANCES
8 AND DECIDE THAT TACITLY, WITHOUT SPEAKING, THAT
9 THERE'S AN AGREEMENT TO COMMIT A CRIMINAL ACT. AND IN
10 THIS CASE IT WOULD BE ARMED ROBBERY. POSSESSION OF A
11 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, IF
12 IT'S ARMED ROBBERY, YOU'VE GOT TO HAVE A WEAPON SO
13 YOU'RE FREE TO FIND THE DEFENDANT GUILTY OF THAT.
14 NOW, THAT'S THE LAW.

15 WHAT ARE THE FACTS? WHAT HAS BEEN PRESENTED TO
16 YOU TODAY? YOU RECALL MR. MAYER SAID IN HIS OPENING
17 STATEMENT, THERE'S NO QUESTION THAT THERE WAS AN ARMED
18 ROBBERY, THAT'S NOT THE ISSUE. AND IT'S NOT THE
19 ISSUE, WHY? BECAUSE YOU HEARD THE TESTIMONY ON THE
20 STAND FROM THE VICTIMS IN THE CASE, PAUL BENJAMIN
21 CAGLE AND JENNIFER SATTERFIELD AND THEY TOLD YOU WHAT?
22 TOGETHER, THEY TOLD YOU THEY WERE AT THE LAUNDROMAT
23 HERE IN LAURENS COUNTY OVER THE WESTERN SQUARE
24 SHOPPING CENTER NEXT TO BI-LO. THEY WERE IN THERE IN
25 THE EARLY MORNING HOURS OF MAY 27TH, WASHING CLOTHES,

1 MINDING THEIR OWN BUSINESS. AND ALL OF THE SUDDEN
2 THESE GUYS WITH GUNS COME IN, POINT THOSE GUNS AT
3 THEM, TELL THEM, THEY TELL THEM TO LOOK DOWN, AND THEY
4 COMMENCE TO TAKE MONEY AND JEWELRY THROUGH FORCE,
5 INTIMIDATION, PUTTING THEM IN FEAR. THEY TOOK
6 PROPERTY. THEY PUT MR. CAGLE, MS. SATTERFIELD IN THE
7 BATHROOM, TOLD THEM TO COUNT TO A HUNDRED. AND I
8 THINK MS. SATTERFIELD TESTIFIED SHE ONLY COUNTED TO
9 54, SHE CHEATED A LITTLE BIT. BUT THEN SHE WENT OUT
10 AND THEN CALLED THE POLICE. AND THEY CAN'T IDENTIFY
11 THE FOLKS. NOW MR. CAGLE SAID WHAT? AND I THINK MR.
12 MAYER'S GOING TO TRY TO MAKE A BIG DEAL ABOUT OKAY,
13 HOW MANY PEOPLE WERE THERE? HOW MANY? AS A MATTER OF
14 FACT KNOWING MR. MAYER I'LL GUARANTEE THAT HE'S GOING
15 TO MAKE A BIG DEAL OUT OF HOW MANY FOLKS WERE THEY.
16 BUT REMEMBER THE TESTIMONY OF MR. CAGLE, WHAT DID HE
17 SAY? THREE CAME IN, AND THERE WAS ONE IN THE CAR.
18 THREE CAME IN, THERE WAS ONE IN THE CAR. MS.
19 SATTERFIELD SAID THAT SHE SAW THREE. WHAT DO YOU DO
20 IN A SITUATION LIKE THIS. AND YOU'VE GOT GUNS, YOU'VE
21 GOT PEOPLE POINTING GUNS AT YOU, IF THAT DOESN'T PUT
22 YOU IN FEAR, I DON'T KNOW WHAT DOES. AND IT'S MF THIS
23 AND MF THAT AND YOU BITCH. YOU CAN'T HOLD IT AGAINST
24 HER BECAUSE SHE CAN'T SAY THERE WERE THREE OR FOUR OR
25 FIVE OR HOW MANY THERE WERE. YOU KNOW THAT'S GOT TO

1 BE A PRETTY EXCITABLE SITUATION. SO WHERE DO YOU
2 LOOK? I MEAN, WHERE DO YOU LOOK? HOW DO YOU
3 DETERMINE WHETHER MR. SCHUMPERT PARTICIPATED? I MEAN
4 JUST LIKE THE JUDGE SAID, THIS AIN'T LIKE T.V., YOU
5 KNOW, NO DNA, NO FINGERPRINTS. SO WHERE DO YOU GO?
6 WHAT EVIDENCE, WHAT EVIDENCE DO YOU HAVE THAT THIS
7 DEFENDANT PARTICIPATED IN THIS ROBBERY? YOU'VE GOT A
8 CODEFENDANT WHO CAME IN, TOOK THE STAND AND UNDER OATH
9 SAID WHAT? SAID ME, M., MAURICE SUBER, MARCUS BROWN
10 AND TYRONE SCHUMPERT. WE PARTICIPATED IN THE ROBBERY
11 AND HOW. THEY WENT AROUND AFTER MAURICE SUBER SAW HIS
12 BOY WAS AT THE LAUNDROMAT. MAURICE SUBER CAME BACK AND
13 GOT THIS GUY, THESE GUYS. AND SAID ALL RIGHT, LET'S
14 GO AND THEY WENT AROUND. NOW DID ANYBODY EVER SAY, IS
15 THERE ANY EVIDENCE ANYBODY EVER SAID, OKAY, LET'S GO
16 AROUND AND ROB THESE GUYS? NO. BUT CAN YOU STILL
17 FIND AN AGREEMENT? YES. AND HOW? YOU FIND IT ON THE
18 FACTS AND CIRCUMSTANCES. THEY WENT AROUND AND THEY
19 DID WHAT? THE TESTIMONY IS WHAT? THEY PULLED SHIRTS
20 OVER THEIR HEADS AND THEY HAD GUNS AND THEY WENT IN.
21 THAT'S THE CONSPIRACY. THAT'S THE CONSPIRACY.

22 NOW, YOU'LL BE ABLE TO TAKE, YOU KNOW MR. MAYER
23 ASKED MR. MOSLEY ABOUT MAKING STATEMENTS. MR. MAYER
24 ASKED HIM ABOUT MAKING STATEMENTS. YOU'LL BE ABLE TO
25 TAKE THOSE STATEMENTS IN WITH YOU AND YOU'LL BE ABLE

1 TO READ THOSE STATEMENTS. YOU'LL SEE THAT THOSE
2 STATEMENTS PRETTY MUCH FOLLOW THE TESTIMONY THAT HE
3 GAVE TODAY. AND YOU'LL NOTE THE DATES ON THESE
4 STATEMENTS, HE MADE THESE STATEMENTS AT THE TIME OF
5 THE ROBBERY, RIGHT AFTER THE ROBBERY. THE SAME DAY HE
6 MADE THESE STATEMENTS TELLING WHAT HAPPENED. NOW MR.
7 MAYER ASKED HIM WHAT? DO YOU HAVE A DEAL? DO YOU
8 HAVE A DEAL FOR TESTIFYING TODAY? WHAT WAS HIS
9 RESPONSE? NO, SIR. I DON'T HAVE A DEAL. AND THEN I
10 GOT UP AND ASKED HIM WHAT? DO YOU HAVE A DEAL WITH
11 THE STATE TO TESTIFY IN THIS CASE? THE ANSWER WAS
12 WHAT? NO, SIR. I DON'T HAVE A DEAL. SO IT'S YOUR
13 JOB, IT'S YOUR RESPONSIBILITY TO DETERMINE THE
14 CREDIBILITY OF DEREK MOSLEY. BECAUSE YOUR FINDING IN
15 THIS CASE WILL RELY, WILL DEPEND ON WHETHER YOU FIND
16 HE'S CREDIBLE. AND SO WHAT DO YOU LOOK AT TO
17 DETERMINE WHETHER DEREK MOSLEY'S CREDIBLE? WAS THERE
18 ANYTHING TO SHOW THAT HE HAD SOMETHING AGAINST TYRONE
19 SCHUMPERT? WAS THERE ANYTHING TO SHOW THAT HE HAD
20 ANYTHING AGAINST TYRONE SCHUMPERT? THAT HE HAD AN AX
21 TO GRIND. WAS THERE ANYTHING TO SHOW THAT HE MADE
22 THESE STATEMENTS AFTER HE HAD A DEAL? NO. WHY?
23 BECAUSE THE STATEMENTS WERE MADE ON THE DAY OF THE
24 ROBBERY. IN ORDER NOT TO BELIEVE DEREK MOSLEY, IN
25 ORDER NOT TO BELIEVE DEREK MOSLEY, IT'S YOUR

1 RESPONSIBILITY TO FIND A REASON NOT TO BELIEVE HIM.
2 IT'S YOUR RESPONSIBILITY TO FIND A REASON NOT TO
3 BELIEVE HIM. AND TO DO THAT YOU NEED TO USE YOUR
4 COMMON SENSE. YOU NEED TO USE YOUR COMMON SENSE BASED
5 ON WHAT WAS PRESENTED, NOT SUPPOSITION, NOT ANYTHING
6 ELSE. BUT BASED ON WHAT WAS PRESENTED WHY WOULD YOU
7 NOT BELIEVE HIM. HE'S NOT GETTING A DEAL. NO AX TO
8 GRIND. WHY NOT BELIEVE HIM? THE TESTIMONY HE GAVE
9 TODAY, YOU CAN MAKE COMPARISONS, IT'S PRETTY MUCH IN
10 CONJUNCTION WITH THE STATEMENTS THAT HE MADE EARLIER.
11 HE HASN'T CHANGED HIS STORY. HE CAME IN WITH NOTHING
12 TO HIDE, CAME IN WITH NOTHING TO HIDE AND HAD THE GUTS
13 AND FORTITUDE TO COME BEFORE YOU AND TELL WHAT
14 HAPPENED. SO THE ONLY ISSUE IS DID TYRONE SCHUMPERT
15 COMMIT THESE ARMED ROBBERIES, PARTICIPATE IN THE
16 CONSPIRACY AND POSSESS A WEAPON?

17 NOW, THE JUDGE IS GOING TO TELL YOU THAT IN SOUTH
18 CAROLINA THE HAND OF ONE IS THE HAND OF ALL. THAT YOU
19 CAN DO IT BY AIDING AND ABETTING OTHERS IN THE
20 COMMISSION OF THIS CRIME. SO IT REALLY DOESN'T MATTER
21 IF TYRONE SCHUMPERT HAD A GUN OR NOT. IT REALLY
22 DOESN'T MATTER IF HE HAD A GUN OR NOT. WE KNOW
23 SOMEBODY, AT LEAST ONE OR TWO PEOPLE HAD A GUN AND
24 WENT INSIDE AND COMMITTED THIS ROBBERY. SO, THERE'S
25 AIDING AND ABETTING EVEN IF YOU'RE NOT SURE WHETHER HE

1 HAD A GUN. BUT THE TESTIMONY IS WHAT? WHAT'S THE
2 TESTIMONY THAT YOU HAVE? THE TESTIMONY FROM DEREK
3 ~~MOSLEY IS TYRONE SCHUMPERT~~ HAD A GUN. I MEAN THAT'S
4 THE CASE IN A NUTSHELL. IF YOU DON'T BELIEVE DEREK
5 MOSLEY, IF YOU DON'T BELIEVE DEREK MOSLEY, I CAN'T DO
6 ANYTHING FOR YOU. I CAN'T DO ANYTHING FOR YOU. BUT
7 NOT TO BELIEVE HIM YOU NEED TO SATISFY YOURSELF
8 THERE'S A REASON NOT TO BELIEVE HIM. BUT THERE'S, BUT
9 THERE'S BEEN ABSOLUTELY NOTHING PRESENTED NOT TO
10 BELIEVE DEREK MOSLEY.

11 SO, YOU KNOW WHERE WE WERE WHEN WE STARTED, TOLD
12 YOU WHERE WE WERE GOING AND I TOLD YOU HOW WE WERE.
13 GOING TO GET THERE. AND NOW WE'RE THERE SO WHAT DO
14 YOU DO? THE JUDGE IS GOING TO INSTRUCT YOU IN A
15 MINUTE ON A LOT OF THINGS. HE'S GOING TO TELL YOU
16 WHAT ARMED ROBBERY IS AND HE'S GOING TO TELL YOU WHAT
17 CONSPIRACY IS AND POSSESSION OF A WEAPON. IF ANYTHING
18 I SAID DOES NOT COMPORT WITH WHAT HE SAYS, THEN, OF
19 COURSE, TAKE HIS INSTRUCTION BECAUSE HE'S THE LAW
20 GIVER. I THINK PRETTY MUCH WHAT I SAID WILL COMFORT.
21 BUT IF THERE'S ANY QUESTION GO WITH WHAT THE JUDGE
22 SAID. HE'S ALSO GOING TO TELL YOU ABOUT REASONABLE
23 DOUBT. HE'S GOING TO TELL YOU, YOU'VE GOT TO BE
24 FIRMLY CONVINCED BEFORE YOU CAN CONVICT THE DEFENDANT.
25 WHAT DOES FIRMLY CONVINCED MEAN? DOES THAT MEAN YOU

1 HAVE TO BE A HUNDRED, A HUNDRED PERCENT CONVINCED? IT
2 DOESN'T MEAN THAT. THERE ARE FEW THINGS THAT WE ARE
3 ONE HUNDRED PERCENT CONVINCED ABOUT. YOU HAVE TO BE
4 FIRMLY CONVINCED. AND BASED ON THE EVIDENCE THE STATE
5 HAS PRESENTED, YA'LL CAN BE FIRMLY CONVINCED. YA'LL
6 CAN BE FIRMLY CONVINCED BECAUSE THE EVIDENCE IS THESE
7 FOUR GUYS WENT TO THE LAUNDROMAT, COMMITTED AN ARMED
8 ROBBERY AGAINST THESE TWO PEOPLE. AND LOOKING AT THE
9 FACTS AND CIRCUMSTANCES, YOU CAN FIND THAT THERE WAS A
10 CONSPIRACY TO DO THAT. NOT THAT THEY AGREED VERBALLY,
11 BUT THE FACTS AND CIRCUMSTANCES SHOW THAT THEY GOT
12 THERE AND PUT THE SHIRTS OVER THEIR HEAD, THEY HAD THE
13 WEAPON AND THEY WENT IN. OF COURSE, THEY HAD THE
14 WEAPON SO THAT'S POSSESSION OF A WEAPON DURING THE
15 COMMISSION OF A VIOLENT CRIME. I TOLD YOU THIS
16 MORNING IN MY OPENING THAT WHEN YOU WENT BACK TO MAKE
17 YOUR DECISION THAT YOU WOULDN'T HAVE ANY TROUBLE
18 FINDING BEYOND A REASONABLE DOUBT, HOWEVER THE JUDGE
19 DEFINES REASONABLE DOUBT, THAT THE DEFENDANT'S GUILTY.
20 I TOLD YOU THAT THIS MORNING AND I TELL YOU THAT THIS
21 AFTERNOON. YA'LL WON'T HAVE ANY TROUBLE GOING BACK
22 THERE AND FINDING THIS DEFENDANT GUILTY.

23 AGAIN, I THANK YOU FOR YOUR TIME AND ATTENTION.
24 YOU'VE BEEN IN AND OUT AND HAD TO WAIT AND YOU
25 PROBABLY WONDERED HOW WE EVER GET ANYTHING DONE AND

1 SOMETIMES I DO TOO. BUT WE SEEM TO GET IT DONE. AND
2 AGAIN, I APPRECIATE YOU, YOU DOING YOUR DUTY AS
3 CITIZENS OF LAURENS COUNTY CAUSE IT'S PRETTY EASY TO
4 GET OUT OF JURY SERVICE. BUT YOU HAVEN'T DONE THAT.
5 YOU'RE SITTING HERE AND SITTING IN JUDGMENT ON THIS
6 DEFENDANT. AND I JUST, I JUST ASK YOU TO GO BACK AND
7 DO YOUR DUTY. JUST DO YOUR DUTY AS YOU SEE FIT AND
8 EVERYBODY CAN LIVE WITH THAT, THE DECISION IS IN YOUR
9 HAND. AND AGAIN I THINK THE STATE'S PRESENTED THE
10 CASE WHERE YOU WON'T HAVE A PROBLEM GOING BACK AND
11 FINDING THE DEFENDANT GUILTY OF EVERYTHING HE'S
12 CHARGED WITH. THANK YOU VERY MUCH.

13 THE COURT: ALL RIGHT. MR. MAYER.

14 MR. MAYER: THANK YOU, YOUR HONOR. IF IT
15 PLEASE THE COURT. MR. PEACE, LADIES AND GENTLEMEN OF
16 THE JURY, MADAM FOREMAN. I AGREE WITH PRETTY MUCH
17 MOST OF WHAT MR. PEACE SAID, WHICH SHOULD SURPRISE
18 SOME OF YOU WHO PROBABLY THOUGHT I WOULDN'T. I'M NOT
19 GOING TO SPEND A LOT OF TIME TELLING YOU ABOUT THE
20 LAW. AND ACTUALLY I THINK MR. PEACE DID AN EXCELLENT
21 JOB EXPLAINING THE LAW OF WHAT IS ARMED ROBBERY AND
22 WHAT ARE WEAPONS AND WHAT IS CONSPIRACY. I AGREE WITH
23 MR. PEACE ON A LOT OF THINGS THAT HE SAID
24 PROCEDURALLY. JUST ABOUT EVERYTHING RIGHT DOWN THE
25 LINE. SUBSEQUENTLY ABOUT THE FACTS OF THIS CASE, IT

1 WON'T SURPRISE YOU TO HEAR THAT I DON'T AGREE WITH
2 HIM. HE SAYS THAT IT SHOULD BE REAL EASY FOR YOU TO
3 GO BACK IN THE BACK ROOM AND DO YOUR DUTY. I AGREE
4 WITH THAT ABSOLUTELY, BUT WHAT I THINK YOUR DUTY IS,
5 IS A FAR CRY OR RESULT OF WHAT MR. PEACE THINKS IT IS.
6 WE'VE GOT A STRANGE CASE HERE. MR. SCHUMPERT'S BEEN
7 ACCUSED OF A BUNCH OF CRIMES OF ARMED ROBBERY AND
8 CONSPIRACY AND POSSESSION OF WEAPONS. AND WE HAD
9 THREE PEOPLE SIT IN THAT CHAIR AND A WHOLE LOT OF
10 UNANSWERED QUESTIONS ABOUT THIS CASE. WE'VE GOT THE
11 RECOLLECTION ELEVEN MONTHS AFTER THIS HAPPENED, WHICH
12 SOMETIMES FLIES IN THE FACE OF A STATEMENT.

13 WE WILL GO OVER A LITTLE BIT OF THE TESTIMONY
14 OF PEOPLE. AND MR. PEACE IS RIGHT, HE WOULD HAVE WON
15 HIS BET IF YOU HAD BET WITH HIM THAT I'M GOING TO
16 DISAGREE WITH HIM ON WHAT SOME OF THE FACTS ARE. I
17 WON'T CALL THEM FACTS BECAUSE HE'S RIGHT, THEY ARE NOT
18 FACTS UNTIL YA'LL DECIDE THEY ARE. MR. CAGLE, ELEVEN
19 MONTHS LATER SAYS HE THINKS THREE GUYS CAME IN, HE
20 THINKS. BUT LATER ON HE SAYS THERE'S JUST TWO WITH
21 GUNS. EVERYBODY SAYS THERE WERE THREE PEOPLE THERE.
22 NOBODY HAS SAID THERE WERE FOUR, I THINK THERE MIGHT
23 HAVE BEEN FOUR. WELL, IT COULD HAVE BEEN MORE, WELL,
24 SOMETHING. BUT ALL THE STATEMENTS THAT WERE TAKEN IN
25 THE MORNING OF THE ROBBERY IN TALKING TO PEOPLE ABOUT

1 THEM ON THE STAND AND THE TWO VICTIMS NOBODY SAID
2 FOUR. EVERYBODY SAID THREE. I ASKED BENJI CAGLE. HE
3 SAID THREE GUYS CAME IN, THEN HE SAID YOU KNOW THERE
4 WERE TWO OF THEM THAT HAD GUNS. THEN THERE WAS ONE
5 GUY OUTSIDE LATER ON. WELL THAT TOTALS THREE. HE ALSO
6 SAID HE DIDN'T SEE ANYTHING EXCEPT THE GUN POINTING AT
7 HIM AND I CAN CERTAINLY UNDERSTAND THAT. IT'S A
8 HORRIBLE THING WHAT THESE PEOPLE WENT THROUGH. IT IS.
9 BUT THAT DOESN'T MAKE TYRONE PART OF IT AND THERE'S NO
10 EVIDENCE TO SHOW THAT HE WAS. WE'LL GET TO THAT IN A
11 MINUTE. THEY PUT THEM IN THE BATHROOM. SHE COUNTED,
12 THEY COUNTED, HER KEYS HIT THE DOOR, THEY WENT OUT,
13 CALLED 911 AND BENJI SAID HE DIDN'T SEE THE CAR THE
14 SECOND TIME THAT JENNIFER SAW IT. BUT THAT DOESN'T
15 AMOUNT TO A WHOLE LOT. THEY WERE ON THE PHONE, SEE A
16 CAR LEAVING GO DOWN TOWARD THE HIGH SCHOOL COMES BACK,
17 THEY POINT IT OUT AND OFFICERS GOES TO PULL IT OVER.
18 THE STATE MADE A POINT OF ASKING MR. CAGLE BECAUSE
19 THERE WERE PROBLEMS IN DIFFERENCES IN WHAT HE SAID
20 ELEVEN MONTHS AND WHAT HE SAYS TODAY. AND THE STATE
21 SAID WELL, YOU KNOW, IT WAS THREE O'CLOCK IN THE
22 MORNING AND YOU WERE, YOU WERE UNDER DURESS. AND HE
23 SAID NO, I WASN'T. HE SAID WELL, YOU KNOW IT WAS, IT
24 WAS THREE O'CLOCK IN THE MORNING. WELL, IT WAS THREE
25 O'CLOCK IN THE MORNING. WHAT I TOOK FROM THE

1 IMPLICATION MR. PEACE MIGHT HAVE BEEN HINTING AT WAS
2 THAT MAYBE AT THREE O'CLOCK IN THE MORNING YOU'RE
3 TIRED AND YOU DON'T SAY MUCH. I, I OFFER TO YA'LL
4 SITTING IN THE JURY BOX, IF IT'S THREE O'CLOCK IN THE
5 MORNING AND YOU'VE JUST HAD A GUN STUCK IN YOUR FACE,
6 TIRED IS THE LAST THING YOU ARE. YOU ARE VERY, VERY
7 MUCH JACKED UP. YOU ARE VERY WIDE AWAKE AND YOU ARE
8 VERY AWARE OF WHAT'S GOING ON. I KNOW THAT IF I HAD A
9 GUN STUCK IN MY FACE AND SOMEBODY ASKED ME I WOULD
10 GIVE THEM ALL KINDS OF DETAILS ABOUT THINGS. I WOULD
11 THINK THAT MY RECOLLECTION AT THAT POINT WOULD BE
12 BETTER THAN ELEVEN MONTHS LATER HAVING HAD BEEN
13 INTERVIEWED, ACKNOWLEDGING BY WHATEVER REPRESENTATIVE
14 THE STATE MAY HAVE TALKED TO. OVER A PERIOD OF TIME
15 GETTING READY FOR INVESTIGATIONS OR WHATEVER. AND WE
16 DON'T KNOW THAT BECAUSE WE HAVE ABSOLUTELY NO
17 POLICEMAN, NO DEPUTIES, NO POLICEMEN, NO DETECTIVES,
18 NO INVESTIGATORS, NO NOTHING. NOBODY FROM LAW
19 ENFORCEMENT TO TALK ABOUT HOW THIS EVER CAME TO
20 INVOLVE TYRONE. NOTHING. JENNIFER TOOK THE STAND.
21 SAID THREE GUYS CAME IN, TWO OF THEM HAD GUNS. SHE
22 TRIED TO FLEE, BUT THEY LOCKED HER IN. SHE ALSO
23 TESTIFIED THAT SHE RECOGNIZED THEM BECAUSE OF THEIR
24 SHOES. SHE WAS EMPHATIC ABOUT THAT. I THOUGHT THAT
25 WAS INTERESTING. THESE DAYS THERE ARE SO MANY

1 DIFFERENT KINDS OF SHOES. IF YOU'RE IN THAT GENERAL
2 AGE GROUP YOU MAY WELL UNDERSTAND. SAID SHE
3 RECOGNIZED AND COULD IDENTIFY THEM BY THEIR SHOES.
4 SHE COULD IDENTIFY THEM AT THEIR BOND HEARING BY THEIR
5 SHOES. WERE YOU AT TYRONE'S BOND HEARING? YEAH.
6 HAVE ANYTHING TO DO WITH HIM. SHE WAS THE ONE, SHE
7 SET IT EARLIER, GOT HIM PR, GOT HIM OUT ON PERSONAL
8 RECOGNIZANCE. SO SHE TESTIFIED THAT SHE COULD
9 IDENTIFY THE THREE PEOPLE, THE THREE PEOPLE WERE CAME
10 INTO THAT PLACE BY THEIR SHOES. NONE OF THEM WAS
11 TYRONE. AND ULTIMATELY WHAT THEY SAY IS WE CAN'T
12 IDENTIFY WHO IT WAS AT THE TIME. NEITHER ONE OF THEM
13 CAN IDENTIFY HIM. HER STATEMENT ABOUT THE BOND
14 HEARING SAID SHE CAN IDENTIFY THAT IT WAS SOMEBODY
15 OTHER THAN HIM. SAID SHE SAW FOUR BLACK MALES LEAVE
16 IN A CAR. AND WE DREW THAT LITTLE MAP UP HERE COMING
17 UP THE ROAD FROM THE APARTMENTS AND TURNED RIGHT.
18 FOUR BLACK MALES, SHE SAID IT TWO SEPARATE TIMES. TWO
19 IN THE BACK SEAT, TWO IN THE FRONT. WHAT DID MR.
20 MOSLEY SAY? HE SAID THEY LEFT TOGETHER. TODD
21 DRIVING, BROWN, HE AND SUBER. THERE'S NO SCHUMPERT
22 THERE. MR. MOSLEY, MR. PEACE IS CORRECT, IS WHAT THIS
23 WHOLE THING COMES DOWN TO. HE IS A ROBBER, CONFESSED
24 TO IT ON THAT STAND. MR. PEACE EXPLAINED THAT THE
25 HAND OF ONE IS THE HAND OF ALL, WHICH GIVES SOMETHING,

1 THE DEFENSE CRIMINAL EXPOSURE TO MR. MOSLEY. BUT HE
2 GETS ON THAT STAND AND HE TELLS YOU THAT HE IS CHARGED
3 WITH TWO COUNTS OF ARMED ROBBERY, CONSPIRACY TO COMMIT
4 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE
5 COMMISSION OF A VIOLENT CRIME. AND HE TESTIFIES WITH
6 HIS HALO BALANCE ABOVE HIS HEAD, THAT HE DIDN'T DO
7 ANYTHING. READ THE STATEMENT. WHAT HAPPENED? THE
8 STATEMENT'S AWESOME. THE STATEMENT IS AN ABSOLUTE
9 WHITEWASH OF ANY INVOLVEMENT AT ALL. IT'S THE KIND OF
10 THING IF YOU'VE GOT KIDS, YOU TALK TO KIDS, THEY WALK
11 IN THE ROOM, THERE'S A BROKEN PLANT, THEY SAY THE CAT
12 DID IT. THERE'S A LITTLE HALO REVOLVING OVER THEIR
13 HEAD. HE SAYS IN HIS STATEMENT, HE SAID ON THAT
14 STAND, THAT THERE WERE THREE GUNS INVOLVED IN THIS
15 ROBBERY. NOT ONLY THAT THERE WERE THREE GUNS, BUT HE
16 SAID WHO HAD THE .308, WHO HAD THE .38? WHO HAD THE
17 .380? WHICH I DIDN'T KNOW THERE WAS A .380. AND WHO
18 HAD THE .22? THE CURIOUS THING ABOUT THAT IS, THE BIG
19 SHINY .22 REVOLVER IS HIS. HE TESTIFIED TO THAT.
20 THAT'S ONE THAT HE GOT FROM SOMEBODY A COUPLE OF WEEKS
21 AGO. BUT HE'S NOT ENTIRELY SURE HOW IT IS THAT TYRONE
22 GOT IT SINCE HE, OF COURSE, HAD NOTHING TO DO WITH
23 ANYTHING. HE, HIS GUN MYSTERIOUSLY APPEARS WITH THEM,
24 BUT HE TESTIFIED THOUGH I DIDN'T KNOW WE WERE GOING TO
25 A ROBBERY. NO, NO, NO. I DIDN'T KNOW WE WERE GOING

1 TO MESS WITH ANYBODY. EVERYTHING HE SAYS IS JUST TOO
2 ENTIRELY SELF-SERVING. HE'S NOT MAKING THIS STATEMENT
3 AT THREE O'CLOCK IN THE MORNING LIKE THE VICTIMS WERE.
4 HE'S MAKING A STATEMENT ABOUT NOON THE FOLLOWING DAY.
5 11:50 THE FOLLOWING DAY IN THE POLICE STATION HE'S
6 MAKING THE STATEMENT AND HE WRITES OUT WHAT HE HAS TO
7 SAY THEN AND HE SIGNED IT. THEN HE COMES BACK AND
8 TALKS ABOUT EVERYBODY HAD GUNS, PARTICULARLY TYRONE
9 HAD A GUN. IT DOESN'T SAY THAT HE HAS ONE. IT
10 DOESN'T SAY HE BROUGHT HIS. ONCE AGAIN, HE'S JUST
11 POLISHING HIS HALO. HE'S GOT TEN HOURS, ELEVEN HOURS
12 BETWEEN THE TIME THIS HAPPENED AND THAT STATEMENT TO
13 COOK UP WHATEVER HE WANTS TO COOK UP. HE'S GOT A
14 PERIOD OF TIME TO MANUFACTURE IN HIS MIND WHAT HE'S
15 GOING TO TELL PEOPLE TO TRY AND BUY HIM SOME TIME.
16 IT'S AN INTERESTING CURIOSITY IN THIS WHICH STRUCK ME
17 THE FIRST TIME I READ IT. WHEN HE GOES IN AND MAKES
18 THIS STATEMENT, HE TESTIFIED THAT THE COPS WERE
19 TELLING HIM WHAT HAPPENED. HE KNEW THEY KNEW
20 SOMETHING. HE SAID I DON'T KNOW HOW THEY KNEW IT,
21 THEY WEREN'T THERE, BUT THEY KNEW SOMETHING. BUT WHAT
22 HE DOESN'T KNOW IS HOW MUCH THEY KNOW. HE DOESN'T
23 KNOW THAT. SO HE BUILDS AN INSURANCE POLICY INTO HIS
24 STATEMENT. HE WRITES, YOU KNOW, THERE'S A .22 PISTOL,
25 JUST IN CASE IT WAS SEEN, THERE'S A .22 PISTOL SHINY,

1 TRUE IT IS MINE. I ADMIT THAT IT IS MINE, BUT TYRONE
2 HAD IT, NOT ME. NOW NOBODY HAS SAID ANYTHING ABOUT A
3 THIRD PISTOL. NONE OF THE VICTIMS SAID THEY SAW A
4 THIRD PISTOL. THERE'S EVEN A QUESTION AS TO WHETHER
5 THERE WAS A THIRD PERSON INSIDE THE BUILDING OTHER
6 THAN JUST TO GET KEYS. BUT JUST IN CASE IT WAS SEEN
7 HE'S GOING TO GET THAT INSURANCE POLICY IN THERE SO
8 NOBODY CAN COME BACK LATER AND SAY, ISN'T THAT YOURS?
9 SO, I GOT THAT COVERED, I DIDN'T HAVE IT, SOMEBODY
10 ELSE HAD IT. MR. PEACE COMES BACK AND ASKS YOU WHAT
11 IS THE ULTIMATE QUESTION. IT COMES DOWN TO ONE THING.
12 HE'S A GOOD BOY. IT COMES DOWN TO DO YOU BELIEVE
13 MOSLEY. THAT'S IT. THAT'S IT. THE STATE IS ASKING
14 YOU TO CONVICT THIS MAN BASED UPON A ROBBER SAYING
15 WELL, HE WAS IN ON IT. THAT'S IT. THERE'S NO
16 PHYSICAL EVIDENCE. THERE'S NO POLICE WORK. THERE'S
17 NOT ANY OTHER WITNESSES. THERE'S NO NOTHING. THERE'S
18 ONE GUY SAYING WELL, YOU SHOULD CONVICT HIM BECAUSE HE
19 WAS IN ON IT AND THAT'S IT. SO THE QUESTION COMES
20 DOWN TO WHAT JERRY PEACE ASKED YOU. DO YOU HAVE A
21 REASON TO DISBELIEVE HIM? AND ABSOLUTELY YOU DO.
22 HE'S NOT CREDIBLE. NOT REMOTELY. MR. PEACE WOULD
23 HAVE YOU BELIEVE THAT THIS MAN HAS NO REASON TO LIE.
24 ABSOLUTELY NONE. ABSOLUTELY NONE. WELL, ONE THING
25 THAT HE HAS TO DO IS HE HAS TO BACK UP THE STATEMENTS

1 HE ORIGINALLY MADE OR HE'S GOT OTHER PROBLEMS. SO
2 THAT'S ONE REASON TO LIE. THE STATEMENTS ON
3 THEMSELVES ARE INCREDIBLY SELF-SERVING. OH, I DIDN'T
4 DO ANYTHING. I JUST STOOD BACK. OH, I DIDN'T, I
5 DIDN'T SEE ANYTHING HAPPEN. I COULDN'T EVEN, ONE, ONE
6 LITTLE MOMENT IS THE ONLY TIME THAT I COULD LOOK
7 INSIDE AND THAT'S WHEN SUBER HIT HIM ON THE HEAD WITH
8 THE GUN, WHICH NEVER HAPPENED. NOBODY TESTIFIED TO
9 THAT. BUT HE DOESN'T KNOW WHAT HAS HAPPENED ENTIRELY
10 AND HE DOESN'T KNOW WHAT THE POLICE HAVE BEEN TOLD.
11 HE DOESN'T KNOW WHAT THE VICTIMS HAVE CLAIMED AT THE
12 TIME HE MANUFACTURES THOSE STATEMENTS. SO HE'S GOT TO
13 COVER HIMSELF TO SOME DEGREE. AND HE DOESN'T. THAT'S
14 ONE OF THE WAYS THAT HE CATCHES HIMSELF, HE WRITES
15 STUFF IN THERE THAT SIMPLY DIDN'T HAPPEN. THE BIGGEST
16 THING IT COMES DOWN TO IS THE THING THAT MR. PEACE SAT
17 RIGHT THERE IN THAT CHAIR AND BROUGHT TO YOUR
18 ATTENTION, I AGREE ONE HUNDRED PERCENT. THERE'S NO
19 DEALS ON THIS GUY. HE TESTIFIED HE'S FACING 20 YEARS
20 AND THERE'S NO DEALS ON THIS GUY. NONE. WHAT DOES
21 THAT MEAN? MR. PEACE WOULD HAVE YOU BELIEVE THAT
22 MEANS THAT THE STATE DID NOT SAY WELL, MR. MOSLEY, IF
23 YOU SAY WHAT WE WANT YOU TO SAY THEN WE'LL GIVE YOU
24 THIS WONDERFUL CHRISTMAS HAM. THE STATE WOULDN'T DO
25 THAT. THAT'S NOT HOW THEY DO IT. THAT'S NOT RIGHT.

1 THEY WOULDN'T DO IT. AND THEY DIDN'T DO IT. BUT WHAT
2 DO WE HAVE? WE'VE GOT A GUY SITTING THERE WHO HAS NO
3 DEAL. NO DEAL. HE'S GOT A WRITTEN STATEMENT THAT
4 SAYS HE DID IT. AND NO DEAL. WHAT'S THE ONLY CHANCE
5 THAT MAN HAS IS TO GIVE A STATEMENT TO LAW
6 ENFORCEMENT. THAT'S THE ONLY CHANCE HE'S GOT. THE
7 ONLY WAY HE CAN SAVE HIMSELF IS TO GIVE THEM WHAT HE
8 THINKS THEY WANT. AND THAT IS A REASON TO LIE. THAT
9 IS ABSOLUTELY A REASON TO LIE. PARTICULARLY IF JUST
10 LYING TO SUPPORT THE LIES THAT HE GAVE IN HIS
11 STATEMENTS CAUSE THE STATEMENTS DON'T JIVE. AND IT
12 COMES DOWN TO IT, THEY JUST DON'T GEL. YOU HAVE
13 SHUFFLED ACROSS THIS FOR A NUMBER OF YEARS, EVERY ONE
14 OF YOU, YOU'RE ALL OF LEGAL AGE. YOU HAVE TALENTS AND
15 ABILITIES TO DISCERN TRUTH AND TO DISCERN WHAT IS OR
16 ISN'T REAL. PERSONAL DISCRETION IS WHAT YOU USE WHEN
17 YOU DECIDE WHETHER OR NOT YOU WANT TO BUY A USED CAR
18 FROM SOMEBODY OR NOT. YOU WANT TO GO SOMEWHERE ELSE.
19 OR WHETHER YOU TAKE SOMEBODY AT THEIR WORD OR TAKE
20 SOMEBODY ON FAITH. I'M ASKING, I'M BEGGING YOU TO USE
21 THAT NOW. THIS MAN IS THE EPITOME, HE IS THE MODEL OF
22 SOMEBODY THAT HAS SOMETHING HE HAS TO HIDE. THAT HAS
23 TO COME UP WITH A STORY AS OPPOSED TO THE TRUTH. THE
24 STATEMENTS THAT HE WROTE ARE ALL TOTALLY SELF-SERVING.
25 YOU'RE GOING TO HAVE THEM BACK THERE. READ THEM.

1 READ THEM. NOTHING IN THERE SAYS LOOK, I DID
2 SOMETHING STUPID. WE WERE GOING TO GO DO SOMETHING
3 AND I GOT INVOLVED IN SOMETHING AND I'M REALLY SORRY.
4 THEY ALL SAID, WELL, I WAS STANDING BACK HERE WHILE
5 EVERYBODY ELSE DID THINGS. AND I DIDN'T KNOW WHEN WE
6 WENT THERE, WHAT WE WERE GOING THERE FOR. AND I
7 DIDN'T KNOW AFTER IT HAPPENED WHAT WE HAD DONE. I
8 JUST RAN AWAY WITH EVERYBODY ELSE. OH, AND BY THE WAY
9 I AM THE NICE PERSON THAT GAVE THE CAR KEYS BACK.
10 IT'S NOT CREDIBLE. ON MY THEORY OF JUSTICE IS
11 PREDICATED ON SOME VERY SIMPLE RULES. IT'S PROBABLY
12 THE BEST SYSTEM EVER INVENTED, THAT MAN'S NOT GUILTY.
13 THAT MAN IS NOT GUILTY UNTIL THE EVIDENCE THAT THE
14 STATE PUTS FORTH CONVINCES EACH AND EVERY ONE OF YOU
15 BEYOND ANY REASONABLE DOUBT THAT THEY HAVE PROVED HE
16 DID WHAT THEY ACCUSE HIM OF. THE BURDEN IS ENTIRELY
17 ON THEM. THE JUDGE WILL TELL YOU NOT TO READ ANYTHING
18 INTO THE FACT THAT HE DIDN'T GET UP THERE AND TAKE THE
19 STAND. THERE'S NO REASON TO TAKE THE STAND IF THERE'S
20 NOTHING YOU CAN PROVE. HE WASN'T THERE, HE CAN'T SAY
21 ANYTHING. THERE'S EVIDENCE IN THIS CASE. THERE'S A
22 STATEMENT OF THE ROBBER WHO IS TRYING TO FIND, AND THE
23 ANSWER IS SIMPLE. THE ANSWER IS THE MOST OBVIOUS OF
24 ALL. EVERYBODY SAYS THERE WERE THREE ROBBERS.
25 EVERYBODY SAYS THERE WERE THREE. MOSLEY'S GOT TO

1 GENERATE A FOURTH PERSON OTHERWISE HE CAN'T ADOPT THIS
2 POSITION OF NONINVOLVEMENT. HE'S GOT TO GENERATE A
3 FOURTH PERSON OR HE'S NUMBER THREE. HE CAN'T PRODUCE
4 A DIFFERENT NUMBER THREE. AND THEN, OF COURSE, WHEN
5 HE'S HIDDEN BACK IN THE SHADOWS WHERE NOBODY CAN SEE
6 HIM, THEN HE CAN'T CLAIM THAT HE WASN'T INVOLVED,
7 WHICH IS WHAT HE'S CLAIMING. THE ONLY REASON FOR
8 THAT, THAT'S THE STANDARD THAT EACH ONE OF YOU IS PUT
9 TO. HAS THE STATE PROVED IT'S CASE TO YOU BEYOND A
10 REASONABLE DOUBT? I WOULD SAY NO. I WOULD SAY NOT AT
11 ALL. I DON'T BELIEVE YOU CAN GO BEYOND A REASONABLE
12 DOUBT ON NOTHING MORE THAN THE TESTIMONY OF A
13 CONFESSED ROBBER WHO BY EVERY INDICATION IS TRYING TO
14 COVER HIS BACK. WHAT HE'S TRYING TO DO, NO MORE.
15 IT'S THE SINGLE WORD OF SOMEBODY WHO HAS TOLD YOU THAT
16 HE'S DISHONEST, HE'S A ROBBER. HE WAS INVOLVED IN
17 THIS. THE JUDGE IS GOING TO TELL YOU AS MR. PEACE
18 DID, AS I AM GOING TO, TO JUDGE THIS BASED ONLY UPON
19 THE EVIDENCE PUT IN FRONT OF YOU. THAT'S ALL. DON'T
20 TRY AND MAKE SUPPOSITIONS. DON'T TRY AND WORK ON WHAT
21 IF'S. LOOK AT THE EVIDENCE THAT'S BEEN PUT BEFORE YOU
22 AND THAT'S ALL YOU HAVE TO BASE THIS ON. I CAN RAMBLE
23 ON. THE CASE IS SIMPLE, THOUGH DIFFICULT TO DECIDE IN
24 TERMS OF WEIGHING PROS AND CONS. I BELIEVE THE TRUTH
25 IS APPARENT. I BELIEVE IT'S OBVIOUS. I DO NOT

1 BELIEVE THAT YOU CAN IN GOOD CONSCIENCE BRING YOURSELF
2 TO BELIEVE THAT SOMETHING HAS BEEN PROVED BEYOND A
3 REASONABLE DOUBT. AND A REASONABLE DOUBT FIRMLY
4 CONVINCED, A REASONABLE DOUBT IS THAT DOUBT THAT WOULD
5 CAUSE A REASONABLE PERSON TO HESITATE. YOU KNOW, I
6 DON'T KNOW IF HE IS. I'M NOT SURE THAT HE IS. I
7 DON'T, I DON'T KNOW THAT I TRUST MOSLEY. THAT'S
8 SUFFICIENT. THAT IS A REASONABLE DOUBT. REVIEW THE
9 EVIDENCE. DON'T GO BY WHAT MR. PEACE HAS SAID, NOT
10 WHAT I HAVE SAID. WEIGH ON THE TESTIMONY OF THE
11 WITNESSES, THAT CREDIBILITY YOU WISH TO GIVE THEM. AS
12 THE JUDGE SAID YOU ARE THE SOLE DETERMINERS OF WHAT IS
13 CREDIBLE AND WHAT IS NOT. WHO IS CREDIBLE AND WHO IS
14 NOT. DO YOUR DUTY AND RETURN A FAIR VERDICT, THAT
15 YOUR CONSCIENCE WILL BE COMFORTABLE WITH.

16 THE COURT: ALL RIGHT. MADAM FORELADY AND
17 LADIES AND GENTLEMEN AT THIS TIME IT DOES BECOME THE
18 DUTY OF THE COURT TO CHARGE YOU, THAT SIMPLY MEANS TO
19 INSTRUCT YOU IN THE LAW THAT DOES APPLY IN THIS CASE.
20 UNDER THE CONSTITUTION OF THIS STATE, I AM BOUND TO
21 CHARGE AND INSTRUCT YOU IN THE LAW THAT APPLIES. IT
22 IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS
23 THE COURT IS NOW GOING TO EXPLAIN IT TO YOU. AND AS
24 JURORS IT IS YOUR EXCLUSIVE DUTY TO DETERMINE AND
25 DECIDE ALL THE ISSUES OF FACT IN THIS CASE AND FOR

1 THAT PURPOSE TO DETERMINE THE EFFECT, THE VALUE, THE
2 WEIGHT AND THE TRUTH OF THE EVIDENCE THAT HAS BEEN
3 PRESENTED DURING THE TRIAL. BOTH THE STATE OF SOUTH
4 CAROLINA AND THE DEFENDANT, MR. SCHUMPERT HAVE A RIGHT
5 TO EXPECT THAT YOU WILL INDIVIDUALLY AND COLLECTIVELY,
6 THAT YOU WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE
7 THE EVIDENCE IN THIS CASE. AND APPLY THE LAW OF THE
8 CASE TO THAT EVIDENCE SO THAT BOTH THE STATE AND THE
9 DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL
10 TRIAL IN THIS CASE. I'M GOING TO GO OVER WITH YOU IN
11 PART THE CHARGES THAT ARE MADE IN THE INDICTMENT.
12 AGAIN, I WOULD INSTRUCT YOU THAT THE INDICTMENT IN
13 THIS CASE IS NOT EVIDENCE OF THE CHARGES THAT IT
14 CONTAINS AND CAN NOT BE CONSIDERED BY YOU AS EVIDENCE
15 OF THE CHARGES THAT IT CONTAINS.

16 AGAIN, THIS IS CASE NUMBER 02-GS-30-1018, THERE
17 ARE SEVERAL DEFENDANTS CHARGED IN THE CASE. THE
18 TRIAL, OF COURSE, IS THAT OF STATE VERSUS TYRONE
19 SCHUMPERT. FOUR DIFFERENT CHARGES ARE INCLUDED IN THE
20 INDICTMENT: IN COUNT ONE, IT IS ALLEGED THAT THE
21 DEFENDANT, MR. SCHUMPERT WITH THE OTHER CODEFENDANTS
22 DID IN LAURENS COUNTY IN THE STATE AFORESAID ON OR
23 ABOUT THE 27TH DAY OF MAY, 2002, WILFULLY AND
24 UNLAWFULLY UNITE, COMBINE, CONSPIRE, CONFEDERATE,
25 AGREE BETWEEN AND AMONG THEMSELVES AND HAVE TACIT

1 UNDERSTANDING WITH EACH OTHER OR WITH OTHER PERSONS
2 WHOSE NAMES WERE NOT KNOWN TO THE GRAND JURY FOR THE
3 PURPOSE OF COMMITTING THE ACT OF ARMED ROBBERY IN
4 VIOLATION OF 16-17-410 OF THE SOUTH CAROLINA CODE OF
5 LAWS.

