

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Anderson County
Honorable J. Cordell Maddox, Jr., Judge
2008-CP-04-00073

S.C. Supreme Court

WAYMON HARBIN, JR.,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELON MAY
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEYS FOR PETITIONER.

BRUCE BYRHOLDT, ESQUIRE

Post Office Box 2506
Anderson, South Carolina 29622

ATTORNEY FOR RESPONDENT.

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1 COUNTY OF ANDERSON)
2 STATE OF SOUTH CAROLINA)
3)
4)
5 STATE OF SOUTH CAROLINA,)
6)
7)
8)
9)
10)

COURT OF GENERAL SESSIONS

6 PLAINTIFF,
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VERSUS

TRANSCRIPT OF RECORD
CASE NO. 98-GS-04-93
98-GS-04-94

WAYMON STEVEN HARBIN, JR.
DEFENDANT.

APRIL 21, 1998