6 COUNT TWO AND COUNT THREE ARE CHARGES OR
7 ALLEGATIONS OF THE OFFENSE OF ARMED ROBBERY. IN THOSE
8 COUNTS IT IS ALLEGED THAT THIS DEFENDANT, MR.
9 SCHUMPERT WITH OTHER DEFENDANTS AIDING, ABETTING AND
10 ASSISTING ONE ANOTHER DID IN LAURENS COUNTY IN THE
11 STATE AFORESAID ON OR ABOUT THE 27TH DAY OF MAY, 2002,
12 WILFULLY AND UNLAWFULLY COMMIT ROBBERY WHILE ARMED
13 WITH A DEADLY WEAPON, TO-WIT: A FIREARM UPON AND,
14 EXCUSE ME, AND TOOK GOODS OR MONIES FROM THE PERSON OF
15 ONE PAUL CAGLE BY MEANS OF FORCE OR INTIMIDATION. THE
16 SAID GOODS AND MONIES BEING DESCRIBED AS GOOD AND
17 LAWFUL MONEY OF THE UNITED STATES BEING OWNED BY PAUL
18 CAGLE.

19 COUNT THREE IS A VERY SIMILAR CHARGE OF ARMED
20 ROBBERY. IT IS ALLEGED IN THAT COUNT THAT A, THE
21 OFFENSE OF ARMED ROBBERY WAS COMMITTED UPON ONE
22 JENNIFER SATTERFIELD.

23 AND COUNT FOUR IN THE INDICTMENT ALLEGES THAT
24 THIS DEFENDANT, MR. SCHUMPERT WITH OTHER DEFENDANTS
25 NAMED AIDING, ABETTING AND ASSISTING ONE ANOTHER DID

1 IN LAURENS COUNTY IN THE STATE AFORESAID ON OR ABOUT
2 THE 27TH DAY OF MAY, 2002, POSSESS A FIREARM DURING
3 THE COMMISSION OF A VIOLENT OFFENSE, TO-WIT: ARMED
4 ROBBERY IN VIOLATION OF 16-23-490 OF THE SOUTH
5 CAROLINA CODE OF LAWS. THOSE ARE THE CHARGES AND
6 ALLEGATIONS THAT ARE MADE IN THE INDICTMENT.

7 OF COURSE, THROUGHOUT THESE INSTRUCTIONS WHEN I
8 USE THE WORD DEFENDANT I AM REFERRING TO MR. TYRONE
9 SCHUMPERT. AND TO THE CHARGES THAT HAVE BEEN MADE IN
10 THIS INDICTMENT THE DEFENDANT, MR. SCHUMPERT HAS
11 ENTERED A PLEA OF NOT GUILTY. AND THIS PLEA OF NOT
12 GUILTY BY THE DEFENDANT PLACES THE BURDEN OF PROOF ON
13 THE STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A
14 REASONABLE DOUBT BEFORE YOU, THE JURY, CAN FIND THE
15 DEFENDANT GUILTY. THE DEFENDANT IS PRESUMED IN LAW
16 INNOCENT OF THE CHARGES THAT ARE MADE IN THIS
17 INDICTMENT. IT IS A CARDINAL AND FUNDAMENTAL RULE OF
18 THE LAW OF EVIDENCE OF THIS STATE THAT A DEFENDANT
19 REGARDLESS OF THE CHARGE OR CHARGES AGAINST HIM WILL
20 ALWAYS BE PRESUMED INNOCENT OF THE CRIMES FOR WHICH HE
21 HAS BEEN INDICTED UNLESS AND UNTIL THE GUILT OF THE
22 DEFENDANT HAS BEEN PROVEN BY EVIDENCE THAT SATISFIES
23 YOU, THE JURY, OF HIS GUILT BEYOND A REASONABLE DOUBT.
24 THIS PRESUMPTION OF INNOCENCE IS NOT JUST A MERE LEGAL
25 THEORY. IT'S NOT JUST A LEGAL PHRASE, BUT IT IS A

1 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT, INCLUDING
2 MR. SCHUMPERT, IS ENTITLED. THE PRESUMPTION OF
3 INNOCENCE ACCOMPANIES A DEFENDANT FROM THE TIME OF HIS
4 ARRAIGNMENT, FROM THE TIME OF HIS APPEARANCE IN THIS
5 COURT AND THROUGHOUT EVERY STAGE OF THE TRIAL AND
6 CONTINUES WITH THE DEFENDANT EVEN AFTER YOU RETIRE
7 INTO THE JURY ROOM TO CONSIDER YOUR VERDICT IN THIS
8 CASE. THE PRESUMPTION OF INNOCENCE CONTINUES TO EXIST
9 TO THE BENEFIT OF THE DEFENDANT UNTIL YOU, THE JURY,
10 REACH THE CONCLUSION THAT THE STATE HAS PROVEN THE
11 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

12 I WOULD INSTRUCT YOU, MADAM FORELADY AND LADIES
13 AND GENTLEMEN, THAT THE FACT THAT THE DEFENDANT IN THE
14 TRIAL OF A CRIMINAL CASE DOES NOT TESTIFY IN HIS OWN
15 BEHALF IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY
16 WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON
17 THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE
18 ACCUSED. IT MUST NOT BE CONSIDERED BY YOU IN ANY
19 MANNER AGAINST THE DEFENDANT OR MITIGATE AGAINST HIM
20 IN ANY RESPECT. A DEFENDANT HAS A CONSTITUTIONAL
21 RIGHT TO REMAIN SILENT AND THE ASSERTION OF THAT
22 CONSTITUTIONAL RIGHT CAN NOT AND MUST NOT BE
23 CONSIDERED BY YOU IN YOUR DELIBERATIONS. SO UNDER THE
24 OATH THAT YOU TOOK WHEN THIS CASE BEGAN, YOU ARE TO
25 REACH NO INFERENCE AND DRAW NO CONCLUSION FROM THE

1 FACT THAT THE DEFENDANT IN THIS CASE DID NOT HIMSELF
2 TESTIFY. AGAIN, THE FACT THAT THIS DEFENDANT DID NOT
3 TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM
4 FOR THE BURDEN OF PROOF AS I STATED TO YOU IS UPON THE
5 STATE. IT IS NOT INCUMBENT UPON THE ACCUSED TO PROVE
6 HIS INNOCENCE. THE BURDEN OF PROOF REMAINS UPON THE
7 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT. AND
8 AGAIN, THE FACT THAT A DEFENDANT DOES NOT TESTIFY, IT
9 IS NOT A FACTOR TO BE CONSIDERED BY YOU IN DETERMINING
10 THE GUILT OR THE INNOCENCE OF THE DEFENDANT.

11 NOW THE STATE, LADIES AND GENTLEMEN, IS NOT
12 REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND
13 ALL DOUBT OR BEYOND EVERY DOUBT, BUT BEYOND A
14 REASONABLE DOUBT. AND WHEN WE SAY THE PROOF MUST BE
15 ESTABLISHED BEYOND A REASONABLE DOUBT, YOU SHOULD GIVE
16 THOSE WORDS THEIR PLAIN AND ORDINARY MEANING. FOR A
17 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE
18 A REASONABLE PERSON TO HESITATE TO ACT. A REASONABLE
19 DOUBT CAN ARISE FROM EVIDENCE PRESENTED IN THE CASE OR
20 THE LACK OF EVIDENCE IN THE CASE. TO THINK THAT A
21 DEFENDANT IS PROBABLY GUILTY OR THE CIRCUMSTANCES ARE
22 SUSPICIOUS IS NOT ENOUGH. PROOF BEYOND A REASONABLE
23 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
24 DEFENDANT'S GUILT. THERE ARE FEW THINGS IN THIS WORLD
25 THAT WE KNOW WITH ABSOLUTE CERTAINTY AND IN CRIMINAL

1 CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES
2 EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION
3 OF THE EVIDENCE YOU'RE FIRMLY CONVINCED THAT THE
4 DEFENDANT IS GUILTY OF THE CRIME OR CRIMES CHARGED,
5 YOU MUST FIND HIM GUILTY.. ON THE OTHER HAND IF YOU
6 THINK THERE'S A REAL POSSIBILITY THAT HE IS NOT GUILTY
7 YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND
8 HIM NOT GUILTY. YOU ALONE MUST MAKE THE DETERMINATION
9 OF WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE
10 GUILT OF THIS DEFENDANT. I WOULD INSTRUCT YOU THAT
11 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT
12 ARISING FROM THE WHOLE CASE. SO IF UPON ANY ISSUE OF
13 FACT THAT IS ESSENTIAL TO A CONVICTION AND A VERDICT
14 OF GUILTY, IF YOU HAVE A REASONABLE DOUBT AS TO HOW
15 THAT ISSUE SHOULD BE RESOLVED IT WOULD BE YOUR DUTY TO
16 RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE
17 DEFENDANT. A DEFENDANT, MADAM FORELADY AND LADIES AND
18 GENTLEMEN, IS NOT REQUIRED TO PROVE HIS INNOCENCE BUT
19 THE STATE IS REQUIRED UNDER THE LAW TO PROVE EVERY
20 ESSENTIAL ELEMENT OF THE OFFENSES CHARGED AGAINST HIM
21 BY EVIDENCE THAT SATISFIES YOU, THE JURY, OF THE GUILT.
22 OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU
23 CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY. SO IF
24 UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS TO
25 THE GUILT OR THE INNOCENCE OF THE DEFENDANT HE IS

1 ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE
2 ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY.
3 BUT ON THE OTHER HAND, IF UPON THE WHOLE CASE YOU FIND
4 THAT THE STATE HAS PROVEN BY EVIDENCE THAT SATISFIES
5 YOU OF THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE
6 DOUBT, THEN IN THAT CIRCUMSTANCE IT WOULD EQUALLY BE
7 YOUR DUTY TO CONVICT THE DEFENDANT AND TO FIND HIM
8 GUILTY.

9 I WOULD INSTRUCT YOU AGAIN THAT THE INDICTMENT IS
10 NOT EVIDENCE OF THE CASE, IN THE CASE AND CAN NOT BE
11 CONSIDERED BY THE JURY AS EVIDENCE IN THIS CASE.
12 AGAIN, IT IS A FORMAL WRITTEN DOCUMENT THAT HAS
13 PROCESSED THIS CASE INTO THIS COURT. NOW LADIES AND
14 GENTLEMEN DURING THE COURSE OF THIS TRIAL YOU AND I
15 HAVE CERTAIN DUTIES THAT WE ARE TO PERFORM. AS THE
16 TRIAL JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER
17 THE TRIAL OF THE CASE. I ALSO HAVE THE DUTY TO RULE
18 UPON OR PASS UPON THE ADMISSIBILITY OF EVIDENCE THAT
19 WAS OFFERED DURING THE TRIAL. YOU ARE TO CONSIDER
20 ONLY THE COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO
21 DISREGARD AND DISABUSE FROM YOUR MIND ANY TESTIMONY
22 THAT MIGHT HAVE BEEN STRICKEN FROM THE RECORD IN THIS
23 CASE, IF THERE WAS ANY. YOU'RE TO CONSIDER ONLY THE
24 TESTIMONY THAT HAS BEEN PRESENTED FROM THE WITNESS
25 STAND TOGETHER WITH ANY EXHIBITS THAT WERE MADE A PART

1 OF THE RECORD IN THIS CASE. I DO HAVE THE ADDITIONAL
2 DUTY TO CHARGE YOU OR EXPLAIN TO YOU THE LAW THAT
3 APPLIES IN THIS CASE AND AS THE PRESIDING JUDGE UNDER
4 THE LAW I'M THE SOLE JUDGE OF THE LAW OF THE CASE. IT
5 IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS
6 IT IS NOW EXPLAINED AND STATED TO YOU. THAT'S TRUE
7 EVEN IF YOU HAD A PRECONCEIVED IDEA AS TO WHAT YOU
8 THOUGHT THE LAW WAS. AND IF THAT DOESN'T AGREE WITH
9 WHAT I'M NOW EXPLAINING TO YOU, THEN UNDER THE LAW AND
10 UNDER YOUR OATH, YOU ARE BOUND TO ABANDON THAT
11 PRECONCEPTION BECAUSE YOU HAVE AGREED TO ACCEPT AND
12 APPLY THE LAW AS IT IS NOW EXPLAINED TO YOU.

13 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE
14 A JURY, THE JURY DOES BECOME THE SOLE AND THE
15 EXCLUSIVE JUDGE OF THE FACTS IN A CASE AND, YOU, THE
16 JURY ARE THE JUDGE OF THE FACTS OF THIS CASE. AGAIN,
17 THE COURT IS THE JUDGE OF THE LAW OF THE CASE. THE
18 CONSTITUTION OF THIS STATE HAS DECLARED THAT THE TRIAL
19 JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR MAKE
20 ANY STATEMENT TO THE TRIAL JURY ABOUT THE FACTS IN A
21 CASE. AND SINCE YOU ARE THE SOLE JUDGE OF THE FACTS
22 OF THIS CASE, YOU ARE NOT TO INFER FROM ANYTHING THAT
23 I'VE SAID DURING THE PROGRESS OF THE TRIAL IN RULING
24 UPON ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR
25 ANYTHING THAT I SAY DURING THE COURSE OF THESE

1 INSTRUCTIONS TO YOU THAT I HAVE ANY OPINION ABOUT THE
2 FACTS OF THIS CASE. AGAIN, THE LAW DOES NOT PERMIT ME
3 TO HAVE AN OPINION ABOUT THE FACTS OF THIS CASE. THIS
4 IS A MATTER SOLELY FOR YOU, THE JURY TO DETERMINE. AS
5 JURORS THEN IT IS YOUR DUTY, AS I'VE INSTRUCTED YOU TO
6 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE
7 TRUTH OF THE EVIDENCE THAT HAS BEEN PRESENTED DURING
8 THE TRIAL. BY NECESSITY YOU MUST ASSESS THE
9 CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS
10 CASE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM THAT
11 MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO
12 ANALYZE AND EVALUATE THE EVIDENCE AND DETERMINE THAT
13 EVIDENCE WHICH CONVINCES YOU OF IT'S TRUTH.

14 I WOULD INSTRUCT YOU THAT IN DETERMINING THE
15 QUESTION OF CREDIBILITY OR BELIEVABILITY OF WITNESSES
16 WHO HAVE TESTIFIED IN THE CASE, YOU MAY BELIEVE ONE
17 WITNESS AGAINST SEVERAL OR SEVERAL AGAINST ONE. YOU
18 MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND
19 REJECT THE REMAINING PART OF THE TESTIMONY OF THAT
20 SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
21 WITNESS IN IT'S ENTIRETY OR REJECT THE TESTIMONY OF A
22 WITNESS IN IT'S ENTIRETY. YOU MAY CONSIDER WHETHER
23 ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, ANY
24 BIAS OR ANY PREJUDICE IN THE CASE. YOU MAY CONSIDER
25 THE DEMEANOR OF A WITNESS, THAT IS THE APPEARANCE OF A

1 WITNESS ON THE WITNESS STAND. AND OF COURSE, YOU MAY
2 CONSIDER THE OPPORTUNITY FOR KNOWLEDGE CONCERNING
3 THOSE THINGS ABOUT WHICH A WITNESS HAS TESTIFIED.
4 YOUR OBJECTIVE, LADIES AND GENTLEMEN IS TO FIND THE
5 TRUTH REGARDLESS OF IT'S SOURCE AND IN DOING SO AND
6 EXERCISING YOUR MENTAL PROCESSES AND THEN DETERMINING
7 WHAT YOU CONSIDER TO BE TRUE. THE LAW SIMPLY REQUIRES
8 THAT YOU EXERCISE YOUR GOOD JUDGMENT AND YOUR COMMON
9 SENSE AND YOUR SENSE OF LOGIC AND REASON AND YOUR
10 EXPERIENCES IN LIFE. AND YOU THEN APPLY THESE
11 ATTRIBUTES OF ABILITY TO THE EVIDENCE AND DETERMINE
12 WHAT YOU, THE JURY CONSIDER TO BE TRUTHFUL EVIDENCE.
13 AND TO THE STATE OF FACTS THAT ARE DETERMINED BY YOU,
14 YOU THEN TAKE AND APPLY THE LAW AS IT'S NOW EXPLAINED
15 TO YOU AND THUS YOU WOULD ARRIVE AT A TRUE VERDICT IN
16 THE CASE.

17 I WOULD FURTHER INSTRUCT YOU THAT THERE ARE TWO
18 TYPES OF EVIDENCE THAT ARE GENERALLY PRESENTED DURING
19 A TRIAL, DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT
20 EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR
21 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
22 EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A
23 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
24 EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO
25 DISTINCTION BETWEEN THE WEIGHT OR THE VALUE TO BE

1 GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE.
2 NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
3 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
4 SHOULD WEIGH ALL THE EVIDENCE IN THE CASE AND AFTER
5 WEIGHING ALL THE EVIDENCE IF YOU'RE NOT CONVINCED OF
6 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,
7 THAT YOU SHOULD FIND THE DEFENDANT NOT GUILTY.

8 I WOULD FURTHER CHARGE YOU, MADAM FORELADY AND
9 LADIES AND GENTLEMEN, THAT WHEN TWO OR MORE PERSONS
10 AID, ENCOURAGE AND ABET EACH OTHER IN THE COMMISSION
11 OF A CRIME ALL WHO ARE PRESENT ARE PRINCIPALS AND ARE
12 EQUALLY GUILTY. WHERE TWO OR MORE PERSONS COMBINE
13 TOGETHER TO COMMIT A CRIME, WHEN A CRIME IS COMMITTED
14 ALL OF THOSE WHO ARE PRESENT TO AID AND ABET AND
15 ASSIST IN THE COMMISSION OF THAT CRIME ARE GUILTY.
16 THE ACT OF ONE BECOMES THE ACT OF ALL, THE HAND OF ONE
17 BECOMES THE HAND OF ALL. IT MAKES NO DIFFERENCE BY
18 WHOSE IMMEDIATE AGENCY THE CRIME IS COMMITTED, ALL ARE
19 PRINCIPALS. HOWEVER, MERE PRESENCE OR ASSOCIATION AT
20 THE SCENE OF THE CRIME WITHOUT AN INTENT TO AID, ABET
21 OR ASSIST IN IT'S COMMISSION WOULD NOT CONSTITUTE
22 GUILT. THE BURDEN IS UPON THE STATE TO ESTABLISH
23 BEYOND A REASONABLE DOUBT BOTH THAT THE DEFENDANT WAS
24 PRESENT AND THAT HE WAS THERE WITH THE CRIMINAL
25 INTENT. THAT IS TO SAY WITH THE INTENT TO AID AND

1 ENCOURAGE AND ABET ANOTHER OR OTHERS IN COMMITTING THE
2 OFFENSES WITH WHICH HE IS CHARGED.

3 NOW I'VE ALREADY INDICATED TO YOU THERE ARE FOUR
4 SEPARATE COUNTS OR OFFENSES THAT ARE CHARGED IN THE
5 INDICTMENT. EACH COUNT CONTAINS A SEPARATE AND
6 DISTINCT OFFENSE. YOU MUST DECIDE EACH COUNT OR EACH
7 CHARGE SEPARATELY ON THE EVIDENCE AND THE LAW THAT
8 APPLIES TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY
9 OTHER CHARGE IN THE INDICTMENT. THE DEFENDANT MAY BE
10 CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES
11 THAT ARE CHARGED. YOU ARE GOING TO BE ASKED TO WRITE
12 A SEPARATE VERDICT AS TO EACH CHARGE. AND MADAM
13 FORELADY, I'LL GO OVER THAT WITH YOU IN JUST A MOMENT.
14 LET ME NOW TURN TO THE LAW THAT APPLIES TO EACH OF THE
15 CHARGES MADE IN THE INDICTMENT.

16 AGAIN, THE FIRST BEING THE CHARGE OF CONSPIRACY,
17 THAT IS FOUND IN 16-17-410 OF THE SOUTH CAROLINA CODE
18 OF LAWS. LET ME READ A PORTION OF THAT STATUTE TO
19 YOU. COMMON LAW CRIME KNOWN AS CONSPIRACY IS DEFINED
20 AS A COMBINATION BETWEEN TWO OR MORE PERSONS FOR THE
21 PURPOSE OF ACCOMPLISHING AN UNLAWFUL OBJECT OR A
22 LAWFUL OBJECT USING UNLAWFUL MEANS. A CONSPIRACY IS A
23 COMBINATION OR THE AGREEMENT OF TWO OR MORE PERSONS TO
24 ACCOMPLISH SOME UNLAWFUL PURPOSE OR TO ACCOMPLISH SOME
25 LAWFUL PURPOSE BY AN UNLAWFUL MEANS. THE GIST OF THE

1 OFFENSE IS A COMBINATION OR AN AGREEMENT TO DISOBEY OR
2 DISREGARD THE LAW. IN ORDER TO ESTABLISH THE OFFENSE
3 OF CONSPIRACY, THE STATE MUST SHOW FIRST THAT TWO OR
4 MORE OF THE DEFENDANTS WILFULLY JOINED TOGETHER AS
5 MEMBERS OF THE CONSPIRACY. THAT THE CONSPIRACY EXISTED
6 AT THE TIME THAT IT IS ALLEGED THAT IT EXISTED. AND
7 IN FURTHERANCE OF THE CONSPIRACY ONE OR MORE OF THE
8 DEFENDANTS KNOWINGLY COMMITTED AT LEAST ONE OF THE
9 OVERT ACTS THAT ARE CHARGED IN THE INDICTMENT. THE
10 FACT THAT THE DEFENDANTS MAY BE ASSOCIATED WITH EACH
11 OTHER AND MAY HAVE ASSEMBLED TOGETHER TO DISCUSS
12 COMMON AIMS AND INTERESTS DOES NOT NECESSARILY
13 ESTABLISH PROOF OF THE EXISTENCE OF A CONSPIRACY.
14 FURTHERMORE, THE MERE FACT THAT ONE OR MORE DEFENDANTS
15 MAY HAVE ENGAGED IN THE PERFORMANCE OF ANY OF THE ACTS
16 CHARGED IN THE INDICTMENT AS OVERT ACTS WOULD NOT
17 AUTHORIZE A CONVICTION BY REASON OF THAT FACT ALONE.
18 ON THE OTHER HAND, THE EVIDENCE IN THE CASE NEED NOT
19 SHOW THAT THE MEMBERS ENTERED INTO ANY EXPRESS OR
20 FORMAL AGREEMENT OR THAT THEY DIRECTLY BY WORDS OR IN
21 WRITING STATED BETWEEN THEMSELVES WHAT THEIR PURPOSE
22 WAS OR THE DETAILS OF THE SCHEME OR THE MEANS BY WHICH
23 THE PURPOSE WAS TO BE ACCOMPLISHED. WHAT THE EVIDENCE
24 IN THIS CASE MUST SHOW BEYOND A REASONABLE DOUBT IN
25 ORDER TO ESTABLISH PROOF THAT A CONSPIRACY EXISTED IS

1 THAT THE MEMBERS IN SOME MANNER POSITIVELY OR TACITLY
2 CAME TO A MUTUAL UNDERSTANDING TO TRY TO ACCOMPLISH A
3 COMMON UNLAWFUL PLAN. IF PERSONS PURSUED BY THEIR
4 ACTS THE SAME UNLAWFUL GOAL, ONE PERFORMING ONE ACT
5 AND ANOTHER PERSON ANOTHER ACT, ALL WITH THE VIEW
6 TOWARD THE ATTAINMENT OF THE GOAL WHICH THEY ARE
7 PURSUING, THE CONCLUSION IS WARRANTED THAT THEY WERE
8 ENGAGED IN A CONSPIRACY TO ACHIEVE THAT GOAL. AGAIN,
9 EACH OF THOSE ELEMENTS AND FACTORS MUST BE ESTABLISHED
10 BY THE STATE BEYOND A REASONABLE DOUBT BEFORE THE
11 DEFENDANT COULD BE CONVICTED OF THE OFFENSE OF
12 CONSPIRACY.

13 THE NEXT TWO COUNTS THAT ARE ALLEGED AND CHARGED
14 IN THE INDICTMENT ARE COUNTS OF ARMED ROBBERY. THAT
15 OFFENSE IS FOUND IN THE SOUTH CAROLINA CODE OF LAWS IN
16 16-11-380. LET ME READ IN PART THAT STATUTE TO YOU.
17 A PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A
18 PISTOL, DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR OR
19 OTHER DEADLY WEAPON IS GUILTY OF THIS OFFENSE. NOW
20 I'M GOING TO DEFINE FOR YOU THE OFFENSE OF ROBBERY
21 WHILE ARMED WITH A DEADLY WEAPON WHICH FOR THE
22 CONVENIENCE OF THESE INSTRUCTIONS I'M GOING TO CALL
23 ARMED ROBBERY. IN ORDER THAT YOU MAY UNDERSTAND WHAT
24 IS MEANT BY ARMED ROBBERY, I WILL FIRST DEFINE FOR YOU
25 THE CRIME OF LARCENY AND THEN ROBBERY AND THEN WHAT

1 CONSTITUTES ARMED ROBBERY. BECAUSE LARCENY IS
2 EMBRACED WITHIN ROBBERY AND ARMED ROBBERY IS THE
3 AGGRAVATION OF THE CRIME OF ROBBERY. NOW WHAT IS
4 LARCENY? LARCENY IS THE FELONIOUS TAKING AND CARRYING
5 AWAY BY ANY PERSON OF THE GOODS OR PERSONAL PROPERTY
6 OF ANOTHER WITH THE FELONIOUS INTENT TO PERMANENTLY
7 DEPRIVE THE OWNER OF HIS OR HER PROPERTY AND CONVERT
8 IT TO THE TAKERS OWN USE. THE ESSENTIAL ELEMENTS OF
9 THE OFFENSE OF THE CRIME OF LARCENY WHICH IS
10 ORDINARILY CALLED STEALING ARE ONE, THE FELONIOUS
11 TAKING INTO POSSESSION THE PERSONAL PROPERTY OF
12 ANOTHER. NEXT, THE CARRYING AWAY AND REMOVAL OF THE
13 PERSONAL PROPERTY. AND NEXT, THE FELONIOUS INTENT,
14 THE INTENT TO STEAL ON THE PART OF THE TAKER TO
15 PERMANENTLY DEPRIVE THE OWNER OF THE PERSONAL PROPERTY
16 AND TO CONVERT THE PROPERTY TO THE TAKERS OWN USE.

17 NOW, ROBBERY IS THE FELONIOUS TAKING OR THE
18 CARRYING AWAY OF THE PERSONAL PROPERTY OF ANY VALUE OF
19 ANOTHER FROM HIS PERSON OR IN HIS PRESENCE BY VIOLENCE
20 OR PUTTING THAT PERSON IN FEAR OF VIOLENCE. ROBBERY
21 WOULD INCLUDE LARCENY AND ALL THE ELEMENTS THAT ARE
22 NECESSARY TO CONSTITUTE LARCENY ARE ALSO NECESSARY TO
23 CONSTITUTE ROBBERY. SO THE ELEMENTS OF ROBBERY ARE AS
24 FOLLOWS: THE PROPERTY TAKEN MUST BE THE SUBJECT OF
25 LARCENY. THAT IS PERSONAL PROPERTY AND I WOULD CHARGE

1 YOU THAT COIN AND CURRENCY OF THE UNITED STATES IS
2 PERSONAL PROPERTY. NEXT, THERE MUST A FELONIOUS
3 TAKING AND CARRYING AWAY OF PERSONAL PROPERTY, THAT IS
4 THERE MUST A TRESPASS TO AND AN ASPIRATION OR THE
5 CARRYING AWAY THE PERSONAL PROPERTY WITH THE INTENT TO
6 STEAL. THE NEXT ELEMENT THE TAKING OR THE CARRYING
7 AWAY OF THE PERSONAL PROPERTY MUST BE DONE WITH THE
8 FELONIOUS INTENT. THAT IS WITH THE INTENT TO STEAL ON
9 THE PART OF THE TAKER TO PERMANENTLY DEPRIVE THE OWNER
10 OF THE PERSONAL PROPERTY AND TO CONVERT THE PERSONAL
11 PROPERTY TO THE TAKERS OWN USE. AND FOURTH, THE
12 AGGRAVATED CIRCUMSTANCES NECESSARY TO CONSTITUTE
13 ROBBERY AS DISTINGUISHED FROM LARCENY ARE THAT THE
14 PROPERTY MUST BE TAKEN FROM THE PERSON OF ANOTHER.
15 SECOND, THE TAKING MUST NOT ONLY BE WITHOUT HIS OR HER
16 CONSENT, BUT IT MUST BE ACCOMPLISHED WITH VIOLENCE OR
17 BY PUTTING THE OWNER OF THE PROPERTY IN FEAR OF
18 VIOLENCE. IN ORDER FOR ONE TO BE GUILTY OF ROBBERY
19 WHILE ARMED WITH A DEADLY WEAPON THE LAW REQUIRES THAT
20 ONE MUST HAVE USED A DEADLY WEAPON TO ACCOMPLISH THE
21 PURPOSE OF THE ROBBERY AS I'VE DEFINED THAT TERM TO
22 YOU. I WOULD CHARGE YOU THAT A PISTOL IS A DEADLY
23 WEAPON AS DEFINED BY THE STATUTE WHICH I'VE READ TO
24 YOU. AGAIN, I WOULD CHARGE YOU, MADAM FORELADY AND
25 LADIES AND GENTLEMEN, THAT THE STATE IS REQUIRED TO

1 PROVE ALL OF THE MATERIAL AND ESSENTIAL ALLEGATIONS OF
2 THESE CHARGES MADE IN THE INDICTMENT BEYOND A
3 REASONABLE DOUBT BEFORE YOU COULD CONVICT THE
4 DEFENDANT AND FIND HIM GUILTY OF THE OFFENSE.

5 AND THE FINAL CHARGE THAT IS IN THE INDICTMENT IS
6 THAT OF POSSESSION OF A FIREARM OR A KNIFE DURING THE
7 COMMISSION OF A VIOLENT CRIME. THAT IS ALSO A
8 STATUTORY OFFENSE AND IT READS IN PART, IN PART AS
9 FOLLOWS: IF A PERSON IS IN POSSESSION OF A FIREARM OR
10 PHYSICALLY DISPLAYS WHAT APPEARS TO BE A FIREARM
11 DURING THE COMMISSION OF A VIOLENT CRIME AND IS
12 CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A
13 VIOLENT CRIME AS DEFINED IN SECTION 16-1-60, THEN THAT
14 PERSON IS GUILTY OF THIS CODE SECTION. IN ORDER TO
15 ESTABLISH A VIOLATION OF THIS STATUTE, I STATE AGAIN
16 THAT THIS SECTION MAKES IT ILLEGAL TO POSSESS A
17 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. I
18 WOULD CHARGE YOU THAT UNDER THE LAW OF THE STATE OF
19 SOUTH CAROLINA THE CRIME OF ARMED ROBBERY IS DEFINED
20 AS A VIOLENT CRIME. NOW FOR YOU TO FIND THE DEFENDANT
21 GUILTY OF THIS SEPARATE STATUTORY OFFENSE OF
22 POSSESSING A FIREARM DURING THE COMMISSION OF A
23 VIOLENT CRIME YOU MUST FIRST FIND THAT THE DEFENDANT
24 IS GUILTY OF A VIOLENT CRIME. AND IF YOU FIND THE
25 DEFENDANT GUILTY OF A VIOLENT CRIME, IN THIS CASE

1 ARMED ROBBERY, THEN YOU MUST DETERMINE WHETHER THE
2 STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE
3 DEFENDANT WAS IN POSSESSION OF A FIREARM DURING THE
4 COMMISSION OF A VIOLENT CRIME OF ARMED ROBBERY. IT IS
5 USED IN THIS SECTION, FIREARM IS DEFINED AS ANY
6 MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL OR ANY
7 WEAPON WHICH WILL OR IS DESIGNED TO OR MAY BE READILY
8 CONVERTED TO EXPEL A PROJECTILE. AGAIN, EACH OF THOSE
9 ESSENTIAL ELEMENTS MUST BE PROVEN BY THE STATE BEYOND
10 A REASONABLE DOUBT BEFORE YOU COULD CONVICT THE
11 DEFENDANT AND FIND HIM GUILTY OF THIS OFFENSE.

12 NOW, MADAM FORELADY AND LADIES AND GENTLEMEN, I
13 HAVE WRITTEN ON THESE SHEETS OF YELLOW PAPER THE
14 POSSIBLE VERDICTS IN THIS CASE. WHATEVER YOUR VERDICT
15 OR VERDICTS ARE, THEY MUST BE UNANIMOUS. THAT MEANS
16 THAT ALL TWELVE MEMBERS OF THE JURY MUST AGREE ON A
17 VERDICT. I'M GOING TO TELL YOU WHAT THE POSSIBLE
18 VERDICTS ARE. YOU'RE GOING TO HAVE THIS VERDICT FORM
19 WITH YOU IN THE JURY ROOM. AND WHAT I HAVE DONE,
20 MADAM FORELADY, AS TO EACH CHARGE OR EACH COUNT I'VE
21 WRITTEN IT OUT. COUNT ONE: CONSPIRACY; COUNT TWO:
22 ARMED ROBBERY; COUNT THREE: ARMED ROBBERY; COUNT FOUR:
23 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
24 VIOLENT CRIME. UNDER EACH ONE OF THOSE COUNTS I HAVE
25 WRITTEN THE POSSIBLE VERDICTS, EITHER GUILTY OR NOT

1 GUILTY. UNDER EACH POSSIBILITY I'VE DRAWN A LINE FOR
2 THE FOREPERSON TO SIGN HER NAME. SO, AFTER THE JURY
3 HAS DELIBERATED AND REACHED A UNANIMOUS VERDICT AS TO
4 EACH COUNT, MADAM FORELADY, YOU SIMPLY SIGN YOUR NAME
5 UNDER WHICHEVER VERDICT IT IS ON EACH COUNT. AND I
6 THINK IT WILL BE SELF-EXPLANATORY WHEN YOU GET THE
7 FORM WITH YOU BACK IN THE JURY ROOM. NOW, WHEN YOU GO
8 BACK TO THE JURY ROOM YOU'LL HAVE THE EXHIBITS THAT
9 WERE ADMITTED INTO EVIDENCE ALONG WITH THE VERDICT
10 FORM. ONCE THOSE ARE BROUGHT TO YOU THAT'S YOUR
11 SIGNAL TO BEGIN YOUR DELIBERATIONS. AND ONCE YOU HAVE
12 COMPLETED YOUR DELIBERATIONS AND YOU HAVE A UNANIMOUS
13 VERDICT, DON'T TELL THE BAILIFF WHAT IT IS, JUST TELL
14 THE BAILIFF WHO WILL BE RIGHT OUTSIDE YOUR DOOR. TELL
15 HIM THAT YOU'VE REACHED A VERDICT AND WE'LL BRING YOU
16 BACK IN THE COURTROOM AND WE'LL TAKE YOUR VERDICT AT
17 THAT TIME. NOW FROM TIME TO TIME, MANY, MANY TIMES I
18 DON'T HAVE ANY QUESTIONS FROM JURY'S OR JURORS. BUT
19 IF YOU WERE TO HAVE A QUESTION, WRITE IT DOWN ON A
20 SLIP OF PAPER, HAND IT OUT TO THE BAILIFF AND HE WILL
21 BRING IT TO ME. IF IT IS A QUESTION THAT I AM
22 PERMITTED TO RESPOND TO I'LL RESPOND TO IT. SOMETIMES
23 I'LL DO IT IN WRITING, SOMETIMES I'LL BRING YOU BACK
24 IN THE COURTROOM AND DO IT ORALLY. SOMETIMES JURY'S
25 ASK ME QUESTIONS THAT I CAN NOT RESPOND TO. KEEP IN

1 MIND THAT I CAN'T RESPOND TO ANY FACTUAL QUESTION.
2 ANYTHING THAT HAS TO DO WITH THE FACTS, YOU HAVE TO
3 DECIDE THAT AND I CAN'T RESPOND TO ANY FACTUAL
4 QUESTIONS. IF YOU DO HAVE QUESTIONS, THAT IS HOW YOU
5 WOULD DEAL WITH THAT SITUATION. AGAIN, SOMETIMES
6 JURY'S DO, SOMETIMES THEY DON'T. I'M GONNA SEND YOU
7 BACK IN YOUR JURY ROOM AT THIS TIME I WILL INSTRUCT
8 YOU NOT TO BEGIN DELIBERATING. I'M GOING TO GO OVER A
9 COUPLE OF THINGS WITH THE ATTORNEYS, IF I HAVE OMITTED
10 ANYTHING. IF I DECIDE AFTER TALKING TO THEM THAT I
11 NEED TO EXPLAIN SOMETHING AT THIS TIME IN MORE DETAIL,
12 I'LL BRING YOU RIGHT BACK TO THE JURY ROOM AND TAKE
13 CARE OF THAT. IF THAT IS NOT NECESSARY THEN WHEN THE
14 CLERK OR THE BAILIFF BRINGS YOU THE JURY FORM, THE
15 VERDICT FORM AND THE EXHIBITS GO AHEAD AND BEGIN
16 DELIBERATING AT THAT TIME. NOW, I'M GOING TO ASK MY
17 ALTERNATE, YOU STAY WITH ME HERE IN THE COURTROOM, THE
18 REST OF YOU, YOU ARE EXCUSED TO YOUR JURY ROOM.
19 EVERYONE ELSE STAY SEATED PLEASE.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM
21 OPEN COURT.)

22 THE COURT: I CAN LET YOU GO SINCE NOBODY
23 HAD TO BE EXCUSED DURING THE TRIAL. YOU WILL NOT BE
24 GOING BACK HELPING THEM MAKE A DECISION. YOU CAN
25 LEAVE, I THINK THE REST OF THE JURORS ARE CALLING

1 TONIGHT AFTER SIX O'CLOCK. I'M NOT REAL SURE WHAT TO
2 TELL YOU SO IF YOU'VE GOT THAT PHONE NUMBER ON THAT
3 CARD, CALL THAT NUMBER AFTER SIX O'CLOCK TONIGHT. WE
4 MAY HAVE YA'LL BACK UP HERE TOMORROW, I DON'T KNOW
5 WHEN, WE MAY SKIP A DAY. I DON'T KNOW. JUST CALL THAT
6 NUMBER, BUT YOU'RE EXCUSED. I APPRECIATE YOUR BEING
7 HERE. HOW ABOUT TAKE YOUR BADGE AND JUST PUT IT, GIVE
8 IT TO HIM RIGHT THERE.

9 ALL RIGHT. EXCEPTIONS, ADDITIONS FROM THE STATE?

10 MR. PEACE: NONE FROM THE STATE, YOUR HONOR.

11 THE COURT: MR. MAYER?

12 MR. MAYER: NONE FROM DEFENSE, YOUR HONOR.

13 THE COURT: ALL RIGHT. WE'LL STAND IN RECESS
14 TILL WE HEAR FROM THE JURY. YA'LL TAKE A LOOK AT THE
15 VERDICT FORM, BE SURE YOU DON'T HAVE A PROBLEM WITH
16 IT.

17 (WHEREUPON, THE JURY STARTED
18 DELIBERATIONS AT APPROXIMATELY 3:35 P.M.)

19 THE COURT: THE JURY HAS SENT A NOTE OUT.
20 I'LL MAKE IT A COURT EXHIBIT. AND IT'S ASKING WHAT
21 THE DEFINITION OF REASONABLE DOUBT IS. SO I'M GOING
22 TO RECHARGE THEM ON REASONABLE DOUBT. I NEED TO BRING
23 THE JURY IN.

24 (WHEREUPON, THE JURY CAME INTO OPEN
25 COURT AT APPROXIMATELY 5:30 P.M.)

1 BAILIFF: ALL THE JURORS PRESENT, YOUR HONOR.

2 THE COURT: MADAM FORELADY AND LADIES AND

3 GENTLEMEN, YOU SENT OUT A NOTE ASKING FOR THE
4 DEFINITION OF REASONABLE DOUBT. I'LL USE FOR THE MOST
5 PART THE WORDING THAT I USED EARLIER IN THE ORIGINAL
6 CHARGE THAT I GAVE TO YOU. AND THIS IS THE TYPE OF
7 QUESTION THAT UNDER THE LAW I AM PERMITTED TO RESPOND
8 TO. I WOULD CAUTION YOU AND REMIND YOU TO TAKE THESE
9 SUPPLEMENTARY INSTRUCTIONS IN CONJUNCTION WITH THE
10 ORIGINAL INSTRUCTION THAT I'VE GIVEN YOU. REASONABLE
11 DOUBT, REALLY I'M GIVING YOU TWO DIFFERENT DEFINITIONS
12 THAT HAVE BEEN HANDED DOWN BY THE SOUTH CAROLINA
13 SUPREME COURT. PROOF BEYOND A REASONABLE DOUBT IS
14 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
15 DEFENDANT'S GUILT. THERE ARE FEW THINGS IN THIS WORLD
16 THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL
17 CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES
18 EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION
19 OF THE EVIDENCE YOU'RE FIRMLY CONVINCED THAT THE
20 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST
21 FIND HIM GUILTY. IF ON THE OTHER HAND YOU THINK THAT
22 THERE'S A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU
23 MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM
24 NOT GUILTY. ANOTHER DEFINITION IS HANDED DOWN BY THE
25 SUPREME COURT IS THAT A REASONABLE DOUBT IS THE KIND

1 OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
2 HESITATE TO ACT. A REASONABLE DOUBT CAN ARISE FROM
3 EVIDENCE PRESENTED IN THE CASE OR THE LACK OF EVIDENCE
4 IN THE CASE. BUT TO THINK THAT A DEFENDANT IS PROBABLY
5 GUILTY OR THAT THE CIRCUMSTANCES ARE SUSPICIOUS IS NOT
6 ENOUGH. AND AGAIN YOU, THE JURY, ALONE MUST MAKE A
7 DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT
8 EXISTS IN THIS CASE. NOW, THAT'S THE BEST I CAN DO.
9 THOSE ARE THE TWO DEFINITIONS THAT I HAVE FOR
10 REASONABLE DOUBT AND I COMBINED THEM. THEY DON'T MEAN
11 ANYTHING DIFFERENT, IT'S JUST A DIFFERENT WAY OF
12 SAYING THE SAME THING. I DO KNOW THAT IN SOME CASES,
13 THERE HAVE BEEN INSTANCES WHERE JURY'S HAVE ASKED A
14 JUDGE TO SAY WHAT IS REASONABLE DOUBT, THE JUDGE
15 REFUSED TO. IT'S WHAT YOU DECIDE IT IS. IT'S
16 REASONABLE, YOU USE YOUR COMMON SENSE. AGAIN, THAT'S
17 THE BEST I CAN DO. I'M GOING TO SEND YOU BACK TO YOUR
18 JURY ROOM AND ASK YOU TO CONTINUE TO DELIBERATE AND
19 NOTIFY THE BAILIFF WHEN YOU'VE REACHED A VERDICT.
20 YOU'RE EXCUSED. EVERYONE ELSE STAY SEATED PLEASE.

21 (WHEREUPON, THE JURY CONTINUES
22 DELIBERATIONS AT APPROXIMATELY 5:35 P.M.)

23 THE COURT: ANY EXCEPTIONS OR ADDITIONS TO
24 THE SUPPLEMENTARY CHARGE? ANYTHING FROM THE STATE?

25 MR. PEACE: NOTHING FROM THE STATE.

1 THE COURT: DEFENSE?

2 MR. MAYER: NOTHING FROM DEFENSE, YOUR HONOR.

3 THE COURT: WE'LL REMAIN IN RECESS TILL WE
4 HEAR FROM THE JURY.

5 (RECESS FROM THE CASE.)

6 THE COURT: BRING THE JURY IN, PLEASE..

7 (WHEREUPON, THE JURY CAME INTO OPEN
8 COURT AT APPROXIMATELY 6:30 P.M.)

9 BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

10 THE COURT: ALL RIGHT. MADAM FORELADY, I
11 HAVE RECEIVED A REQUEST TO STOP FOR THE EVENING AND
12 CONTINUE TOMORROW. THAT'S A REQUEST THAT I CAN GRANT
13 AND I WILL GRANT. LET ME AGAIN REMIND AND INSTRUCT
14 YOU NOT TO DISCUSS THE CASE WITH ANYONE. NOW, WHEN
15 YOU'RE AT THE COURTHOUSE ALL DAY IT'S PRETTY EASY NOT
16 TO TALK TO ANYBODY ABOUT THE CASE. WHEN YOU GO HOME
17 AND YOUR FAMILY OR FRIENDS KNOW THAT YOU MAY HAVE JURY
18 SERVICE THIS WEEK, THEY ARE GOING TO ASK YOU IF YOU'RE
19 SITTING ON A CASE. THEY ARE GOING TO WANT TO KNOW
20 WHAT KIND OF CASE IT IS, MAY EVEN WANT TO KNOW WHAT
21 STAGE OF THE TRIAL YOU'RE IN. I'M, I'M THE BAD GUY,
22 YOU CAN BLAME IT ALL ON ME, BUT PLEASE DON'T TALK TO
23 ANYBODY ABOUT THE CASE. I THINK YOU CAN UNDERSTAND
24 THE CRITICAL TIME OF THE TRIAL WHEN THE JURY IS
25 DELIBERATING THAT YOU'RE NOT TO BE INFLUENCED BY ANY

1 OUTSIDE INFLUENCES. SO DON'T HAVE ANY DISCUSSIONS
2 WITH SPOUSES, CHILDREN, FRIENDS OR ANYONE ELSE. I
3 DON'T KNOW WHAT CASES MIGHT HAVE ANY PUBLICITY OR BE
4 WRITTEN UP IN THE NEWSPAPER. IF YOU SEE SOME HEADLINE
5 OR SOMETHING THAT MAKES YOU THINK IT MIGHT BE ABOUT
6 THIS CASE, PLEASE DON'T READ ANYTHING ABOUT THE CASE.
7 AGAIN, YOU'RE THE ONLY PEOPLE WHO WILL BE MAKING A
8 DECISION IN THE CASE. AND IT WOULD BE IMPROPER TO
9 HAVE ANY KIND OF OUTSIDE INFLUENCE ON YOUR DECISION
10 MAKING. WE WILL START BACK AT 9:30 TOMORROW MORNING.
11 I'VE GOT ANOTHER HEARING IN A WHOLE DIFFERENT CASE AT
12 NINE O'CLOCK. WHEN YOU COME TOMORROW, GO STRAIGHT TO
13 YOUR JURY ROOM. THEN DON'T BEGIN DELIBERATING AGAIN
14 UNTIL I SEND YOU WORD TO. WHEN I GET WORD THAT ALL
15 TWELVE OF YOU ARE BACK THEN I'LL SEND WORD TO YOU TO
16 CONTINUE WITH YOUR DELIBERATIONS. BUT UNTIL THEN
17 PLEASE DON'T DO THAT. MADAM FORELADY, IF YOU'LL LEAVE
18 THE VERDICT FORM AND THE EXHIBITS WITH THE BAILIFF,
19 AND WE'LL GET THOSE BACK TO YA'LL IN THE MORNING.
20 YA'LL HAVE A GOOD NIGHT, GET A GOOD SUPPER TONIGHT.
21 SEE YOU AT 9:30 IN THE MORNING. EVERYBODY ELSE STAY
22 SEATED PLEASE. YOU FOLKS ARE EXCUSED.

23 (WHEREUPON, THE JURY WAS EXCUSED FROM
24 OPEN COURT TO RESUME THE NEXT MORNING AT 9:30 A.M.)

25 APRIL 30, 2003

1 (WHEREUPON, THE JURY CAME INTO THE JURY
2 ROOM TO START DELIBERATIONS AT APPROXIMATELY 10:00
3 A.M.)

4 THE COURT: ALL RIGHT. I'VE BEEN ADVISED
5 THAT THE JURY'S REACHED A VERDICT IN THE CASE THAT
6 THEY HAVE RESUMED DELIBERATIONS IN THIS MORNING AND
7 I'M GOING TO TAKE THEIR VERDICT AT THIS TIME. I WOULD
8 CAUTION THOSE IN THE COURTROOM THAT NO EMOTIONAL
9 OUTBURSTS OF ANY KIND ARE PERMITTED. AND IF THERE'S
10 ANYONE WHO THINKS THAT THEY WOULD RESPOND IN THAT
11 FASHION, THEN THEY DO NEED TO EXCUSE THEMSELVES FROM
12 THE COURTROOM. AFTER WE GET THE VERDICT AND WHATNOT
13 I'LL PUT ON THE RECORD ABOUT THE NOTE THAT I'VE GOTTEN
14 FROM THE PANEL THAT WE HAD TALKED ABOUT EARLIER THIS
15 MORNING. GO AHEAD AND BRING THE JURY IN PLEASE.

16 (WHEREUPON, THE JURY RETURNED TO OPEN
17 COURT WITH THE VERDICT AT 10:40 A.M.)

18 BAILIFF: ALL JURORS PRESENT, YOUR HONOR.

19 THE COURT: ALL RIGHT. MADAM FORELADY, I'VE
20 BEEN ADVISED THE JURY HAS REACHED A VERDICT, IS THAT
21 CORRECT?

22 MADAM FORELADY: WE HAVE, YOUR HONOR.

23 THE COURT: IS IT UNANIMOUS?

24 MADAM FORELADY: YES.

25 THE COURT: ALL RIGHT. HAND IT TO THE

1 BAILIFF, PLEASE.

2 ALL RIGHT. IN THE CASE OF STATE VERSUS TYRONE
3 SCHUMPERT, 02-GS-30-1018, ON THE FOUR COUNTS.

4 THE FIRST COUNT: CONSPIRACY, THE VERDICT OF THE
5 JURY IS GUILTY, SIGNED BY THE FORELADY, MS. VAUGHAN.

6 ON COUNT TWO: ARMED ROBBERY, THE VICTIM BEING
7 PAUL CAGLE, THE VERDICT IS GUILTY, SIGNED BY LINDA
8 VAUGHAN AS THE FORELADY.

9 COUNT THREE: ARMED ROBBERY, VICTIM, JENNIFER
10 SATTERFIELD, THE VERDICT IS GUILTY, SIGNED BY THE
11 FORELADY.

12 ON COUNT FOUR: POSSESSION OF A FIREARM DURING THE
13 COMMISSION OF A VIOLENT CRIME, THE VERDICT IS NOT
14 GUILTY, SIGNED BY THE FORELADY.

15 NOW, MADAM FORELADY AND LADIES AND GENTLEMEN, IF
16 THIS IS YOUR VERDICT ON THESE COUNTS WOULD YOU PLEASE
17 INDICATE BY RAISING YOUR RIGHT HAND?

18 (JURORS RAISE THEIR RIGHT HANDS.)

19 THE COURT: ALL TWELVE JURORS HAVE SO
20 RESPONDED. ANYTHING FURTHER OF THE JURY FROM THE
21 STATE?

22 MR. PEACE: NOTHING FROM THE STATE, YOUR
23 HONOR.

24 THE COURT: MR. MAYER?

25 MR. MAYER: NOTHING FROM THE DEFENSE, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT. MADAM FORELADY AND
3 LADIES AND GENTLEMEN, THIS WILL CONCLUDE YOUR SERVICE
4 IN THIS CASE. I KNOW YOU WORKED ON IT HARD YESTERDAY
5 AND RESUMED YOUR DELIBERATIONS AGAIN THIS MORNING.
6 THE REST OF THE JURY PANEL, WHEN THEY CALLED IN LAST
7 NIGHT, THEY WERE INSTRUCTED TO CALL BACK TONIGHT AFTER
8 SIX O'CLOCK TO SEE IF THEY NEED TO COME BACK EITHER
9 TOMORROW OR FRIDAY. AND THAT'S THE ONLY INSTRUCTIONS
10 I CAN GIVE YOU AT THIS TIME IS TO CALL BACK TONIGHT
11 AFTER SIX O'CLOCK AND COMPLY WITH WHATEVER THE
12 INSTRUCTIONS ARE. THERE WILL BE SOME ADDITIONAL
13 PROCEEDINGS IN THIS CASE AS FAR AS THERE MAY BE SOME
14 MOTIONS AND SENTENCING. YOU ARE CERTAINLY WELCOME TO
15 STAY. YOU'VE GOT A DAY AND A HALF OF YOUR LIVES
16 INVESTED IN THE CASE, BUT YOU'RE NOT REQUIRED TO STAY
17 FOR THAT PART OF IT IF YOU WOULD RATHER LEAVE. AND
18 THAT'S UP TO YOU INDIVIDUALLY. IF YOU WANT TO LEAVE
19 YOU CAN GO AHEAD AND FOLLOW MR. BYERS OUT. IF YOU
20 WOULD LIKE TO STAY YOU'RE CERTAINLY WELCOME TO DO
21 THAT. I'LL LEAVE THAT UP TO YOU. IF ANYBODY WANTS TO
22 LEAVE, GO AHEAD WITH MR. BYERS.

23 ALL RIGHT. ANY MOTIONS? ANY MATTERS OF LAW AT
24 THIS TIME? SOLICITOR, I DON'T GUESS THE STATE HAS
25 ANYTHING.

1 MR. PEACE: NO, SIR. THE STATE DOES NOT HAVE
2 ANYTHING.

3 THE COURT: MR. MAYER?

4 MR. MAYER: YOUR HONOR, THE DEFENSE WOULD
5 MOVE TO SET ASIDE THE TWO VERDICTS OF ARMED ROBBERY.
6 WE BELIEVE THAT THEY ARE INCONSISTENT THAT THIS JURY
7 COULD HAVE FOUND THE FACTS WHICH SUPPORT A CONVICTION
8 OF AN ARMED ROBBERY. BUT NOT FIND SUFFICIENT FACTS TO
9 SAY THIS MAN WAS IN POSSESSION OF A WEAPON. WE
10 BELIEVE AN ELEMENT OF ARMED ROBBERY IS THE POSSESSION
11 OF A WEAPON.

12 THE COURT: SOLICITOR?

13 MR. PEACE: YOUR HONOR, IT'S NOT INCONSISTENT
14 THE JURY COULD HAVE FOUND THAT BASED ON THE HAND OF
15 ONE IS THE HAND OF ALL, THAT THE DEFENDANT WAS GUILTY
16 OF THE ARMED ROBBERY. THEY CAN FIND THAT HE WAS
17 GUILTY OF THE ARMED ROBBERY BECAUSE OF THE HAND OF ONE
18 IS THE HAND OF ALL, BUT HE DID NOT PERSONALLY POSSESS
19 A WEAPON. AND THAT MIGHT BE A COMPROMISE THAT THEY
20 MADE TO FIND THE DEFENDANT NOT GUILTY OF THAT
21 PARTICULAR CHARGE. THE DECISION OF THE JURY IS NOT
22 INCONSISTENT, THE DECISION OF THE JURY SHOULD STAND.

23 MR. MAYER: MAY I RESPOND, YOUR HONOR?

24 THE COURT: YES, SIR.

25 MR. MAYER: THE INCONSISTENCY IS APPARENT AND

1 IT'S HOMOGENEOUS. IF THE HAND OF ONE IS THE HAND OF
2 ALL, THAT IS THE LAW AND THE JURY FOUND THAT THAT IS
3 THE LAW AND CONVICTED HIM OF ARMED ROBBERY
4 ACCORDINGLY. THEN THE LAW APPLIES AND THIS MAN WOULD
5 BE GUILTY OF POSSESSION OF A WEAPON DURING THE
6 COMMISSION OF A VIOLENT CRIME. THE FINDINGS OF THE
7 JURY ARE INCONSISTENT, CAN'T BE SUPPORTED.

8 THE COURT: MY UNDERSTANDING OF THE LAW, IT'S
9 A LITTLE UNUSUAL IS THAT A PERSON WHETHER THEY
10 ACTUALLY HAD A WEAPON OR NOT COULD BE CONVICTED OF
11 ARMED ROBBERY UNDER THE AIDING, ABETTING THEORY. AND
12 I THINK IT WOULD BE POSSIBLE FOR INDIVIDUALS WHO
13 PARTICIPATE AND AID AND ABET SOMEONE WHO ACTUALLY HAD
14 A WEAPON IN THE COMMISSION OF AN ARMED ROBBERY TO BE
15 FOUND GUILTY OF THAT PARTICULAR CHARGE WHILE NOT
16 PERSONALLY POSSESSING THE WEAPON HIMSELF OR HERSELF.
17 I THINK THERE'S A CASE TO THAT EFFECT, TALKED ABOUT
18 CONSISTENCY OR INCONSISTENCY OF INCONSISTENCIES OF
19 VERDICT. I'M GOING TO DENY THAT MOTION. I THINK UNDER
20 THE, UNDER THE EVIDENCE AS PRESENTED TO THIS JURY,
21 THERE'S SUFFICIENT EVIDENCE TO SUPPORT THE FINDING OF
22 THE JURY. SO, YOUR MOTION TO SET ASIDE THE VERDICT ON
23 THE TWO ARMED ROBBERY CHARGES IS DENIED.

24 ALL RIGHT. ANYTHING FURTHER? IF NOT, MR. MAYER
25 IF YOU AND MR. SCHUMPERT WILL STEP UP. AND SOLICITOR,

1 I'LL BE GLAD TO HEAR FROM YOU AND THEN MR. MAYER AND
2 MR. SCHUMPERT. JUST, JUST STAY RIGHT HERE. JUST STAY
3 RIGHT HERE, MR. MAYER.

4 MR. PEACE: YOUR HONOR, THE SENTENCING
5 SHEETS. YOUR HONOR, THE DEFENDANT'S CRIMINAL HISTORY
6 IN 2000, HE HAS FOUR COUNTS OF ATTEMPTING TO BREAK
7 INTO A MOTOR VEHICLE. AND HE RECEIVED A YOA SUSPENDED
8 TO PROBATION ON THOSE PARTICULAR CHARGES.

9 THE COURT: WHAT YEAR WAS THAT?

10 MR. PEACE: WAS MARCH OF 2000.

11 THE COURT: IS HE STILL ON PROBATION ON THAT?
12 WAIT A MINUTE. DON'T SAY ANYTHING TO MR. MAYER.
13 NOT ON PROBATION RIGHT NOW?

14 MR. PEACE: NO, SIR.

15 THE COURT: DOES YOUR INFORMATION INDICATE
16 THAT HE IS SUSPENDED YOA?

17 MR. PEACE: YES, SIR.

18 THE COURT: DOES IT INDICATE HOW MUCH
19 PROBATION?

20 MR. PEACE: IT JUST SAYS SUSPENDED ON
21 PROBATION, YOUR HONOR. NO, I'M SORRY. ON THE FIRST
22 COUNT IT DOES SAY TWO YEARS PROBATION.

23 THE COURT: ALL RIGHT. MR. MAYER, I'LL BE
24 GLAD TO HEAR FROM YOU AND YOUR CLIENT.

25 MR. MAYER: YOUR HONOR, I'M GOING TO LET MR.

1 SCHUMPERT SPEAK FIRST. IN REQUESTING TALKING TO THE
2 JUDGE ABOUT SENTENCING.

3 THE COURT: YES, SIR.

4 DEFENDANT: THANK YOU, YOUR HONOR. I
5 UNDERSTAND THAT WE DID NOT PUT A DEFENSE OF OUR OWN TO
6 PROVE MY INNOCENCE. BUT I HAD NOTHING TO DO WITH THE
7 WHOLE THING. AND I'M NOT ANGRY AT THE JURY BECAUSE
8 APPARENTLY THE GUY WHO WAS ON THE STAND, HE WAS A
9 LIAR. HE PUT MY NAME IN A SITUATION WHERE THERE WAS
10 ONLY THREE GUYS. TWO PLED GUILTY TO ARMED ROBBERY AND
11 THE THIRD GUY WHO WAS ON THE STAND HE SAID HE WAS
12 STANDING OUTSIDE. HE PUT MY NAME IN TO CLEAR HIS
13 NAME. BUT AND ON THE 2000 CHARGE YES, I WAS 17 YEARS
14 OLD. I TOUCHED ONE CAR DOOR HANDLE AND I PLED GUILTY
15 TO THAT ONE CAR DOOR HANDLE. AND WHEN I GOT IN FRONT
16 OF THE JUDGE AND I THINK THE JUDGE WAS YOU IN 2000. I
17 WAS 17 YEARS OLD AND THEY, I THINK THEY THREW THE
18 OTHER FOUR COUNTS ON ME JUST TO RUN THEM CONCURRENT
19 WITH THE, THERE WERE FOUR CARS IN THAT PARKING LOT.

20 THE COURT: ALL RIGHT. THANK YOU, MR.
21 SCHUMPERT. MR. MAYER.

22 MR. MAYER: YOUR HONOR, I'VE DEALT WITH MR.
23 SCHUMPERT SINCE I WAS APPOINTED TO THIS CASE. HE'S
24 FAIRLY ARTICULATE. HE'S FAIRLY INTELLIGENT. HE GOT
25 INTO A PROBLEM WHEN HE WAS 17 WITH SOME PEOPLE, GOT

1 HIM BREAKING INTO A CAR OR INVOLVED IN BREAKING INTO A
2 CAR. HE HAD NO PROBLEM ON HIS PROBATION. HE WASN'T
3 VIOLATED ON HIS PROBATION AND HE FINISHED IT AS A MAN
4 WHO HAD PROMISE. AND HE'S GOTTEN INVOLVED IN THIS
5 PROCEEDING WHICH LED TO THIS CONVICTION TODAY. YOUR
6 HONOR, WE WOULD REQUEST THAT THE COURT GIVE HIM THE
7 MINIMUMS. THEY ARE FAIRLY SUBSTANTIAL IN AND OF
8 THEMSELVES.

9 THE COURT: HE IS 21, IS THAT RIGHT?

10 MR. MAYER: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. WHAT ABOUT, YOU'VE
12 GOT HOW MUCH TIME HE SERVED? DO YOU KNOW HOW MUCH
13 TIME HE SERVED PRETRIAL?

14 MR. MAYER: IT'S BEEN ABOUT SIX MONTHS HE'S
15 BEEN THERE. HE WAS LOCKED UP ON A BENCH WARRANT IN
16 NOVEMBER. IT WAS ACTUALLY, IT WAS OCTOBER 9TH, THAT
17 YOU WERE ORIGINALLY PICKED UP.

18 (CONFERRING WITH CLIENT.)

19 MADAM CLERK: JUDGE, ACCORDING TO MY RECORDS
20 INITIALLY HE WAS ARRESTED ON JUNE 20TH OF '02, AND
21 RELEASED ON JUNE 21ST OF '02. BUT THEN THE BENCH
22 WARRANT INDICATES THAT HE WAS PICKED UP IN OCTOBER
23 9TH.

24 MR. MAYER: OCTOBER 9TH, YEAH.

25 MADAM CLERK: OF '02.

1 THE COURT: AND WAS HE STILL IN JAIL?

2 MR. MAYER: HE'S BEEN, HE STILL IS NOW, YOUR
3 HONOR.

4 THE COURT: HE'S BEEN IN JAIL--

5 MR. MAYER: YES, YOUR HONOR.

6 THE COURT: CONTINUOUSLY SINCE OCTOBER 9TH,
7 IS THAT RIGHT?

8 MR. MAYER: PARDON ME?

9 THE COURT: CONTINUOUSLY SINCE OCTOBER 9TH?

10 MR. MAYER: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. HAVING BEEN
12 CONVICTED BY THE JURY OF TWO COUNTS OF ARMED ROBBERY;
13 ONE COUNT OF CONSPIRACY. THE SENTENCE OF THE COURT ON
14 EACH OF THE ARMED ROBBERY CHARGES IS THAT MR.
15 SCHUMPERT BE CONFINED TO THE DEPARTMENT OF CORRECTIONS
16 FOR A PERIOD OF 22 YEARS WITH CREDIT FOR 6 MONTHS, 23
17 DAYS. AND 5 YEARS ON THE CONSPIRACY. ALL TO RUN
18 CONCURRENT.

19 MR. PEACE: THANK YOU, YOUR HONOR.

20 THE COURT: ALL RIGHT. MADAM FORELADY,
21 LADIES AND GENTLEMEN, THAT CONCLUDES THIS CASE. YOU
22 FOLKS ARE EXCUSED. IF YOU'LL CALL THAT NUMBER TONIGHT
23 AFTER SIX O'CLOCK AND COMPLY WITH THOSE INSTRUCTIONS
24 PLEASE. YOU'RE EXCUSED, EVERYONE ELSE STAY SEATED
25 PLEASE.

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OPEN COURT.)

(WHEREUPON, THE JURY WAS EXCUSED FROM
THE COURT: I NEED TO GET ON THE RECORD THAT
WHEN I GOT BACK THIS MORNING I WAS HANDED A NOTE THAT
APPARENTLY ONE OF THE JURORS HANDED TO A BAILIFF
YESTERDAY INDICATING THAT JUROR NUMBER 130 WOULD LIKE
TO SPEAK TO THE JUDGE. I ADVISED COUNSEL THAT I HAD
RECEIVED A NOTE AND THE JUROR WAS BROUGHT TO MY
CHAMBERS WHERE SHE ASKED THE COURT A QUESTION ABOUT
CREDIBILITY. SHE WAS UNDER THE IMPRESSION THAT SHE
HAD TO BELIEVE ALL OR NONE OF ANY PARTICULAR WITNESS'S
TESTIMONY. I WENT BACK OVER WITH HER THAT SHE COULD
BELIEVE ALL, NONE OR A PORTION, THAT IT WAS TOTALLY UP
TO HER. SHE WAS THEN KEPT SEPARATED FROM THE REST OF
THE JURY PANEL. COUNSEL WAS BROUGHT BACK AND I
ADVISED COUNSEL OF WHAT I HAD DONE AND OFFERED TO
RECHARGE THE ENTIRE JURY ON CREDIBILITY. AND COUNSEL,
NO ONE MADE THE REQUEST, DID NOT FEEL LIKE THAT WAS
PROPER AND NO OBJECTIONS WERE MADE TO MY ANSWERING
THAT QUESTION OF THAT JUROR. I WANTED TO PUT THAT ON
THE RECORD. MR. PEACE, ANYTHING ELSE YOU WOULD LIKE
TO ADD ABOUT THAT?
MR. PEACE: NO, YOUR HONOR. NOTHING FROM THE
STATE.
THE COURT: MR. MAYER, ANYTHING YOU WOULD

1 LIKE TO ADD ABOUT THAT?

2 MR. MAYER: NO, YOUR HONOR.

3 THE COURT: THAT NOTE WILL BE MADE A COURT
4 EXHIBIT. ALL RIGHT. THANK YA'LL VERY MUCH.

5 MR. PEACE: THANK YOU, YOUR HONOR.

6 (WHEREUPON, COURT'S EXHIBIT NO. 1, 2, 3
7 AND 4 WAS MARKED FOR IDENTIFICATION ONLY.)

8 (WHEREUPON, THE PROCEEDINGS WERE
9 CONCLUDED.)

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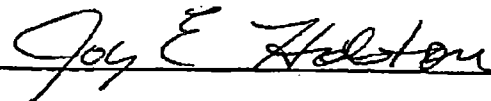
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

I, JOY HOLSTON, OFFICIAL COURT REPORTER FOR THE
8TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL
OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
COURT OF GENERAL SESSIONS FOR LAURENS COUNTY, SOUTH
CAROLINA, ON THE 29TH DAY OF APRIL, 2003.

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

JULY 18, 2003



JOY HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: 3-13-06

WITNESSES

P. J. Quinton

WARRANT NUMBERS

G-396202 G-396523
(a) (b) (c) and (d) on info

True Bill

Rev. C. C. Evans

Foreman of the Grand Jury

Date:

11 November 2002

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2002

Indictment # 02GS30-1018

THE STATE

vs.

- a) MARCUS A. BROWN
- b) DEREK MAURICE MOSLEY *IC*
- c) TYRONE SHUMPERT
- d) WILLIE LAMAR TODD *IC*
- e) MAURICE MARQUIS SUBER

Re-indict of 02-839

will prosecute as to d) *See Bill*
Rec'd 5-10-03

INDICTMENT FOR

- 1) CONSPIRACY (V.S. 16-17-410)
- 2) ARMED ROBBERY
- 3) ARMED ROBBERY
- 4) POSSESSION OF A FIREARM OR KNIFE DURING
THE COMMISSION OF A VIOLENT CRIME

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

I, MARCUS A. BROWN, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE
BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY
PLEAD GUILTY TO THE CHARGE(S) OF:

Common Law Robbery

THIS _____ DAY OF _____ A.D. _____

ATTEST:

Marcus Brown

DEFENDANT'S SIGNATURE

CLERK OF COURT, LAURENS, S.C.

I, DEREK MAURICE MOSLEY, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO
THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND
VOLUNTARILY PLEAD GUILTY TO THE CHARGE(S) OF:

Conspiracy

THIS _____ DAY OF _____ A.D. _____

ATTEST:

Derek Mosley

DEFENDANT'S SIGNATURE

CLERK OF COURT, LAURENS, S.C.

I, TYRONE SHUMPERT, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE
BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY
PLEAD GUILTY TO THE CHARGE(S) OF:

THIS _____ DAY OF _____ A.D. _____

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, LAURENS, S.C.

THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR

1. CONSPIRACY (V.S. 16-17-410)
2. ARMED ROBBERY
3. ARMED ROBBERY
4. POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on the 11th day of November, 2002, the Grand Jurors of Laurens County present upon their oath:

COUNT ONE

That, MARCUS A. BROWN, DEREK MAURICE MOSLEY, TYRONE SHUMPERT, WILLIE LAMAR TODD, and MAURICE MARQUIS SUBER, did in Laurens County, state aforesaid, on or about the 27th day of May, 2002, wilfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended

COUNT TWO

That, MARCUS A. BROWN, DEREK MAURICE MOSLEY, TYRONE SHUMPERT, WILLIE LAMAR TODD, and MAURICE MARQUIS SUBER aiding, abetting, and assisting one another, did in Laurens County, state aforesaid, on or about the 27th day of May, 2002, wilfully and unlawfully commit robbery while armed with a deadly weapon, to wit: a firearm, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, by wilfully, unlawfully and feloniously taking goods and/or monies from the person of Paul Cagle by means of force or intimidation, the said goods and/or monies being described: good and lawful money of these United States of America, and being owned by Paul Cagle, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

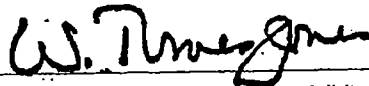
COUNT THREE

That, MARCUS A. BROWN, DEREK MAURICE MOSLEY, TYRONE SHUMPERT, WILLIE LAMAR TODD, MAURICE MARQUIS SUBER aiding, abetting, and assisting one another, did in Laurens County, state aforesaid, on or about the 27th day of May, 2002, wilfully and unlawfully commit robbery while armed with a deadly weapon, to wit: a firearm, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, by wilfully, unlawfully and feloniously taking goods and/or monies from the person of Jennifer Satterfield by means of force or intimidation, the said goods and/or monies being described: good and lawful money of these United States of America, and being owned by Jennifer Satterfield, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

COUNT FOUR

That, MARCUS A. BROWN, DEREK MAURICE MOSLEY, TYRONE SHUMPERT, WILLIE LAMAR TODD, and MAURICE MARQUIS SUBER aiding, abetting, and assisting one another, did in Laurens County, state aforesaid, on or about the 27th day of May, 2002, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Armed Robbery, or any lesser included violent offense, said offense being defined as a violent offense in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said defendant(s) was/were convicted of committing or attempting to commit the said violent crime, Armed Robbery, or any lesser included violent offense, in violation of Section 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 cases made and provided.


Solicitor

I, WILLIE LAMAR TODD, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE
 BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY
 PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS _____ DAY OF _____ A.D. _____

ATTEST:

DEFENDANT'S SIGNATURE _____

CLERK OF COURT, LAURENS, S.C.

I, MAURICE MARQUIS SUBER, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO
 THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND
 VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

Common law Robbery

THIS _____ DAY OF _____ A.D. _____

ATTEST:

Maurice M. Suber
 DEFENDANT'S SIGNATURE

CLERK OF COURT, LAURENS, S.C.

RECORDED
 INDEXED
 1960 JUN 10
 10 10 1960

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.TYRONE SHUMPERT

AKA:

Race: B Sex: M Age: 21DOB: 2/28/81 SS#: 2Address: MEADOWBROOK APTSLaurens SC 29360DL# 2 SID#: 2IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:2002-GS-30-1018A/W#: DA IN FDate of Offense: 5-27-2002S.C. Code §: 16-11-330CDR Code #: 011319☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robbery (10-30 yrs)in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 011319☐ 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:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 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 60 days 23 days days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/30/03

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)\$ 100.00

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment)\$ _____

3% to County (if paid in installments)\$ 3.00TOTAL\$ 103.00Barbara T. Wasser
Clerk of Court/ Deputy ClerkCourt Reporter: Joy Holston

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PRESIDING JUDGE [Signature]Judge Code: 101515Sentence Date: 4/30/03Laurens County CCRP & GS
Lynn W. Lancaster
Lynn W. LancasterPTUP _____
_____ 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: _____

A TRUE COPY OF ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS
STATE VS.TYRONE SHUMPERT

AKA:

Race: B Sex: M Age: 21DOF: --- LSS#: ---Address: MEADOWBROOK APTSLAURENS SC 29360SID#: ---IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:2002-GS-30-1018A/W#: ON INFODate of Offense: 5-27-2002S.C. Code §: 16-11-330CDR Code #: 0111319☐ CASE RESTORED☒ SENTENCE
☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: ARMED ROBBERY (10-30 yrs)in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0111319☐ 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:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 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 6 mos 23 days days/months jail time. **TRUE COPY OF ORIGINAL**
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/30/03

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)\$ 100.00

\$14-1-211(A)(2) (Surcharge)\$ _____

\$56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)...\$ 3.00TOTAL.....\$ 103.00Barbara T. Nasson
Clerk of Court/ Deputy ClerkCourt Reporter: Joy Holston

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____

_____ days/hours Public Service Employment **GS**

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 J. J. [Signature]Judge Code: 20155Sentence Date: 4/30/03

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Tyone Shumpert
 AKA:
 Race: R Sex: M Age: 21
 DOB: SS#:
 Address: Meadowbrook Apts
Laurens SC 29360
 DL# SID#:

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#:

02-GS-30-1018
 A/W#: on information
 Date of Offense: May 27, 2002
 S.C. Code §: 16-19-410
 CDR Code #: 0 0 1 4 9

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

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

TO: Conspiracy (0-5145 or 0-51000)
 in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0 0 1 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:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 23 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 6 mos 23 days days/months jail time. ☐ TRUE COPY OF ORIGINAL
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/30/03

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)\$ 100.00

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)....\$ 3.00

TOTAL.....\$ 103.00

Barbara T. Wasser
 Clerk of Court/Deputy Clerk

Court Reporter: Joy Holston

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____

_____ days/hours Lynn W. Lancaster
Laurens County CCCP & GS

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 [Signature]

Judge Code: 101515

Sentence Date: 4/30/03

The State

v.
Tyrone Shampert,
Defendant.

02-GS-30-1018

Possible Verdicts

1. Count One - Conspiracy

a) Guilty

Linda Shampert
Forelady

b) Not Guilty

Forelady

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

2. Count Two - Armed Robbery - Paul Cate

a) Guilty

Linda Shampert
Forelady

b) Not Guilty

Forelady

3. Count Three - Armed Robbery - Jennifer Salterfield

a) Guilty

Linda Hughes
Forelady

b) Not Guilty

Forelady

4. Count Four - Possession of a Firearm During
Commission of Violent Crime

a) Guilty

Forelady

b) Not Guilty

Linda Hughes
Forelady

FORM 5

STATE OF SOUTH CAROLINA

County of LAURENS

BARBARA T. WASSON

IN THE COURT OF COMMON PLEAS

2005 MAY 24 P 3: 24

Tyrone Shumpert #292828

Full name and prison number (if any) of Applicant

vs.

State Of [REDACTED] South Carolina

Name of Respondent

S.C. Dept of CorrectionsLAURENS COUNTY
CLERK OF COURT
APPLICATION FOR

POST-CONVICTION RELIEF

A TRUE COPY OF ORIGINAL

Barbara T. Wasson
BARBARA T. WASSON
Laurens County CCCP & GS2005 - CP - 30 - 422INSTRUCTIONS - 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 Mc Gormick Correctional Institution
2. Name and location of Court which imposed sentence LAURENS COUNTY Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 02-GS-30-1018 - Count 1- Conspiracy, Count # 2 Arm Robbery
 - (b) Count # 3- Arm Robbery, Count # 4 Possession of A Firearm.
 - (c) _____

4.

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

- (a) April 30, 2003 22 Years Arm Robbery
- (b) April 30, 2003 5 Years - Conspiracy CONCURREN
- (c) _____

Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____

Did you appeal from the judgement of conviction or the imposition of sentence?

Yes

7.

If you answered "yes" to (6), list:

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

i. S.C. Court of Appeals

ii. _____

iii. _____

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

i. Appealed Dismissed 2/05 by Court

ii. _____

iii. _____

- (c) the date of each such result:

i. February 2005

ii. _____

iii. _____

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

i. NONE

ii. _____

iii. _____

8.

If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____

- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Afro American excluded from Jury
- (c) Prosecutor's comments was unconstitutional

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Counsel failed to object to all white Jury
- (b) Counsel failed to present A Alibi defense
- (c) Counsel failed to object to prosecutor's argument alluding to the defendant's failure to put up a defense

11. 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 (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

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

- (b) the name and location of the Court in which each was filed:

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13) identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
(b) N/A
(c) _____

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

(a) your arraignment and plea? Yes
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgement of conviction or the imposition of sentence? Yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. Bill Mayer - Lauren County Public Defender office

ii. TARA S. Taggart - SC. Appellate office

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal

iii. _____

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

Vacate Sentence New Trial

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

No

STATE OF SOUTH CAROLINA)

County of Mc Cormack)

VERIFICATION

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

Tyrone Shumpert

SWORN to and subscribed before me this 25
day of April, 2005

George J. Gray (L.S.)
Notary Public

My Commission Expires: 8 28 2011

2005 - CP - 30 - 422

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

I, Tyrone Shumpert, 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.

*Tyrone Shumpert
Applicant

SWORN or affirmed to and subscribed before me this
25 day of April, 2005.

Joseph L. Young
Notary Public

My Commission Expires: 8 28 2011

LAURENS COUNTY
CLERK OF COURT

2005 MAY 24 P 3:24

BARBARA T. WASSON

BARBARA T. WASSON

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
2005 OCT 27	) A 10:30	2005-CP-30-422
Tyrone Shumpert, SCDC No. 292828,	)	
	)	
Applicant, LAURENS COUNTY	)	
CLERK OF COURT	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its return to the application for post-conviction relief (PCR) filed May 24, 2005, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Laurens County Grand Jury indicted the Applicant at the November 2002 term for conspiracy, two (2) counts of armed robbery, and possession of a firearm during the commission of a violent crime (02-GS-30-1018). William G. Mayer, Esquire, represented the Applicant. On April 28, 2003, the Applicant proceeded to trial before the Honorable James W. Johnson, Jr., and a jury. The Applicant was convicted of conspiracy and the two (2) counts of armed robbery, but was acquitted of the firearms charge. Judge Johnson sentenced him to five (5) years for conspiracy and to twenty-two (22) years for each count of armed robbery, with all sentences concurrent.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App. filed February 8, 2005).

Attached herewith and incorporated herein by reference are the records of the Laurens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the current application for PCR.

II.

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

1. Ineffective assistance of counsel.
 - A. Counsel failed to object to all white jury.
 - B. Counsel failed to present an alibi defense.
 - C. Counsel failed to object to prosecution's argument alluding to the defendant's failure to put up a defense.

III.

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, *supra*. 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 the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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, 474 U.S. 52, 106 S. Ct. 366, (1985).

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

IV.

The refusal to strike a juror merely at a defendant's insistence is not ineffective assistance of counsel. Jury selection is inherently a matter of trial tactics. Palacio v. State, 333 S.C. 506, 511

S.E.2d 62 (1999). While a defendant has the right to challenge a juror for cause, the exercise of peremptory challenges by counsel adequately protects this right. Id. Therefore, absent credible evidence that the failure to strike a juror or challenge them for cause prejudiced the defense, counsel's actions are not ineffective assistance. Id.

V.

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

VI.

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

VII.

WHEREFORE, having made its return, the Respondent requests that a hearing be held.

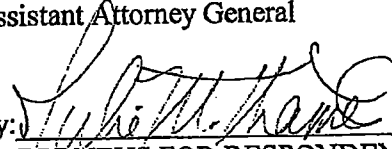
Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

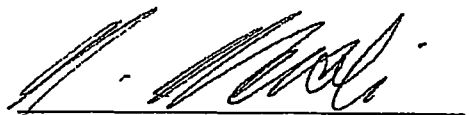
10/25, 2005.

BARBARA T. WASSON
 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LAURENS)
 2005 OCT 27 A 10: 30 2005-CP-30-422
 Tyrone Shumpert, #292828)
)
 LAURENS COUNTY
 Applicant CLERK OF COURT)
 vs) AFFIDAVIT OF SERVICE BY MAIL
)
 State of South Carolina,)
)
 Respondent.)

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

Joel Dean Bieber
 201 E. North St.
 Greenville, SC 29601

DATED this 25th day of October, 2005.


 Gianandrea A. Maoli, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

COURT OF COMMON PLEAS
2005-CP-30-422

TYRONE SHUMPERT,

-VS-

STATE OF SOUTH CAROLINA,
Defendant.

January 18, 2006

B E F O R E:

HONORABLE WYATT T. SAUNDERS

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

RODNEY W. RICHEY, Esquire
Attorney for the Petitioner

JULIE M. THAMES, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

I-N-D-E-X

WITNESS

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Candi Robertson

Direct Examination by Mr. Richey

23

William Mayer

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Petitioner Exhibit 1 (Juror Affidavit)

7

Defendant Exhibit 1 (Plea Offer)

21

1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 11:06 a.m.).

3 THE COURT: What is the next matter?

4 MS. THAMES: Tyrone Shumpert.

5 THE COURT: Thank you. The record will open,
6 please. Tyrone Shumpert, inmate number 292828 as
7 applicant versus the State of South Carolina as
8 respondent in Civil Action 2005-CP-30-42. Rodney
9 Richey, Esquire, of the Greenville Bar representing
10 the applicant, and Julie Thames, Esquire, of the
11 Attorney General's staff represents the respondent
12 the State of South Carolina.

13 We will turn the matter over to you, Mr.
14 Richey.

15 MR. RICHEY: Thank you, Your Honor. Your
16 Honor, first a couple brief issues. There is a
17 witness that I had, that I subpoenaed, Randall
18 Williams. Mr. Williams is not in the courtroom.
19 The Attorney General has agreed that we could
20 depose that witness within fifteen days of this
21 hearing if the Court would allow us to do that. I
22 will go out and find his address, he signed for the
23 subpoena and the whole thing but he's not here, and
24 they have agreed to allow me to do that within
25 fifteen days if the Court will do that.

1 THE COURT: And the subpoena was properly
2 served upon him?

3 MR. RICHEY: Yes, sir, and he signed for it
4 and everything, he is just not here and there is
5 some folks that are back here who got served with
6 subpoenas. As I understand it, he got it and
7 received it, just didn't come.

8 THE COURT: Well, were it to, we will follow
9 the procedure which you have suggested but were he
10 not to cooperate and/or make himself unavailable,
11 if you will return to the Court we will see that
12 the sheriff gets involved and he cooperates.

13 MR. RICHEY: Yes, sir.

14 THE COURT: But we'll try to take his
15 deposition, as you suggested.

16 MS. THAMES: I would ask, Mr. Richey already
17 said, you know, within a certain amount of time and
18 I would ask that we do put a deadline on that so
19 we're not --

20 MR. RICHEY: Fifteen days from today's date,
21 that's more than enough time.

22 THE COURT: Do you think that's fine?

23 MR. RICHEY: That's fine, Your Honor.

24 THE COURT: All right, thank you.

25 MR. RICHEY: Your Honor, the second issue, we

1 took this issue up in chambers, about the
2 presentation of affidavit from Mr. Ricky Paulson.
3 I don't know if the Court still has a copy of the
4 affidavit. I would intend to submit this affidavit
5 from a juror in the trial who claims that they used
6 Mr. Shumpert's silence against him and I think the
7 Court made a preliminary ruling that this was not
8 admissible but it could be marked as an exhibit. I
9 would like to do that at this time if the Court
10 would allow me to.

11 THE COURT: We will officially place on the
12 record that counsel for the State Miss Thames and
13 you, Mr. Richey, and the Court met previously in
14 chambers and you displayed this statement, I
15 believe it's an affidavit --

16 MR. RICHEY: Yes, sir.

17 THE COURT: -- to the Court and we discussed
18 that paper, rather extraordinary document, you
19 don't see these things very often, and the Court
20 did in fact make a preliminary ruling, at least a
21 directive, not a finding on the record by any
22 means, but I told you what the Court thought what
23 the proper procedure would be and that would be
24 mark it for identification and it would not be
25 admitted as evidence in this case but having been

1 marked for identification it will go up with the
2 record if there were to be an appeal, which is
3 frankly expected, then the higher court will have
4 it for its review.

5 Now, is that a fair statement of what we
6 talked about, Miss Thames?

7 MS. THAMES: I believe so, Your Honor. I
8 would want to put on the record the State is
9 objecting to that statement in its entirety. I
10 don't know if I need to do that.

11 THE COURT: Well, the State took that
12 position in chambers, too.

13 MS. THAMES: Right.

14 THE COURT: It was a very brief conversation,
15 some of it was not even having to do with this
16 document, some of it was more in the way of a
17 personal conversation about Mr. Richey's family and
18 my family and those kind of things, but we did talk
19 about this case to the extent you intended to
20 introduce that affidavit and Miss Thames objected
21 to it and the Court concurred with her objection.

22 Would you agree that that's what we did?

23 MR. RICHEY: That's a correct statement, Your
24 Honor.

25 THE COURT: Very well, let it be marked for

1 identification.

2 MR. RICHEY: Thank you Your Honor.

3 (Affidavit marked and filed as Exhibit
4 Number 1 for identification).

5 MR. RICHEY: We're ready to go forward
6 whenever the Court is ready.

7 THE COURT: All right, would you like to make
8 a statement of your case?

9 MR. RICHEY: Your Honor, this is Tyrone
10 Shumpert. Mr. Shumpert was convicted of robbery,
11 Your Honor, we're prepared to go forward, he
12 received a 22 year sentence and he had a trial by
13 jury and we're ready to proceed with his case.

14 THE COURT: Very well. Call your first
15 witness.

16 MR. RICHEY: Thank you. We call Mr.
17 Shumpert. .

18 THE COURT: Thank you.
19
20
21
22
23
24
25

TYRONE SHUMPERT - DIRECT

1 TYRONE SHUMPERT,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. RICHEY:

5 Q State your name, please, sir.

6 A Tyrone Shumpert.

7 Q Mr. Shumpert, where are you currently
8 incarcerated?

9 A McCormick.

10 Q And what are the charges you were convicted
11 of?

12 A Two counts of armed robbery, one count of
13 conspiracy.

14 Q Okay. And who represented you on those
15 cases?

16 A Bill Mayer.

17 Q Did you have a jury trial or did you plead
18 guilty?

19 A I had a jury trial.

20 Q Okay. A jury found you in fact guilty of
21 those charges?

22 A Yes, sir.

23 Q Did you file an application on May 24th,
24 2005, for ineffective assistance of counsel?

25 A Yes, sir.

TYRONE SHUMPERT - DIRECT

1 Q And did you allege that Mr. Mayer
2 ineffectively represented you?

3 A Yes, sir.

4 Q Was one of the issues in your case -- first
5 of all, at your trial did you put up any testimony
6 or evidence?

7 A No, sir.

8 Q Okay. And did you discuss that with your
9 attorney?

10 A Some way, yes, sir.

11 Q Okay. And did you all discuss why you would
12 not call any witnesses in your trial?

13 A Yes, sir.

14 Q And what were those discussions?

15 A Well, the reason why he wouldn't call Candi
16 Robertson and Randall Williams, he said they stayed
17 too close to the scope of the crime.

18 Q Okay. And we go back, did you have witnesses
19 in the courtroom that day, is that correct?

20 A Yes, sir.

21 Q And who were those witnesses?

22 A Candi Robertson and Randall Williams and
23 Maurice Hooper.

24 Q How do you know these witnesses?

25 A I know them because I basically live with

TYRONE SHUMPERT - DIRECT

1 Candi Robertson.

2 Q And these witnesses, you know what their
3 testimony would have been?

4 A Yes, sir.

5 Q What was that?

6 A That I was in the house all night.

7 MS. THAMES: Objection, Your Honor.

8 MR. RICHEY: I'll rephrase it.

9 THE COURT: Sustained.

10 Q Why did you present these witnesses to your
11 attorney?

12 A To basically prove my whereabouts during the
13 time of the crime, of the event.

14 Q And do you believe these witnesses, that was
15 the purpose for these witnesses?

16 A Yes, sir.

17 Q And did you discuss the substance of what
18 these witnesses would say with your attorney?

19 A Yes, sir,

20 Q Okay. And do you believe these witnesses
21 would have been credible?

22 A Yes, sir.

23 Q Okay. And, so, you talked to your attorney,
24 was it during the trial or after trial or before
25 the trial, on whether to call these witnesses or

TYRONE SHUMPERT - DIRECT

1 not?

2 A Before the trial.

3 Q Okay. And did you all make the decision
4 before the trial not to call any witnesses?

5 A No, sir.

6 Q When did you all make the decision?

7 A The middle of the trial.

8 Q Okay. And tell me, did you agree with that
9 decision?

10 A Sir?

11 Q Did you agree with the decision not to call
12 these witnesses?

13 A Yes, he persuaded me not to.

14 Q And did you agree, did you agree with the
15 decision for you not to testify as well?

16 A Yes, sir.

17 Q Okay. And did you have enough time to
18 discuss that with him?

19 A Not really.

20 Q Okay. What is not really?

21 A I'm saying because when it was sprunged upon
22 me that I wouldn't testify because of my prior
23 criminal record, that attempted auto breaking, the
24 reason why I didn't testify was because he said
25 they would attack my credibility because of my

TYRONE SHUMPERT - DIRECT

1 priors.

2 Q And your priors was what?

3 A Attempted auto breaking.

4 Q Was there any other priors that you have?

5 A No, sir.

6 Q And did you discuss your case with your
7 attorney?

8 A Yes, sir.

9 Q Okay. And did you all discuss what evidence
10 would be brought in, what evidence would not be,
11 other than the alibi?

12 A Some way. We discussed some things would be
13 brought in.

14 Q Did you all, the composition of the jury,
15 when the jury was picked, did you have any issues
16 with that?

17 A Yes, sir.

18 Q Okay. What were those issues?

19 A I tried to get him to move for a Batson
20 violation.

21 Q And why is that?

22 A Because members of my race were purposely
23 struck from the jury.

24 Q And do you recall that motion was made?

25 A No, sir, it was never made.

TYRONE SHUMPERT - DIRECT

1 Q Why was it not made?

2 A He told me the judge wouldn't grant it
3 because it was too late.

4 Q Okay. Too late? What do you mean, too late?

5 A It was like the jury was picked the day
6 before, right, and I was like I don't like this
7 jury, so when I went back to the jail and I looked
8 something up in a book it say Batson, you know what
9 I'm saying, so I brought it to his attention. He
10 said it was too late the next day, he said the
11 judge would never grant it.

12 Q So, at the time the jury was impaneled and
13 sworn you did not know that you could make that
14 motion?

15 A No, sir.

16 Q All right. And do you have any other issues
17 with Mr. Mayer?

18 A Sir?

19 Q Do you have any other issues with Mr. Mayer?

20 A Do I have any issues?

21 Q As to his representation.

22 A I feel that he was ineffective.

23 Q Why is that?

24 A Because he persuaded me not to put up a
25 defense when I tell him, my quote, I could win this

TYRONE SHUMPERT - DIRECT

1 trial by myself.

2 Q Okay. And is that the only, is that the only
3 thing you have against Mr. Mayer?

4 A Like I'm saying, I got a brief I written.

5 Q Tell me what some of the issues you have are.

6 A The Batson violation, failure to, failure to
7 object to the prosecution's statement, switching
8 the burden of proof.

9 Q Hold on a second. When you say that, are you
10 referring to page 99, lines 8 through 10?

11 A Yes, sir.

12 Q And that is where the prosecutor says, "But
13 there has been absolutely nothing presented not to
14 believe Derrick Mosley"? Who was he?

15 A That was the State's whole witness.

16 Q How was he involved in the case?

17 A He was one of the robbers.

18 Q Okay. Were you ever identified by anybody in
19 this case?

20 A No, sir, nobody other than Derrick Mosley.

21 Q Go ahead and continue, sorry for the
22 interruption. Go ahead and continue if I
23 interrupted you.

24 A Nobody other than Derrick Mosley pointed a
25 finger at me.

TYRONE SHUMPERT - DIRECT

1 Q Your grounds?

2 A You want me to start from the beginning?

3 Q No, we have already gone through about four
4 of them.

5 A Okay.

6 MR. RICHEY: While you are doing that, can I
7 approach the witness, Your Honor?

8 THE COURT: You may.

9 Q Mr. Shumpert, I have been given this
10 document. I want you to look at this document that
11 purports to have your signature on it. On that
12 document it is saying that the State made you an
13 offer of strong armed robbery. Do you recall that
14 offer?

15 A Yes, sir.

16 Q Okay. Did you talk to Mr. Mayer about that?

17 A Yes, sir.

18 Q Okay.. Did he encourage you to accept that or
19 not accept it?

20 A He encouraged me to accept it.

21 Q Okay. And you turned that down?

22 A Yes, sir.

23 Q Can you tell me why?

24 A Because I'm innocent.

25 Q Was this during, or after the jury -- tell me

TYRONE SHUMPERT - DIRECT

1 what stage of the trial this was at.

2 A This was before trial.

3 Q Okay. Did they ever make that offer to you
4 after the trial or after the jury was out or
5 anything?

6 A No, sir.

7 Q You turned it down based on you were
8 innocent?

9 A Yes, sir.

10 Q Okay. Go ahead and continue your grounds.

11 A All right. He never objected to the
12 prosecutor withholding discovery information by
13 failing to produce the videotape of the arrest and
14 stop by the police of the three co-defendants.
15 Since the robbery victim Jennifer Satterfield
16 testified she couldn't identify the robber, this
17 tape may well have presented exculpatory evidence
18 for the applicant. There is no record whatsoever
19 that the Solicitor never found this tape, thus by
20 not producing this tape or establishing on the
21 record why he failed to do so the prosecutor
22 violated both the Brady rule and discovery Rule 5.

23 Q Mr. Schumpert, let me ask you this. Did you
24 and your attorney discuss the lack of evidence
25 being turned over by the State?

TYRONE SHUMPERT - DIRECT

1 A No, sir.

2 Q Okay. Was there any inquiry made, "Where is
3 the tape, where is the information," by you to him?

4 A He said this on record, he asked where the
5 tape, they never found it.

6 Q So, are you saying he was ineffective for
7 failure to get the tape?

8 A He didn't get the tape, the shoes, and the
9 shoes.

10 Q Okay. And tell me the grounds, I want you to
11 tell them to me.

12 A Huh?

13 Q I want you to tell me, not read them.

14 A All right. He failed to object to
15 prosecution alluded to my right to remain silent.

16 Q We have gone through that one.

17 A He failed to object to the biased juror who,
18 quote, she knew the Todds and worked with the
19 Todds' mother.

20 Q That was one of the jurors that sent the
21 judge a note that she knew one of the folks?

22 A Yes, sir.

23 Q All right. Have we gone through them all?

24 A I think. I got, let me see here, I got a
25 paper with some more issues, Rodney, they are

TYRONE SHUMPERT - DIRECT

1 outlined where it would be easier to state them,
2 right, but I think they are over there on the
3 table.

4 Q I think one of them is that he failed to
5 object, that you allege that you wanted a special
6 instruction on the co-defendant's testimony, is
7 that correct?

8 A Yes, sir.

9 Q And that he failed to show the police
10 willfully destroyed evidence against you?

11 A Yes, sir.

12 Q And that he failed to conduct any type of
13 investigation?

14 A Yes, sir.

15 Q And he failed to present a defense?

16 A Yes, sir.

17 Q And he failed to have his client present at
18 critical stages of the suppression hearing?

19 A Yes, sir.

20 Q He failed to bring an action on a Brady
21 violation?

22 A Yes, sir.

23 Q And he failed to bring forward testimony on
24 Mr. Todd, who was the fourth robber?

25 A Yes, sir.

TYRONE SHUMPERT - DIRECT

1 THE COURT: Are those things part of the
2 record?

3 MR. RICHEY: Your Honor, they are in the
4 brief on the ineffective assistance of counsel that
5 he prepared.

6 THE COURT: Are they annexed to the
7 application?

8 MR. RICHEY: No, sir.

9 MS. THAMES: I have not heard of them until
10 just this moment, these extra allegations.

11 THE COURT: The Court has been looking
12 through the file and did not see those. That
13 presents a question as to whether the State would
14 be prepared to respond to those allegations.

15 MS. THAMES: I think we are, Your Honor.

16 THE COURT: All right, proceed.

17 MR. RICHEY: Answer any questions the
18 Attorney General has for you.

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TYRONE SHUMPERT - CROSS

CROSS EXAMINATION

QUESTIONS BY MS. THAMES:

Q Mr. Schumpert, at trial when it came time to put up a defense do you remember your trial attorney telling the judge that you all were not going to put up a defense?

A Yes, sir -- yes, ma'am.

Q And did you concur in that decision at that time?

A Yes, ma'am.

Q You had discussed that decision with Mr. Mayer?

A Yes, ma'am, we discussed it.

Q The document that --

MS. THAMES: May I approach?

THE COURT: Yes, ma'am.

Q This document that Mr. Richey just showed you, you said you do remember that?

A Well, I signed it, so I had to read it, I had to.

Q And you said you thought this occurred before the trial?

A Yes, ma'am.

Q Do you recall in here where there is a paragraph that says you're happy with what your

TYRONE SHUMPERT - CROSS

1 lawyer has done and that you didn't want to take
2 the plea offer?

3 A Yes, ma'am. I probably just signed it,
4 right, because being my attorney presented it to me
5 but, you know, I am under oath so I'm going to tell
6 you the truth. I don't remember that paper but I
7 signed it, so I signed it.

8 Q Do you think it's important to read something
9 you're signing?

10 A Yes, ma'am, but my attorney gave it to me,
11 you know.

12 Q All right.

13 MS. THAMES: I would like to offer this, have
14 it marked.

15 THE COURT: Very well.

16 (Plea offer marked and received in
17 evidence as Defendant's Exhibit 1).

18 MS. THAMES: Do you want to see it, Your
19 Honor?

20 THE COURT: Thank you.

21 MS. THAMES: That's all the questions I have
22 for this witness.

23 THE COURT: Redirect?

24 MR. RICHEY: No questions.

25 THE COURT: Thank you, come down. Take your

TYRONE SHUMPERT - CROSS

1 time and watch your step.

2 (Witness excused).

3 MR. RICHEY: My next witness will be Miss
4 Candi Robertson.

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CANDI ROBERTSON - DIRECT

1 CANDI ROBERTSON,
2 after being first duly sworn testified as follows:

3 THE COURT: Thank you. Be seated.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. RICHEY:

6 Q Ma'am, will you state your name, please?

7 A Candi Robertson.

8 Q Miss Robertson, do you know Tyrone Shumpert?

9 A Yes, sir.

10 Q How do you know him?

11 A He's my baby's daddy.

12 Q How many children do you all have?

13 A We have one.

14 Q And how old is that child?

15 A Two.

16 Q Do you recall when Mr. Schumpert was on trial
17 for robbery?

18 A Yes, sir.

19 Q Do you recall the date he was actually tried?

20 A No, sir, it's been so long.

21 Q But you recall there was a trial held in this
22 courthouse?

23 A Yes, sir.

24 Q And were you present for that trial?

25 A Yes, sir.

CANDI ROBERTSON - DIRECT

1 Q And why were you present?

2 A Why was I present? I was here to speak about
3 where he was, alibi.

4 Q Were you subpoenaed?

5 A No, sir.

6 Q You came of your own free will?

7 A Yes, sir?

8 Q If they brought you in to say, what would
9 your testimony have been?

10 A My testimony would have been he was working
11 at night, he get off work, we was all sitting in
12 the house, we was sitting in the house and then
13 about 12:30, I went to bed about 1:30 and he came
14 on later about 2:00, about 2:00.

15 Q And, so, was he at your house during the time
16 this crime was committed? Is that what your
17 testimony would be?

18 A Yes, sir.

19 Q And were you prepared to give that testimony?

20 A Yes, sir.

21 Q And why did you not give it? Do you have any
22 idea?

23 A Because Bill Mayer told me he was gambling
24 his case.

25 Q All right, thank you. Answer any questions

CANDI ROBERTSON - DIRECT

1 the Attorney General has.

2 THE COURT: Cross-examination?

3 MS. THAMES: I don't have any questions but I
4 didn't hear the last answer.

5 THE COURT: Would you repeat your last
6 answer?

7 THE WITNESS: The question was why I was not,
8 why wouldn't I --

9 MR. RICHEY: The question was why did you not
10 testify?

11 THE WITNESS: Because Bill Mayer told me he
12 was gambling his case.

13 THE COURT: He told you what?

14 THE WITNESS: He was gambling his case.

15 THE COURT: All right. Anything further?

16 MS. THAMES: Nothing from the State, Your
17 Honor.

18 MR. RICHEY: Nothing, Your Honor.

19 THE COURT: Thank you, ma'am. Come down.
20 Watch your step.

21 (Witness excused).

22 MR. RICHEY: We call Mr. Mayer to the stand.
23
24
25

WILLIAM MAYER - DIRECT

1 WILLIAM MAYER,
2 after being first duly sworn testified as follows:.

3 THE COURT: Be seated.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. RICHEY:

6 Q Sir, would you state your name, please?

7 A William Mayer.

8 Q Mr. Mayer, you're an attorney in Laurens
9 County?

10 A I am indeed.

11 Q Do you recall representing Tyrone Shumpert?

12 A Yes, I do.

13 Q Do you recall what charges you represented
14 him for?

15 A I do. Two counts of armed robbery, one for
16 conspiracy and one possession of a weapon during
17 commission of a violent crime.

18 Q Did you all have a jury trial in this case?

19 A Yes, we did, the end of April of '03.

20 Q The last part, I'm sorry?

21 A The end of April, 2003.

22 Q Okay. At that jury trial -- first of all,
23 did you believe the State had a weak, or strong
24 case?

25 A I thought it was weak before the trial, I

WILLIAM MAYER - DIRECT

1 thought it was weak after the trial.

2 Q Why do you say it was weak?

3 A The fact, again I always refer to the record,
4 the facts are there were two individuals went in a
5 laundromat and robbed two patrons of the laundromat
6 and locked them in the closet. The victims said
7 two came in and someone waited at the car. The
8 only evidence the State could put up was the basic
9 law enforcement investigation that shows a robbery
10 had happened and the victim was an individual who
11 admitted he was part of the robbery but declared
12 himself to be the, I believe, fourth man. It was
13 only his testimony after having pleading guilty
14 that involved Tyrone at all.

15 Q The mythical fourth man, was that Mr.
16 Shumpert?

17 A According to the testimony of the third
18 member of the team that robbed them. I don't think
19 Mr. Schumpert did this, didn't at the time, I don't
20 now.

21 Q Was there any forensic evidence against Mr.
22 Shumpert?

23 A The case was the testimony of this third
24 individual.

25 Q Did you discuss with Mr. Shumpert the

WILLIAM MAYER - DIRECT

1 strength and weaknesses of the case you just
2 outlined?

3 A I believe I did, yes.

4 Q And in your preparation did you ask him for
5 any witnesses?

6 A Yes, we did. We met with a few people. We
7 met with the woman he was staying with at the time,
8 I don't think he lived with her, he was staying
9 with her. My memory doesn't serve me as to whether
10 I can testify that was the woman that just
11 testified but I would assume it was, her name is
12 familiar. And I also spoke to the two individuals
13 who actually went into the laundromat, that pled
14 guilty.

15 Q Okay. And the substance of the testimony
16 from your interviewing would have been what of
17 each?

18 A The gentleman, the gentleman who we will say
19 was the leader, if we put him up he would have
20 testified that Tyrone didn't have anything to do
21 with it. The second person in the laundromat, the
22 same thing.

23 By the way, they were both in the courthouse
24 that day for trial, they were available if we put
25 up a defense.

WILLIAM MAYER - DIRECT

1 Q They were the, I guess, the four people, the
2 one mythical one of the three, the other two
3 involved, you had them in the courtroom, is that
4 correct?

5 A In the courthouse. They were back in the
6 holding cell.

7 Q Their testimony would have been what?

8 A He had nothing to do with it.

9 Q All right. And the third person?

10 A I believe that was Mr. Mosley, is that
11 correct?

12 Q Yes.

13 A He testified for the State. It is my
14 understanding that he was the third person, he was
15 the individual who the victims identified, they
16 didn't identify him, the two victims identified,
17 there was a third individual involved who waited in
18 the car. It is my belief that was Mr. Mosley. Mr.
19 Mosley testified at trial that that wasn't him,
20 that he was there but he wasn't the person waiting
21 in the car, the person in the car was Mr. Shumpert.
22 It is my recollection the only evidence against Mr.
23 Shumpert was the testimony of Mr. Mosley.

24 Q Okay. You all said and at some point made a
25 decision in this case about whether you would call

WILLIAM MAYER - DIRECT

1 witnesses or not call witnesses, is that correct?

2 A Yes, sir.

3 Q And can you tell me the thought process in
4 that decision making?

5 A Well, always before trial --

6 Q From your standpoint, then later from the
7 client's standpoint?

8 A I can only testify from my standpoint but I
9 will tell what I can. I always discuss with
10 clients before trial that it's a possibility, it's
11 nothing you decide before trial because not putting
12 up a defense is something you do if the State's
13 case is extraordinarily weak. Not putting up a
14 defense is not a surrender. Not putting up a
15 defense allows you to close last, that's a tactic
16 of unestimateable importance. That means the State
17 presents its case, the State closes to the jury and
18 the last thing the jury hears is the defense. The
19 State has no opportunity to rebutt.

20 It also means the State has no opportunity to
21 hear any of the details of the claims of the
22 defense as far as strategy, because the State has
23 passed a chance to rebutt. If the State's case is
24 weak it's an acceptable trial tactic, I had used it
25 many times, far more with success than not.

WILLIAM MAYER - DIRECT

1 I speak about these things prior to trial and
2 I think Mr. Shumpert said we talked about it prior
3 to trial, but at the time we really get down to
4 make the decision has to be the period of time
5 after the State has rested because you can't make
6 this decision until you have heard the State's
7 witnesses and what they have put up and not some
8 sort of read about whether the jurors' nodding
9 their heads or seem to be paying attention or
10 falling asleep or whatever.

11 Q And you and Mr. Shumpert, you all sat down
12 and discussed this at that point, is that correct?

13 A Both before the trial and during the break
14 after the State rested.

15 Q After the State rested is when you would have
16 gotten down to the real crux of making a decision,
17 is that correct?

18 A Yes, sir.

19 Q And when you talked to Mr. Schumpert was he
20 reluctant to do that or what was his feeling about
21 it?

22 A My recollection is, reluctance is probably an
23 ambiguous word. I explained to him my position,
24 explained to him my position then, which is as it
25 is now, which is no jury could convict him on the

WILLIAM MAYER - DIRECT

1 evidence presented, I thought that then, I still
2 think it now. I have come to believe this jury
3 convicted him in spite of the evidence presented,
4 yes, sir.

5 Q Go ahead. I cut you off.

6 A I'm fine.

7 Q Okay. In looking at the evidence against Mr.
8 Shumpert do you believe there was a risk in terms
9 of having folks there that said he did do it and
10 another person saying he was not there, can you
11 tell me your thought process in weighing that in
12 your decision?

13 A Well, we have got the two victims who have
14 nothing to gain or lose, neither one of them can
15 identify him. In fact, if recollection serves me,
16 they both said, they both identified the two that
17 came in but couldn't identify Mr. Shumpert as
18 having been involved at all. There were also
19 people that said there were only three involved.
20 Those would be the two that went in and Mr. Mosley
21 in the car. That wouldn't allow for Mr. Shumpert's
22 presence at all.

23 The State's entire case, my recollection,
24 came down to Mr. Mosley's statement. Mosley's
25 statements were absolutely self serving. I believe

WILLIAM MAYER - DIRECT

1 he testified he had already pled guilty but not
2 been sentenced. He also touched on something which
3 I have a problem with procedurally, which he
4 testified under oath that there were absolutely no
5 deals, his testimony hadn't been bought.

6 About one or two days after this trial when
7 Mr. Shumpert got more than two decades in prison
8 Mr. Mosley walked in with 90 days summer camp. I
9 am concerned about the fact he testified there was
10 no formal deal and when he testified under my
11 cross, if memory serves me, he had taken part in
12 this armed robbery and didn't get the minimums.

13 Q Did it concern you the fact Mr. Mosley,
14 although his testimony seemed to be not credible to
15 you but he was in fact putting your client at the
16 scene of that crime, did that --

17 A Oh, his testimony alone puts my client at the
18 scene of the crime and in danger of conviction, we
19 had talked about that.

20 Q And when you looked at that versus having, I
21 guess, the other people who were actually there
22 saying he was not there, and the alibi witnesses,
23 do you believe the decision you made, do you
24 believe that that risk of your decision outweighed
25 the benefits?

WILLIAM MAYER - DIRECT

1 A Well, you say it's my decision. It wasn't my
2 decision.

3 Q Your client.

4 A I merely advise and I say to this courtroom
5 now under oath, at the time I thought it was a
6 smart thing to do because I believed the jury would
7 follow its instructions. Sitting in this chair I
8 believe it's a smart thing to do. In this
9 profession I have to expect that a jury will do
10 what it's supposed to do. This is my first forray
11 into being presented with evidence where I believed
12 jurors acted in misconduct.

13 Q Let me ask you, do you believe you got all
14 the discovery in this case?

15 A Yes, I did.

16 Q Okay. And as to the Batson motion, do you
17 believe a Batson motion was proper?

18 A If you read the transcript you see as we came
19 down to the very end there is, and of course the
20 transcript, there is a portion where I excused
21 myself to talk to opposing counsel, Mr. Peace was
22 opposing counsel. If memory serves me, there was
23 very few minorities in the venire and only one or
24 possibly two that were picked, both of whom had
25 criminal records. I checked them on the State's

WILLIAM MAYER - DIRECT

1 list, a Batson motion would have been pointless,
2 the State has every right to strike somebody with
3 its peremptory strikes if they have a criminal
4 history.

5 Q If that motion had been made would that have
6 preserved that issue for Mr. Shumpert?

7 A Preserved the issue? Every bit of law I have
8 read gives the State the right to strike peremptory
9 strikes.

10 Q I'm not saying you would have won the issue,
11 I'm saying would an objection preserve that issue
12 for an appellate court?

13 A It would have preserved it but I don't think
14 there is an argument, I don't think we need to load
15 up the court with issues for which there is no
16 practical issue. Our discussion later that night
17 with Mr. Shumpert, he mentioned Batson and I said,
18 "We can't do that, we would have to have done that
19 when we drew the jury," and I had already informed
20 the Court we didn't have any objections to the
21 jury.

22 MR. RICHEY: Your Honor, may I review the
23 exhibit with the witness?

24 THE COURT: Yes, sir.

25 MR. RICHEY: Thank you.

WILLIAM MAYER - DIRECT

1 BY MR. RICHEY:

2 Q Mr. Mayer, I am giving you an exhibit that's
3 marked as Defendant's Exhibit 1. Do you recognize
4 that document?

5 A Yes, sir.

6 Q Is that a document that was maintained in
7 your file?

8 A Yes, sir, it is. In fact this is the
9 original, I made a copy of it.

10 Q That document is purporting to discuss a plea
11 offer to Mr. Schumpert. Is that correct?

12 A Yes, sir.

13 Q And when was that offer made?

14 A The offer was made during the entire pendency
15 of the case. The State really didn't want to try
16 this, its case was weak and it knew it. The offer
17 had been for strong armed robbery, which is a zero
18 to fifteen, I believe. It would have been a
19 straight up plea to strong armed robbery, which is
20 not an 85 percent sentence. That had been extended
21 through the entire pendency of the prosecution.
22 The State came to me when the jury was out because
23 we had both, both the State and I, I can't speak
24 for the State; we had discussions to the fact that
25 people I talked to, we all expected the jury could

WILLIAM MAYER - DIRECT

1 come back rather quickly. I expected them to come
2 back rather quickly. They didn't.

3 There were a number of notes sent, there was
4 one juror who specifically wanted to talk to the
5 judge. Of course the judge said it was improper.
6 And a recharge on what was reasonable doubt. The
7 longer the jury stayed out the more nervous I got
8 about a conviction. This man was facing
9 considerable exposure, and the Solicitor's office
10 and I touched informally on whether or not the plea
11 offer was still open while the jury was out, and I
12 was under the impression that if I brought them an
13 offer they would certainly entertain it.

14 I brought this document to Mr. Shumpert.
15 What it says, I disagree, Mr. Shumpert says this
16 was prior to trial, this says, "Yesterday I was
17 tried on charges. The trial ended and the jury was
18 sent home to reconvene in the morning." This is
19 done after the jury has been charged and is
20 deliberating prior to returning a verdict. It
21 says, "While deliberating, the jury asked for
22 recharge on definition of reasonable doubt." He
23 then says, "I understand this jury is undecided and
24 the case can go either way. My lawyer has advised
25 me I should consider negotiating at this point, as

WILLIAM MAYER - DIRECT

1 conviction is certainly possible." He says he
2 understands that he is facing, what he is facing if
3 he's convicted. He could receive mandatory
4 minimums and consecutive time as a reality and a
5 plea bargain to a non-violent common law robbery
6 would substantially reduce any amount of his
7 exposure.

8 He says that he understands the situation
9 fully, he's asked all the questions he needs to
10 ask, he has no further need to consider this, does
11 not want me to negotiate a plea. He says he is
12 pleased with my work, he heard the trial, he
13 believes he is going to found not guilty, he's
14 going to put his faith in the hands of God and the
15 jury.

16 Q Okay. The other two defendants in the
17 courtroom, did they plead guilty?

18 A I believe they did.

19 Q Did they plead guilty prior to the trial?

20 A They had pled and were sentenced.

21 Q When you brought them to court they were in
22 the Department of Corrections?

23 A Yes.

24 Q Okay.

25 A That came into the decision because if we got

WILLIAM MAYER - DIRECT

1 into putting up a defense we now have, would then
2 have competing felons, for lack of a better term,
3 with the two people with nothing to lose saying he
4 wasn't part of it and the one individual with
5 everything to lose, meaning Mr. Mosley, saying that
6 he would testify truthfully.

7 I have been a Solicitor, Counselor. That is
8 a very strong thing to argue to a jury, that the
9 witnesses then in support of Mr. Shumpert are in
10 effect flipping off the State by lying to let a
11 co-defendant off, that's the argument to be made,
12 and that adds credibility to Mr. Mosley's position
13 because, as I pointed out, he's the only one needs
14 to be truthful, he is the only one to be sentenced
15 yet. That is another thing Mr. Shumpert and I
16 discussed.

17 MR. RICHEY: Answer any questions the
18 Attorney General has for you.

19 THE COURT: Cross-examination.

20 MS. THAMES: Thank you, Your Honor.

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WILLIAM MAYER - CROSS

CROSS EXAMINATION

QUESTIONS BY MS. THAMES:

Q I believe you stated this but I'm going to ask just to make sure. Did you discuss the decision with Mr. Shumpert to not put up his witnesses?

A Yes. It would be his decision. In the transcript I asked the judge are there any questions he would like to ask, and the judge declined. The reason I did that is because I have done this in the past with a number of trials and routinely the judges have asked defendants on the record, "Do you understand you have a right to do that," and Judge Johnson didn't wish to do that. But I asked to put it on the record because it was Mr. Shumpert's position, I supported him, I still think it was the smart thing to do.

Q And it was his decision?

A Yes, it was.

Q The document we had that talks about, the one that was signed during the jury deliberations, did you discuss that document with Mr. Shumpert?

A Of course.

Q And, so, as for as you know he knew what the contents were?

WILLIAM MAYER - CROSS

1 A He would have for two reasons. The first is
2 the statement that he wants to put his faith in the
3 hands of God and the jury are his own words.
4 Obviously I don't have a computer at the jail.
5 This is a conversation that he and I had prior to
6 leaving the courtroom that night, I then go back to
7 my office, type up what it is that he said, what it
8 is I told him and bring it out to the jail for him
9 to sign, I can't type it in front of him.

10 Q Do you know whether or not he read that
11 document?

12 A We discussed it. That's where the wording
13 came from, at the courthouse. Of course he would
14 have read it prior to signing it. He's not dumb by
15 any stretch of the imagination.

16 Q Did you see any, did you review the
17 transcript in terms of what Mr. Shumpert said about
18 the Solicitor's closing argument?

19 A Just now, yes.

20 Q In looking at that do you see any reason that
21 you should have objected at that point?

22 A There is an objection there. What would have
23 happened with it, I can't see anything, I think if
24 anything, it would have called attention to
25 something we were trying to avoid. One of the

WILLIAM MAYER - CROSS

1 tactical decisions you make in trial as things come
2 up, there are all kind of objections that lawyers
3 can make, that you don't because sometimes stuff
4 just breezes through. Particularly if it's
5 technical, the jury may not give any weight to it
6 or even notice it. If you call attention to it and
7 argue it you sometimes blow something up to make a
8 bigger problem than is necessary, and there are
9 lawyers, I'm not saying Mr. Peace did this, there
10 are lawyers who do things hoping they will be
11 objected to simply so they can put on presentations
12 about it.

13 Q Mr. Shumpert testified today about a tape
14 that was not found and there are some discussions
15 about that in the transcript. Do you remember
16 that?

17 A This is a period of time a few years ago when
18 they had done legislation in Columbia, they had
19 started to put cameras in vehicles. I would have
20 requested a tape, that was common at the time, it
21 still isn't one was ever produced, I don't think I
22 have ever gotten any indication one ever existed.
23 If the record shows me wrong I apologize for my
24 shortcoming.

25 Q And do you recall the issue with the juror

WILLIAM MAYER - CROSS

1 that knew someone?

2 A There was a juror that knew a member of
3 somebody's family.

4 Q Do you recall if there was a discussion on
5 the record about that?

6 A I think she did but we didn't object at that
7 point. We were sufficiently in the trial, trial
8 was going very well for us, I thought the State's
9 witnesses were weak, the State's case was weak, I
10 didn't see that as a major problem.

11 Q Do you remember whether you, whether you
12 specifically told the judge you had no objection to
13 her continuing on the jury?

14 A I think the record shows I said that. The
15 judge asked and I said I wouldn't have any
16 objection to it.

17 MS. THAMES: Okay, that's all I have, Your
18 Honor.

19 THE COURT: Redirect, Mr. Richey?

20 MR. RICHEY: No questions for him.

21 THE COURT: Thank you, Mr. Mayer. Come down.
22 (Witness excused).

23 THE COURT: Call your next witness.

24 MR. RICHEY: That will be all the witnesses
25 we have.

1 THE COURT: That's the applicant's case in
2 chief. We turn to the respondent the State of
3 South Carolina. Call your first witness, please.

4 MS. THAMES: The State has no witnesses, Your
5 Honor.

6 THE COURT: Thank you. Mr. Richey,
7 summation?

8 MR. RICHEY: Your Honor, I will give a
9 summation, it's going to be assumed that Mr.
10 Williams who we don't have the testimony of, I'm
11 going to make the assumption that he would testify
12 that my client was there with him. That is the
13 basis for why he is called. I will use those
14 arguments in my summation.

15 First, when you evaluate the case you look at
16 the strengths and weaknesses of that case. I think
17 in this case everybody testified it wasn't a very
18 strong case for the State, that Mr. Shumpert had a
19 legitimate and good chance to win this trial. I
20 think the downfall comes in this case is about
21 these witnesses, and I will say to the Court in
22 this case we have to look at a witness testifying
23 against Mr. Shumpert that he was involved in the
24 crime, that he was actually there involved and gave
25 detailed statements about his involvement.

1 Counsel then had witnesses available to him
2 who were actually involved in the transaction, not
3 people, people who were actually involved in the
4 transaction, had been sentenced and were currently
5 under sentence, in the courthouse to testify that
6 Mr. Shumpert was not involved in this act. And
7 there was some issue about their credibility,
8 whether they would be believed, because they had
9 been convicted and that they have got nothing to
10 lose and they try to protect him.

11 It gives an issue of credibility, but I think
12 to bolster their credibility he also had available
13 to him other witnesses who were not incarcerated,
14 they have some interest, the lady had a baby by the
15 gentleman, probably Mr. Williams was a friend, but
16 I think when you look at the tools that counsel had
17 at his disposal, that those witnesses were critical
18 because the one witness actually placed his client
19 at the scene.

20 So, the danger of calling these witnesses
21 outweighed any benefits you would get by having the
22 last argument, because even if you did not have the
23 last argument you would still be able to tell the
24 jury that you have presented evidence that his
25 client was not there, by the people who were there

1 and by folks that he was staying with.

2 The second issue, Your Honor, I would bring
3 the Court's attention to is that the objection not
4 being made on page 99, that seems innocent in and
5 of itself when Mr. Peace talks about absolutely
6 nothing has been presented. In this type of case
7 and a lot of cases you look at that statement and
8 say that statement is not too bad, you are not
9 really saying anything, but that statement, Your
10 Honor, is a dangerous statement in this case. When
11 a defendant tries a case of this nature he puts up
12 no witnesses, no evidence, nothing. He has an
13 absolute right to do that.

14 The only witnesses, the one witness whose
15 credibility is at issue, who testified against my
16 client, when the Solicitor is able to stand up in
17 front of that jury at the end and tell that jury
18 absolutely nothing has been presented, that
19 Solicitor is basically taking his finger and
20 pointing at this defendant when he says absolutely
21 nothing has been presented not to believe Derrick
22 Mosley. The Solicitor is telling the jury they
23 haven't presented anything for you not to believe
24 him so you have to, and that is an essential phrase
25 that I use, burden shifting, the Solicitor stood in

1 front of that jury and shifted the burden to this
2 defendant to put up evidence and testimony when the
3 Solicitor says in front of that jury nothing has
4 been presented, nothing.

5 He's right, nothing had been presented by Mr.
6 Shumpert, but that statement is totally improper,
7 but in light of this case of no evidence, no
8 defense case, it is absolutely magnified. An
9 objection is appropriate there. For one, the
10 objection, Your Honor, it does not, from a
11 strategic standpoint, you have to raise attention
12 to it, you have to, you have to, because that's the
13 type of issue that has to be preserved for this
14 defendant.

15 Okay. But to have a Solicitor stand up in
16 front of a jury and tell them the defendant hadn't
17 presented anything when he hasn't in a no evidence
18 case, that is improper and we believe, Your Honor,
19 based upon these issues, that my client should be
20 granted post conviction relief. I think he was
21 prejudiced by, Your Honor, you look at the record,
22 that statement prejudiced him, there is absolutely
23 no way, when a Solicitor says nothing has been
24 presented, there is no way that doesn't prejudice
25 the defendant. It does, and counsel has to object,

1 at minimum he has to get a curative instruction,
2 something to say this defendant does not have to
3 put up evidence.

4 Secondly, as to the witnesses, Your Honor, I
5 think he was prejudiced by not calling the
6 witnesses. When you have the witnesses and the
7 people in the courthouse to testify to assist your
8 defendant, I think the danger of it is where we're
9 at today, that's the danger of it, and if counsel
10 talks to the client, the client presents the
11 witnesses, I know counsel has to make the
12 decisions, but I think the risk/reward of it was
13 too dangerous and we ask you to grant the petition
14 at this time.

15 THE COURT: Thank you, Mr. Richey. Miss
16 Thames?

17 MS. THAMES: Your Honor, the State would
18 argue that the applicant has not met his burden of
19 proof. While it is true that the State's case was
20 weak, the case was presented to the jury, the jury
21 was required to make the decision and they did and
22 they made the decision that found Mr. Shumpert
23 guilty.

24 Mr. Mayer has articulated valid strategy
25 reasons for not putting up the witnesses that would

1 have testified on his behalf, and further the
2 record reflects that Mr. Shumpert concurred in that
3 decision and they did that in part to preserve the
4 final argument and that reason is in and of itself
5 not enough to grant him a new trial.

6 In terms of that comment that Solicitor Peace
7 made, the State would argue first of all he does
8 say there has been absolutely nothing presented not
9 to believe Derrick Mosley, but I think there is a
10 little bit of a qualifier there. He made the
11 comment only one time, so I'm not sure that
12 magnified is the correct adjective in that
13 situation. I don't think it rises to the level of
14 such unfairness as to require Mr. Shumpert to have
15 a new trial.

16 And subject to the deposition, the State
17 would request that the application be denied.

18 THE COURT: Thank you, Miss Thames. Anything
19 in response?

20 MR. RICHEY: Your Honor, could I have one
21 moment with her about one issue?

22 THE COURT: Yes, sir.

23 MR. RICHEY: Your Honor, I have nothing else
24 but we have just modified our deposition. Counsel
25 and I have discussed it. Because there was no

1 cross-examination of Miss Robinson, we have agreed
2 I can get an affidavit from Mr. Williams and we
3 will supply that to the Court and that will be a
4 little bit easier because there will be no
5 cross-examination of that. But I have no further
6 argument to make, I think my first statement was
7 sufficient.

8 THE COURT: Now, the Court doesn't understand
9 entirely what you are saying. Are you still going
10 to depose this witness?

11 MR. RICHEY: Your Honor, we have agreed that
12 we will not depose the witness. We have agreed
13 that the witness will supply an affidavit of what
14 he would say. We did that in agreement because,
15 first, counsel would not have any cross-examination
16 for that witness, that he would merely submit an
17 affidavit and we would forward that to the Court.

18 THE COURT: What do you believe the tenor of
19 his statement to be?

20 MR. RICHEY: It would be, my position would
21 be just like Miss Robinson, my client was there at
22 the house with him and that he was not there when
23 the actual robbery occurred, that would be his
24 testimony.

25 THE COURT: Assuming that that is what this

1 absent witness would say, the Court will proceed
2 and put its findings on the record. Were the
3 affidavit and/or statement of this absent witness
4 to be different, then the Court reserves the right
5 to amend the ruling.

6 MR. RICHEY: That's fine, Your Honor.

7 THE COURT: The Court has read the transcript
8 of the hearing, of the trial, the Court has read
9 the application for post conviction relief and the
10 return of the State. The Court has also read the
11 opinion of the Court of Appeals, and concerning the
12 ineffective assistance of counsel, which is the
13 main objection or main thrust of the application,
14 the Court finds that counsel's performance was not
15 ineffective, as the applicant has failed to prove
16 that counsel's conduct so undermined the proper
17 functioning of the adversarial process that the
18 trial cannot be relied upon as having produced an
19 unjust result.

20 What we have here is a credibility issue at
21 bottom, and that is the testimony of one witness
22 that the defendant herein was present and did have
23 a gun. He said Mr. Shumpert had a .22 pistol and
24 that he brandished the pistol, and if the jury were
25 to have believed that, then counsel did the best he

1 could on cross examination. Anyone can read the
2 transcript and conclude that cross-examination was
3 professional and he did the best possible.

4 Counsel was performing within that range of
5 competency and professional conduct and ability as
6 would be expected of any attorney practicing
7 criminal law within the United States or within the
8 State of South Carolina. The Court does not find
9 that his performance was deficient. The Court does
10 not find that counsel's performance has prejudiced
11 or did prejudice the applicant to the extent that
12 there is any reasonable probability that but for
13 any unprofessional errors the result of the
14 proceedings would have been different.

15 Looking at the record itself, particularly
16 where on page 59 the Solicitor talks about Derrick
17 Mosley, there is no mention that the applicant
18 herein failed to present any evidence. In fact,
19 the Court on page 117 made it clear that, "A
20 defendant in a trial of a criminal case does not
21 have to testify in his own behalf and it is not a
22 factor to be considered by the jury in any way. It
23 must not be considered by the jury in any manner
24 against the defendant or mitigate against him in
25 any respect. The defendant has a constitutional

1 right to remain silent and the assertion of that
2 constitutional right cannot and must not be
3 considered by you in your deliberations."

4 So, the Court went on to say other things.
5 Returning, then, to what the Solicitor said. He
6 said that the testimony from Derrick Mosley is that
7 Tyrone Shumpert, the applicant herein, had a gun.
8 I mean, that's the case in a nutshell, quoting it
9 at line 4, page 99. "If you don't believe Derrick
10 Mosley, if you don't believe Derrick Mosley, I
11 can't, I can't do anything for you. I can't do
12 anything for you. But not to believe him, you need
13 to satisfy yourself there is a reason not to
14 believe him but there has been absolutely nothing
15 presented not to believe Derrick Mosley.

16 The Court fails to agree with counsel, able
17 counsel for the applicant, that that is a burden
18 shifting remark, as it could have gone to the
19 cross-examination of Derrick Mosley. So, there is
20 no burden shifting involved. The Solicitor is
21 pointing out that nothing was brought out that
22 would indicate that there were any facts in this
23 trial that would cause any reasonable person not to
24 believe Derrick Mosley. That does not shift the
25 burden over to the applicant herein to have

1 presented any testimony, particularly in view of
2 the Court's absolute thorough charge to the jury
3 that the defendant had a right not to testify, had
4 no obligation to present any evidence.

5 Now, the Court has read the record and
6 briefs. There were only, out of the box there were
7 only drawn two minority potential jurors, both of
8 whom were struck by the State, and counsel, trial
9 counsel, Mr. Mayer, has responded fully to his not
10 having made a Batson motion, because his
11 investigation indicated that those persons had
12 criminal records. They were properly stricken by
13 the State, taking the testimony under oath of Mr.
14 Mayer as being true.

15 His not calling the other witnesses is
16 certainly based upon a strategic decision that were
17 he to have called those witnesses their criminal
18 record would have mitigated against this applicant.

19 The Court is not able to conclude that trial
20 counsel was deficient in any way. There was no
21 ineffective assistance of counsel, based upon any
22 of the allegations contained in the application,
23 and the application is respectfully dismissed.

24 Miss Thames, you will do a thorough and
25 complete order.

1 MS. THAMES: Yes, Your Honor, I will.

2 THE COURT: And, Mr. Shumpert, you are
3 advised that you have a right to appeal this
4 decision and your time for appeal will begin when
5 you and your attorney receive the final order.

6 Now, we have a little time here that we're
7 going to look for an affidavit, so that will extend
8 the time slightly that you will receive the final
9 order. And, Mr. Richey, you will give notice of
10 intent to appeal on behalf of Mr. Shumpert and the
11 matter will take its course from there.

12 Now, the important thing is, Mr. Shumpert, do
13 you understand you have the right to appeal this
14 decision?

15 MR. SHUMPERT: Yes, sir.

16 THE COURT: Thank you, sir. Is there
17 anything further from any quarter?

18 MR. RICHEY: Your Honor, it is my
19 understanding the Court, if the affidavit says
20 something differently, than the Court would want
21 the affidavit, but if it's going to be consistent
22 do you want me to still supply it for the record?
23 I want to make sure.

24 THE COURT: If the affidavit says something
25 different, the Court has already stated that we

1 will return to this matter.

2 MR. RICHEY: Okay.

3 THE COURT: But based upon what you have
4 represented what you expect the affidavit to say,
5 then the Court has made a ruling which although not
6 final, is tentative and will become final unless
7 there is something in that affidavit that's
8 unexpected.

9 MR. RICHEY: Okay. Thank you, Your Honor.

10 THE COURT: Is that your understanding?

11 MR. RICHEY: That's my understanding, Your
12 Honor.

13 THE COURT: Is that your understanding, Miss
14 Thames?

15 MS. THAMES: Yes, Your Honor.

16 THE COURT: Very well. These proceedings are
17 closed.

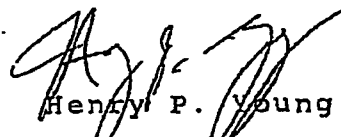
18 (Concluded at 12:08 p.m.).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Laurens County, South Carolina, on the 18th day of January, 2006.

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

May 28, 2006


Henry P. Young
Court Reporter

BARBARA T. WASSON

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	2005 MAR -b P 2: 52
	)	2005-CP-30-422
Tyrone Shumpert, SCDC No. 292828,	)	
Applicant,	)	LAURENS COUNTY
	)	CLERK OF COURT
v.	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
State of South Carolina,	)	
Respondent.	)	

Rodney Richey, Esquire, appearing for the Applicant.

Julie M. Thames, Assistant Attorney General, appearing for the Respondent.

This is a post-conviction relief (PCR) matter. The Applicant filed an application for PCR on May 24, 2005. The Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel. In addition, the Applicant alleged that juror misconduct occurred during the deliberations in his trial. An evidentiary hearing was convened at the Laurens County Courthouse on January 18, 2006.

I. PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Laurens County Grand Jury indicted the Applicant at the November 2002 term for conspiracy, two (2) counts of armed robbery, and possession of a firearm during the commission of a violent crime (02-GS-30-1018). William G. Mayer, Esquire, represented the Applicant. On April 28, 2003, the Applicant proceeded to trial before the Honorable James W. Johnson, Jr., and a jury. The Applicant was convicted of conspiracy and the two (2) counts of armed robbery, but was acquitted of the firearms charge. Judge

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A TRUE COPY OF ORIGINAL

Barbara T. Wasson
BARBARA T. WASSON
Laurens County CACP & GS

Johnson sentenced him to five (5) years for conspiracy and to twenty-two (22) years for each count of armed robbery, with all sentences concurrent.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App. filed February 8, 2005).

II. APPLICABLE LAW

Ineffective assistance of counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, *supra*. 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,

Rs 278-11

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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, 474 U.S. 52, 106 S. Ct. 366, (1985).

III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Prior to the evidentiary hearing, a conference was held in chambers to determine whether or not the Applicant could submit an affidavit. The affidavit purportedly contained the statement of one of the jurors in the Applicant's trial. The juror stated that he believed certain members of the jury considered the fact that the Applicant did not testify in their deliberations. The Applicant wanted to present the affidavit as newly discovered evidence. The Applicant argued the affidavit be allowed due to the obvious unfairness to the Applicant. The Respondent objected and argued that Rule 606(b), SCRE, and South Carolina case law clearly prohibited the introduction of such a statement. The Respondent further argued that the affidavit clearly showed the juror's feelings were largely based on hindsight and reflection after the verdict.

This Court finds that the Applicant is clearly prohibited from introducing the affidavit at the PCR hearing. State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995); State v. Franklin, 341 S.C. 555, 534 S.E.2d 716 (Ct. App. 2000); State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004). This Court did allow the affidavit to be marked as an exhibit for the purposes of appellate review.

At the PCR evidentiary hearing, the Applicant testified that trial counsel was ineffective in

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failing to call witnesses to testify at trial. He testified that witnesses who could have testified as to his alibi were in the courtroom, but that trial counsel did not offer their testimony. The Applicant testified that trial counsel convinced him not to put up any witnesses in order to reserve the last argument. He testified that he based his decision not to testify based upon his prior record and advice from trial counsel.

The Applicant testified that trial counsel did not move for a mistrial based on a Batson violation. He testified that African-Americans were excluded from the jury. In addition, the Applicant acknowledged that he had received an offer from the solicitor that would have allowed him to plead to strong arm robbery, and that trial counsel encouraged him to take the plea. He testified at the PCR hearing that he signed the document declining the offer in regard to the plea offer without reading it and that he did not understand its contents.

The Applicant further testified that he had heard that a videotape existed, but that the tape was never turned over. He acknowledged that at the guilty plea a discussion about the tape was had wherein the solicitor's office was going to look for the tape. The tape was never found, nor was it used at the guilty plea hearing. The Applicant also testified that a comment made by the solicitor in closing argument improperly shifted the burden of proof to the Applicant. Lastly, the Applicant testified that trial counsel failed to investigate and did not prepare a defense.

The Applicant's girlfriend testified at the PCR hearing. She testified that the Applicant is the father of her child. She testified that the Applicant was at her house during the time of the offense and that trial counsel stated to her in regard to the Applicant's case, that he was "gambling his case."

Trial counsel also testified at the PCR hearing. He testified that the State's case was weak

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and that the only testimony implicating the Applicant was the "mythical 4th man" that allegedly participated in the robbery. Trial counsel testified that he discussed witnesses with the Applicant and that he interviewed two of the co-defendants. He testified that the co-defendants who were in jail would have testified that the Applicant was not involved, but that it was the fourth man who testified that the Applicant was involved in the robbery.

Trial counsel testified that a common trial strategy is to not put up a defense in order to preserve the last argument. He testified that this strategy often works and that while he thought it was a good strategy in this case based on the State's weak evidence, it did not work this time and the jury found the Applicant guilty. He testified that he discussed this strategy with the Applicant at least twice and that he still believes today that it would be a good strategy based on the lack of evidence produced by the State.

Trial counsel testified that after the jury was chosen, he had an off-the-record discussion with the solicitor about the two African-Americans that had been struck from the jury. He testified that based on the solicitor's information concerning prior criminal records for both prospective jurors, he saw no reason to object to the jury selection process. Lastly, trial counsel testified that the plea offer made to the Applicant for a negotiated sentence to strong arm robbery was repeated throughout the trial. He testified that he initially advised the Applicant to take the deal. He also testified that he believed the continuing offer to strong arm robbery indicated that the State knew its case was weak.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly.

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Further, this Court reviewed the records of the Laurens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the application for PCR, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds that the allegation that trial counsel's representation fell below reasonable professional norms is without merit. Trial counsel testified that the reason he did not make a Batson motion in reference to two African-Americans being struck by the State was that he had an off-the-record discussion with the solicitor and based upon representations by the solicitor that the two individuals were struck for race neutral reasons, he opted not to object. Jury selection is inherently a matter of trial tactics. Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999). While a defendant has the right to challenge a juror for cause, the exercise of peremptory challenges by counsel adequately protects this right. Id. Therefore, absent credible evidence that the failure to strike a juror or challenge them for cause prejudiced the defense, counsel's actions are not ineffective assistance. Id. Accordingly, this Court finds no error in this regard.

This Court further finds trial counsel was not ineffective in reserving the last argument by not presenting any evidence. Trial counsel articulated valid strategy reasons for wanting to preserve the last argument. Trial counsel testified, and the record reflects, that the State's case against the Applicant rested primarily on the testimony of one co-defendant. Trial counsel testified that the only witnesses that could possibly have testified on behalf of the Applicant were the other co-defendants who had already been sentenced and he believed their testimony would not be credible. Trial

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counsel testified that based on the evidence presented by the State, he did not believe the jury could return a verdict of guilty. He testified at the PCR hearing that he still believes no evidence supported the jury's decision, but that they were presented with the evidence and they rendered a decision.

This Court finds that trial counsel did the best possible job under the circumstances and that he performed well within the range of competency expected of criminal attorneys. This Court finds the comment by the solicitor during his closing argument was not burden shifting and that it could have been a reference to the cross examination of the witness.

V. CONCLUSION

This Court concludes that the Applicant failed to carry his burden of proof to show that trial counsel's representation fell below reasonable professional norms or that he was prejudiced by the alleged deficient representation. The Applicant's former trial counsel rendered reasonably effective assistance of counsel under prevailing professional norms and demonstrated a normal degree of skill, knowledge, and professional judgment that is expected of an attorney in a criminal case. Strickland v. Washington, supra; Cherry v. State, supra. Additionally, the Applicant did not carry his burden to show a reasonable probability that the result at trial would have been different had trial counsel done what the Applicant alleges should or should not have been done. Johnson v. State, supra.

As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. These allegations are not supported by any law and were not addressed at the hearing. Accordingly, this Court finds that the Applicant waived the allegations and failed to meet his burden of proof regarding them.

JS 7/28

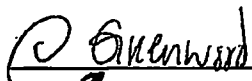
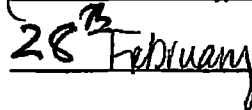
Accordingly, they are denied and dismissed with prejudice.

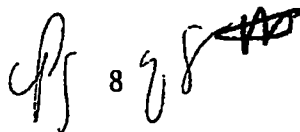
IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE;**
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED.


Wyatt T. Saunders,
Presiding Judge
Eighth Judicial Circuit


O. Greenwood, South Carolina

28th February, 2006.


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BARBARA T. WASSON

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LAURENS 2006 MAR -6 PD 2: 52

2005-CP-30-422

Tyrone Shumpert, #292828 LAURENS COUNTY
 CLERK OF COURT

Applicant,

vs

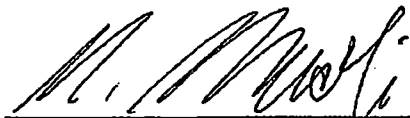
State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney Richey, Esquire
 P.O. Box 10916
 Greenville, SC 29603-0916

DATED this 15th day of February, 2006.


Gianandrea A. Maoli, Legal Assistant
 For Respondent

378 S.C. 62

Supreme Court of South Carolina.

Tyrone SHUMPERT, Petitioner,

v.

STATE of South Carolina, Respondent.

No. 26483. | Submitted April
16, 2008. | Decided May 12, 2008.

Synopsis

Background: Petitioner sought post-conviction relief (PCR) following convictions for armed robbery and conspiracy. The Circuit Court, Laurens County, Wyatt T. Saunders, Jr., denied relief. Petitioner sought certiorari review.

[Holding:] The Supreme Court, Toal, C.J., held that juror affidavit, alleging that deliberating jurors improperly considered defendant's failure to testify as evidence of guilt, did not raise sufficient questions of fundamental fairness so as to be admissible evidence of jury misconduct.

Affirmed.

West Headnotes (5)

[1] Criminal Law

Interlocutory, Collateral, and
Supplementary Proceedings and Questions

Supreme Court gives great deference to post-conviction relief (PCR) court's findings and conclusions.

2 Cases that cite this headnote

[2] Criminal Law

Post-Conviction Relief

Post-conviction relief (PCR) court's findings will be upheld on review if there is any evidence of probative value supporting them.

3 Cases that cite this headnote

[3] Criminal Law

Interlocutory, Collateral, and
Supplementary Proceedings and Questions

Where post-conviction relief (PCR) court's decision is controlled by an error of law, Supreme Court will reverse.

3 Cases that cite this headnote

[4] Criminal Law

Misconduct of Jurors, in General

Juror's affidavit, alleging that deliberating jurors improperly considered defendant's failure to testify as evidence of guilt, did not raise sufficient questions of fundamental fairness so as to be admissible evidence of jury misconduct; juror's affidavit as to what may have confused other jurors or influenced their votes was pure speculation presented without specific factual support, and juror's averment that he would initially vote to acquit if he had preliminary vote to do over again did not relate to juror's ultimate vote of guilty. Rules of Evid., Rule 606(b).

4 Cases that cite this headnote

[5] Criminal Law

Statements, Affidavits, and Testimony of
Jurors

Trial courts are justified in exercising a degree of caution before entertaining juror testimony in an attack on a jury's verdict. Rules of Evid., Rule 606(b).

1 Cases that cite this headnote

Attorneys and Law Firms

****369** Appellate Defender Robert M. Pachak, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Julie M. Thames, all of Columbia, for Respondent.

Opinion

Chief Justice TOAL:

*63 The post-conviction relief ("PCR") court denied relief to Petitioner Tyrone Shumpert, and Petitioner requested that this Court issue a writ of certiorari to review the PCR court's *64 decision. This Court issued the writ to review whether the PCR court erred in refusing to admit an affidavit which purportedly contains evidence of jury misconduct. **370 Because we find the PCR court did not err in refusing to admit the affidavit, we affirm.

FACTUAL/PROCEDURAL BACKGROUND

The criminal case that preceded this PCR action arose out of an armed robbery which occurred late one evening in May 2002, in Laurens County, South Carolina. A small band of individuals robbed the two patrons of a local laundromat, and although the total number of criminal participants and the number of participants who were armed is disputed, it is undisputed that at least some of the robbers brandished firearms during the robbery. One of the confessed participants implicated Petitioner in the crime, and the State charged Petitioner with two counts of armed robbery, one count of conspiracy to commit armed robbery, and one count of possession of a firearm or knife during the commission of a violent crime.

The State's case at trial consisted of the testimonies of the victims and the confessed participant. The confessed participant testified to Petitioner's involvement in the crime, but neither of the victims could identify Petitioner as having been involved in the robbery. Believing that the State's case in chief was relatively weak, Petitioner opted not to put up a defense in order to give the last closing argument to the jury. The jury acquitted Petitioner of the possession charge, but convicted him on the armed robbery and conspiracy charges. Petitioner received a total sentence of twenty-two years imprisonment, and his direct appeal was dismissed by the court of appeals pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

Petitioner filed a PCR application, and at the PCR hearing, Petitioner sought to admit an affidavit of one of the jurors in his criminal trial as evidence of jury misconduct. In relevant part, the affidavit provides:

I recall it being discussed in the jury room that if [Petitioner] wasn't guilty [] he would have taken the stand and informed us, and also one of the jurors stated that if he *65 wasn't guilty [] he would have had family members or witnesses take the stand to tell us.

There were a couple of people at least, maybe more, that made these statements. I firmly believe that these comments weighed importantly in the jury deciding to convict [Petitioner]. The tall skinny white lady who kept wanting to talk to [the trial court] seemed very concerned by this and I believe it played a big part in her decisions. She was very confused about it all. Also the preacher's wife, I can't recall her name, was very unsure about it.

I don't recall anybody in the jury room mentioning the judge telling us not to consider that. I do remember the judge saying that we can only "reach a decision based on the evidence presented before you today."

I think when we voted we were ten to two to convict when the ladies asked the judge if they could go home and sleep on it. If I had it to do again, it would have been nine to three because I think I let those comments about him not testifying swing my vote. Deep down inside I think we made a wrong decision and for the wrong reason-basically for the comments that were made in that room about him not getting up to deny it. I also believe that we made those ladies change their vote because of that. I feel that others in that jury, if they are asked, will agree with me, especially those two ladies.

At the PCR hearing, Petitioner argued that the affidavit constituted evidence that some jurors may have considered the fact that Petitioner did not testify at trial in their deliberations. The State argued that the affidavit was inadmissible under the rules of evidence and the relevant jurisprudence, and that the affidavit was based largely on hindsight and speculation. The PCR court held that the affidavit was inadmissible, and the hearing continued in order to address the remaining claims in Petitioner's PCR application. The PCR court ultimately denied relief.

This Court granted Petitioner's request for a writ of certiorari, and Petitioner presents the following issue for review:

Did the PCR court err in excluding the juror's affidavit?

****371 *66 STANDARD OF REVIEW**

[1] [2] [3] This Court gives great deference to the PCR court's findings and conclusions. *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000) (citing *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995)). A PCR court's findings will be upheld on review if there is any evidence of probative value supporting them. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Where the PCR court's decision is controlled by an error of law, however, this Court will reverse. *Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

LAW/ANALYSIS

Petitioner argues that the PCR court erred in excluding the juror's affidavit. We disagree.

For a considerable period of history, the rule in South Carolina was that a juror's testimony was not admissible to prove either a juror's own misconduct or the misconduct of fellow jurors. *State v. Thomas*, 268 S.C. 343, 348, 234 S.E.2d 16, 18 (1977) (citing *Barsh v. Chrysler Corp.*, 262 S.C. 129, 203 S.E.2d 107 (1974)). Rule 606(b) of the South Carolina Rules of Evidence alters this common law rule by allowing a juror to offer testimony as to "whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." The rule additionally provides:

[A] juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, ... [n]or may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Id. Rule 606 thus draws a distinction between evidence of external influences on the jury's deliberations and comments of jurors occurring during deliberations. While the rule allows evidence of the former to be introduced, it prohibits the introduction of the latter.

*67 Although Rule 606 expressly prohibits the introduction of juror testimony regarding both the content and the effect of statements occurring during the jury's deliberations, this Court has recognized an exception to that categorical prohibition. In *State v. Hunter*, this Court held that juror testimony involving internal misconduct may be received only when necessary to ensure fundamental fairness. 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). That case involved allegations by a juror that the verdict was tainted by racial prejudice, and this Court affirmed the rule announced in *Hunter* in the later case *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999), which involved allegations that the jury began deliberations prematurely. The Court has instructed that a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial. *Id.* at 314, 509 S.E.2d at 814.¹

[4] Turning the focus to an analysis of the affidavit offered in the instant case, we find that it was not necessary that the PCR court admit the affidavit in order to ensure fundamental fairness. Though the affidavit is significantly longer than this summary, the affidavit essentially provides that the juror recalls "a couple of people, maybe more" remarking that if Petitioner was not guilty he would have taken the stand or presented a defense; that the juror does not recall anyone mentioning the trial court's instructions not to consider Petitioner's decision not to testify; that if the juror had it to do over again, he would cast his initial vote to acquit; that the juror thinks other jurors changed their vote because of the comments; and that **372 the juror believes the jury made the wrong decision and "think[s][he] let those comments ... swing [his] vote." Although this Court has not articulated precise guideposts for judging whether proffered juror testimony raises sufficient questions of fundamental fairness so as to be admissible, a return to our precedent is instructive.

State v. Hunter, the seminal case from this Court on the issue of juror testimony regarding statements and conduct *68 during the deliberative process, involved a juror's allegations that she was coerced through racial intimidation to cast her vote one way. We held "[i]f a juror claims prejudice played

a role in determining the guilt or innocence of a defendant, investigation into the matter is necessary.” 320 S.C. at 88, 463 S.E.2d at 316. “To hold otherwise,” we stated, “would violate ‘the plainest principles of justice.’ ” *Id.* The case *McDonald v. Pless*, a federal decision, similarly recognizes the potential for “instances in which [juror testimony] could not be excluded without violating the plainest principles of justice.” 238 U.S. 264, 268-69, 35 S.Ct. 783, 59 L.Ed. 1300 (1915) (internal quotation marks omitted). This Court relied on *McDonald* in announcing the limited exception to the exclusion of juror testimony regarding deliberations, *see Hunter*, 320 S.C. at 88, 463 S.E.2d at 316, and other federal precedent echoes *McDonald's* language that juror testimony must raise significant questions of substantial injustice in order to be admissible. *See, e.g., Downey v. Peyton*, 451 F.2d 236, 239-40 (4th Cir.1971) (describing evidence that the jury's verdict was based on certain extrinsic information as creating such a probability of prejudice that the verdict was deemed inherently lacking in due process).

Using this jurisprudence as a guide, it is clear, in our view, that this affidavit does not measure up to the high bar that precedent sets for the seriousness of allegations that juror testimony must raise before it may be admitted. We think it is plain that the portion of the affidavit pertaining to what may have confused other jurors or influenced their votes is pure speculation presented without any specific factual support, and the juror's testimony about his own deliberative process is similarly flawed. The generic assertion that a juror would vote the opposite way if given another opportunity too closely resembles a case of buyer's remorse from a guilty verdict to be given much credence. Moreover, although the juror avers that if he had the preliminary vote to do over again, he would cast an initial vote to acquit, this testimony does not relate to the juror's ultimate vote of guilty. The jury returned a unanimous verdict, and the trial court polled the jury after it returned a verdict.

This analysis should not be interpreted as suggesting that more concrete and factually specific allegations regarding a *69 jury's consideration of a defendant's failure to testify might not raise such significant questions that it is necessary to admit the testimony in order to ensure fundamental fairness. In this vein, it is important to point out a subtle flaw in Petitioner's argument. Petitioner argues that the question presented in the instant case is whether consideration of a defendant's failure to testify can potentially implicate fundamental fairness. We disagree. The question we address here is whether the affidavit offered in the instant case

suggests that the conduct of Petitioner's jury rendered his trial fundamentally unfair. Because the affidavit at issue does not suggest that Petitioner's trial was fundamentally unfair, we affirm the PCR court's decision excluding the juror's affidavit.²

CONCLUSION

[5] The occurrence of a significant degree of jury misconduct calling for the admission of juror testimony has proved to be quite rare. *See State v. Pittman*, 373 S.C. at 554-55, 647 S.E.2d at 158 (suggesting that the mine-run of prejudicial jury misconduct cases involve internal coercion based on race or gender bias). For this reason, we think trial courts are justified in exercising a degree of caution before entertaining such evidence in an attack on a jury's verdict. As the court stated in *McDonald*:

****373** But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might vindicate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct ... [and] the result would be to make what was intended to be a private deliberation the constant subject of public investigation.... [T]he argument in favor of receiving such evidence is not only very strong, but unanswerable- *70 when looked at solely from the standpoint of the private party who has been wronged by such misconduct. The argument, however, has not been sufficiently convincing to induce legislatures generally to repeal or to modify the rule. For, while it may often exclude the only possible evidence of misconduct, a change in the rule would open the door to the

most pernicious arts and tampering with jurors. The practice would be replete with dangerous consequences. It would lead to the grossest fraud and abuse and no verdict would be safe.

MOORE, WALLER, PLEICONES and BEATTY, JJ.,
concur.

All Citations

238 U.S. at 267-68, 35 S.Ct. 783. With these principles in mind, we affirm the PCR court's denial of relief.

378 S.C. 62, 661 S.E.2d 369

Footnotes

- 1 Both of these cases were direct appeals from criminal convictions. The parties to the instant case did not argue that the rules for the introduction of juror testimony and the standard for a grant of post-conviction relief based on internal jury misconduct differ from the standard applicable on direct appeal. We therefore assume, but do not decide, that the analysis outlined in our direct appeal precedent applies.
- 2 As a housekeeping matter, it is important to note that even if circumstances called for the admission of the affidavit, we have held that a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial. See *Aldret*, 333 S.C. at 314, 509 S.E.2d at 814.

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>South Carolina</u>
Name (under which you were convicted): <u>Tyrone Shumpert</u>		Docket or Case No.: <u>Yes</u>
Place of Confinement: <u>McCormick</u>		Prisoner No.: <u>292829</u>
Petitioner (include the name under which you were convicted) <u>Tyrone Shumpert</u>		Respondent (authorized person having custody of petitioner) <u>Colie L. Rushton</u>
The Attorney General of the State of <u>South Carolina</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging:
Laurens County - General Session - Eighth Circuit
Laurens, SC 29360
- (b) Criminal docket or case number (if you know): 02-68-30-1018
- (a) Date of the judgment of conviction (if you know): 4-30-03
- (b) Date of sentencing: 4-30-03
- Length of sentence: 22 years
- 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:
ARMED ROBBERY (COUNT ONE) - 22 years
ARMED ROBBERY (COUNT TWO) - 22 years
CONSPIRACY (COUNT) - 5 years
ALL SENTENCES ARE CONCURRENT
- (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?

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2008 SEP 12 PM 1:03

(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: SC COURT OF APPEALS

(b) Docket or case number (if you know): [OP. No. 2005-UP-095]

(c) Result: Affirmed

(d) Date of result (if you know): ~~March 2006~~

(e) Citation to the case (if you know): _____

(f) Grounds raised: Directed verdict

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Common PLEAS COURT (Post Conviction Relief)

(2) Docket or case number (if you know): 2005-CP-30-422

(3) Result: Denial and Dismissed with Prejudice

(4) Date of result (if you know): February 28, 2006

(5) Citation to the case (if you know): _____

(6) Grounds raised: Counsel fail to object to Batson Violation

(A) and the selection of an all white/Elderly Jury

(B) Counsel failed to present and subpoena Alibi to trial

(C) Counsel failed to object when Prosecutor Alluded to lack of Defense-

directly. (h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): _____

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(2) Result: GRANTED PETITION for writ of Certiorari /
Denied Writ of Certiorari

(3) Date of result (if you know): December 13, 2007 ^{petition} / UNSURE ^{when writ was} DENIED

(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: _____

(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): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

[illegible]

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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: Trial Counsel failed to move for a Batson Violation: whereas all members of my race were struck from jury

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During ~~the~~ Jury Selection Juror 53 DAVID JACKSON and Juror 33 Gregory Fielder was struck from Jury Selection by Prosecutor. Plus all Jurors picked were Caucasians, over the age of 35 by 90%

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(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: My Prese Brief was returned "undated"

(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

Name and location of the court where the motion or petition was filed: _____

Common Pleas Court - Laurens, South Carolina

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Docket or case number (if you know): 2005-CP-30-422Date of the court's decision: February 28, 2006Result (attach a copy of the court's opinion or order, if available): Denied

(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 Court Columbia, SC

Docket or case number (if you know): _____

Date of the court's decision: UNSURE OF EXACT DATE

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: My Appellate Counsel never raise it.

(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: _____

GROUND TWO: Counsel fail to present an alibi defense

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At trial Kenya Robinson was present because I notified her by phone is the only reason, Oscar Taylor, Brandon Williams, Marcus Brown and Lamar Todd were never subpoena to trial after repeated request to counselman Mayor

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(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: ^{Anders} Prose Brief undated

(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: PCR

Name and location of the court where the motion or petition was filed: Common Pleas

Laurens South Carolina 29360

Docket or case number (if you know): 2005-CP-30-422

Date of the court's decision: February 28, 2006

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: South Carolina

Supreme Court of Appeals - Columbia, SC

Docket or case number (if you know): UNSURE

Date of the court's decision: 2/28/06

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: Appeal. Counsel never raised it.

(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: _____

GROUND THREE: counsel failed to object to
Prosecutor's allusion to my failure to present
a defense.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecutor statement: "There's been absolutely nothing presented
for you not to believe Derek Mosley" who was the state's
only witness. This also influenced the jury to use the
right to silence against me. [THE EXTRANEOUS INFLUENCE!!]

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(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: My Prose (ANDERS BREITZ
was "UPDATED"

(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 Application / Motion

Name and location of the court where the motion or petition was filed: Common PLEAS Court
LAURENS, South Carolina 29360

Docket or case number (if you know): _____

Date of the court's decision: 2/28/08

Result (attach a copy of the court's opinion or order, if available): Denied

(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: Supreme Court of
South Carolina, Court of Appeals Columbia, SC

Docket or case number (if you know): _____

Date of the court's decision: ~~2/28/08~~ UNSURE of Exact Date

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: Appellate Counselman Robert McPachak did not raise
this issue

(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: _____

GROUND FOUR: ^(Serial 07) Admissibility of Juror Affidavit

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Post conviction Relief Judge didn't allow the Affidavit on records. Affidavit contained facts that my silence was used against me by Juror even after the Judges charges and prosecutors extraneous influence outside of deliberations.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(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: found out ~~before~~ after Direct Appeal was denied

(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

Name and location of the court where the motion or petition was filed: Common Pleas

Laurens County, SC 29360

Docket or case number (if you know): CP-30-422

Date of the court's decision: 2/28/06

Result (attach a copy of the court's opinion or order, if available): Dismissed with prejudice, Denied ORDER

(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: Supreme Court of
South Carolina Court of Appeals - Columbia, SC

Docket or case number (if you know): _____

Date of the court's decision: Unsure of exact date

Result (attach a copy of the court's opinion or order, if available): Adjudicated

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(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: _____

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: _____

(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: _____

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. _____

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. _____

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: NONE / N/A

(b) At arraignment and plea: NONE / N/A

(c) At trial: William G. Mayer

116 West Main St. Laurens SC 29360

(d) At sentencing: William G. Mayer

116 W. Main St. Laurens, SC 29360

(e) On appeal: Tara S. Taggart

1205 Pendleton St Room 306 Columbia SC 29201

(f) In any post-conviction proceeding: Rodney W. Richey

P.O. Box 10916 Greenville SC 29603

(g) On appeal from any ruling against you in a post-conviction proceeding: Robert M. Pachak

P.O. Box 11589 Columbia SC 29211-1589

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: McCormick Uptown Court House

1335 133 S. Mine St., Room 102 McCormick, SC 29835

(b) Give the date the other sentence was imposed: unsure of DATE

(c) Give the length of the other sentence: 3 years non violent

(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. *

* 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...)

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Therefore, petitioner asks that the Court grant the following relief:

(New Evid. Hearing/PCR.)

Vacate, ~~revoke~~, ~~renew~~ sentence or new trial

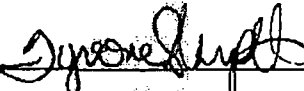
or any other relief to which petitioner may be entitled.

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

9/9/08 (month, date, year).

Executed (signed) on 9/09/08 (date).



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.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

District Court of South Carolina

[Insert appropriate court]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Tyrone Shumpert, #292828,

Petitioner,

v.

Colie L. Rushton, Warden McCormick
Correctional Institution,

Respondents.

C/A No. 8:08-3172-HFF-BHH

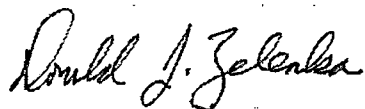
**MOTION FOR SUMMARY
JUDGMENT**

The Respondents, above-named, by and through the undersigned attorneys, would respectfully move this Court, pursuant to Rule 12(b) and Rule 56(b) F.R.C.P., for summary judgment based on the pleadings.

Respectfully submitted,
HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
ID No. 4425



By: /s/ Donald J. Zelenka
ATTORNEYS FOR RESPONDENTS

December 17, 2008
Post Office Box 11549
Columbia, South Carolina 29211

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Tyrone Shumpert, #292828,	)	C/A No. 8:08-3172-HFF-BHH
	)	
Petitioner,	)	RETURN AND MEMORANDUM
	)	OF LAW IN SUPPORT OF
v.	)	MOTION FOR SUMMARY
	)	JUDGEMENT
Colie L. Rushton, Warden McCormick	)	
Correctional Institution,	)	
	)	
Respondents.	)	

The Respondent, above-named, by and through the undersigned attorneys, would hereby make a Return to the Rule To Show Cause filed on September 24, 2008 by the Honorable Bruce Howe Hendricks, United States Magistrate Judge to the pro se petition for a writ of habeas corpus delivered September 9, 2008. The Respondents would show this Court the following:

I.

The petitioner, Tyrone Shumpert, # 292828, is presently confined at the McCormick Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Laurens County. The petitioner was indicted at the November 2002 term for conspiracy, two (2) counts of armed robbery, and possession of a firearm during the commission of a violent crime. (02-GS-30-1018). He was represented by William G. Mayer. On April 28, 2003, the Petitioner went to trial before the Honorable James W. Johnson, Jr., and a jury. He was convicted of conspiracy and two counts of armed robbery and found not guilty of the possession of a weapon charge. He was sentenced to twenty-two (22) years on each armed robbery charge concurrent and five (5) years for conspiracy.

The Petitioner made an appeal to the South Carolina Court of Appeals. On appeal, he was

represented by Tara S. Taggart of the South Carolina Office of Appellate Defense. Counsel made a Final Anders Brief of Appellant and request to be relieved asserting as the sole arguable ground: "[w]hether the judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt?" The Petitioner made a Pro Ser Brief of Appellant received on September 14, 2004 in which he alleged a Batson violation, prosecutorial misconduct based upon a comment, bolstering of witnesses, improper seating of a juror, and ineffective counsel. The Court of Appeals dismissed the appeal after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). *State v. Tyrone Shumpert*, Unpublished Op. No. 2005-UP-095 (S.C. Ct. App. Feb. 8, 2005). The remittitur was issued on March 15, 2003 after rehearing and certiorari was not sought to the South Carolina Supreme Court.

On May 24, 2005, the Petitioner made an application for postconviction relief in Laurens County. 2005-CP-30-422. App.p. 166. In the application, he alleged:

- I. Ineffective Assistance of Counsel:
 - A. Counsel failed to object to an all white jury.
 - B. Counsel failed to present an alibi defense.
 - C. Counsel failed to object to the prosecutor's argument alluding that the defense had failed to put up a defense.

App.p. 167. The Respondent made a Return. App.p. 170. On January 18, 2006, an evidentiary hearing was convened before the Honorable Wyatt T. Saunders, Presiding Judge. The Petitioner was present and represented by Rodney Richey. The State was represented by Assistant Attorney General Julie M. Thames. Testimony was received from Shumpert, Candi Robertson and William Mayer. App.p. 177- 231. On March 6, 2006, Judge Saunders entered his order denying the application. App.p. 234 -241.

The Petitioner made an appeal to the South Carolina Supreme Court. On Oct. 27, 2006, .
Shumpert made a Petition for Writ of Certiorari asserting as the sole issue:

Whether petitioner's case should be remanded for consideration of an affidavit that
was wrongly excluded?"

The Respondent made a Return to Petition for Writ of Certiorari, January 7, 2007. On December 13, 2007, the South Carolina Supreme Court entered an order granting certiorari and setting a briefing schedule. The Brief of Petitioner was filed on January 9, 2008. The Brief of Respondent was filed on February 8, 2008. On May 12, 2008, the Supreme Court affirmed the judgement denying state postconviction relief. *Tyrone Shumpert v. State*, Op. No. 26483 (S.C.S.Ct. May 12, 2008) [378 S.C. 62, 661 S.E.2d 39 (2008)]. The remittitur was entered by Remittitur Letter on May 29, 2008.

ATTACHMENTS

Respondents attach and incorporate herein by reference the following documents:

DIRECT APPEAL : State v. Shumpert

1. State v. Shumpert, Final Anders Brief of Appellant, July 27, 2004.
2. State v. Shumpert, Pro se Brief of Appellant, received September 14, 2008.
3. *State v. Tyrone Shumpert*, Unpublished Op. No. 2005-UP-095 (S.C. Ct. App. Feb. 8, 2005).
4. Remittitur Letter, March 15, 2005.

PCR APPEAL : Shumpert v. State, 2005-CP- 30-422.

5. Shumpert v. State, Petition for Writ of Certiorari, dated Oct. 27, 2006.
6. Shumpert v. State, Return to Petition for Writ of Certiorari, January 7, 2007.
7. Shumpert v. State, Order Granting Petition and Briefing, Dec. 13, 2007.
8. Shumpert v. State, Brief of Petitioner, January 9, 2008.
9. Shumpert v. State, Brief of Respondent, February 8, 2008.

10. *Tyrone Shumpert v. State of South Carolina*, Op. No. 26483 (S.C.S.Ct. May 12, 2008) [378 S.C. 62, 661 S.E.2d 39 (2008)].
11. Shumpert v. State. Remittitur Letter, May 29, 2008.
11. Shumpert v. State. PCR Appendix - 251 pages.
12. Shumpert v. State. PCR Supplemental Appendix - 1 page.(Plaintiff's Exhibit 1 IV).

II.

In his petition before this Court, Shumpert makes the following allegations:

- I. Trial counsel failed to move for a Batson violation where all members of my race were struck from the jury.
 - A. During jury selection, juror 53 David Jackson and juror 33 Gregory Fielder were struck from jury selection by prosecutor. Plus all jurors were Caucasian and over the age of 35 by 90%.
- II. Counsel failed to present an alibi defense.
 - A. At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoenaed to trial after repeated request to councilman Mayo.
- III. Counsel failed to object to prosecutor's alluding to my failure to present a defense.
 - A. Prosecutor statement: "there's been absolutely nothing presented for you not to believe Derrick Mosely" who was the state's only witness. This also influenced the jury to use the right to silence against me. [The extraneous

influence.]

IV. Denial of Admissibility of Juror Affidavit.

- A. Post-conviction relief judge did not allow the affidavit on record. Affidavit contained facts that my silence was used against me by jurors even after the judge's charges and prosecutor's extraneous influence outside deliberations.

III.

Federal Habeas Review Under 28 U.S.C. § 2254

Notwithstanding the standards which govern the granting of a motion for summary judgment, the provisions of 28 U.S.C. § 2254 must be examined to determine whether habeas relief is proper. Title 28 U.S.C. § 2254 requires a district court to entertain a petition for habeas corpus relief from a prisoner in State custody, but "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Regardless, "[a]n 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 ... the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). However, the federal court may not grant habeas relief unless the state court's adjudication of the claim:

- (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)(1) and (2); *see also Williams v. Taylor*, 529 U.S. 362 (2000).

The Fourth Circuit Court of Appeals has determined that "the phrase 'adjudication on the merits' in section 2254(d) excludes only claims that were not raised in state court, and not claims that

were decided in state court, albeit in a summary fashion.” *Thomas v. Taylor*, 170 F.3d 466, 475 (4th Cir.1999). When a state court summarily rejects a claim and does not set forth its reasoning, the federal court independently reviews the record and clearly established Supreme Court law. *Bell v. Jarvis*, 236 F.3d 149 (4th Cir.), *cert. denied*, 524 U.S. 830 (2001)(quoting *Bacon v. Lee*, 225 F.3d 470, 478 (e Cir.2000)). However, the court must still “confine [it’s] review to whether the court’s determination ‘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.’” *Id.* at 158. A federal habeas court may grant relief under the “contrary to” clause “if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently that this Court has on a set of materially indistinguishable facts.” *Williams*, 529 U.S. at 413. A federal court may grant a habeas writ under the “unreasonable application” clause, “if the state court identifies the correct governing legal principle from the Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* “An unreasonable application of federal law is different from an incorrect application of federal law.” *Id.* at 410.

When a petitioner challenges the factual determination made by a state court, “federal habeas relief is available only if the state court’s decision to deny post-conviction relief was ‘based on an unreasonable determination of the facts.’” “28 U.S.C. § 2254(d)(2). In reviewing a state court’s ruling on post-conviction relief, we are mindful that ‘a determination on a factual issue made by a State court shall be presumed correct,’ and the burden is on the petitioner to rebut this presumption ‘by clear and convincing evidence.’” *Tucker v. Ozmint*, 350 F.3d 433, 439 (4th Cir.2003).

However, habeas corpus relief is not warranted unless the constitutional trial error had a “substantial and injurious effect or influence in determining the jury’s verdict.” *Brecht v.*

Abrahamson, 507 U.S. 619, 637 (1993); *Richmond v. Polk*, 375 F.3d 309 (4th Cir.2004). "Under this standard, habeas petitioners may obtain plenary review of their constitutional claims, but they are not entitled to habeas relief based on trial error unless they can establish that it resulted in 'actual prejudice.'" *Brecht, supra*.

To prove ineffective assistance of counsel, Petitioner must show that trial counsel's performance was deficient. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). An attorney's performance is deficient when it is not reasonable under prevailing professional norms. *Id.* at 688. Petitioner also must demonstrate that he was prejudiced by trial counsel's alleged deficient performance, in that because of trial counsel's unprofessional errors, the result of the proceeding would have been different. See *id.* at 694.

Strickland requires Petitioner to "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Id.* at 690. The court then must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.* Even if counsel's performance is outside the wide range of professional assistance, an error by counsel will not warrant setting aside the conviction if the error had no effect on the judgment. *Id.* at 694.

EXHAUSTION AND PROCEDURAL BYPASS

To satisfy the statutory requirements, a petitioner first must exhaust his claims by presenting them to the highest state court with jurisdiction to decide them before seeking relief through the federal writ of habeas corpus. *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir.1997). Indeed, a claim is unexhausted unless the substance of a petitioner's claims are "fairly presented" to the state courts. The *Matthews* court explained,

The ground relied upon must be presented face-up and squarely; the federal question must be plainly defined. Oblique references which hint that a theory may be lurking in the woodwork will not suffice. In other words, fair presentation contemplates that both operative facts and the controlling legal principles must be presented to the state court.

Id.

If, however, a habeas petitioner has not presented certain issues to the state's highest court, the claim "nevertheless may be treated as exhausted if it is clear that the claim would be procedurally defaulted under state law if petitioner attempted to raise it at this juncture." George v. Angelone, 100 F.3d 353, 363 (4th Cir.1996). However, since the Petitioner has no further way to exhaust his unexhausted claims, he is not required to attempt to do so; his claims are deemed technically exhausted for habeas purposes. Matthews v. Evatt, 105 F.3d 907 (4th Cir.1997).

Although the claims here are technically exhausted, they are nonetheless unreviewable on the merits because an adequate and independent state law ground, state procedural bypass, is sufficient to uphold the petitioner's convictions. Where a petitioner fails to comply with a state procedural rule, and that failure provides an adequate and independent ground for the state's denial of relief, federal review will also be barred if the state court has expressly relied on the procedural default. Harris v. Reed, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989); Coleman v. Thompson, 501 U.S. 722, 735, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Additionally if a petitioner fails to present a ground for decision, so the state court has nothing upon which to rule, that is a default barring review on the merits here as well. Coleman, 501 U.S. at 735; Teague v. Lane, 489 U.S. 288 at 299, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). In other words, where the state court has not had the opportunity to apply its own procedural bar the federal court will nevertheless bar the claim where application of the bar is clear. Teague, 489 U.S. at 297-98; Bassette v. Thompson, 915

F.2d 932, 937 (4th Cir.1990).

Nonetheless, a Petitioner may overcome the default by showing cause for the default and prejudice therefrom, or actual innocence. See, e.g., Harris v. Reed, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989).

IV.

Failure to Make a Batson Motion

In his first allegation, he asserts that his counsel was ineffective in failing to request a *Batson v. Kentucky* hearing because two jurors from his race were struck. This assertion is procedurally barred due to the failure to raise the claim in the PCR appeal to the South Carolina Supreme Court. *Coleman v. Thompson*, supra. A review of the record reveals that this issue was raised at the state PCR hearing, but was denied by the trial judge after counsel testified that the reason he did not raise the issue was because he was aware that the two struck jurors had a criminal record. See App.p. 229. ("They were properly stricken by the State taking the testimony under oath of Mr. Mayer as true."). Also, App.p. 239 . (written order) . The records reveals that the ineffective assistance and Batson issue was not raised in the certiorari petition before the South Carolina Supreme Court. Because of this abandonment in the collateral appeal, the ground must be dismissed as procedurally barred. Where a petitioner fails to comply with a state procedural rule, and that failure provides an adequate and independent ground for the state's denial of relief, federal review will also be barred if the state court has expressly relied on the procedural default. *Harris v. Reed*, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989); *Coleman v. Thompson*, 501 U.S. 722, 735, 111 S.Ct. 2546, 115 L.Ed.2d

640 (1991).¹

Alternately, the state PCR court did not unreasonably apply *Strickland v. Washington* and *Batson v. Kentucky*, 476 U.S. 79 (1986) in denying relief based upon this record. The Petitioner failed to show either deficient performance or prejudice. The state court record reveals jury selection. App.p. 4-14. The state struck potential jurors Douglas Volauka (119 - white male, App.p. 13, l. 13-16), David Jackson (53 - black male , App.p. 13, l. 25- p. 26, l.30); and Gregory Fielder (black male, App.p. 17, l. 13-16). At the conclusion of selection, after defense counsel consulted with the Solicitor, made no motions concerning the jurors. App.p. 18, l. 15-25. The jury was then sworn as constituted.

During the PCR hearing, counsel William Mayer testified:

If you read the transcript you see as we came down to the very end there is, and of course the transcript, there is a portion where I excused myself to talk to opposing counsel, Mr. Peace was the opposing counsel. If memory serves me, there was very few minorities in the venire and only one and possibly two were picked, both of who had criminal records. I checked them on the state's list. A Batson motion would have been pointless, the State had every right to strike somebody with its peremptory strikes if they have a criminal record.

App.p. 210. Counsel further stated that he had a discussion with Shumpert that evening after

¹The Petitioner cannot receive sanctuary from the default by claiming PCR counsel was ineffective. The claim is barred by 28 U.S.C. § 2254(i): "The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under Section 2254." It is well-settled that there is no constitutional right to habeas counsel in state collateral proceedings. See *Barraza v. Cockrell*, 330 F.3d 349, 352 (5th Cir.2003) ("there is no constitutional right to competent habeas counsel," and a state statutory requirement for the appointment of competent habeas counsel does not create a constitutionally secured right); *Beazley v. Johnson*, 242 F.3d at 271 (no constitutional right to habeas counsel in state collateral proceedings); *Martinez v. Johnson*, 255 F.3d 229, 245 (5th Cir.2001) (same); *Fairman v. Anderson*, 188 F.3d 635, 643 (5th Cir.1999) ("because appointment of counsel on state habeas is not constitutionally required, any error committed by an attorney in such a proceeding 'cannot be constitutionally ineffective' " (quoting *Coleman v. Thompson*, 501 U.S. at 752, 111 S.Ct. 2546).

Shumpert mentioned *Batson* and counsel told him; "we can't do that, we would have to have done that when we drew the jury," and I already informed the court we didn't have any objections." App. p. 210, l. 13-21.

In *Batson*, the Supreme Court established a three-part test to evaluate claims of racial discrimination based on the prosecution's use of peremptory challenges. First, the defendant must make a *prima facie* showing that the challenges at issue were made on the basis of race. *Batson*, 476 U.S. at 96, 106 S.Ct. at 1723. Once the defendant makes this showing, the burden shifts to the state to rebut the inference of discrimination by offering race-neutral explanations for the challenges. *Id.* at 97, 106 S.Ct. at 1723. If the prosecutor articulates such reasons, the court must then determine whether the defendant has established purposeful discrimination. *Id.* at 98, 106 S.Ct. at 1724. That a prospective juror has a criminal record is a proper race-neutral reason for striking the venire member. *United States v. Crawford*, 413 F.3d 873, 875 (8th Cir.2005). Shumpert has made no showing that the government was using the prospective juror's conviction as a pretext for purposeful discrimination. See, *U.S. v. Wilcox*, 487 F.3d 1163, 1170 (C.A.8 (S.D.),2007). See *State v. Martinez*, 294 S.C. 72, 362 S.E.2d 641 (1987) (unemployment and possible criminal records may be race-neutral reasons for a strike); *State v. Cochran*, 369 S.C. 308, 344, 631 S.E.2d 294, 313 (S.C.App.,2006). Counsel therefore was not deficient for failing to object based upon his understanding of the prosecution reason for striking the two potential jurors.² His claim must fail.

Failure to Present Available Alibi Witnesses

² Further, he has made no showing or claim of pretext. There is no showing presented that any other juror with a criminal record was not struck by the State during this trial. His claim fails for this additional reason.

In his second allegation, he asserts that counsel failed to present an alibi defense.³ This issue is barred from habeas consideration because it was not raised in the PCR appeal and certiorari petition before the Supreme Court of South Carolina. A review of the record reveals that this issue was raised at the state PCR hearing, but was denied by the trial judge after counsel, the Petitioner, and Candi Robertson testified. See App.p. 239. Also, App.p. 226-227. (oral order). The records reveals that the ineffective assistance and failure to present alibi issue was not raised in the certiorari petition before the South Carolina Supreme Court. Because of this abandonment in the collateral appeal, the ground must be dismissed as procedurally barred. Where a petitioner fails to comply with a state procedural rule, and that failure provides an adequate and independent ground for the state's denial of relief, federal review will also be barred if the state court has expressly relied on the procedural default. *Harris v. Reed*, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989); *Coleman v. Thompson*, 501 U.S. 722, 735, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

Shumpert testified at his PCR hearing that although he discussed putting up evidence with his counsel, he failed to call Candi Robertson and Randall Williams and Maurice Hooper about his whereabouts that night. Shumpert stated that he discussed the substance of what these witnesses would say with his counsel and his counsel said that he would not use them because they stayed too close to the crime. App.p. 184-185. He testified that the three witnesses were in court during the trial.

³The trial testimony revealed that the incident happened on May 27, 2002. According to the testimony of victim Jennifer Satterfield the robbery at the laundromat occurred around 12:30 to 12:45 am, although she was not exact about the time. App.p. 53, 57. Derek Mosley, a participant in the robbery stated that Shumpert came up to them at Meadowbrook Apartments that evening. He stated that the apartments were about 2 minutes from the laundromat and Shumpert had been there about 15 minutes. App.p. 77-78. He described Maurice Suber and Shumpert entering the laundromat with guns and shirts covering their faces. App.p. 67-68. NOTE : Shumpert's address was at Meadowbrooks Apartments, two minutes from the crime scene. App.p. 249. 242-244,

App.p. 184. He said the decision was made to not call the witnesses in the middle of the trial. App.p. 186. He said his counsel persuaded him not to put up the witnesses. App.p. 186. Similarly, he stated that he agreed with the advice not to testify at the time because of his criminal record of attempted auto braking because his credibility would be attacked. App.p. 186-187. On cross-examination, Shumpert confirmed that he concurred in the decision not to put up any evidence at trial when his counsel announced it to the court. App.p. 195.

During the PCR hearing, the petitioner called Candi Robertson. App.p. 198. She stated that she knew Shumpert and that he had fathered her two year old child. App.p. 198. She stated that she was present at the trial and came on her own free will. She said that her testimony would have been that he was working at night, that he got off work, and that they were sitting in the house "and then about 12:30, I went to bed about 1:30 and he came on no later about 2:00." App.p. 199, l. 10-17. She claimed he was at the house when the crime occurred. She said she did not give the testimony "because Bill Mayer told me he was gambling his case." App.p. 199, l. 23-24.

William Mayer testified that he initially considered the state's case as weak because the victims were unable to identify his client. App.p. 201-202. Mayer stated that the case was based upon the testimony of the alleged accomplice Derek Mosley. App.p. 202-203. He stated that he spoke with Shumpert about witnesses prior to the trial. He said they met with a few people including the woman that he was with that night, who he assumed was Candi Robertson. App.p. 203, l. 6-9. Counsel testified that he also spoke with two individuals who had pled guilty to the crime. App.p. 203. He stated that he learned the person who was the leader of the robbery would have testified that Shumpert had nothing to do with the crime, as well as the other person. App.p. 203. Mayer stated that both were present in the courthouse and available if they decided to put up a defense. App.p.

203-204.

Counsel stated his reasons for not putting up testimony. App.p. 205-207. He stated that he had discussed with his client that not putting up a defense was something you do when the state's case is extraordinarily weak and was not a surrender. He stated that this would create some benefits and allow the defense to argue last without the state being given an opportunity to rebut. App.p. 205. Further, he noted that this decision is not made in advance of the trial but during the trial. App.p. 205.

Mayer stated the decision was made after the state rested its case. App.p. 206. Counsel stated that after the state rested, they discussed their position and counsel's belief that no jury could convict him on the evidence presented if they followed their instructions. App.p. 206-207. Counsel pointed out that the two victims could not identify the Petitioner, but identify others and the conflicting testimony that only three were involved with would not account for Shumpert's presence as compared to Mosley's testimony that four were involved. App.p. 207. Counsel opined that the entire case rested upon Mosley's statement which counsel considered to be self-serving. App.p. 207. Counsel noted that at the time of his testimony that he had not been sentenced, although he questioned that there were no deals when Mosley received a 90 day sentence shortly after the trial. App.p. 208.

Importantly, Mayer stated that it was Shumpert's decision to forego testimony. App.p. 209. He confirmed on cross-examination that he discussed putting up witnesses with Shumpert, but that it was Shumpert's decision. App.p. 215. He stated that it was confirmed by the questioning of Judge Johnson after the state had rested. App.p. 215, see App.p. 90-91 (inquiry of Shumpert about waiving

right to present a defense).⁴

The state PCR court concluded that the failure to call witnesses was based upon a strategic decision. App.p. 229. In the written order, the PCR court held that counsel "was not ineffective in reserving the last argument by not presenting any evidence. App.p. 239-240. The PCR Court held that:

- counsel had articulated a valid strategy for wanting to preserve the last argument.
- counsel testified and the record reflects that the case against Shumpert rested upon the testimony of one co-defendant.
- the only witnesses that could possibly testify on behalf of Shumpert were the other co-defendants who had already been sentenced and he believed there testimony would not have been credible.
- Counsel believed that based upon the evidence presented a jury could not return a guilty verdict.

App.p. 239-240.

⁴During defense counsel Mayer's closing argument, he sought to expose the weaknesses in the state's case from his perspective. He noted that everyone said that there were three people there, not four. App.p. 102, ll. 21-p. 103, l. 3. He also pointed out that no one in law enforcement testified as to how Shumpert was determined to be involved in the crime. App.p. 104. The victim stated that she could identify three people who came into the store, but never identified Shumpert. App.p. 105. While she stated that she later saw 4 black males leave in a car, yet Mosely stated when he left there were four in the car, Todd driving, Brown, Mosley and Suber, but no mention of Shumpert in the car. App.p. 105. Counsel then sought to impeach the credibility of Mosley by asserting Mosley's statements were a self-serving whitewash of his involvement in the crime, although admitting there were three pistols involved at the scene and one of the guns was his but denying it was in his possession during the robbery. App.p. 106. He noted that Mosley initially claimed that Cagle was struck in the head, but the testimony of Cagle revealed that never happened. App.p. 109. He also challenged the claim that there were no deals with Mosley. App.p. 109 - 110.

Respondent submits that the state court decision is a reasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel stated that based upon the evidence presented in the state's case he recommended to Shumpert that a defense be waived and that the benefit of the last argument be retained. In a criminal prosecution, where a defendant introduces no testimony, he is entitled to the final closing argument to the jury. *See State v. Crowe*, 258 S.C. 258, 188 S.E.2d 379, *cert. denied*, 409 U.S. 1077, 93 S.Ct. 691, 34 L.Ed.2d 666 (1972). *State v. Mouzon*, 326 S.C. 199, 53-204, 485 S.E.2d 918, 921 (S.C., 1997). The South Carolina Supreme Court has held that the right to close the argument to the jury is "a substantial right, the denial of which is reversible error," *see State v. Rodgers*, 269 S.C. 22, 24-25, 235 S.E.2d 808, 809 (1977).

Strickland says that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." 466 U.S. at p. 690, 104 S.Ct. at p. 2066. Moreover, "strategic theories made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitation on investigations. *Wade v. Calderon*, *supra*, 29 F.3d 1312, 1316. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

The proffered testimony at the PCR hearing consisted of the testimony of the girlfriend with whom the Petitioner had a baby. App.p. 198. Proposed alibi testimony by a defendant's family members is of significantly less exculpatory value than the testimony of an objective witness. *Romero v. Tansy*, 46 F.3d 1024, 1030 (10th Cir. 1995). Counsel could have thought that alibi witnesses who were family members would not be convincing because of their obvious interest. *U.S. ex rel. Maxwell v. Gilmore*, 37 F.Supp.2d 1078, 1089 (N.D. Ill. 1999). Failure to call an alibi witness was not ineffective in *Wright v. Gramley*, 125 F.3d 1038, 1042 (7th Cir. 1997) where the alibi

evidence was weak:

Failure to call the witness could reasonably have been based by the state court on trial tactics. *Wright v. Vaughn*, 473 F.3d 85 (3rd Cir. 2006). *Knox v. Johnson*, 224 F.3d 470, 479 (5th Cir. 2000) (no ineffectiveness where witness statements were contradictory and otherwise debunked by the evidence). It was ineffective in *Brown v. Myers*, 137 F.3d 1154 (9th Cir. 1998) where no investigation was conducted and the witnesses were close to the time of the crime.

The other witnesses that counsel was considering were the co-defendants who had already pled guilty. The credibility problems of an uncalled co-defendant who had previously pleaded guilty were noted in *Fuller v. Attorney General*, 197 F.3d 1109, 111 (11th Cir. 1999). That the witness was subject to impeachment prevented ineffectiveness in *U.S. v. Foreman*, 323 F.3d 498, 503 (6th Cir. 2003).

It was reported that this location was within close proximity of the crime scene. App.p. 184, l. 15-17. A failure to call an alibi witness was not ineffective where the proposed testimony was not in fact inconsistent with the defendant's presence at the crime. *Knight v. Spencer*, 447 F.3d 6, 16 (1st Cir. 2006) (not ineffective to fail to call a witness who is uncertain of the date in issue); *Millender v. Adams*, 376 F.3d 520, 526-27 (6th Cir. 2004) (failure to call rebuttal witnesses not ineffective when witness not present); *Mathews v. Rakiey*, 54 F.3d 908, 918 (1st Cir. 1995); *Hamblin v. U.S.*, 911 F.2d 551, 556 (11th Cir. 1990); *Williams v. Weldon*, 826 F.2d 1018, 1022 (11th Cir. 1987); *U.S. v. Gallego*, 944 F.Supp. 309, 316 (S.D.N.Y. 1996) (professed alibi witnesses to car repairs did not present dates actually inconsistent with presence on date of crime).

Here, the state court reasonably concluded that counsel was not ineffective in failing to call

alibi witnesses when based upon a valid and sound strategy to protect the "substantial right to last argument," was based upon a reasonable investigation where he had spoken to the Petitioner's girlfriend and co-defendants, and not made until he had assessed the state's case presented to the jury in the state's case in chief. The allegation must be dismissed.

Failure to Object to Alleged Improper Comment by Prosecutor

In his third allegation, he contends that the defense counsel failed to object to the prosecutor's alleged improper comment on his right to remain silent when he stated: "there's been absolutely nothing presented for you not to believe Derrick Mosely." App.p. 99, l. 8-9. The state PCR court held that "the comment by the solicitor was not burden shifting and that it could have been a reference to the cross-examination of the witness." App.p. 240. In his oral order, Judge Saunders opined that this comment was not error (and therefore not objectionable) because "there is no mention that the applicant herein failed to present evidence. Judge Saunders noted that the trial judge gave a cautionary instruction to draw no adverse inference from the defendant's failure to testify and should not be considered against him and that the defendant has a constitutional right to remain silent. He further rejected the Petitioner's characterization of the comment as burden shifting and asserts that it could have gone to the cross-examination of Mosley. App.p. 228, l. 4-20. The PCR Court concluded that the solicitor was pointing out that nothing was brought out that would indicate that there were any facts in the trial that would cause any reasonable person not to believe Mosley. He stated that this was not burden shifting, particularly in light of the charge. App.p. 228-229.

This claim of ineffective assistance was not raised in the state court certiorari petition. Because of this abandonment in the collateral appeal, the ground must be dismissed as procedurally barred. Where a petitioner fails to comply with a state procedural rule, and that failure provides an

adequate and independent ground for the state's denial of relief, federal review will also be barred if the state court has expressly relied on the procedural default. *Harris v. Reed*, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989); *Coleman v. Thompson*, 501 U.S. 722, 735, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

Alternately, Respondent submit that relief must be denied because the state court rejection was a reasonable application of *Strickland*. In fuller context the prosecution argument was a description of the hand of one hand of all. App.p. 98, l. 16- p. 99, l. 1. It followed with:

... So, there's aiding and abetting even if you're not sure whether he had a gun. But the testimony is what? What's the testimony you have? The testimony from Derek Mosley is Tyrone Shumpert had a gun. I mean that's the case in a nutshell. If you don't believe Derek Mosley, I can't do anything for you. But not to believe him is to satisfy yourself there's a reason not to believe him. But there's, but there's been absolutely nothing presented not to believe Derek Mosley. . .

App.p. 99. The trial court instructed the jury the burden of proof, presumption of innocence, the right to remain silent with no inference against him, and "proof beyond a reasonable doubt", in addition to the remaining charge. App.p. 116-133, 135-136. Counsel testified that there was an objection there and that it would have called attention to it. However, he noted that it was one of the tactical decisions made at trial to not call attention to it because if it is technical, the jury may not give any weight to it. App.p. 216-217. The state PCR court correctly assessed this comment and concluded that it was not either a comment of the defendant's right to testify or an inversion of the burden of proof. Counsel was not ineffective in failing to object.

In considering the closing argument issues, the Fourth Circuit has recognized in Bates v. Lee, 308 F.3d 411(4th Cir. 2002), that prosecutors enjoy considerable latitude in presenting arguments to a jury, Sizemore v. Fletcher, 921 F.2d 667, 670 (6th Cir.1990), because "the adversary system

permits the prosecutor to 'prosecute with earnestness and vigor.' " United States v. Young, 470 U.S. 1, 7, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985) (quoting Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). Committed advocates do not always present antiseptic closing statements, and the jury is entrusted within reason to resolve such heated clashes of competing views. Moreover, the scope of our review is narrow, because "not every trial error or infirmity which might call for application of supervisory powers correspondingly constitutes a 'failure to observe that fundamental fairness essential to the very concept of justice.' " Donnelly v. DeChristoforo, 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974) (quoting Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941)).

Federal habeas review is limited to whether the comments rendered the proceeding so fundamentally unfair as to constitute a denial of due process. Bates, *supra*.; Donnelly, 416 U.S. at 643, 94 S.Ct. 1868. This determination requires us to look at "the nature of the comments, the nature and quantum of the evidence before the jury, the arguments of opposing counsel, the judge's charge, and whether the errors were isolated or repeated." Boyd v. French, 147 F.3d 319, 329 (4th Cir.1998).

A solicitor's closing argument must be carefully tailored so it does not appeal to the personal biases of the jurors. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Further, the argument may not be calculated to arouse the jurors' passions or prejudices and its content should stay within the record and its reasonable inferences. Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998). Moreover, the State cannot, through evidence or argument, comment upon a defendant's exercise of a constitutional right. State v. Johnson, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987) ("When an accused asserts a constitutional right, it is impermissible for the state to comment upon or argue in favor of guilt or punishment

based upon his assertion of that right.") (citation omitted).

The test of granting a new trial for alleged improper closing argument is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986); Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997); State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990); see also State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996) (ruling test of granting new trial for alleged improper closing argument of counsel is whether defendant was prejudiced to extent that he was denied a fair trial).

In State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975), our Supreme Court set forth the parameters of permissible prosecutorial argument:

In 23A C.J.S. Criminal Law § 1107, closing arguments, similar to that of the solicitor in this case, are discussed as follows:

"So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider."

Durden, 264 S.C. at 92, 212 S.E.2d at 590.

If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs. *Id.* Undoubtedly, a Solicitor may argue the State's version of

the testimony presented, and furthermore may comment on the weight to be accorded such testimony. See State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976). On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury's passions or prejudice. See Durden, supra; State v. White, 246 S.C. 502, 144 S.E.2d 481 (1965).

Our Supreme Court has held specifically that "[a] solicitor's argument concerning the credibility of the State's witnesses based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). See also Raffaldt, supra (the State may comment on the credibility of witnesses in argument); State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct.App.1999) (the Solicitor responded to New's objection by indicating her comments were not outside the record, but instead were based on common knowledge: "It's a common known, it's a well-known fact.... He has testified against someone, he will be considered-[a rat]" and the court affirmed finding the Solicitor's comments regarding the witness's credibility were reasonable inferences from the evidence in the record). See Caldwell, supra (finding Solicitor's remarks referencing credibility of critical State witnesses permissible and directly related to the evidence where common sense biases of the witnesses were apparent from the record). See Caldwell, 300 S.C. at 506, 388 S.E.2d at 822 (no improper bolstering where Solicitor argued State's witnesses were credible and "should be admired for their fortitude in telling the truth about their own family member"); State v. Copeland, 278 S.C. 572, 579, 300 S.E.2d 63, 68 (1982) (Solicitor's statement that defendant's accomplice and State's key witness was "going to prison for at least-I submit to you for somewhere around twenty years" was not bolstering even though accomplice-witness received complete immunity from prosecution in exchange for his testimony, because evidence showed he

would be sentenced later for various other crimes he committed elsewhere); cf. United States v. Creamer, 555 F.2d 612 (7th Cir. 1977)(no bolstering where purpose of prosecutorial exchanges with witness was to establish pressures under which witness testified by putting before the jury the witness's understanding of his plea agreement and what would happen to the witness if he did not testify truthfully); Commonwealth v. Gurney, 413 Mass. 97, 595 N.E.2d 320 (1992)(prosecutor's argument was permissible inference from facts presented at trial and not bolstering where he stated in closing that police officers and complainant were credible because their testimony was reasonable and they had no reason to target defendant with false accusations).

Therefore, the state PCR court's decision was not "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding . . .," and was not "contrary to . . . an unreasonable application of clearly established Federal law . . ." based upon *Strickland* and *Darden*. Accordingly, the Petitioner is not entitled to habeas corpus relief.

Denial of Juror Affidavit

This issue concerns the exclusion of the juror affidavit during the state PCR proceedings. This issue was the sole issue raised in the state PCR appeal to the South Carolina Supreme Court. See *Tyrone Shumpert v. State*, Op. No. 26483 (S.C.S.Ct. May 12, 2008) [378 S.C. 62, 661 S.E.2d 39 (2008)]. This is purely a matter of state evidentiary law under SCRE Rule 606(b). In rejecting the issue under state law on appeal, the South Carolina Supreme Court concluded:

LAW/ANALYSIS

Petitioner argues that the PCR court erred in excluding the juror's affidavit. We disagree.

For a considerable period of history, the rule in South Carolina was that a juror's testimony was not admissible to prove either a juror's own misconduct or the misconduct of fellow jurors. State v. Thomas, 268 S.C. 343, 348, 234 S.E.2d 16, 18 (1977) (citing Barsh v. Chrysler Corp., 262 S.C. 129, 203 S.E.2d 107 (1974)). Rule 606(b) of the South Carolina Rules of Evidence alters this common law rule by allowing a juror to offer testimony as to "whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." The rule additionally provides:

[A] juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith; ... [n]or may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Id. Rule 606 thus draws a distinction between evidence of external influences on the jury's deliberations and comments of jurors occurring during deliberations. While the rule allows evidence of the former to be introduced, it prohibits the introduction of the latter.

Although Rule 606 expressly prohibits the introduction of juror testimony regarding both the content and the effect of statements occurring during the jury's deliberations, this Court has recognized an exception to that categorical prohibition. In State v. Hunter, this Court held that juror testimony involving internal misconduct may be received only when necessary to ensure fundamental fairness. 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). That case involved allegations by a juror that the verdict was tainted by racial prejudice, and this Court affirmed the rule announced in Hunter in the later case State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), which involved allegations that the jury began deliberations prematurely. The Court has instructed that a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial. *Id.* at 314, 509 S.E.2d at 814.^{FNI}

^{FNI}. Both of these cases were direct appeals from criminal convictions. The parties to the instant case did not argue that the rules for the introduction of juror testimony and the standard for a grant of post-conviction relief based on internal jury misconduct

differ from the standard applicable on direct appeal. We therefore assume, but do not decide, that the analysis outlined in our direct appeal precedent applies.

*Turning the focus to an analysis of the affidavit offered in the instant case, we find that it was not necessary that the PCR court admit the affidavit in order to ensure fundamental fairness. Though the affidavit is significantly longer than this summary, the affidavit essentially provides that the juror recalls "a couple of people, maybe more" remarking that if Petitioner was not guilty he would have taken the stand or presented a defense; that the juror does not recall anyone mentioning the trial court's instructions not to consider Petitioner's decision not to testify; that if the juror had it to do over again, he would cast his initial vote to acquit; that the juror thinks other jurors changed their vote because of the comments; and that **372 the juror believes the jury made the wrong decision and "think[s] [he] let those comments ... swing [his] vote." Although this Court has not articulated precise guideposts for judging whether proffered juror testimony raises sufficient questions of fundamental fairness so as to be admissible, a return to our precedent is instructive.*

State v. Hunter, the seminal case from this Court on the issue of juror testimony regarding statements and conduct *68 during the deliberative process, involved a juror's allegations that she was coerced through racial intimidation to cast her vote one way. We held "[i]f a juror claims prejudice played a role in determining the guilt or innocence of a defendant, investigation into the matter is necessary." 320 S.C. at 88, 463 S.E.2d at 316. "To hold otherwise," we stated, "would violate 'the plainest principles of justice.'" *Id.* The case McDonald v. Pless, a federal decision, similarly recognizes the potential for "instances in which [juror testimony] could not be excluded without violating the plainest principles of justice." 238 U.S. 264, 268-69, 35 S.Ct. 783, 59 L.Ed. 1300 (1915) (internal quotation marks omitted). This Court relied on *McDonald* in announcing the limited exception to the exclusion of juror testimony regarding deliberations, see *Hunter*, 320 S.C. at 88, 463 S.E.2d at 316, and other federal precedent echoes *McDonald's* language that juror testimony must raise significant questions of substantial injustice in order to be admissible. See, e.g., Downey v. Pevton, 451 F.2d 236, 239-40 (4th Cir. 1971) (describing evidence that the jury's verdict was based on certain extrinsic information as creating such a probability of prejudice that the verdict was deemed inherently lacking in due process).

Using this jurisprudence as a guide, it is clear, in our view, that this affidavit does not measure up to the high bar that precedent sets for the seriousness of allegations that juror testimony must raise before it may be admitted. We think it is plain that the portion of the affidavit pertaining to what may have confused other jurors or influenced their votes is pure speculation presented without any specific

factual support, and the juror's testimony about his own deliberative process is similarly flawed. The generic assertion that a juror would vote the opposite way if given another opportunity too closely resembles a case of buyer's remorse from a guilty verdict to be given much credence. Moreover, although the juror avers that if he had the preliminary vote to do over again, he would cast an initial vote to acquit, this testimony does not relate to the juror's ultimate vote of guilty. The jury returned a unanimous verdict, and the trial court polled the jury after it returned a verdict.

*This analysis should not be interpreted as suggesting that more concrete and factually specific allegations regarding a *69 jury's consideration of a defendant's failure to testify might not raise such significant questions that it is necessary to admit the testimony in order to ensure fundamental fairness. In this vein, it is important to point out a subtle flaw in Petitioner's argument. Petitioner argues that the question presented in the instant case is whether consideration of a defendant's failure to testify can potentially implicate fundamental fairness. We disagree. The question we address here is whether the affidavit offered in the instant case suggests that the conduct of Petitioner's jury rendered his trial fundamentally unfair. Because the affidavit at issue does not suggest that Petitioner's trial was fundamentally unfair, we affirm the PCR court's decision excluding the juror's affidavit.^{FN2}*

FN2. As a housekeeping matter, it is important to note that even if circumstances called for the admission of the affidavit, we have held that a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial. See Aldret, 333 S.C. at 314, 509 S.E.2d at 814.

CONCLUSION

The occurrence of a significant degree of jury misconduct calling for the admission of juror testimony has proved to be quite rare. See State v. Pittman, 373 S.C. at 554-55, 647 S.E.2d at 158 (suggesting that the mine-run of prejudicial jury misconduct cases involve internal coercion based on race or gender bias). For this reason, we think trial courts are justified in exercising a degree of caution before entertaining such evidence in an attack on a jury's verdict. As the court stated in McDonald:

But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might vindicate the finding. Jurors would be harassed and beset by the defeated party in an effort to

*secure from them evidence of facts which might establish misconduct ... [and] the result would be to make what was intended to be a private deliberation the constant subject of public investigation.... [T]he argument in favor of receiving such evidence is not only very strong, but unanswerable-*70 when looked at solely from the standpoint of the private party who has been wronged by such misconduct. The argument, however, has not been sufficiently convincing to induce legislatures generally to repeal or to modify the rule. For, while it may often exclude the only possible evidence of misconduct, a change in the rule would open the door to the most pernicious arts and tampering with jurors. The practice would be replete with dangerous consequences. It would lead to the grossest fraud and abuse and no verdict would be safe.*

238 U.S. at 267-68, 35 S.Ct. 783. *With these principles in mind, we affirm the PCR court's denial of relief.*

Shumpert v. State, supra.

Respondent submits that this ground fails to state a cognizable claim. First, it is a challenge solely addressed to the admission of evidence at a collateral proceeding. Infirmities in a state post-conviction relief hearing are not a ground for federal habeas corpus relief. *Bryant v. Maryland*, 848 F.2d 492 (4th Cir. 1988). Furthermore, since there is no right to counsel in a state collateral attack on a conviction, any alleged attorney errors at a state post-conviction relief hearing will not support a cognizable claim for federal habeas corpus relief. 28 U.S.C. 2254(I); *Coleman v. Thompson*, 501 U.S. 722 (1991). Therefore, this Court should summarily dismiss these grounds for relief. See also *Bell-Bey v. Roper*, 499 F.3d 752, 756 (8th Cir.2007) ("Because the Constitution does not guarantee the existence of state post-conviction proceedings, an infirmity in a state post-conviction proceeding does not raise a constitutional issue cognizable in a federal habeas application.") (internal citations, quotation marks, and alteration omitted); *United States v. Dago*, 441 F.3d 1238, 1248 (10th Cir.2006) ("[D]ue process challenges to post-conviction procedures fail to state constitutional claims

cognizable in a federal habeas proceeding."); *Lawrence v. Branker*, 517 F.3d 700, 717 (C.A.4 (N.C.),2008).

Second, the issue concerns an evidentiary claim which rests solely on state law. Federal Habeas is unavailable to retry state issues. *Milton v. Wainwright*, 407 U.S. 371, 377, 92 S.Ct. 2174, 2178, 33 L.Ed.2d 1 (1972). "A federal court may not issue the writ on the basis of a perceived error of state law." *Pulley v. Harris*, 465 U.S. 37, 41, 104 S.Ct. 871, 874-75, 79 L.Ed.2d 29 (1989). If the petition alleges only a violation of state law, e.g., a state speedy trial rule, no federal claim is presented and the petition is subject to dismissal for failure to state a claim. *Favors v. Eymann*, 466 F.2d 1325, 1327 (9th Cir. 1972); *McGowan v. Miller*, 109 F.3d 1168, 1171-73 (7th Cir. 1997); *Stewart v. Nix*, 972 F.2d 967, 970 (8th Cir. 1992); *Cox v. Lockhart*, 970 F.2d 448 (8th Cir. 1992). Here, the claim must be dismissed.

Finally, the South Carolina Supreme Court's rejection of the issue in the PCR appeal was a correct interpretation of South Carolina evidentiary rule 606(b). The holding is the same in federal court. The post-verdict affidavits, submitted, *inter alia*, for the purpose of showing that the jury discussed a defendant's failure to testify, are inadmissible under Rule 606(b) for that purpose because a defendant's failure to testify cannot constitute "extrinsic evidence." *See, e.g., United States v. Rodriguez*, 116 F.3d 1225, 1226-27 (8th Cir.1997); *United States v. Martinez-Moncivais*, 14 F.3d 1030, 1037 (5th Cir.1994); *United States v. Voigt*, 877 F.2d 1465, 1468-69 (10th Cir.1989); *see also* Weinstein, § 606.04 [3] [a], n. 26, pp. 606-25 and 606-26 (evidence in the form of juror affidavits inadmissible under Rule 606(b) to show jury considered defendant's failure to testify; no circuit court ruling to the contrary); Mueller, § 249, at 75 (1994) ("[R]ule [606(b)] bars proof that one or more jurors held it against the accused that he failed to take the stand"). Cf., *Robinson v. Polk*, 438 F.3d

350 (4th Cir. 2006). His allegation must be denied.

V.

WHEREFORE, having made Return, the Respondents request that the be dismissed under Section 2254(b) for the reasons set forth above.

Respectfully submitted,

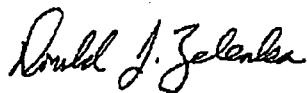
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ATTORNEYS FOR RESPONDENTS



S/Donald J. Zelenka

By: _____

DONALD J. ZELENKA

December 17, 2008.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Tyrone Shumpert, #292828,

Petitioner,

v.

Colie L. Rushton, Warden McCormick
Correctional Institution,

Respondents.

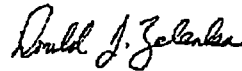
C/A No. 8:08-3172-HFF-BHH

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, do hereby certify that I have this date served the Respondent's *Return and Memorandum of Law in Support of Motion for Summary Judgment* in the foregoing action on the Petitioner by depositing one copy of the same in the United States mail, and addressed as follows:

Tyrone Shumpert, #292828
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899

This 17th day of December, 2008.



S/Donald J. Zelenka

In The U.S. District
District of S.C.

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TyRone Schumpert,
292828
v.

C/A No. 8:08-cv-03172-HFF-BHH
Petitioner

WARDEN CEROY CANTLEDGE, Respondent(s)
of Collier L. Ruston (ETAL) ~~(C)~~

The Petitioner would hereby oppose
Respondent motion for Summary Judgment,
move for counsel be appointed, further
factual investigation to establish actual
innocence exceptual to overcome
procedural BARS, AND ASSENTS cumulative
error then Aggregation of error
Prejudice.

Petitioner sets forth as follows —

Statement of Case

Appellant Tyrone Schumpert was indicted by the Laurens County Grand Jury during its November 2002, term for two counts of Armed Robbery, Conspiracy, and possession of a weapon during a violent crime. Appellant was tried before the Honorable James W. Johnson, Jr, and a jury beginning April 28, 2003. The jury acquitted of weapons charge but found Appellant guilty on the remaining three charges. Judge Johnson sentenced Appellant to (20) Twenty two years in prison on each of the two Armed Robbery charges and (5) Five years for conspiracy. The sentences are concurrent.

I. ACTUAL INNOCENCE

(A) Please be advised that at this time that Derek Maurice Mosley will, at this day and time, testify on behalf of the petitioner, Tyrone Shumper^{#292828}. He will testify that he lied under oath during the petitioner's trial. He will further testify that the petitioner took no part in the crime and had no knowledge that a crime was ever committed. Stating these facts herein, Actual Innocence is required to overcome procedural bar, Schlup v DELO, 912 F.Supp. 448 (1995) Although this eyewitness is not new, his testimony at trial was false and coerced by law enforcement of Laurens County, (Laurens City Police Dept.) Herrera v Collins, ~~House~~ House v. Bell 125 S.Ct. 2991 (June 28, 2005), 386 F.3d 608 (2004). All who opposed is ready to tell the truth.

(B) The fact of the matters herein, is that the petitioner, Tyrone Shumpert #292828, never participated in the armed robbery of Jennifer Satterfield and Paul B. Cagle on or around the said date of May, 27, 2002. Neither did he have any knowledge that a crime was committed until arrested. Maurice Suber, ~~Mr. Suber~~ ^{Mr. Shumpert} and Mr. Cagle (vict./wits) will testify to the fact that Mr. Cagle was intimidated and even threatened by Deputy Solicitor, Jerry Peace, into testifying that "It could have been more than (3) three robbers." Mr. Suber, the petitioners Co defendant, Mr. Cagle and Ms Satterfield (victims) will testify that I never robbed them and they had already identified the (3) robbers months before trial, and Tyrone Shumpert #292828 had no part in it. In fact

I was granted bond on my own Personal Recognizance.

(c) missing Evidence • Brady Violation. U.S.C.A. Amend 6.14.

The Lauren City Police Department did withhold discoverable evidence as did the prosecution, withheld discoverable information from the petitioner by failing to produce the video tape of the traffic stop. This tape holds every shred of evidence needed to prove my innocence. This tape has the robber's attire, and shoes apparel pictured on it. (Trial transcript: RE. 57 Lines 20-25) This tape may well have presented exculpatory evidence for the petitioner. State v. Hall, 229 S.E.2d 860 (1985) Duty to disclose extends to the police and includes evidence the prosecutor may not even be aware of. U.S. v. Austin, 632 F.2d. 478 (). It also includes evidence that may be used to impeach a prosecution witness. U.S. v. Bagley, 105 S.Ct. 3375 (1985)

Since the record fails to show how the court reached a final resolution concerning this missing tape, we must assume a suppression hearing of some type was held in the petitioner's absence. Without a "waiver," from the petitioner, this is prejudicial error. McCullum v State, 571 SE2d 405 (2002). Defendant has a right to be present at ALL material stages of his trial. Plus the petitioner never received a Rule 5 motion of discovery. US v Green, 683 F. Supp. 330 (1988). Trial counsel was ineffective in his performance at trial and his deficient performance did greatly prejudice his client. Sharper v State, 279 SC 264, 305 SE.2d 247 (1983). The petitioner made his claim in Post Conviction Relief hearing identifying many acts and omissions such as not subpoena business, not supplying his client with the Rule 5 Brady motion of discovery.

this information is especially important in the instant case, because the ~~ONLY~~ evidence implicating the petitioner in the crime whatsoever is the testimony of Derek Mosley. Suppression by the prosecution of evidence favorable to an accused upon Request violates due process where evidence is material to the guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963). This tape showed things that are hidden still, and the "disappearing" of this tape is the only thing that hindered the victim's from making a positive I.D. Martinez v. Wainwright, 621 F.2d 189, 199 (5th Cir. 1980). when Reliability of a given witness may well be determinative of Guilt or innocence; non-disclosure of evidence affecting credibility falls within the general Rule that suppression or misplacing of material (evidence) justifies a new trial. Martinez, 198-Id.

During the petitioner's trial, his trial counsel
counselman William Mayer never sent one
subpoena; that is the reason no defense
was presented. There were no witnesses present

who was with the petitioner except the mother
of his child, Kenya Robinson, but this is the mother
of his child who lived very close to the "scene

of the crime." Counselman Mayer said she wouldn't
carry much weight, but he never even tried to subpoena
the Alibi witnesses, the video tapes, the codefendants

or anything in favor of the defense, not even the
Bond hearing records, in which the petitioner

was granted a P. R. bond due to the fact that both
victim/witnesses stated, "It wasn't him, we already

identified the three (3) robbers by their clothes and
shoes," at another previous bond hearing.

To prove my actual Innocence I'm sure I must show prejudice that was forced upon me by almost everyone who was supposed to insure the fundamental fairness of the trial was not violated. No Law cases need be quoted, because the U.S. Constitution was so greatly violated. U.S.A. Const. Amend. 6, 14 Counsel was also ineffective for failure to even notify me that witnesses was in the building. R.P. 90 Lines 8-9) And had even interviewed the without my knowledge. Thomas-V-State, 417 S.E.2d 531 (Ga. 1992) and they would give testimony Contradictory to that of Derek Mosley, whose testimony was the "sole source" of evidence, "against the petitioner R.P. 23-29.

the petitioner has been incarcerated for approximately
(6) years for a crime he didn't commit. Anyone
who started out as state witnesses (Derek Mosley)
will come forth at this day and time will ^{tell} the
truth and prove my actual innocence. These
individuals will prove that the prosecution
denied the petitioner a fair trial, a fair
jury, and also that the prosecution intimidated
witnesses, and somewhere between them
destroyed exculpatory evidence. The violations
of the U.S.C.A. Amendments 6, 5, and 14, repeatedly!
The prosecution purposely "struck members (all members)
of my race from the jury" using their preemptory strikes.
There was bias jurors on the jury panel whom

Used my silence against me Violating USCA Amend. 5 as
was friends with the petitioner's co-defendants

parents, knew and worked daily with them.

The coincidence is that the "friend's" child never
was formally charged or punished for driving

these robbers to the scene and away from it. The

video was misplaced that showed his car it's
occupants and the loot from the crime scene.

Although this "loot" was recovered by the Laurens

City Police Department, they never presented this

tape, and didn't even return the victims jewelry

and money. The Guns was found in this vehicle

also. The vehicle had a paper (Eagle/Seep) Tag for

(6) six months due to the fact that Ms Vaughn and
his mother works at the Laurens D.M.V.

The state Denies A BLACK MAN THE EQUAL protection WHEN it puts HIM ON trial Before A JURY From which members of HIS RACE HAVE BEEN PURPOSELY EXCLUDED, See BATSON V KENTUCKY, 476 US. 79, 106 Sct 1712, 90 LEd 2d 69 (1986)

THE CASE AT BAR THE PROSECUTION DID USE PEREMPTORY STRIKES TO STRIKE THE ONLY BLACK JURORS CALLED DURING JURY SELECTION. OF THE THREE PERSONS STRUCK BY THE PROSECUTION, TWO WERE BLACK.

THIS RESULTED IN THE ~~Petitioner~~, WHO IS A BLACK MALE, BEING TRIED BEFORE A JURY OF SEVEN WHITE MEN AND FIVE WHITE WOMEN.

A DEFENDANT HAS A RIGHT TO A JURY DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY, AS PER BATSON - Id.

ALSO WHERE A DEFENDANT IS CHARGED WITH AN INTERRACIAL VIOLENT CRIME, "A REASONABLE POSSIBILITY OF PREJUDICE" IS PRESUMED, AND THE DUTY TO INQUIRE IS AUTOMATIC, See MUMFORD V VA, 500 US, 415, 424 (1991)

US V KEATING, 147 F3d 895, 903 (9 CIR 1998) (REVERSIBLE ERROR BECAUSE JURORS LEARNED OF DEFENDANT'S PRIOR CONVICTIONS ON SAME CHARGE DURING TRIAL)

AND IN IRVIN V DOWD, 366 US, 717, 722-23 727-28 (1961) THIS COURT VACATING CONVICTION AND CAPITAL SENTENCE BECAUSE JURY INCLUDING 8 MEMBERS WHO EXPRESSED FIXED OPINIONS REGARDING DEFENDANT'S GUILT DURING VOIR DIRE)

AND IN US V MCCARTHY, 961 F2d 970, 976 (1st CIR 1992)
 The trial Court's determination of a prospective Juror's
 bias is reversible on appeal only if it is a manifest
 error See Id. at 723

See The trial Judge Abuse of discretion, Rosales-Lopez
 451 US at 191 See eg, US V LOVE, 219 F3d 721, 728-29 8 CIR
 2000) (The court abused its discretion because it was
 required to hold further voir dire inquiry into racial
 prejudice when reasonable possibility of racial
 prejudice existed because feelings of jurors towards
 African Americans were unknown and defendant was
 an African American being tried before a white
 jury in predominantly white area ~~Highly~~ Highly Racial Area.

See US V MICKELSON, 378 F3d 810, 818 N.2 (8 CIR 2004) (Review
 Permitted despite failure to object at trial, if defendant
 did "Not Consent to the error and the Court should
 consider his constitutional right to effective assistance
 of counsel with full knowledge of the situation)

if, however, the failure to preserve is a mere forfeiture,
 the federal Court will consider whether an alleged
 irregularity amounts to "plain error" Fed.R. Crim p. 52

II.

The prosecutor did repeatedly allude to the fact that
 the appellant did not testify and that there was no defense
 presented. first, the prosecutor clearly stated at the
 beginning of closing argument.

This is the only time that the prosecutor got to address
 you (the jury) in his closing arguments. This in itself
 is an improper comment alluding to the fact that the
 appellant did not testify.

See McFadden v State, 342 SC 637, 539 SE 2d 291 (2000) R.P. 92-93 Lines 1-23 THE PROSECUTOR THEN PROCEEDED TO STATE TO THE JURY, "IN ORDER NOT TO BELIEVE DEREK MOSELY (PROSECUTION'S ONLY WITNESS HOWEVER IMPLICATED THE APPELLANT IN THESE CRIMES)" IN ORDER NOT TO BELIEVE DEREK MOSELY, IT'S YOUR RESPONSIBILITY TO FIND A REASON NOT TO BELIEVE HIM." (EMPHASIS ADDED),

R.P. 97 AND 98 LINES 24-15) AND AGAIN "IF YOU DON'T BELIEVE DEREK MOSELY, I CAN'T DO NOTHING FOR YOU. I CAN'T DO ANYTHING FOR YOU. BUT NOT TO BELIEVE HIM YOU NEED TO SATISFY YOURSELF THERE'S A REASON NOT TO BELIEVE HIM, BUT THERE'S BEEN ABSOLUTELY NOTHING PRESENTED NOT TO BELIEVE DEREK MOSELY," R TR P 99, LINES 4-10.

NOT ONLY IS THE PROSECUTOR HERE IS TELLING THE JURY A "BALD-FACED" LIE, SINCE THE COURT RULES PERMIT THE JURY TO BELIEVE OR NOT TO BELIEVE ANY WITNESS FOR ANY REASON OR FOR NO REASON AT ALL, (EMPHASIS ADDED"]

BUT THE PROSECUTOR IS IMPROPERLY BOLSTERING THIS STATE'S WITNESS AND MORE IMPORTANTLY HE IS SHIFTING THE STATE'S BURDEN OF PROOF, WHICH UNQUESTIONABLY MUST BE BORN BY THE PROSECUTION, ONTO THE SHOULDERS OF THE DEFENDANT, FACT THAT THE DEFENDANT DID NOT PRESENT ANY EVIDENCE, NOR TESTIFY IN HIS OWN BEHALF DOES NOT REVERSE THE USUAL RULE THAT THE BURDEN OF PROOF REMAINS ON THE STATE. SEE STATE V PRIMUS, 341 SC. 592, 535 SE 2d 152 (SC. APP 2000). AT. 156, (CITING STATE V BROWNING, 154 SC. 97, 151 SE 233 (1930)

Here the prosecutor also implies to the Jury that prosecution witness, Derek Mosely should be believed because "there's been absolutely nothing presented not to believe him." (R TR P. 99 Lines 4-10) However it is never permissible for the prosecutor to suggest to the Jury that it draw an adverse inference when the Defendant fails to present any evidence at trial, primus, 157-1d. Citing: Douglas v State, 332 SC. 67, 504 SE 2d 307 (1998)

Prosecutorial Comment, whether directly or indirect, on Defendant's failure to testify is impermissible where solicitor comments on certain evidence as uncontradicted. State v Sweet, 342 SC 342, 536 SE 2d 91 SC. App 2000). It is improper for prosecutor to vouch for his own witness or implicitly bolster witness by indicating information not presented to the Jury supports testimony. US v Lewis, 10 F3d 1086 (1993)

IN THE INSTANT CASE THE PROSECUTOR DID THIS REPEATEDLY. TR P 96 Lines 1-5... "NO DNA, NO FINGERPRINTS, SO WHERE DO YOU GO?" R p. 97 Lines 17-22. "WAS THERE ANYTHING TO SHOW THAT HE HAD SOMETHING AGAINST TYRONE SCHUMPER THAT HE HAD AN AX TO GRIND? THAT HE MADE THESE STATEMENTS AFTER HE HAD A DEAL? AGAIN TR P 98 Lines 6-8

THROUGH THE IMPROPER COMMENTS, THE ASSISTANT SOLICITOR INVITED THE JURY TO MAKE THE VERY INFERENCE THE JURY IS NOT ALLOWED TO MAKE. (Emphasis Added) primus, 161-1d

THE FIFTH AND FOURTEENTH AMENDMENTS FORBID COMMENT BY THE PROSECUTOR ON THE DEFENDANT'S SILENCE OR FAILURE TO TESTIFY, Edmond v State, 341 SC. 340, 534 SE 2d 682 (SC, 2000)

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 Citing State v Cockerham, 294 SC. 380, 365 SE 2d 22 (1988)
 Counsel's failure to object to prosecutor's improper
 statement was fatal to appeal since remarks were
 sufficiently egregious as to constitute plain error,
 See US v Young, 736 F2d 565, 105 Sct. 1038 (1984)

IN Absence of a contemporaneous objection to allegedly
 improper prosecutorial argument, plain error review is
 appropriate. US v Marshall, 109 F3d 94, where improper
 comments could effect the jury's deliberations, and
 thus the outcome of the trial, reversal is required.
 See US v White, 241 F3d 1015 (2001) Judge's General
 charge to the jury did not cure the error. See
State v Pickens, 320 SC. 528, 530. 466 SE 2d 364, 365-64
 (1996) also citing Sweet, McFadden, and Edmond Id.

Although the instruction constitutes a correct statement
 of the law, it does not cure the error of permitting
 the inappropriate comments by the Assistant Solicitor
 during closing argument.

The jury was however never informed the solicitor's
 remarks were improper, moreover, the charge on the
 law does not operate in a reparative vein so as to
 eliminate the error which occurred during jury
 argument. Primus, 160 Id.

For the error to be harmless the record must
 establish; the reference to the defendant's right
 to be silent was a 'single' reference, which was
 not repeated... on the evidence was overwhelming,
Pickens Id.

IN EACH CASE cited, THE JUDGE'S CHARGE TO THE JURY
 WAS VERY MUCH THE SAME AS IN THE APPELLANT'S
 CASE. ALSO THE ERROR IN THE INSTANT CASE FAILS
 TO MEET THE CRITERIA FOR HARMLESS ERROR AS PER
PICKENS Id.

It was error of the PCR Judge to dismiss the Application of Applicant, because he clearly raised in the hearing that a comment made by the solicitor in closing argument improperly shifted the burden of proof to the Applicant.

This was not a "single" reference, but the solicitor repeatedly made improper inference to the appellant not testifying neither was there overwhelming evidence,

where specific guarantees of the "Bill of Rights" are involved, a court must insure that prosecutorial conduct in no way infringed such rights. Reversal is warranted where the prosecutor's remarks so infected the trial with unfairness as to make the resulting conviction a clear denial of the due process. See State v. Tubbs, 333 S.C. 316, 509 S.E. 2d 815, 818 (1999) also State v. Patterson, 482 S.E. 2d 760, 766 (1997) USCA Amend. 14

Although credibility issues are for the jury, conviction cannot stand if the evidence is insufficient to convince rational fact-finder beyond a reasonable doubt, see US v. Chancey, 715 F.2d 543 (1983)

The petitioner contends the prosecutor did withhold discoverable information from the defense by failing to produce a video tape of the arrest and stop of three of the appellant's alleged co-defendants.

Since the robbery victim, Jennifer Satterfield, testified that she could identify the robber's shots, TR p 57 lines 21-25. This tape may well have presented exculpatory evidence for the appellant. There is no record what so ever that the solicitor never found this tape,

thus by not producing this tape or establishing on record why he failed to do so, the prosecutor violated both the Brady rule and disclosure rule, rule 5.

The Defendant Clearly HAS A Constitutional Right to be present At all material Stages of his Trial, including Evidentiary Suppression Hearings. US V GERENA, 683 F Supp. 330 (1988)

The petitioner next contends that his Appointed Defense Counsel was ineffective in his performance at trial and his deficient performance did greatly prejudice his client, while a claim of ineffective assistance of counsel probably raises question of facts that the record does not conclusively refute, SHARPER V STATE, 279 SC 264, 305 SE 2d 747 (1983).

The Appellant contends THAT THERE IS SUFFICIENT irrefutable EVIDENCE in the record, in his instant case, to uphold this claim on ~~the~~ ^{Federal Habeas} ~~the~~ ^{claim}, Likewise.

Defendants should raise claim of ineffective assistance of counsel at the earliest feasible opportunity. see Billy-EKO V US, 8 F3d 111 (2d Cir 1993)

~~Petitioner~~ making a claim of ineffective assistance of counsel must identify the act or omissions of counsel THAT ARE ALLEGED NOT TO HAVE BEEN the result of REASONABLE professional judgement. STRICKLAND V WASHINGTON, 466 US 668, 104 Sct. 2052, 80 LEd. 2d 674 (1984).

Counsel was deficient in failing to object to solicitor's comments on defendant's exercise of a constitutional right and in failure to present a defense. see McFadden, 393 Id.

Counsel fell below an objective standard of reasonableness under the sixth amendment for failure like wise to call Subpoena and interview witnesses. Thomas V State, 417 SE 2d 531 (SC 1992) [Especially in this instant case where Defense witnesses were "in the Building" [Emphasis Added] "TR p 90 Lines 8-9), and there would have been a fair probability beyond a reasonable doubt that counsel interviewed and called these witnesses that these witnesses would have gave testimony favorable to the Appellant innocence and contradicted THAT of Derek Mosely.

WHOS testimony WAS the "sole source" of evidence against the Appellant. TR p 23. Lines 1-25 To p 29 Lines 1-25) was clearly prejudicial. Therefore the Appellant should Be Entitled to relief As per McFadden, and primus Id. Clearly Trial Counsel's conduct so undermined the proper functioning of the Adversarial process that the trial cannot be relied upon as having produced a Just Result, Strickland, 466 US 668, 686, 104 Sct 2052, 2064 (1984) See Butler v State, 286 SC, at 441, 334 SE 2d at 813.

And the petitioner has clearly overcome this presumption and should receive the relief he seeks, see Cherry v State, 300 SC. 115, 386 SE 2d 624 (1989) and however the PCR court did allow the Affidavit to be marked as an exhibit for the purposes of Appellate Review, and Trial Counsel also testified also at the PCR hearing that the state's case was weak and that the only testimony implicating the Applicant was the "mythical 4th man" that allegedly participated in the Robbery,

Clearly at PCR Trial Counsel testified that he did discuss witnesses with the Applicant and that he interviewed two of the Co-defendants. He testified that the Co-defendants who were in Jail would have testified that the Applicant was not involved, but that it was the "mythical 4th man" who testified that the Applicant was involved in the Robbery.

Trial Counsel testified that a common trial Strategy is to not put up a defense was prejudicial, in order to preserve the last argument, and the Applicant did clearly carried His burden to show a reasonable probability that had counsel ~~Subpoena~~ witnesses to testify, that the result at trial would have been different, because if the Jury heard him say that he was not involved or not Guilty they would have come back with a verdict of Not Guilty and the result at trial would have clearly been different had trial Counsel actually done what the ~~Retention~~ Retention alleges should or should not have been done see Johnson v State, supra.

therefore the petitioner should be entitled to relief as

per McJadden-V- State, 342 S. 637, 539 S.E. 2d. 391 (2000)

Petitioner Prays for EVIDENTIARY hearing
on the merits of his claim of ACTUAL
INNOCENCE gateway to address the Allegations
in the totality of circumstances that
cumulative effect of Aggregation of ERRORS
Denied Petitioner due process of LAW

Thus, per 28 USC 2254 this court
should Appoint counsel, and Dismiss
stated motion for summary judgment AS
MATERIAL FACTS ARE IN DISPUTE that if
proven would entitle Petitioner to Relief
ACTUAL INNOCENCE, supported by U.S.
const. violations 5th, 6th 14th
Amendments -

Respectfully

S/ Syon Shupett

DATE

1-16-08

310 5037

ATTORNEY GENERAL'S OFFICE

RECEIVED 4-22-09

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REPORT AND RECOMMENDATION

OF MAGISTRATE JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Tyrone Shumpert, #292828

Petitioner,

v.

Colie L. Rushton, Warden
of McCormick Correctional
Institution,

Respondent.

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. # 11.)

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 September 9, 2008.¹ On December 17, 2008, the respondent moved for summary judgment. By order filed December 18, 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 January 26, 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 September 9, 2008, at the McCormick 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).

I. PROCEDURAL HISTORY

The petitioner is currently incarcerated at the McCormick Correctional Institution. In November 2002, the petitioner was indicted for conspiracy, two counts of armed robbery, and possession of a firearm during the commission of a violent crime. He was represented by William G. Mayer. On April 28, 2003, the petitioner was tried by a jury with the Honorable James W. Johnson, Jr., presiding. He was convicted of conspiracy and two counts of armed robbery, but he was found not guilty on the weapons charge. He was sentenced to twenty-two years for each robbery charge to run concurrently and five years for the conspiracy charge. The petitioner appealed to the South Carolina Court of Appeals:

On appeal, the petitioner was represented by Appellate Defender Tara S. Taggart. Taggart filed an *Anders*² brief raising the following issue: "Whether the judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt?" On September 14, 2004, the petitioner filed a pro se brief raising the following issues: a *Batson* violation, prosecutorial misconduct based upon a comment, bolstering of witnesses, improper seating of a juror, and ineffective counsel. The Court of Appeals dismissed the appeal in an unpublished opinion, *State v. Shumpert*, Op. No. 2005-UP-095 (S.C. Ct. App. filed Feb. 8, 2005). The remittitur was issued on March 15, 2005, after rehearing and the petitioner did not file a petition seeking a writ of certiorari in the South Carolina Supreme Court.

On May 24, 2005, the petitioner filed an application for post-conviction relief ("PCR") raising the following grounds for relief, quoted verbatim:

- A. Counsel failed to object to an all white Jury.
- B. Counsel failed to present a Alibi defense.

²*Anders v. California*, 386 U.S. 738 (1967).

C. Counsel failed to object to prosecutor's argument alluding to the defendant's failure to put up a defense.

(App. 167.) On January 18, 2006, an evidentiary hearing was held before the Honorable Wyatt T. Saunders. The petitioner was present and represented by Rodney Richey. On March 6, 2006, Judge Saunders entered an order denying the petitioner PCR. (App. 234-241.)

The petitioner appealed to the South Carolina Supreme Court raising the following issue for relief: "Whether petitioner's case should be remanded for consideration of an affidavit that was wrongly excluded?" (Return Ex. # 5.) On December 13, 2007, the South Carolina Supreme Court entered an order granting certiorari. (Return Ex. # 7.) On May 12, 2008, the Supreme Court affirmed the judgement denying state PCR in *Shumpert v. State*, 661 S.E.2d 369 (S.C. 2008). (Return Ex. 10.) The remittitur was sent down on May 29, 2008. (Return Ex. # 11.)

The petitioner filed this habeas petition raising the following grounds for relief, quoted verbatim:

Ground One: Trial counsel failed to move for a Batson violation: where all members of my race were struck from the jury.

Supporting Facts: During jury selection juror 53 David Jackson and juror 33 Gregory Fielder was struck from jury selection by prosecutor. Plus all jurors picked were Caucasian, over the age of 35 by 90%.

Ground Two: Counsel fail to present an alibi defense.

Supporting Facts: At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoena to trial after repeated request to councilman Mayo.

Ground Three: Counsel failed to object to prosecutor's alluding to my failure to present a defense.

Supporting Facts: Prosecutor statement: "there's been absolutely nothing presented for you not to believe Derrick Mosely" who was the state's only witness. This also influenced

the jury to use the right to silence against me. [The extraneous influence!!]

Ground Four: Denial of Admissibility of Juror Affidavit.

Supporting Facts: Post-conviction relief judge did not allow the affidavit on record. Affidavit contained facts that my silence was used against me by Juror's even after the judge's charges and prosecutor's extraneous influence outside deliberations.

(Pet. 6-11.)

II. APPLICABLE LAW

A. 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).

B. 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.

C. 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.

i. 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).

ii. 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).

iii. 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).

iv. 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).

III. DISCUSSION

A. Procedurally Barred Claims

The respondent contends that the claims raised in Grounds One, Two, and Three are procedurally barred as they were either not raised on appeal. The undersigned agrees. ✓

In Ground One, the petitioner alleges his trial counsel was ineffective for failing to make a *Batson*³ motion. In Ground Two, the petitioner alleges that his trial counsel was ineffective for failing to present an alibi defense. In Ground Three, the petitioner alleges that his trial counsel was ineffective for failing to object to the prosecutor's alleged improper comment on his right to remain silent. While the petitioner did raise these issues at his PCR hearing, the petitioner did not appeal these issues to the South Carolina Supreme Court in his PCR appeal. As noted above, in his appeal to the South Carolina Supreme Court, the petitioner raised only the following issue for relief: "Whether petitioner's case should be remanded for consideration of an affidavit that was wrongly excluded?" "To exhaust state remedies, a habeas petitioner must fairly present the substance of his claim to the state's highest court. The exhaustion requirement is not satisfied if the petitioner presents new legal theories or factual claims for the first time in his federal habeas petition." *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997)).

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. *Coleman*, 501 U.S. at 750. A

³*Batson v. Kentucky*, 476 U.S. 79 (1986).

procedural default also may be excused if the petitioner demonstrates that "failure to consider the claim[] will result in a fundamental miscarriage of justice." *Id.* In other words, that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

In order to use a claim of actual innocence to remove a procedural bar to a separate constitutional claim, a petitioner "must show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." *Schlup v. Delo*, 513 U.S. at 327. To successfully remove any procedural bars to other constitutional claims, the petitioner must present "new reliable evidence" *Id.* at 324. This new "evidence of innocence [must be] so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Id.* at 326-27. "[T]he petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Id.* at 327.

The petitioner contends that he is actually innocent and that several witnesses who testified at trial, including a co-perpetrator, will now recant their trial testimony and testify that he is innocent. (Pet'r's Mem. Opp. Summ. J. Mot. 4-12.)⁴ Recantation is neither reliable nor credible. Without reliable evidence, a petitioner cannot demonstrate that "more likely than not that no reasonable juror would have convicted him in light of the new evidence." *Schlup*, 513 U.S. at 327. Furthermore, it is important to note that this is not a case in which the petitioner has presented direct evidence of recantation by a witness.

⁴"[O]ur habeas jurisprudence makes clear that a claim of actual innocence is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." *Herrera v. Collins*, 506 U.S. 390, 404 (1993). This court, therefore, considers the petitioner's actual innocence claim only as a gateway to his constitutional claims, and not as a freestanding constitutional claim that would entitle the petitioner to relief.

Rather, the petitioner merely states the witnesses will now recant their trial testimony. The petitioner has not presented any affidavits from any witness.

Additionally, the undersigned notes that when considering an actual innocence claim, the court may consider how the timing of the submission and the credibility of the affiants bear on the reliability of the evidence. *Schlup*, 513 U.S. at 331-32. In this regard, recantation testimony, particularly by a codefendant who now has nothing to lose by recanting, is not reliable evidence of innocence. See *United States, Hackley*, 164 F. App'x 301, 305 (4th Cir. 2006) (citing *United States v. Johnson*, 487 F.2d 1278, 1279 (4th Cir.1973)). Here, the new evidence alleged to support the petitioner's claim of actual innocence is not sufficient to remove procedural bars on other constitutional claims. Thus, these claims are procedurally barred from habeas review.

In *Kornahrens v. Evatt*, 66 F.3d 1350 (4th Cir. 1995), the Court of Appeals stated that once a claim is determined to be procedurally barred, the court should not consider the issue on its merits. The Court noted that it is always tempting to discuss the merits as an alternative reason for a conclusion, but that once a court finds an issue to be procedurally barred, all discussion which follows is only dicta. See *Karsten v. Kaiser Foundation Health Plan*, 36 F.3d 8, 11 (4th Cir. 1993). Therefore, once a court has determined that a claim is procedurally barred, it should not stray into other considerations. Accordingly, the undersigned will not discuss the merits of the claims raised in Grounds One, Two, and Three as these claims are procedurally barred. The remaining claim set forth in Ground Four is discussed on the merits below.

B. Merits

In Ground Four, the petitioner alleges that the PCR court erred in excluding a juror's affidavit during the PCR hearing. The respondent contends this issue is purely a matter

of state evidentiary law and thus not grounds for habeas relief and further that any errors in a state PCR hearing are not grounds for habeas relief. The undersigned agrees. ✓

First, federal courts do not review determinations of state law made by state courts. See *Pulley v. Harris*, 465 U.S. 37 ("[A] federal court may not issue a writ of habeas corpus on the basis of a perceived error of state law."). See also 28 U.S.C. § 2254(a) (holding a federal habeas petition may be entertained only on the ground that a petitioner is in custody in violation of the Constitution or laws or treaties of the United States); *Wainwright v. Goode*, 464 U.S. 78, 83 (1983) (per curiam) ("federal courts may intervene in the state judicial process only to correct wrongs of a constitutional dimension" . . . "[i]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"). ✓

The petitioner contends that the affidavit should have been admitted during his PCR proceeding under Rule 606(b) of the South Carolina Rules of Evidence ("SCRE"). Applying Rule 606, SCRE, the South Carolina Supreme Court held that the PCR court's decision excluding the juror's affidavit should be affirmed. *Shumpert v. State*, 661 S.E.2d 369, 371 (S.C. 2008). Such evidentiary and state procedural issues do not rise to the level of a constitutional violation unless the petitioner can show that the ruling "offends . . . some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson v. New York*, 432 U.S. 197, 202 (1977) (citations omitted). The petitioner has made no such show showing. ✓

Furthermore, alleged procedural errors in a state PCR proceeding are also not grounds for federal habeas relief. *Wright v. Angelone*, 151 F.3d 151, 159 (4th Cir.1998) ("a challenge to Virginia's state habeas corpus proceedings cannot provide a basis for federal habeas relief") (citing *Bryant v. Maryland*, 848 F.2d 492, 493 (4th Cir.1988)). Accordingly, this ground is without merit. ✓

CONCLUSION

Wherefore, it is RECOMMENDED that the Respondent's Motion for Summary Judgment (Dkt. # 11) be GRANTED and the habeas petition be DISMISSED with prejudice.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

April 22, 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).

08-5037

8:08-cv-03172-HFF

Date Filed 05/11/2009

Entry Number 17

Page 1 of 5

IN THE DISTRICT COURT
OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA

ATTORNEY GENERAL'S 3257
5-12-09
RECEIVED
ADMINISTRATIVE INSTRUCTIONS
FILE OPEN
HAVE COPIES MADE

Tyrone Shumpert
#292828 PETITIONER,

V.

Colie L. Rushton
Warden
McCormick correct.
Institutions
Respondent.

CA No: 8:08-3172-HFF-001

- Motion -

Objections to

REPORT AND RECOMMENDATION

OF MAGISTRATE JUDGE

Comes now the Petitioner, Prose, respectfully
objecting to the Report and recommendation
of the Magistrate Judge concerning the matters
Herein.

On December 17, 2008, the respondent moved for
summary Judgment. By order filed December
18, 2008 pursuant to Roseboro v. Garrison F.2d 309 (4th Cir 1975)
the petitioner was advised of the summary Judgment
dismissal procedure. On January 19, 2009 the
McCormick Correctional Inst. should have stamped
the envelope containing the response to summary
Judgment petition previously filed by the respondent.
Houston v. Lack 487 US 266 (1988) considered filed
when filed with prison authorities for forwarding to
the district court.

Grounds For Relief

II. ~~Ground One: Batson Violation~~ Quoted Verbatim:

- (1) Ground One: Trial counsel failed to move for a Batson violation where all members of my race were purposely struck from jury.

Supporting Facts: During jury selection juror 58 David Jackson and Juror 33 Gregory Fielder was struck from jury selection by prosecution plus all jurors selected were caucasian over the age 35 by 95%.

Law: The state denies a black man equal protection of the law when it puts him on trial before a jury where members of his race has been purposely excluded.

Batson v. Kentucky 476 U.S. 79, 106 S.Ct. 1712, 68 AFR2d 1339, 1341 (1986) 14 S.L. Title Code 14 § 14-7-360

Ground Two: Denial of Admissibility of Juror Affidavit.

Supporting Facts: Post conviction Relief Judge did not allow the affidavit on record. Affidavit contained facts that my silence was used against me even after Judge charges due to the fact of the prosecutors extreme influence. See Appendix transcript pg 99. "There's been absolutely nothing presented." State v. Aldret 333 S.C. 307, 509 S.E.2d 811 (1999)

Ground Three: Counsel failed to object to prosecutor's comments alluding to my failure to present a defense.

Supporting Facts: Prosecutor's statements: "If you don't ~~present a defense~~"

Believe Derek Mosely I can't do anything for you!!
 "But there's, But there's been absolutely nothing presented
 for you not to believe Derek Mosley. But not to believe
 him you need to satisfy yourself there's a reason not
 to believe him." The Law states a Jury is allow to believe
 anything for any reason at all base on the evidence
 presented. USA Amendments 5, 14 were violated.
 Both Amendments ~~7th~~ ^{5th} and Fourteenth forbids
 comment by the prosecutor on the petitioners silence
 or failure to present a defense. Edmond v. State 341 So.2d
 682 and US v. Lewis 10 F 3d 1086 (1993)

Ground Four: Counsel failed to Subpoena ^{Alibi} Witnesses,
 Present an Alibi defense.

Supporting facts: At trial Kenya Robinson was
 present because I notified her by phone is the only reason
 Oscar Taylor Brandon Williams Marcus Brown and
 Lamar Todd were never subpoena to trial after
 repeated requests to counsel man Mayer.

LAW: UNITED STATE constitutional Amendment:

Sixth Amendment. "In all criminal prosecution, Accused shall
 enjoy the right to a speedy trial before an impartial jury... to be informed
 of the nature and cause of the Accusation, to be confronted with the
 witness against him and; [to have a compulsory process for
 obtaining witnesses in his favor and to have effective assistance
 of counsel for his defense.

I OBJECTIONS /

(1) UNDER 28 U.S.C. § 2254 (d)(1)(2)

Anytime the United States Constitutional Amendments are violated relief may be granted on Federal Habeas Corpus.

(A) All issue filed by the petitioner in his Federal Habeas Applications are Constitution issues upon the facts that ~~the~~ petitioners rights have been violated.

(B) All issues filed by the petitioner to date are more than "harmless" and under the law are called "reversible errors. Any one issue alone shall vacate or at least reverse part of the petitioners sentence.

(2) Majority of the issue filed by the petitioner is against the Prosecution's comments or the jury, the fact is a fair trial did not take place because the Prosecution mislead the Jury by leading them (The Jurors) where it should have and had no right to lead them.

See Transcript Pgs 98-99 LNS 17-25 and 1-10

on Pg 98 Lines 17-25 The Solicitor leads the Jury by asking the Judges to be a statement in which later the Judge states [Pg 143 Lines 8-11] "it's a little unusual." These statements made by The solicitor is the same "Extraneous" or outside influence which allow the court to admit the Jury Affidavit.

III Closing

(1) Furthermore the admissibility of the Juror's Affidavit was wrongfully excluded under Rule 6D(2) SCRE (S.F. Rules of Evidence) the prosecutor's comments were clearly the only "Extraneous" influence needed to influence the jury and simultaneously violate both USA. 6, and 14

IV. Conclusion.

Wherefore it is Recommended that this motion for Summary Judgment made by the Respondent be dismissed and the Habeas petition be GRANTED
It is so Recommended

MAY 6, 2009.

- PETITIONER -
Tyroneshumpert 292825
386 Redemption way
McCormick SC 29899

388-5037

8:08-cv-03172-HFF

Date Filed 05/12/2009

Entry Number 20

Page 1 of 1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

ATTORNEY GENERAL'S OFFICE

RECEIVED

5-12-09

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ EN

HAVE _____ COPIES MADE

ROUTE TO _____

ORDER: _____ TRANSCRIPT

SUMMARY JUDGMENT RECORDED _____ CLERK RECORD

IN A CIVIL CASE _____ OTHER: _____

Civil Action No. 8-08-cv-3172-HFF

Tyrone Shumpert, #292828,

Petitioner,

vs.

Colie L Rushton, Warden McCormick
Correctional Institution,

Respondent.

Decision by the Court. This action came before the court. The court having adopted the report and recommendation of the magistrate judge granting the respondent's motion for summary judgment,

IT IS ORDERED AND ADJUDGED that summary judgment is hereby entered as to the respondent Colie L Rushton, Warden McCormick Correctional Institution.

May 12, 2009

LARRY W. PROPES, CLERK
UNITED STATES DISTRICT COURT

By: s/ L. K. McAlister
Case Manager

08-5037

8:08-cv-03172-HFF

Date Filed 05/12/2009

Entry Number 19

Page 1 of 2



ATTORNEY GENERAL'S OFFICE
RECEIVED 5-12-09

ADMINISTRATIVE INSTRUCTIONS

gsh FILE OPEN END
HAVE COPIES MADE

ROUTE TO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

ORDER: TRANSCRIPT

 PEN RECORDS CLERK RECORDS

OTHER:

TYRONE SHUMPERT,
Petitioner,

vs.

COLIE L. RUSHTON, Warden of McCormick
Correctional Institution,
Respondent.

§
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§
§
§
§
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§

CIVIL ACTION NO. 8:08-3172-HFF-BHH

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondent's Motion for Summary Judgment (Dkt. # 11) be granted and the habeas petition be dismissed with prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

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 the 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 to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 22, 2009, and the Clerk of Court entered Petitioner's objections to the Report on May 11, 2009. The Court has reviewed the objections, however, and finds them to be wholly without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondent's Motion for Summary Judgment (Dkt. # 11) be **GRANTED** and the habeas petition be **DISMISSED** with prejudice.

IT IS SO ORDERED.

Signed this 11th day of May, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

3338
JK

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas AUGUSTED

County of LAURENS)

270 MAR 11 P 4:25

Tyrone Shumper 292828
Full name and prison number, if any, of applicant)

APPLICATION FOR)

v.)

POST-CONVICTION RELIEF)

State of South Carolina
Name of Respondent)

2010 -CP30- 339

INSTRUCTIONS - READ CAREFULLY

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

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

If the applicant 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 applicant was convicted.

1. Place of detention McCORMICK CORRECTIONAL INST.
2. Name and location of Court which imposed sentence General Sessions Court - Laurens
South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 02-C.S.-30-1018- Count 1 Conspiracy, Count #2 Armed Robbery, count
 - (b) #3 Armed Robbery, Count #4 possession of a firearm.
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 30, 2003
 - (b) Sentenced to 22 years of imprisonment
 - (c) _____

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & C's

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Petition for writ of certiorary Granted
- iii. Writ of Cert. Dismissed / [REDACTED]
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 17-27-45(c) After / newly discovered evidence / material
- (b) facts not previously presented
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Co defendant's Affidavit or Recanted Statement

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

yes

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. writ of Certiorary

ii. Post conviction Relief

iii. S.C. Court of Appeals - Direct appeal

iv. Federal Habeas Corpus

(b) the name and location of the Court in which each was filed:

i. S.C. Supreme Court - S.C.

ii. Common Pleas Court - Laurens, SC.

iii. S.C. Appellate Court - Col. SC.

iv. S.C. District Court - Greenville, SC.

(c) the disposition thereof:

i. Dismissed

ii. Dismissed

iii. Dismissed

iv. Dismissed

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Newly After Discovered Evid.
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. William G. Mayer - Laurens Uptown Square Laurens, SC. ^{West MAIN ST. Public Def.}
- ii. Tara Taggart Appellate Defense Lady St. Col. SC
- iii. Robbey Richey Greenville, SC.
- ~~iv~~ Robert Pachek SC Appellate Defense

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Direct Appeal
- iii. P.C.R.
- ~~iv~~ SC Supreme Court

18. State clearly the relief you seek in filing this application.

Reverse / Vartate Sentence

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

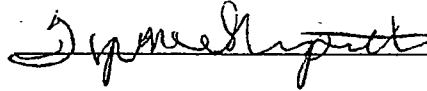
No

STATE OF SOUTH CAROLINA)

COUNTY OF Laurens)

VERIFICATION

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



Sworn to and subscribed before me

This 04 day of March, 2010.

J.C. Franklin L.S.

Notary Public for South Carolina

My Commission Expires 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tyrone Shumpert, 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 proceeding or give security therefor.


Applicant

Sworn to and subscribed before me

This 04 day of March, 2010.

J.C. Franklin L.S.

Notary Public for South Carolina

My Commission Expires: 12-16-2019

I Derek Mosley, ^(UM) sign this Noticication ~~to~~ to bare witness that Tyrone ~~Sh~~ Shumport of 56 Rosco Drive Waterloo, SL 29384 was falsley accused of an criminal charge that sentenced him to twenty-two years of imprisonment. I hear by swear with my right hand that all charges be dropped. I am sure that he his innocent because I am his co defendant with my statement was probably an source of him being committed to his time. My action where wrong and I'll well testify that he his innocent thank you.

Derek Mosley

Dec. 2, 2009.

Appeared before me on 12-2-09

Notary Dinal D. Martinik

Commission Expires 2-21-2018

Affidavit

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Tyrone Shumpert, # 292828,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
Case No. 2010-CP-30-0339

RETURN AND MOTION TO DISMISS

The Respondent, making its Return and Motion to Dismiss to the application for Post-Conviction Relief filed March 11, 2010, would respectfully show this Court:

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Laurens County Clerk of Court. The Applicant was indicted at the November 2002 term of the Laurens County Grand Jury for two (2) counts of Armed Robbery, one (1) count of Conspiracy, and one (1) count of Possession of a Firearm During Commission of a Violent Crime. The Applicant was represented by William G. Mayer, Esq. On April 28, 2003, the Applicant went to trial before the Honorable James W. Johnson, Jr., and was convicted by a jury of two counts of Armed Robbery and one count of Conspiracy. The jury found him not guilty of the possession of a weapon charge. The Honorable James W. Johnson, Jr. sentenced the Applicant to confinement for a period of twenty-two (22) years for each count of Armed Robbery, and five (5) years for Conspiracy, all sentences to be served concurrently with credit for time served.

The Applicant then appealed to the South Carolina Court of Appeals. He was represented by Appellate Defender Tara S. Taggart who filed an Anders brief on his behalf raising the following issue: “[w]hether the judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt.?” The Applicant filed a *pro se* brief on September 14, 2002 in which he alleged a Batson violation, prosecutorial misconduct based on a comment, bolstering of witnesses, improper seating of a juror, and ineffective counsel. The Court of Appeals dismissed his appeal by after review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App., filed February 8, 2005). The Remittitur was issued on March 15, 2005.

2005-CP-30-422

The Applicant subsequently filed his first application for post-conviction relief (PCR) on May 24, 2005. In this application the Applicant alleged that he was being held in custody illegally for the following reasons:

- 1.) “Counsel Failed to Object to an All White Jury”;
- 2.) “Counsel Failed to Present a(sic) Alibi Defense”; and
- 3.) “Counsel Failed to Object to Prosecutor’s Argument Alluding to the Defendant’s Failure to Put up a Defense.”

An evidentiary hearing was convened on January 18, 2005 at the Laurens County Courthouse before the Honorable Wyatt T. Saunders. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The PCR court heard testimony from the Applicant, Candi Robertson, and William Mayer. On March 6, 2006, Judge Saunders entered an order denying the application.

On October 27, 2006, the Applicant filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina raising the following issue, “ Whether [Applicant]’s case should be

remanded for consideration of an affidavit that was wrongly excluded?" The Respondent made its Return to the petition on January 7, 2007. On December 13, 2007, the South Carolina Supreme Court entered an order granting certiorari and setting a briefing schedule. The Brief of Petitioner was filed on January 9, 2008. The Respondent filed its Brief on February 8, 2008. ON May 12, 2008, the Supreme Court affirmed the judgment denying pos-conviction relief. Shumpert v. State, 378 S.C. 62,661 S.E.2d 369 (2008). The Remittitur was issued on May 29, 2008.

8:08-cv-03172-HFF

The Applicant then filed a Petition for Habeas Corpus in the Federal Court for the District of South Carolina on September 9, 2008. Here Applicant alleged he was being held illegally and was entitled to relief for the following reasons:

1. "Trial counsel failed to move for a Batson violation: where all members of my race were struck from the jury;"
 - a. Supporting Facts: "During jury selection juror 53 David Jackson and juror 33 Gregory Fielder was (sic) struck from jury selection by prosecutor. Plus all jurors picked were Caucasian, over the age of 35 by 90%"
2. "Counsel fail (sic) to present an alibi defense;"
 - a. Supporting Facts: "At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoena(sic) to trial after repeated request to councilman Mayo."
3. "Counsel failed to object to prosecutor's alluding to my failure to present a defense;"
 - a. Supporting Facts: "Prosecutor statement: 'there's been absolutely nothing presented for you not to believe Derrick Mosely' who was the state's only witness. This also influenced the jury to use the right to silence against me. [The extraneous influence!!]"
4. "Denial of Admissibility of Juror Affidavit;"
 - a. Supporting Facts: "Post-conviction relief judge did not allow the affidavit on record. Affidavit contained facts that my silence was

used against me by Juror's even after the judge's charges and prosecutor's extraneous influence outside deliberations."

The Respondent moved for summary judgment on December 17, 2008. On January 26, 2009, the Applicant filed a *pro se* response opposing Respondent's motion for summary judgment in which he moved for appointment of counsel, claimed actual innocence, and asserted the following claims:

1. Actual innocence
 - a. Co-defendant Derek Mosley will testify on Applicant's behalf that he lied under oath during Applicant's trial and that Applicant took no part in the crime and had no knowledge of it.
2. Brady violation
3. Ineffective assistance of trial counsel
 - a. For not subpoenaing witnesses and not providing him with a copy of his Rule 5/discovery materials
 - b. Failing to present a defense
 - c. Failing to object to solicitor's improper comments
4. Prosecution intimidated witnesses
5. Batson violation
6. Prosecutorial misconduct in comments made to jury and in bolstering of witnesses

On April 22, 2009 the Magistrate's Report and Recommendation was issued recommending the Respondent's Motion of Summary Dismissal be granted. By written order dated May 12, 2009 the Honorable Henry F. Floyd, United States District Judge for the District of South Carolina dismissed the Petition with prejudice.

Current Application

The Applicant then filed his second application for post-conviction relief on March 11, 2010, alleging he is being held in custody unlawfully for the following reason:

1. 17-27-45(c) After/Newly discovered evidence: co-defendant's affidavit or recanted statement

Attached herewith and incorporated herein by reference are the records of the Laurens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Applicant's prior PCR, PCR appeal, and federal habeas records, and the appellate court records.

Successiveness

The Respondent submits that the current application for post-conviction relief must be summarily dismissed, first, because it is successive to the Applicant's prior applications for post-conviction relief and other actions challenging the conviction and sentence. S.C. Code Ann. §17-27-90 (2003) provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored, especially when the grounds raised could have been raised in the initial application, Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous

application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. at 448, 409 S.E.2d at 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). The prohibition against successive actions includes federal habeas corpus petitions or “any other proceeding taken to secure relief.” Id.

The Applicant already conceded in his federal habeas petition, in support of his “actual innocence” claim, that “although this eyewitness [Derek Mosley] is not new, his testimony at trial was false and coerced by law enforcement of Laurens County.” (See Applicant’s Response in Opposition to Summary Judgment, filed January 26, 2009). Applicant is now re-asserting his actual innocence claim through this successive PCR action, although he couches the claim as a “newly discovered evidence claim.” To be clear, information regarding the Applicant’s guilt or innocence existed before the Applicant’s trial ended, before the Applicant’s direct appeal, and well before the Applicant’s prior PCR, PCR appeal, and federal corpus action. This ground for relief was available for the Applicant to raise in any and all of those prior proceedings and cannot now be a ground for relief in a third, successive collateral attack on these same convictions. The Respondent further contends that the affidavit does not meet *any* of the requirements necessary to constitute newly discovered evidence, as further discussed below, and nonetheless could have been discovered long ago with the exercise of any reasonable due diligence and was in fact already presented to the federal district court and summarily dismissed.

The Respondent submits that under the rules governing state post-conviction relief actions, the Applicant is foreclosed from bringing this claim in a successive application – almost seven years after his convictions, five years after his appeal was dismissed and after he has already pursued two prior collateral attacks on these same convictions. Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1992). Therefore, the Respondent contends that

this application for post-conviction relief should be dismissed because it is improperly successive to the prior applications or actions and is barred by S.C. Code §17-27-90.

Newly Discovered Evidence

To the extent the Applicant relies upon an allegation of newly discovered evidence to show good cause for permitting him to pursue this successive application for post-conviction relief, the Respondent submits the Applicant's alleged newly discovered evidence, even if taken as true, does not constitute newly discovered evidence entitling him to a new trial.

An applicant requesting a new trial based on after discovered evidence must establish that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; *and* (5) Is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 672 S.E.2d (2009); State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); State v. Kelly, 285 S.C. 373, 329 S.E.2d 442 (1985).

The applicant has to meet each prong in order to prevail on this claim. See Hayden v. State, 278 S.C. 160, 299 S.E.2d 854 (1983)(reversing the PCR court's order granting post-conviction relief on the ground of after-discovered evidence where the applicant failed to meet all of the requirements for a new trial).

The Applicant's "newly discovered evidence" is an affidavit from his co-defendant Derek Mosley, who testified against the Applicant under oath at trial, in which Mosley claims he is certain the Applicant is innocent and is now willing to come to court and testify under oath regarding Applicant's innocence. This claim does not constitute newly discovered evidence within the definition of term. Particularly, the affidavit is merely cumulative and is not material given Applicant's claims of actual innocence pursued at trial and rejected by the jury, in his first PCR

action (through an allegation regarding alibi witnesses), and in his federal habeas petition. This "newly discovered evidence" – essentially the Applicant's co-defendant's willingness to now testify under oath that the Applicant is innocent - even if newly discovered evidence, could certainly have been discovered upon the exercise of any due diligence before the Applicant was convicted, and *certainly* well before he pursued his prior PCR actions and his federal habeas corpus action. Significantly, the Applicant admitted in his federal habeas petition that this witness is not new. To the extent the Applicant contends Mosley's willingness to testify or Mosley's testimony being allegedly coerced by law enforcement or the State – the Applicant cannot establish a newly discovered evidence claim by vicariously asserting another's constitutional rights. See Rakas v. Illinois, 439 U.S. 128, 137, 99 S.Ct. 421, 427 (U.S.Ill.,1978).

Statute of Limitations

The Respondent further submits that the current application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(A) (2003) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Also, S.C. Code 17-27-45 (C) (2003) provides:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense he challenges in this application on April 28, 2003. The Remittitur was sent, after the Applicant's unsuccessful appeal, on March 15, 2005. The Applicant was therefore required to file his application before March 15, 2006. This Application was filed on March 11, 2010, which was almost four (4) years after expiration of the statutory filing period.

Moreover and to the extent the Applicant contends that newly discovered evidence should permit him to pursue this untimely post-conviction relief action, the Respondent contends that S.C. Code Ann. section 17-27-45(C), requires that all newly discovered evidence claims be raised within one year after the actual date of discovery of the facts giving rise to the claim by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. Applicant was clearly aware of this claim at the time he filed his opposition to Respondent's Motion for Summary Judgment on January 26, 2009 in the federal district court. The Applicant filed this application raising this claim on March 11, 2010. Clearly the Applicant was aware of and has actually pursued the basis for this claim beginning January 26, 2009. Furthermore, upon the exercise of any due diligence, the Applicant could have ascertained the information he believes constitutes newly discovered evidence well in excess of one year prior to filing this current application. He has not presented an item of new evidence and has not established that he could not have ascertained the matter in a timely manner. The Respondent submits that newly discovered evidence has not been timely asserted in this current application for post-conviction relief, and that the allegation provides no basis to permit the Applicant to pursue the current action.

As previously stated, this information - the co-defendant witness (Mosley) and the Applicant's purported innocence - existed before the Applicant was convicted, and well before he pursued his prior PCR action, PCR appeal, and his federal habeas corpus action. The Respondent contends further that upon the exercise of any due diligence, the Applicant could have ascertained these facts well in excess of one year prior to filing this current application. He has not presented an item of new evidence and cannot establish that he could not have ascertained the matter in a timely manner. Therefore, the Respondent asserts that newly discovered evidence has not been timely asserted in this current application for post-conviction relief and that the allegation provides no basis to permit the Applicant to pursue the current action.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." The Applicant has had ample opportunity to present his case. The Applicant has already litigated or had the opportunity to litigate all the claims he presents in this application. The Applicant continues to raise the same groundless claims by repeated collateral attacks on his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. Therefore, the Respondent contends the Court should summarily dismisses the application for post-conviction relief for successiveness, failure to state a claim pursuant to §17-27-45(c), and for failure to file within the time mandated by the Post Conviction Procedure Act.

CONCLUSION

Based on the foregoing, the Respondent respectfully requests this Court to summarily dismiss the current application for post-conviction relief because it was filed beyond the applicable statute of limitations, is an improper successive action, does not constitute newly discovered evidence, and fails to present any issue of genuine material fact necessitating any further inquiry.

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

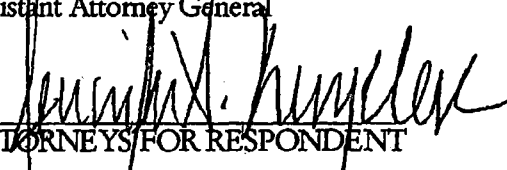
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

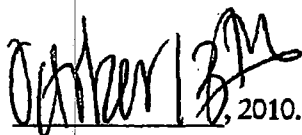
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JENNIFER A. KINZELER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2010-CP-30-0339

TYRONE SHUMPERT,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

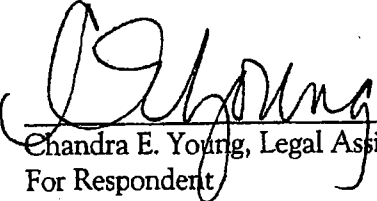
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Tyrone Shumpert, 292828
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, SC 29010

DATED this 13th day of October, 2010.


 Chandra E. Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Tyrone Shumpert, # 292828,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
Case No. 2019-CP-30-Q339

2020 OCT 28 P 55

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for Post-Conviction Relief filed March 11, 2010. Respondent made its Return and Motion to Dismiss on or about October 13, 2010

I.

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Laurens County Clerk of Court. The Applicant was indicted at the November 2002 term of the Laurens County Grand Jury for two (2) counts of Armed Robbery, one (1) count of Conspiracy, and one (1) count of Possession of a Firearm During Commission of a Violent Crime. The Applicant was represented by William G. Mayer, Esq. On April 28, 2003, the Applicant went to trial before the Honorable James W. Johnson, Jr., and was convicted by a jury of two counts of Armed Robbery and one count of Conspiracy. The jury found him not guilty of the possession of a weapon charge. The Honorable James W. Johnson, Jr. sentenced the Applicant to confinement for a period of twenty-two (22) years for each count of Armed Robbery, and five (5) years for Conspiracy, all sentences to be served concurrently with credit for time served.

SCJ

The Applicant then appealed to the South Carolina Court of Appeals. He was represented by Appellate Defender Tara S. Taggart who filed an Anders brief on his behalf raising the following issue: "[w]hether the judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt?" The Applicant filed a *pro se* brief on September 14, 2002 in which he alleged a Batson violation, prosecutorial misconduct based on a comment, bolstering of witnesses, improper seating of a juror, and ineffective counsel. The Court of Appeals dismissed his appeal by after review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App., filed February 8, 2005). The Remittitur was issued on March 15, 2005.

2005-CP-30-422

The Applicant subsequently filed his first application for post-conviction relief (PCR) on May 24, 2005. In this application the Applicant alleged that he was being held in custody illegally for the following reasons:

- 1.) "Counsel Failed to Object to an All White Jury;"
- 2.) "Counsel Failed to Present a(sic) Alibi Defense;" and
- 3.) "Counsel Failed to Object to Prosecutor's Argument Alluding to the Defendant's Failure to Put up a Defense."

An evidentiary hearing was convened on January 18, 2005 at the Laurens County Courthouse before the Honorable Wyatt T. Saunders. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The PCR court heard testimony from the Applicant, Candi Robertson, and William Mayer. On March 6, 2006, Judge Saunders entered an order denying the application.

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remanded for consideration of an affidavit that was wrongly excluded?" The Respondent made its Return to the petition on January 7, 2007. On December 13, 2007, the South Carolina Supreme Court entered an order granting certiorari and setting a briefing schedule. The Brief of Petitioner was filed on January 9, 2008. The Respondent filed its Brief on February 8, 2008. ON May 12, 2008, the Supreme Court affirmed the judgment denying pos-conviction relief. Shumpert v. State, 378 S.C. 62, 661 S.E.2d 369 (2008). The Remittitur was issued on May 29, 2008.

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1. "Trial counsel failed to move for a Batson violation: where all members of my race were struck from the jury;"
 - a. Supporting Facts: "During jury selection juror 53 David Jackson and juror 33 Gregory Fielder was (sic) struck from jury selection by prosecutor. Plus all jurors picked were Caucasian, over the age of 35 by 90%"
2. "Counsel fail (sic) to present an alibi defense;"
 - a. Supporting Facts: "At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoena(sic) to trial after repeated request to councilman Mayo."
3. "Counsel failed to object to prosecutor's alluding to my failure to present a defense;"
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4. "Denial of Admissibility of Juror Affidavit;"
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used against me by Juror's even after the judge's charges and prosecutor's extraneous influence outside deliberations."

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1. Actual innocence
 - a. Co-defendant Derek Mosley will testify on Applicant's behalf that he lied under oath during Applicant's trial and that Applicant took no part in the crime and had no knowledge of it.
2. Brady violation
3. Ineffective assistance of trial counsel
 - a. For not subpoenaing witnesses and not providing him with a copy of his Rule 5/discovery materials
 - b. Failing to present a defense
 - c. Failing to object to solicitor's improper comments
4. Prosecution intimidated witnesses
5. Batson violation
6. Prosecutorial misconduct in comments made to jury and in bolstering of witnesses

On April 22, 2009 the Magistrate's Report and Recommendation was issued recommending the Respondent's Motion of Summary Dismissal be granted. By written order dated May 12, 2009 the Honorable Henry F. Floyd, United States District Judge for the District of South Carolina dismissed the Petition with prejudice.

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Current Application

The Applicant then filed his second application for post-conviction relief on March 11, 2010, alleging he is being held in custody unlawfully for the following reason:

1. 17-27-45(c) After/Newly discovered evidence; co-defendant's affidavit or recanted statement.

Before this Court are the records of the Laurens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Applicant's prior PCR, PCR appeal, and federal habeas records, and the appellate court records.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review all of the pleadings, affidavits, and the record in its entirety. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-70:

Successiveness

This Court first finds that the current application for post-conviction relief must be summarily dismissed because it is successive to the Applicant's prior applications for post-conviction relief and other actions challenging the conviction and sentence. S.C. Code Ann. § 17-27-90 (2003) provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored, especially when the grounds raised could have been raised in the initial application, Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. at 448, 409 S.E.2d at 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). The prohibition against successive actions includes federal habeas corpus petitions or "any other proceeding taken to secure relief." Id.

The Applicant already conceded in his federal habeas petition, in support of his "actual innocence" claim, that "although this eyewitness [Derek Mosley] is not new, his testimony at trial was false and coerced by law enforcement of Laurens County." (See Applicant's Response in Opposition to Summary Judgment, filed January 26, 2009). Applicant is now re-asserting his actual innocence claim through this successive PCR action, although he couches the claim as a "newly discovered evidence claim." To be clear, information regarding the Applicant's guilt or innocence existed before the Applicant's trial ended, before the Applicant's direct appeal, and well before the Applicant's prior PCR, PCR appeal, and federal corpus action. This ground for relief was available for the Applicant to raise in any and all of those prior proceedings and cannot now be a ground for relief in a third, successive collateral attack on these same convictions. This Court finds that the affidavit does not meet *any* of the requirements necessary to constitute newly discovered evidence, as further discussed below, and nonetheless could have been discovered long ago with the exercise of any reasonable due diligence and was in fact already presented to the federal district court and summarily dismissed.

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SCJH

Therefore, the Court finds that under the rules governing state post-conviction relief actions, the Applicant is foreclosed from bringing this claim in a successive application – almost seven years after his convictions, five years after his appeal was dismissed and after he has already pursued two prior collateral attacks on these same convictions. Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1992). Accordingly, this application for post-conviction relief is summarily dismissed because it is improperly successive to the prior applications or actions and is barred by S.C. Code §17-27-90.

Newly Discovered Evidence

To the extent the Applicant relies upon an allegation of newly discovered evidence to show good cause for permitting him to pursue this successive application for post-conviction relief, this Court further finds the Applicant's alleged newly discovered evidence, even if taken as true, does not constitute newly discovered evidence entitling him to a new trial.

An applicant requesting a new trial based on after discovered evidence must establish that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; *and* (5) Is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 672 S.E.2d (2009); State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); State v. Kelly, 285 S.C. 373, 329 S.E.2d 442 (1985).

The applicant has to meet each prong in order to prevail on this claim. See Hayden v. State, 278 S.C. 160, 299 S.E.2d 854 (1983) (reversing the PCR court's order granting post-conviction relief on the ground of after-discovered evidence where the applicant failed to meet all of the requirements for a new trial).

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The Applicant's "newly discovered evidence" is an affidavit from his co-defendant Derek Mosley, who testified against the Applicant under oath at trial, in which Mosley claims he is certain the Applicant is innocent and is now willing to come to court and testify under oath regarding Applicant's innocence. This claim does not constitute newly discovered evidence within the definition of term. Particularly, the affidavit is merely cumulative and is not material given Applicant's claims of actual innocence pursued at trial and rejected by the jury, in his first PCR action (through an allegation regarding alibi witnesses), and in his federal habeas petition. This "newly discovered evidence" - essentially the Applicant's co-defendant's willingness to now testify under oath that the Applicant is innocent - even if newly discovered evidence, could certainly have been discovered upon the exercise of any due diligence before the Applicant was convicted, and *certainly* well before he pursued his prior PCR actions and his federal habeas corpus action. In fact, the Applicant admitted in his federal habeas petition that this witness is not new. To the extent the Applicant contends Mosley's willingness to testify or Mosley's testimony being allegedly coerced by law enforcement or the State - the Applicant cannot establish a newly discovered evidence claim by vicariously asserting another's constitutional rights. See Rakas v. Illinois, 439 U.S. 128, 137, 99 S.Ct. 421, 427 (U.S.Ill.,1978).

This Court finds the Applicant's claim does not constitute newly discovered evidence and that he is not entitled to pursue this successive action on this ground.

Statute of Limitations

The Court further finds that the current application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(A) (2003) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Also, S.C. Code 17-27-45 (C) (2003) provides:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense he challenges in this application on April 28, 2003. The Remittitur was sent, after the Applicant's unsuccessful appeal, on March 15, 2005. The Applicant was therefore required to file his application before March 15, 2006. This Application was filed on March 11, 2010, which was almost four (4) years after expiration of the statutory filing period.

Moreover and to the extent the Applicant contends that newly discovered evidence should permit him to pursue this untimely post-conviction relief action, S.C. Code Ann. section 17-27-45(C), requires that all newly discovered evidence claims be raised within one year after the actual date of discovery of the facts giving rise to the claim by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. Applicant was clearly aware of this claim at the time he filed his opposition to Respondent's Motion for Summary Judgment on January 26, 2009 in the federal district court. The Applicant filed this application raising this claim on March 11, 2010. Clearly the Applicant was aware of and has actually pursued the basis for this claim beginning January 26, 2009. Furthermore, upon the exercise of any due diligence, the Applicant could have ascertained the information he believes constitutes newly discovered evidence

well in excess of one year prior to filing this current application. He has not presented an item of new evidence and has not established that he could not have ascertained the matter in a timely manner. This Court finds that newly discovered evidence has not been timely asserted in this current application for post-conviction relief, and that the allegation provides no basis to permit the Applicant to pursue the current action.

As previously stated, this information - the co-defendant witness (Mosley) and the Applicant's purported innocence - existed before the Applicant was convicted, and well before he pursued his prior PCR action, PCR appeal, and his federal habeas corpus action. Upon the exercise of any due diligence, the Applicant could have ascertained these facts well in excess of one year prior to filing this current application. He has not presented an item of new evidence and cannot establish that he could not have ascertained the matter in a timely manner. Therefore, not only has the Applicant failed to timely assert this claim, the allegation provides no basis upon which the Applicant should be permitted to pursue the current action.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." The Applicant has had ample opportunity to present his case. The Applicant has already litigated or had the opportunity to litigate all the claims he presents in this application. The Applicant continues to raise the same groundless claims by repeated collateral attacks on his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. Therefore, this Court finds the current action is summarily dismissed because it is successive, does not

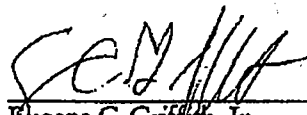
constitute newly discovered evidence, and because it was not filed within the time mandated by the Post Conviction Procedure Act.

Conclusion

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Laurens County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Jennifer A. Kinzeler, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 25th day of October, 2010.


Eugene C. Griffith, Jr.
Chief Administrative Judge
Eighth Judicial Circuit

Nurberg, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Tyrone Shumpert #292828,

Applicant,

State of South Carolina

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO. 2010 CP-30-0339

CONDITIONAL ORDER

Come now the Applicant Filing Pro Se respectfully by way of Application for Post-Conviction Relief filed March 11, 2010. The applicant received the conditional order of dismissal on or about October 20, 2010 from the McCormick Mail Room of the MECTI Corr. Inst.

I.

The Applicant is currently confined in the South Carolina Dept. of Corrections pursuant to orders of commitment by the Laurens County Clerk of Court. The Applicant was indicted during the November 2002 term for two (2) counts of Armed Robbery and one count of conspiracy and one count of possession of a fire arm during the commission of a violent crime. He was found guilty of the two (2) armed robbery, one conspiracy charge; the jury found him not guilty of the weapons charge. He was sentenced to (22) twenty-two years for each robbery and (5) five year on the conspiracy all charges sentences are concurrent.

Current Applicant

§ 17-27-45(c) If the applicant contends that there are facts not previously presented and heard that requires vacation of the conviction ~~or~~ sentence, the application must be filed within one year after the date of when the ~~facts~~ could have been ascertained by the exercise of due diligence. This second application filed on March 11, 2010 is contesting that he is being held unlawfully for the following reasons: Newly/After discovered evidence base upon the fact that the state's/prosecutors sole (only) witness to place the applicant at the scene of the crime has recanted his statement and notified the state that he previously lied in ~~on~~ his two previous statements and his trial testimony, he now comes forward with this new affidavit and admits that he previously lied.

Finding of Fact

- This evidence proves beyond a reasonable doubt that the applicant is innocent. Even with Mosley's first statements in which his lies were contained along with his testimony all grossly violated the applicants 6th and 14th U.S.C.A. Constitutional amendment rights. Mosley's Affidavit tells us, "My Actions were wrong" and "I'll (Mosley) will testify that he (Shumper) is innocent."

Successiveness

This 'newly discovered evidence' was written, and signed, and notarized by Derek Mosley and a notary Public At the Laurens County Court House on December 2, 2009 it's still yet to be a year old. As the record reflects it has never been raised in any other proceeding, in material or affidavit form, in fact was merely mentioned on Federal habeas Corpus in his actual innocence claim because at the time ~~he~~ had yet to receive the copies he await via mail. This is ~~the~~ first court that this issue has been raised and presented in its material weight. This issue is not successive in any way by any law for the ~~above~~ ^{above} reasons, as ~~per~~ ^{per} ~~suant~~ ^{suant} to Odom v. State 337 SC 256, 523 SE 2d 753 (1999) And was filed on March 11, 2010 and initially received by the applicant shortly after Dec. 08, 2009, but still is yet to be one year old therefore is deemed valid under § 17-27-90. and § 17-27-50 Furthermore this evidence was unavailable at any other stages of court, seeing as how the trial dates were April 2003 and the P.C.R. was 2005 in which both happened years before this evidence was born into existence. This Evidence could not have been properly raised in any proceeding prior to this application.

Newly Discovered Evidence

The applicant contends that this evidence is more than sufficient enough to prevail ~~if~~ granted a chance at a new trial and it should be granted for the following reasons, which must be established by the applicant:

- 1) Is such as would probably change the results if a new trial was had?
- 2) Derek Mosley statements and testimony is the sole (only) evidence in this case; the prosecutor's whole case hinged upon this testimony (and the whole case hinged upon this testimony) and without Derek Mosley's words there would have been nothing. No statements, no testimonies, no fingerprints, no DNA, Nothing to even place the Applicant near the scene, now the states only witness and evidence has come forward with the truth. Even the victims stated at my bond hearing as a couple that ~~he~~ "didn't" rob them" and "wasn't one of the robbers" Referring to the Applicant. WITH THIS EVIDENCE it is a great probability that the outcome of the last trial would have been different and that a new trial would have a verdict of Not Guilty.

2) Has been discovered since trial?

1) The Applicants trial was held April 2008, and this evidence was born December 2, 2009

3) could not by the exercise of due diligence been discovered before trial.

a) The applicant still has never received a rule 5/brady/motion of discovery, didn't even know how the state's witness against him could be, he never had a chance to confront him with the knowledge of him (Mosley) being the witness against him or even seen the statements against him and have yet still to see any other statements besides Mosley's from anyone in this case. Mosley had two ~~other~~ false statements before the trial and I was never in contact with Mosley before trial. Therefore through or by the exercise of the most highest diligence it is unseen as how this new evidence could have been obtained and I humbly notify this court that at that time I could not.

4) Is material to the guilt or punishment, or innocence.

a) It is highly probable that upon the receipt of a new trial this "material evidence" would clear the applicants name, reverse and vacate all charges against him. This written, tangible, evidence is paramount to the applicants new trial and is material to his guilt or innocence.

5) This evidence is not merely cumulative or impeaching
 1) This evidence has never been properly raised in any prior proceeding; it was referred to but it wasn't presented as a notarized, signed, dated, Affidavit except in this current application. Nor is this evidence merely impeaching or to bring accusations against Mosley but in all sincerity to establish the applicant's innocence and receive a just decision for the truth in light of a wrongful verdict. State v. Mercer 381 S.C. 149, 672 S.E.2d 28 (2009); State v. Spann 334 S.C. 618, 513 S.E.2d 98 (1999) ~~THE~~ THE Applicant must prove five prongs. Clark v. State 315 S.C. 385, 434 S.E.2d 266 (1993) Applicant shows and this evidence is favorable to the accused by its material weight. State v. Kelly 285 S.C. 373, 329 S.E.2d 442 (1985)

Statute of Limitations

Any statute under Title 17 Criminal Procedures of 17-2710 thru 17-27-90 you shall find that this evidence is valid, is less than one year old as of the filing date March 11, 2010 this evidence was written in is material form Dec 2, 2009, is valid and current, and procedurally filed The Applicant contends that this evidence have not been previously presented, requires vacation of the sentence and was filed within a year of discovery and could not have been ascertained by the exercise of due diligence.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

TYRONE Shumpert, 29288,
Applicant,

v,

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2010 CP-30-0339

AFFIDAVIT OF SERVICE

I, the Applicant, TYRONE Shumpert, did by regular communication by mail did serve a copy of order / motion in the above captioned matter on the following person(s) by depositing same in the United States mail.

Hon. Lynn Lancaster - CLERK of Court
Laurens County - CLERK of Court
100 Hillcrest Dr. P.O. Box 287
Laurens SC 29360

Office of the Attorney Gen.
Attn: Jennifer A. Kinzeleger, Esq.
P.O. Box 11549
Columbia, SC 29211

November 5, 2010

I Derek Mosley^(COM), sign this notification ~~to~~ to bare witness that Tyrone ~~Sh~~ Shumport of 66 Rosco Drive Waterloo, ON N2L 2G8 was falsley accused of an criminal charge that sentenced him to twenty-two years of imprisonment. I here by swear with my right hand that all charges be dropped. I am sure that he his innocent because I am his co defendant with my statement was probably an source of him being committed to his time. My action where wrong and I'll will testify that he his innocent thank you.

Derek Mosley

Dec. 2, 2009.

Appeared before me on 12-2-09

Notary Dinal D. Martinek

Commission Expires 2-21-2018

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) IN THE COURT OF COMMON PLEAS
) LAURENS COUNTY JUDICIAL CIRCUIT
) CLERK OF COURT

Tyrone Shumpert, #292828,

2010-CP-30-0339

Applicant,

2011 DEC 28 P 3:51

v.

) **ORDER VACATING CONDITIONAL ORDER**
) **OF DISMISSAL AND SETTING CASE FOR**
) **EVIDENTIARY HEARING**

State of South Carolina,

) UNRECORDED

Respondent.

This matter comes before the Court by way of an Application for post-conviction relief filed March 11, 2010. The State made its Return and Motion to Dismiss dated October 13, 2010, requesting that the Application be summarily dismissed for failure to comply with the Uniform Post-Conviction Procedure Act S.C. Code Ann. §17-27-10 to -160 in that the Applicant's PCR application was successive and beyond the statute of limitations. Thereafter, this Court issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, but giving the Applicant twenty days from the date of service in which to provide reasons why the case should not be summarily dismissed without a hearing. The Applicant then submitted a response to the Conditional Order of Dismissal on November 5, 2010.

This Court finds that the response to the Conditional Order of Dismissal contains grounds to be sufficient to show why the action for post-conviction relief should not be summarily dismissed without a hearing. The Applicant's response properly alleges he has "newly discovered evidence" relating to his case, which is cognizable in a post-conviction relief action.

Accordingly, the Conditional Order of Dismissal is hereby **VACATED**, and the matter is to be scheduled for an evidentiary hearing solely on the "newly discovered evidence" claim.

IT IS SO ORDERED this 9th day of December, 2011.

E. C. Griffith, Jr.
THE HONORABLE EUGENE C. GRIFFITH, JR.
Chief Administrative Judge
Eighth Judicial Circuit

Newberry, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF LAURENS) IN THE COURT OF COMMON PLEAS
 MAR 20 2010 1:04) EIGHTH JUDICIAL CIRCUIT

Tyrone Shumpert, #292828,

2010-CP-30-0339

Applicant,

AMENDED CONDITIONAL
 ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an Application for Post-Conviction Relief filed March 11, 2010. The Respondent made its Return and Motion to Dismiss on October 13, 2010.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Laurens County Clerk of Court. He was indicted at the November 2002 term of the Grand Jury for Laurens County for two (2) counts of armed robbery, one (1) count of Conspiracy, and one (1) count of Possession of a Firearm during Commission of a Violent Crime. The Applicant was represented by William Mayer, Esq. The Applicant was convicted on April 30, 2003, after a jury trial, of Conspiracy, and two (2) counts of Armed Robbery. The Honorable James W. Johnson, Jr. sentenced him to twenty-two (22) years confinement for each count of Armed Robbery, and five (5) years for Conspiracy, all sentences to be served concurrently with credit for time served.

The Applicant then appealed to the South Carolina Court of Appeals. He was represented by Appellate Defender Tara S. Taggart. An Anders brief was filed on his behalf. The Court of Appeals then dismissed his appeal by written order. State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App., filed February 8, 2005).

2005-CP-30-0422

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 24, 2005. In this application the Applicant alleged that he was being held in custody illegally for the following reasons:

- 1.) "Counsel Failed to Object to an All White Jury";
- 2.) "Counsel Failed to Present a(sic) Alibi Defense"; and
- 3.) "Counsel Failed to Object to Prosecutor's Argument Alluding to the Defendant's Failure to put up a Defense."

An evidentiary hearing was convened on January 18, 2006 at the Laurens County Courthouse before the Honorable Wyatt T. Saunders. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. On March 6, 2006, Judge Saunders entered an order denying PCR.

The Applicant then appealed to the Supreme Court of South Carolina raising the following issue, "Whether [Applicant]'s case should be remanded for consideration of an affidavit that was wrongly excluded?" On May 12, 2008, the Supreme Court affirmed the judgment denying PCR. Shumpert v. State, 378 S.C. 62, 661 S.E.2d 369 (2008).

8:08-3172-HFF-B

The Applicant then filed a Petition for Habeas Corpus in the Federal Court for the District of South Carolina on September 9, 2008. Here, the Applicant alleged he was being held illegally and was entitled to relief for the following reasons:

1. "Trial counsel failed to move for a Batson violation: where all members of my race were struck from the jury
 - a. Supporting Facts: "During jury selection juror 53 David Jackson and juror 33 Gregory Fielder was(sic) struck from jury selection by prosecutor. Plus all jurors picked were Caucasian, over the age of 35 by 90%"
2. "Counsel fail(sic) to present an alibi defense";
 - a. Supporting Facts: "At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoena(sic) to trial after repeated request to councilman Mayo."
3. "Counsel failed to object to prosecutor's alluding to my failure to present a defense";
 - a. Supporting Facts: "Prosecutor statement: 'there's been absolutely nothing presented for you not to believe Derrick Mosely' who was the state's only witness. This also influenced the jury to use the right to silence against me. [The extraneous influence!!]"
4. "Denial of Admissibility of Juror Affidavit";
 - a. Supporting Facts: "Post-conviction relief judge did not allow the affidavit on record. Affidavit contained facts that my silence was used against me by Juror's even after the judge's charges and prosecutor's extraneous influence outside deliberations."

The Respondent moved for summary judgment on December 17, 2008. On April 22, 2009 the Magistrate issued a Report and Recommendation, recommending the Respondent's Motion of Summary Dismissal be granted. By written order dated May 11, 2009 the Honorable Henry F. Floyd, US District Judge for the District of South Carolina dismissed the Petition with prejudice.

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

1. "17-27-45(c) After/Newly discovered evidence/material facts not previously presented."

To support this allegation, the Applicant submitted an affidavit from Derrick Mosely,

who testified against the Applicant at trial, alleging that Mosley's testimony against Applicant at trial was false.

On October 25, 2010, this Court issued a Conditional Order of Dismissal, summarily dismissing the Applicant's case, but allowing the Applicant twenty (20) days from the date of service to respond with legally and factually sufficient reasons why his application should not be dismissed without a hearing. On November 5, 2010, the Applicant responded to the Conditional Order of Dismissal, alleging he had, in his possession, newly discovered evidence in the form of an affidavit of Derrick Mosley, who testified against the Applicant at trial, which alleges Mosley's testimony against Applicant at trial was false. This Court, then, issued an Order vacating the Conditional Order of Dismissal and setting this case for a hearing based solely on this newly discovered evidence claim. It has come to this Court's attention that this claim has been previously raised and therefore is barred by *res judicata*, as discussed below.

This Court has before it the records of the Laurens County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the records from the Applicant's prior PCRs and the records of Applicant's prior Federal Habeas Corpus proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review all of the pleadings, affidavits, and the record in its entirety. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-70:

Successiveness

This Court finds that the current Application must be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored, especially when the grounds raised could have been raised in the initial application, Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. at 448, 409 S.E.2d at 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). The prohibition against successive actions includes federal habeas corpus petitions or "any other proceeding taken to secure relief." Id.

An Applicant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. If Applicant was not guilty of this crime, then he clearly would have known beforehand that he was not involved, and would have been able to challenge the testimony of Mosley at trial. Co-defendant's current testimony, embodied in an affidavit given six years after his testimony at trial, cannot be said to be undiscoverable until after trial. Accordingly, this "evidence" clearly fails prongs two and three of the Hayden test. To be clear, information regarding the Applicant's guilt or innocence existed before the Applicant's trial ended and could certainly have been discovered upon the exercise of any due diligence before the Applicant was convicted, and *certainly* well before he pursued his prior PCR actions and his federal habeas corpus action. This ground for relief was available for the Applicant to raise in any and all of those prior proceedings and cannot now be a ground for relief in a third, successive collateral attack on these same convictions. To the extent the Applicant contends Mosley's willingness to testify or Mosley's testimony being allegedly coerced by law enforcement or the State – the Applicant cannot establish a newly discovered evidence claim by vicariously asserting another's constitutional rights. See Rakas v. Illinois, 439 U.S. 128, 137, 99 S.Ct. 421, 427 (1978). This Court finds that this application alleges no new grounds which could not have been raised in the previous application. Accordingly, it is the finding of this Court that the application must be summarily dismissed because it is successive.

Res Judicata

Additionally, this claim of newly discovered evidence is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a

prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*

The Applicant had a full opportunity to litigate this claims in his federal habeas action. In that action, the Applicant already conceded, in support of his "actual innocence" claim, that "although this eyewitness [Derek Mosley] is not new, his testimony at trial was false and coerced by law enforcement of Laurens County." (See Applicant's Response in Opposition to Summary Judgment, filed January 26, 2009). The Applicant is now alleging this affidavit from Derek Mosley is newly discovered evidence. This Court finds this claim has already been raised and decided in the Applicant's federal habeas action.

The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court summarily dismisses this claim as barred by *res judicata*.

Statute of Limitations

This Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 30,

2003. The Remittitur was issued after the Applicant's unsuccessful appeal on March 15, 2005. Therefore, the Applicant was required to file his application by March 16, 2006. This Application was filed on March 11, 2010, nearly five (5) years after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that this application is hereby dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Laurens County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 17th day of August, 2012.



Eugene C. Griffith, Jr.
Presiding Judge
Eighth Judicial Circuit

Newberry, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

TYRONE SHUMPERT ,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA)
)
 DEFENDANT.)
)

2010-CP-30-0339

TRANSCRIPT OF RECORD

OCTOBER 17, 2014
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
ELIZABETH WIYGUL, ESQUIRE

ATTORNEY FOR DEFENDANT:
RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

HEARING

4

CERTIFICATE OF REPORTER

7

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No exhibits were presented during this hearing)

1 THE COURT: If we may go on the record on case 10-CP-30-
2 339. This is Tyrone Shumpert vs the State. This is a PCR
3 case. We have Ellie Wiygul here representing the Applicant.
4 Mr. Johnson here on behalf of the State, and Josh Nasrollahi
5 as Guardian Ad Litem for an inmate that's in the Federal
6 Bureau of Prisons up in Pennsylvania. I have had a brief
7 conference with the attorneys in my office. The logistical
8 problem, the key part of this PCR, relates to an after
9 discovered evidence claiming the inmate who at some point in
10 time had testified in the underlying trial. It is my
11 understanding that he has now recanted his testimony.
12 Efforts to reach this inmate have been hampered in the last
13 year by Mr. Nasrollahi. He was appointed again to discuss
14 this case with the inmate. What we talked about in chambers
15 is what we're going to attempt to do. The first thing we
16 have to do is Mr. Nasrollahi has to actually have the
17 opportunity to consult with the gentleman in Pennsylvania.
18 Once that's done, it's hoped that we can either set up a
19 teleconference or a video teleconference in a more formal
20 setting and receive this inmate's testimony so that a record
21 can be created for Mr. Shumpert in the event that the court
22 were to decline to afford him relief. At the same time,
23 obviously, he may be entitled to relief based on the
24 testimony of the other witness. I'm not really sure how
25 that's all going to pan out. The logistics are kind of what

1 we're concerned with. Obviously the court has concern that
2 this is a 2010 case. So I'm hoping that we can perhaps get
3 this resolved in the coming months. I do know that the
4 inmate in Pennsylvania -- what's his name again? Mr. Mosely
5 is supposed to be released in November of next year. There
6 is a South Carolina hold on him. Because of the age of this
7 case I would clearly prefer to get it resolved before
8 November of next year. If worse comes to worse and
9 logistically there simply is no way possible to address
10 this, then we would look at staying these proceedings until
11 he is in the Department of Corrections in November of next
12 year. I don't think that is going to happen because I have
13 to believe that the Federal Prison System has the technical
14 capability to make this happen and to get the testimony
15 taken from up in Pennsylvania. We can't, obviously, bring
16 him down here under the circumstances. Does that pretty
17 much comply with what we discussed in chambers, Ms. Wiygul?

18 MS. WIYGUL: Your Honor, I believe it does. My
19 understanding is that everyone will work together to get the
20 hearing scheduled as quickly as possible and not necessarily
21 wait until the next Eighth Circuit docket calendar.

22 THE COURT: Correct. If y'all want I can sort of be the
23 point person on this. If need be, if we can find time
24 during a regular CPNJ term or even a General Sessions term.
25 It doesn't sound like this hearing would be terribly

1 protracted. Assuming that Mr. Mosely's testimony is going
2 to remain the same and that he is going to be able to
3 testify in the context of a PCR, I anticipate that his
4 testimony will be rather brief. It would be a matter then
5 of just taking the additional testimony from the other
6 witnesses who could probably be located. So theoretically
7 we could do this during a Common Pleas term, maybe even a
8 General Sessions term. And I feel like we could make
9 special allowance for this whenever everybody is available
10 and whenever logistically we have everything set up. So why
11 don't y'all treat me and my Assistant, Freda, as the point
12 person on this. As soon as you have all of the pieces
13 together or you know where we stand logistically, contact us
14 and we will figure out a way to make this happen.
15 Somewhere. Somehow. Regardless of what kind of court is
16 going on. That way we can get this case resolved, because
17 obviously Mr. Shumpert you filed this four years ago.
18 You've got the right to have this heard much sooner, it's
19 just logistically this is a nightmare. Is that acceptable
20 to everybody?

21 MR. JOHNSON: Yes, sir.

22 MS. WIYGUL: Yes, Your Honor.

23 THE COURT: Very good. We all know what to do. Thank
24 you.

25 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 17th day of October, 2014.

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

August 17, 2015

S/ Tara T. Scott

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

TYRONE SHUMPERT ,
PLAINTIFF,
-VS-
STATE OF SOUTH CAROLINA
DEFENDANT.

2010-CP-30-0339
PCR HEARING
TRANSCRIPT OF RECORD

HELD IN CHAMBERS
DECEMBER 5, 2014
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
ELIZABETH WIYGUL, ESQUIRE

ATTORNEY FOR DEFENDANT:
RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No exhibits were presented during this hearing)

1 THE COURT: We are on the record, Mr. Mosely, and this
2 is case 2010-CP-30-339. We have Eli Wiygul here who's
3 representing Mr. Shumpert. Mr. Shumpert's here as well.
4 We're holding this in my chambers so that we can communicate
5 with you, Mr. Mosely. Rutledge Johnson is here on behalf of
6 the AG and Brian Ellsworth is filling for Joshua Nassrollahi
7 who is basically in another court, Mr. Mosely. So he's
8 filling in for you today, okay.

9 MR. MOSELY: Uh-huh.

10 THE COURT: Are you able to hear me okay, sir?

11 MR. MOSELY: Yeah, I can hear you.

12 THE COURT: Okay, good. Because we're on the record, if
13 you could answer yes or no, okay, to anything that's being
14 said here. Who wants to start off? The reason Eli -- Ms.
15 Wiygul is here, she's representing Mr. Shumpert. Ms.
16 Wiygul, if you want to ask Mr. -- well, Mr. Mosely, let me
17 first just put you under oath, okay?

18 MR. MOSELY, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. WIYGUL:

22 THE COURT: Ms. Wiygul, you can proceed.

23 Q Mr. Mosely, do you recall giving a statement in
24 December 2009 regarding Mr. Shumpert?

25 A Yes, I do.

1 MR. ELLSWORTH: Your Honor, can I jump in?

2 THE COURT: Sure.

3 MR. ELLSWORTH: The purpose of this hearing to first
4 determine whether or not he wants to testify?

5 THE COURT: Correct. Yeah, the purpose is -- initially,
6 the initial purpose is to find out whether or not you're
7 willing to testify in the action that's been filed in this
8 case.

9 MS. WIYGUL: In that case, perhaps Mr. Ellsworth should
10 ask him a couple questions.

11 THE COURT: Do you want to ask him some questions first,
12 Mr. Ellsworth?

13 MR. ELLSWORTH: Sure.

14 (CROSS EXAMINATION)

15 BY MR. ELLSWORTH:

16 Q Mr. Mosely, do you wish to testify in this matter?

17 A I mean if I have to I will, but the whole situation is
18 that y'all asked me did I remember giving a statement on
19 December, right?

20 MS. WIYGUL: Yes, sir.

21 A Of 2009. Well, that statement was a forced statement
22 from Mr. -- I know the whole situation from Mr. Shumpert.
23 Whether saying that Mr. Shumpert knew that it was forced
24 like that. I'm not saying that he had anything to do with
25 that, but, I mean will, though. I will speak on that if I

1 have to.

2 MR. ELLSWORTH: I believe it's your choice as to
3 whether or not you want to speak on that.

4 THE COURT: Could you hear that, Mr. Mosely?

5 A Yes, I can hear that.

6 THE COURT: You heard what Mr. Ellsworth said to you?

7 A Uh-huh.

8 Q Would you like to voluntarily testify on this matter or
9 not?

10 A I will. I will.

11 MR. ELLSWORTH: Well, if he is going to testify on this
12 matter then, you know, I ask that he be read his rights and
13 not incriminate himself.

14 THE COURT: All right. You do understand, Mr. Mosely,
15 that obviously we are on the record in this case. I placed
16 you under oath. And so anything that you say concerning
17 this matter could be used against you in further
18 proceedings. Do you understand that?

19 A Yes, I do.

20 THE COURT: And, obviously, you've got the right under
21 the Fifth Amendment to not incriminate yourself. If you
22 wanted to take the Fifth you would certainly be at liberty
23 to do so. If you decide to testify, however, anything that
24 you say, of course, can be used against you in any
25 subsequent trial. You do understand that?

1 A Yes, I do.

2 THE COURT: All right. And at any time if you decide
3 that you want to stop answering questions or you want to
4 confer for a moment with Mr. Ellsworth, I'll give you that
5 opportunity. Do you understand that?

6 A Uh-huh.

7 THE COURT: All right.

8 MR. ELLSWORTH: Before we start --

9 A Did you say Mr. Ellsworth is the one that's supposed to
10 be representing me?

11 MR. ELLSWORTH: Yes.

12 THE COURT: He's filling in today for Mr. Nassrollahi.

13 A Oh, okay.

14 Q Did you wish to confer before you testify?

15 A Yes, I would.

16 THE COURT: All right. What we're going to do is we're
17 going to go off the record and I'm just going to walk
18 outside and everybody is going to walk outside. And you're
19 privately going to be able to speak with Mr. Ellsworth
20 before you go any further, okay, sir?

21 A Okay.

22 THE COURT: So as soon as we leave Mr. Ellsworth will
23 speak to you, but you can be assured that everyone is going
24 to be outside. Nobody's going to be listening, okay, Mr.
25 Mosely?

1 A All right.

2 THE COURT: All right. We're off the record.

3 (Off the Record)

4 THE COURT: We're all back on the -- we're going back on
5 the record here. We're all back inside my office, Mr.

6 Mosely. Anything changed that we need to know about?

7 MR. ELLSWORTH: No. I don't believe so.

8 THE COURT: Ms. Wiygul, go ahead please.

9 (DIRECT EXAMINATION)

10 BY MS. WIYGUL:

11 Q Mr. Mosely, do you recall contacting Mr. Shumpert's
12 family in late 2009?

13 A I recall them contacting me.

14 Q And at some point after you communicated with his
15 family did you meet them up at the Laurens County
16 Courthouse?

17 A Yes, I did.

18 Q Did you drive yourself to that meeting?

19 A Actually, I didn't. They went with me. His brother
20 went with me.

21 Q Who drove you to the courthouse?

22 A A female by the name of Quaujanna - well, we followed
23 them there to the courthouse and we went to the post office.

24 Q Okay. Now, so -- but you went up to the courthouse on
25 your own, correct?

1 A Yes, I did.

2 Q All right. When you met them at the courthouse did you
3 write a statement --

4 A Yeah, he made me write it.

5 Q -- that was notarized?

6 A Yes, I did.

7 Q And was that statement notarized by a notary public for
8 South Carolina?

9 A I think that's what was at the post office.

10 Q Okay.

11 A That's where it got notarized at.

12 Q Do you have a copy of that written statement?

13 A No, ma'am, I don't.

14 Q Would it help your recollection to know what that
15 written statement says?

16 A I mean, I remember what some of it said.

17 Q Okay. Does it say in pertinent part, "My actions were
18 wrong and I will testify that he, meaning Mr. Shumpert, is
19 innocent. Thank you."

20 A Yes, that's what he had me -- that's what they had me
21 write.

22 Q Did you sign this statement in front of a notary?

23 A At the post office, right?

24 Q Wherever you signed it. Did you sign it in front of a
25 notary?

26 A Yes, ma'am. We signed it at the post office.

1 Q And did you tell the notary this was your statement?

2 A Yes, I did.

3 Q All right.

4 A With his brother standing right there with me.

5 Q All right, sir. And you were not incarcerated at the
6 time of this statement, correct?

7 A No, ma'am.

8 Q And nobody forced you to go to the Laurens Courthouse
9 to meet the family, correct?

10 A Yes, ma'am. Not correct.

11 Q That is correct?

12 A No, ma'am, that's not correct. I was forced.

13 Q Okay. All right, sir. Could you please just tell us
14 what occurred?

15 A Well, I was living in Mauldin at the time and I'm not
16 saying that Mr. Shumpert, Tyrone, had anything to do with
17 that. I talked to him on the phone one time before.

18 Q And when you talked to him on the phone did you tell
19 him you wanted to make things right?

20 A Yeah. And this was right after his brother had some
21 other guy come to my house.

22 Q Did you mention that to Mr. Shumpert during your phone
23 conversation?

24 A No, I didn't.

25 Q Okay. I don't have any further questions. Thank you,
26 sir.

1 A Okay.

2 MR. JOHNSON: Just briefly.

3 EXAMINATION BY MR. JOHNSON:

4 Q Mr. Mosely, my name is Rutledge Johnson. I represent
5 the attorney general's office in this case. I just have a
6 few questions for you. Do you remember testifying in his
7 2003 trial?

8 A Yes, I do.

9 Q And your testimony is basically he was the one that
10 committed the armed robbery?

11 A In my testimony I said that he was upon -- that he was
12 -- I remember him being with that crowd.

13 MR. JOHNSON: Give me a second, Mr. Mosely.

14 MS. WIYGUL: Mr. Johnson, while you're doing that do
15 mind if I just ask him a couple of followup questions?

16 MR. JOHNSON: No, go ahead.

17 THE COURT: Go ahead, please.

18 EXAMINATION BY MS. WIYGUL:

19 Q Mr. Mosely, how is it that you were forced to sign this
20 statement in a public federal building in front of a notary?

21 A I said I was forced to go to the building.

22 Q So you were not forced to write this statement?

23 A Yes, I was because what I was -- what I wrote, I was
24 told to write.

25 Q In what manner were you forced?

26 A When he had -- when Mr. Shumpert's brother had somebody

1 come to my house threaten me with that.

2 Q Threatened you with what, sir? Mr. Mosely, what were
3 you threatened with?

4 A Excuse me.

5 (Mr. Mosely confers with someone briefly.)

6 Q Yes, sir.

7 A Excuse me. It was one of the inmates in here when I
8 was supposed to have a private call.

9 Q Okay.

10 A Yeah, as I was saying I'm not saying that Mr. Tyrone
11 Shumpert had anything to do with that, but -- and this is
12 something that happened around the neighborhood. Mr.
13 Shumpert's brother had a guy by the name of Quentin come to
14 my house threaten me with a gun, me and my family, if I do
15 not write this then something was going to happen to me.
16 Everybody's saying that I called -- that I snitched on Mr.
17 Shumpert. If Mr. Shumpert didn't do nothing how did I
18 snitch on Mr. Shumpert? In my statement in my testimony
19 against Mr. Shumpert, which I found out I was smoking
20 marijuana at that time, but I found out I was under the
21 influence of crack cocaine in that blunt. And I remember
22 Mr. Shumpert being in the Meadowbrook Apartment that night.
23 Q Sir, did you tell the trial court that you were under
24 the influence of crack cocaine and marijuana during your
25 testimony?

26 A I told Mr. Tommy Lynch that I was never asked that

1 question. I was never asked that question.

2 Q Sir, did you file a police report?

3 A They specifically asked me was Mr. Shumpert around that
4 place at that time, and I said "Yes" because I remember
5 seeing his face out there in Meadowbrook.

6 Q Sir, did you make a police report to the Mauldin Police
7 Department regarding this alleged threat?

8 A No, ma'am.

9 Q Who were the other witnesses to this threat?

10 A The girl that I was with at the time.

11 Q And her name and address, sir?

12 A I just know her name, Quaujanna Nelson. I no longer --
13 me and her don't talk like that anymore.

14 THE COURT: How do you spell her first name? Do you
15 know, Mr. Mosely?

16 A Yeah, it's Q-u-a-u-j-a-n-n-a Nelson.

17 THE COURT: Thank you, sir.

18 Q And, sir, you say that at the time you were in Mauldin?

19 A Yes, ma'am.

20 Q When did this threat allegedly occur? Was it before
21 Thanksgiving or after Thanksgiving?

22 A He came to my house twice. Also came the same day that
23 I did and went the -- the same day that I went to the Clerk
24 of Court.

25 Q So on September 2nd what day had he come out there
26 previously?

1 A I'm not sure of the exact date, but it was before I
2 went to the courthouse with Mr. Shumpert's brother, the
3 first time he came.

4 Q Sir, do you recall your testimony during this trial?

5 A I came -- I honestly don't remember all what was said
6 or nothing. I really don't. I really wasn't even thinking
7 about it, honestly.

8 Q Sir, do you recall if you told the jury that you along
9 with Mr. Shumpert and Mr. Suber --

10 A Yes.

11 Q -- went running to the back of the apartments?

12 A Running to the back of the apartment? I don't remember
13 that.

14 Q Do you recall telling the jury that you were involved
15 in this crime with Mr. Shumpert?

16 A No, I don't remember saying it like that.

17 Q Sir, do you recall if you were under the influence
18 during the time of your testimony during trial?

19 A No, I never said -- I never said -- I was never asked
20 that in my trial.

21 Q No, sir, I'm asking you now. Were you using drugs at
22 the time of the trial?

23 A Yes, ma'am, I was.

24 Q Were you under the influence of marijuana and crack
25 cocaine during the time of your testimony at trial?

26 A No, not during my testimony I wasn't.

15

1 Q How long prior to trial had you used marijuana, drugs
2 or alcohol?

3 A Prior to the trial?

4 Q Yes, sir.

5 A I was pretty much -- I was smoking pretty -- smoking
6 marijuana pretty heavy.

7 Q Had you smoked it the morning of trial?

8 A No, ma'am.

9 Q Had you smoked it the night before trial?

10 A No, ma'am.

11 Q Okay. Is your memory of late 2009 impaired due to your
12 drug use?

13 A No, ma'am. What you mean by impaired?

14 Q Can you remember everything that happened in 2009?

15 A Not everything, but I'm pretty sure I can remember most
16 of it.

17 Q Are your memory lapses --

18 A I wasn't doing no -- I wasn't doing no drugs or
19 nothing. I had just got out of prison myself.

20 Q Okay. All right, sir.

21 MS. WIYGUL: I don't have any further questions. Thank
22 you.

23 EXAMINATION BY MR. JOHNSON:

24 Q Mr. Mosely, it's Mr. Johnson again. I just have few
25 questions for you. So your testimony is that when you gave

1 this statement you felt threatened to give a statement in
2 2009?

3 A Yes, sir.

4 Q Okay. And is that statement the truth?

5 A Yes, sir.

6 Q The statement that you were threatened to give you're
7 saying that is the truth that Mr. Shumpert was not involved?

8 A Yes, sir. Mr. Shumpert was not involved.

9 Q But you testified differently in the 2003 trial. Isn't
10 that correct?

11 A Yes, sir.

12 Q And so under oath you testified Mr. Shumpert was in
13 fact involved in this crime? Isn't that right?

14 A Yes, sir.

15 Q And so now in 2009 you're saying he was not?

16 A Yes, sir.

17 Q So what you're saying is that you lied under oath?

18 A I'm saying he was not because I was threatened to say
19 he was not.

20 Q Okay. So let me get this straight. What you said at
21 the trial under oath was the truth?

22 A Yes, sir.

23 Q And the statement that you gave in 2009 is not the
24 truth?

25 A No, sir.

1 THE COURT: The statement you gave in 2009, was it true
2 or not?

3 Q It was not true. I was forced to write that statement.

4 MR. JOHNSON: I have no further questions, Mr. Mosely.
5 Thank you very much.

6 EXAMINATION BY MS. WIYGUL:

7 Q Mr. Mosely, do you remember what your testimony was
8 during the trial?

9 A I can't remember all that. I just remember the lawyer
10 name that I had and everybody that came in the back room
11 that was talking to me.

12 Q But you don't remember what you said under oath, do
13 you?

14 A Not all of it, no, ma'am.

15 MS. WIYGUL: All right. Thank you, sir.

16 THE COURT: Mr. Ellsworth, anything else that you want
17 to talk to your client about or are you okay where we are?

18 MR. ELLSWORTH: No other questions.

19 THE COURT: Very good. If there's nothing else, Mr.
20 Mosely -- anything else before we let Mr. Mosely go?

21 MR. JOHNSON: No, Your Honor.

22 MS. WIYGUL: No, Your Honor.

23 THE COURT: Mr. Mosely, take care of yourself, all
24 right?

25 MR. MOSELY: Well, I'd like to say something -- you say

1 Mr. Shumpert is in there right?

2 THE COURT: Mr. Shumpert is here, yeah, but everything
3 your saying is being written down. You know that?

4 MR. MOSELY: It's cool. Well, I'd like for y'all to get
5 in contact with Mr. Maurice Suber.

6 THE COURT: Who's that?

7 MR. MOSELY: Because I see -- he was involved in that
8 case.

9 THE COURT: What's the name again, there, sir?

10 MR. MOSELY: Maurice Suber.

11 THE COURT: Suber. S-u-b-e-r?

12 MR. MOSELY: Yes, sir.

13 EXAMINATION BY MS. WIYGUL:

14 Q Sir, what do you believe that Mr. Suber could
15 contribute?

16 MR. JOHNSON: I object to speculation and hearsay.

17 A If I recall, he was the one that had -- he was the main
18 suspect in that case that had to do with Mr. Shumpert and I.
19 He was the one -- see, at that time when I went to that
20 county -- to the county jail, well, Mr. Brown, he was in
21 that case but he's deceased. I never knew Mr. Shumpert's
22 name. That's the name that I got. I only knew his name
23 from that case. I never knew his name. That's how his name
24 came about.

25 Q I'm sorry, sir, how did his name come about?

1 A From Marcus Brown and Mr. Suber. Mr. Suber was caught
2 later on after that.

3 Q I'm sorry, sir, are you saying that the information you
4 testified to at trial actually came from Mr. Suber and Mr.
5 Brown?

6 A It came from Mr. Brown first.

7 Q So your testimony at trial --

8 A Only thing I asked them was who was that other guy that
9 was with us, man. And they told me his name was Tyrone
10 Shumpert. That's the only way I knew his name. He didn't
11 arrive at that scene with us.

12 Q So the information you gave the jury was simply
13 information provided to you by Mr. Suber and Mr. Brown?

14 A Yes, ma'am.

15 MS. WIYGUL: Thank you, sir.

16 EXAMINATION BY MR. JOHNSON:

17 Q One followup question, Mr. Mosely. So what you're
18 saying is that you, Mr. Suber and Mr. Brown were involved in
19 this crime?

20 A Yes. All of us did time for this same crime.

21 Q Okay. And then --

22 A And Willy Lamar Todd. The only one that didn't get
23 arrested.

24 Q But Mr. Shumpert was also involved?

25 A He was there. I remember him at the Meadowbrook

1 Apartment location around the laundromat where it happened
2 at.

3 Q So he was at the crime scene location is what you're
4 telling me?

5 A Yes, sir. In my statement I never said that Mr.
6 Shumpert pointed no gun or nothing at anybody.

7 MR. JOHNSON: That's all I have, Mr. Mosely.

8 A If y'all have that statement right there and that -- it
9 doesn't say that.

10 Q I agree with you.

11 MS. WIYGUL: Thank you, sir.

12 THE COURT: Mr. Mosely, we're going to let you go.
13 Thank you very much for joining us and for testifying today.
14 Take care, sir.

15 MR. MOSELY: Can somebody give me the name of the lawyer
16 that was supposed to contact me, because I never got his
17 name. I mean I never got his -- nothing. You say he was
18 going to contact me. I never got to write him or nothing.

19 THE COURT: Okay. His name is Joshua Nassrollahi.
20 N-a-s-s-r-o-l-l-a-h-I, I think. And his -- I've got an
21 address here for him. Did you want to write him, sir?

22 MR. MOSELY: Yes, I did.

23 THE COURT: Okay. Hold on one second. I'll give you
24 his address.

25 MS. WIYGUL: Judge, can I clarify something?

1 THE COURT: Yeah, go ahead.

2 EXAMINATION BY MS. WIYGUL:

3 Q Mr. Mosely, you spoke with Mr. Nassrollahi prior to
4 today's phone call, haven't you?

5 A Yes, ma'am. I was waiting to get some contact from
6 him, but I never heard from him.

7 Q No, sir. What I'm asking is have you spoken with him
8 at all?

9 A Yes, I talked to him just like I'm talking to y'all,
10 but that's it.

11 THE COURT: Okay.

12 MS. WIYGUL: All right. Thank you, sir.

13 THE COURT: His address is -- sorry, do you have a pen?

14 MR. MOSELY: Yes, sir.

15 THE COURT: The address is [REDACTED],
16 Avenue. And that's in Greenwood, of course, 29646.

17 MR. ELLSWORTH: Your Honor, his address actually
18 changed.

19 THE COURT: Hold on, hold on. His address has changed.
20 I gave you the wrong address. Here, you're going to have
21 the right one now.

22 MR. ELLSWORTH: It's the same address. The first -- the
23 number is [REDACTED].

24 MR. MOSELY: [REDACTED]?

25 MR. ELLSWORTH: [REDACTED] yes.

1 MR. MOSELY: Okay.

2 MR. ELLSWORTH: [REDACTED].

3 MR. MOSELY: That's in Greenwood, 296?

4 THE COURT: 46.

5 MR. MOSELY: 46?

6 THE COURT: Yes, sir. Well, have a good day, Mr.
7 Mosely.

8 MR. MOSELY: All right. Mr. Shumpert, man, I just hope
9 everything work out well for you, man.

10 THE COURT: Take care, sir.

11 MR. MOSELY: All right.

12 THE COURT: We're hanging up. Anything else that we
13 need to do on the record?

14 MS. WIYGUL: Judge, we have some family here. And I
15 believe that one of them may want to testify. If the Court
16 would be inclined to go to the big plea and --

17 MR. JOHNSON: Your Honor, I thought this hearing was
18 only on whether or not Mr. Mosely testimony, that letter, is
19 newly discovered evidence. That's the only issue. There's
20 no other testimony to be taken.

21 MS. WIYGUL: And I will agree with the assistant
22 attorney general that that is the specific reason why the
23 conditional order of dismissal was lifted.

24 THE COURT: Okay. What I'm inclined to do is just see
25 where y'all are regarding this testimony, what your position

1 is concerning that testimony. I mean we do have everyone
2 here and to the extent that maybe we can get this resolved
3 today, I would love to do it. But obviously I'm under some
4 time constraints right now because I'm keeping some people
5 waiting in the courtroom.

6 MS. WIYGUL: If the Court would like us to go on and
7 make final closing summations we are prepared to go through
8 --

9 THE COURT: It looks like your client wants to talk to
10 you for a second, though, Eli. Let me give y'all an
11 opportunity to speak. Let me tell the Solicitor that I will
12 hopefully be with him in a few minutes. And we'll just
13 clear out of this office and you -- or you can go in the
14 hallway and speak with him. However you want to do it,
15 okay?

16 MS. WIYGUL: Thank you, Your Honor.

17 THE COURT: We're off the record on this for a few
18 moments.

19 (Off the Record)

20 THE COURT: Where do we stand from your perspective, Ms.
21 Wiygul?

22 MS. WIYGUL: Your Honor, we are in agreement that having
23 reviewed the order vacating the dismissal I believe it would
24 be appropriate just to make the arguments based on the
25 testimony we've heard.

1 THE COURT: All right. Let me hear from you then,
2 please.

3 MS. WIYGUL: Your Honor, we'd ask that the Court grant
4 this PCR application and vacate the conviction and grant Mr.
5 Shumpert a new trial. As you heard from Mr. Mosely, not
6 only was he high on crack, cocaine, and marijuana at the
7 time of the offense, he stated on the record that the
8 information he had about Mr. Shumpert being involved in the
9 offense came from Mr. Suber and Mr. Brown. While he went
10 back and forth about the written statement that he provided
11 in 2009, he did admit to writing -- or signing that
12 statement, adopting it as his own in front of a notary
13 public at the post office in Laurens County, South Carolina.
14 And I would ask that the Court take into consideration that
15 his allegations of any threats that were supposedly made are
16 not supported by anything, no incident report was filed, no
17 report was filed. He did not ask for any assistance
18 whenever he was at the post office. He voluntarily drove
19 from Mauldin, South Carolina to Laurens, South Carolina to
20 give the statement.

21 THE COURT: All right. What's your position?

22 MR. JOHNSON: Your Honor, the State's position is that
23 under 17-27-45© Mr. Shumpert must have made this claim
24 within one year of when the information was actually
25 discovered or could have been discovered by the exercise of

1 due diligence. Mr. Mosely testified at Mr. Shumpert's trial
2 in 2003. The information certainly was available and known
3 in 2003. Therefore, he had to have filed this by 2004,
4 whatever a year after the trial date to actually become a
5 claim of newly discovered evidence. From that standpoint,
6 the State's position is this is procedurally barred. And
7 getting into the merits of the case, which the State again
8 avers you don't even need to get there. Mr. Mosely
9 testified that in 2003 his testimony to the jury was the
10 truth. He also testifies that in 2009 he was threatened to
11 make the statement and that was not the truth. So even if
12 you get to the merits of this case it still fails because
13 Mr. Mosely made a false claim under threats, even if it is
14 under a notary public that Mr. Shumpert was not involved.
15 But in 2003 his testimony clearly is that he was involved.
16 Mr. Suber and Mr. Brown were also involved. The State would
17 ask you to deny this newly discovered evidence and deny Mr.
18 Shumpert's application.

19 MS. WIYGUL: May I respond, Your Honor?

20 THE COURT: Sure.

21 MS. WIYGUL: Mr. Shumpert filed his -- this post
22 conviction relief application on March 11, 2010, well within
23 a year of finding out that Mr. Mosely was willing and had
24 actually provided this statement. While he knew he was
25 lying at trial, his hands were tied as far as proving it.

1 He had no way of getting inside Mr. Mosely's head. Further,
2 Mr. Mosely's testimony was that he didn't remember what he
3 testified to at trial and that the information he did
4 testify to at trial regarding Mr. Shumpert came from Mr.
5 Brown and Mr. Suber.

6 THE COURT: All right. Well, as is typical, I want to
7 take a second and look at the law. My law clerk is not in
8 here today and I want to ask her, perhaps, to do some
9 additional research on after discovered evidence. I'm
10 pretty confident I'm familiar with the law that does apply,
11 but like I usually do, I want to think about this. So I'll
12 be in contact with y'all if not next week, because I'm out
13 of circuit, certainly within the next two or three weeks I'm
14 preparing an order. If you don't hear from me by around
15 Christmas give me a call back. That means it slipped my
16 mind, but I don't think that's going to happen. All right?

17 MS. WIYGUL: Thank you, Your Honor.

18 MR. JOHNSON: Thank you, Your Honor.

19 THE COURT: Thank you both.

20 MS. WIYGUL: Your Honor, I would make a motion pursuant
21 to South Carolina Code 17-350© that the Court make a
22 determination about paying additional fees in this case. I
23 was appointed in this case on or about December 29, 2011.
24 The case arose from a conviction after trial and simply
25 involved a lot more time and effort than anticipated by

1 indigent defense in a normal case.

2 THE COURT: All right. No position by the State?

3 MR. JOHNSON: I have no standing to object to it, Your
4 Honor.

5 THE COURT: Very good. I will award additional fees.

6 (End of requested transcript of record)

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LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENSIN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Tyrone Shumpert, #292828,

2015 JAN 22 A 10:03

2010-CP-30-0339

Applicant,

v.

LAURENS COUNTY
CLERK OF COURT**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed March 11, 2010. The Respondent made its Return and Motion to Dismiss on October 13, 2010. The Honorable Eugene C. Griffith Jr. issued a Conditional Order of Dismissal on October 25, 2010. The Applicant filed a timely response on November 5, 2010. Judge Griffith then issued an "Order Vacating Order of Dismissal and Setting Case for Evidentiary Hearing" on December 9, 2011. Judge Griffith then issued an Amended Conditional Order of Dismissal on August 17, 2012. A hearing was held on June 3, 2013 before Judge Griffith, whereupon Judge Griffith appointed Josh Nasrollahi, Esquire as counsel for Applicant's co-defendant, Derek Mosley. Another hearing was scheduled for before the Honorable Donald B. Hocker on February 18, 2014. However, the case was continued. This case came before this Court on October 17, 2014; however, this case was continued because Mr. Mosely, incarcerated in the Federal Correction Institution McKean, located in Lewis Run, Pennsylvania, was unavailable for testimony. An evidentiary hearing into the matter was convened on December 5, 2014, at the Greenwood County Courthouse. The Applicant was present and represented by Elizabeth Wiygul, Esquire. Brian J. Ellsworth, Esquire, who, by agreement of all

parties, appeared on behalf of Josh Nasrollahi. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Laurens County Clerk of Court. The Applicant was indicted at the November 2002 term of the Laurens County Grand Jury for two (2) counts of Armed Robbery, one (1) count of Conspiracy, and one (1) count of Possession of a Firearm During Commission of a Violent Crime. The Applicant was represented by William G. Mayer, Esq. On April 28, 2003, the Applicant went to trial before the Honorable James W. Johnson, Jr., and was convicted by a jury of two counts of Armed Robbery and one count of Conspiracy. The jury found him not guilty of the possession of a weapon charge. The Honorable James W. Johnson, Jr. sentenced the Applicant to confinement for a period of twenty-two (22) years for each count of Armed Robbery, and five (5) years for Conspiracy, all sentences to be served concurrently with credit for time served.

The Applicant then appealed to the South Carolina Court of Appeals. He was represented by Appellate Defender Tara S. Taggart who filed an Anders brief on his behalf raising the following issue: "[w]hether the judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt?" The Applicant filed a *pro se* brief on September 14, 2002 in which he alleged a Batson violation, prosecutorial misconduct based on a comment, bolstering of witnesses, improper seating of a juror, and ineffective counsel. The Court of Appeals dismissed his appeal by after review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Shumpert, Op. No. 2005-UP-095 (S.C. Ct. App., filed February 8, 2005). The Remittitur was issued on March 15, 2005.

2005-CP-30-422

The Applicant subsequently filed his first application for post-conviction relief (PCR) on May 24, 2005. In this application the Applicant alleged that he was being held in custody illegally for the following reasons:

- 1.) "Counsel Failed to Object to an All White Jury";
- 2.) "Counsel Failed to Present a(sic) Alibi Defense"; and
- 3.) "Counsel Failed to Object to Prosecutor's Argument Alluding to the Defendant's Failure to Put up a Defense."

An evidentiary hearing was convened on January 18, 2005 at the Laurens County Courthouse before the Honorable Wyatt T. Saunders. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The PCR court heard testimony from the Applicant, Candi Robertson, and William Mayer. On March 6, 2006, Judge Saunders entered an order denying the application.

On October 27, 2006, the Applicant filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina raising the following issue, " Whether [Applicant]'s case should be remanded for consideration of an affidavit that was wrongly excluded?" The Respondent made its Return to the petition on January 7, 2007. On December 13, 2007, the South Carolina Supreme Court entered an order granting certiorari and setting a briefing schedule. The Brief of Petitioner was filed on January 9, 2008. The Respondent filed its Brief on February 8, 2008. ^{On} May 12, 2008, the Supreme Court affirmed the judgment denying pos-conviction relief. Shumpert v. State, 378 S.C. 62,661 S.E.2d 369 (2008). The Remittitur was issued on May 29, 2008.

8:08-cv-03172-HFF

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The Applicant then filed a Petition for Habeas Corpus in the Federal Court for the District of South Carolina on September 9, 2008. Here Applicant alleged he was being held illegally and was entitled to relief for the following reasons:

1. "Trial counsel failed to move for a Batson violation: where all members of my race were struck from the jury;"
 - a. Supporting Facts: "During jury selection juror 53 David Jackson and juror 33 Gregory Fielder was (sic) struck from jury selection by prosecutor. Plus all jurors picked were Caucasian, over the age of 35 by 90%"
2. "Counsel fail (sic) to present an alibi defense;"
 - a. Supporting Facts: "At trial Kenya Robinson was present because I notified her by phone is the only reason. Oscar Taylor, Brandon William, Marcus Brown and Lomar Todd were never subpoena(sic) to trial after repeated request to councilman Mayo."
3. "Counsel failed to object to prosecutor's alluding to my failure to present a defense;"
 - a. Supporting Facts: "Prosecutor statement: 'there's been absolutely nothing presented for you not to believe Derrick Mosely' who was the state's only witness. This also influenced the jury to use the right to silence against me. [The extraneous influence!!]"
4. "Denial of Admissibility of Juror Affidavit;"
 - a. Supporting Facts: "Post-conviction relief judge did not allow the affidavit on record. Affidavit contained facts that my silence was used against me by Juror's even after the judge's charges and prosecutor's extraneous influence outside deliberations."

The Respondent moved for summary judgment on December 17, 2008. On January 26, 2009, the Applicant filed a *pro se* response opposing Respondent's motion for summary judgment in which he moved for appointment of counsel, claimed actual innocence, and asserted the following claims:

1. Actual innocence
 - a. Co-defendant Derek Mosley will testify on Applicant's behalf that he lied under oath during Applicant's trial and that Applicant took no part in the crime and had no knowledge of it.

2. Brady violation
3. Ineffective assistance of trial counsel
 - a. For not subpoenaing witnesses and not providing him with a copy of his Rule 5/discovery materials
 - b. Failing to present a defense
 - c. Failing to object to solicitor's improper comments
4. Prosecution intimidated witnesses
5. Batson violation
6. Prosecutorial misconduct in comments made to jury and in bolstering of witnesses

On April 22, 2009 the Magistrate's Report and Recommendation was issued recommending the Respondent's Motion of Summary Dismissal be granted. By written order dated May 12, 2009 the Honorable Henry F. Floyd, United States District Judge for the District of South Carolina dismissed the Petition with prejudice.

Current Application

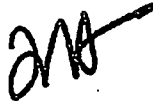
In his current application, Applicant is alleging that he is being held in custody unlawfully for the following reason:

1. 17-27-45(c) After/Newly discovered evidence: co-defendant's affidavit or recanted statement

FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code § 17-27-45(c) states: If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

In addition, a party making a motion for a new trial or for relief from judgment based on



newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005).

At the hearing on December 5, 2014, Derek Mosley, who testified by telephone, testified that he was contacted in 2009 by Applicant's family to meet with them at the Laurens County Courthouse. Mr. Mosely then stated he met Applicant's family at the ~~courthouse~~ ^{past office} and wrote a statement, essentially recanting the testimony he gave at Applicant's trial in 2003. This statement contradicts his testimony at trial by stating his testimony at trial was incorrect and Applicant was innocent of the charges. Mr. Mosley also testified Applicant's brother was standing beside Mr. Mosely and threatened Mr. Mosely if he did not sign the statement.

On cross-examination, Mr. Mosely stated his testimony during Applicant's 2003 trial was the truth and the statement signed in 2009 was not the truth, but a forced statement.

After a complete review of the record, consideration of the testimony presented at the hearing and a review of the applicable law, this Court finds the Applicant has failed to meet his burden of proof in this case and thus, his application for a new trial should be denied. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) (In PCR, Applicant has the burden of proving the allegations in his application). The information that Applicant claims is "newly discovered evidence" was clearly available during his trial in 2003 and could have been discovered well prior to his application under S17-27-45(c) being filed. Thus, this Court finds Applicant's application for PCR is procedurally barred. More significantly, Mr., Mosley testified that the statement given in 2009 was not the truth and testified as to the coercion at the time he provided this statement. Accordingly, even if this

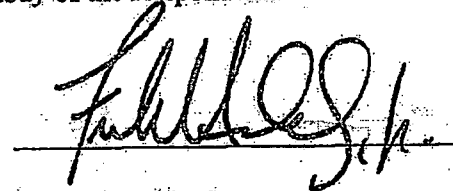
Court were to reach the merits, the Applicant had failed to show how this information would probably change the result of his trial, could not have been discovered before the trial or is material to the issue; thus, he fails the Lanier test. Therefore, even on the merits, this application must be denied.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED:



Frank R. Addy, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

January 16, 2015
Greenville, South Carolina

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS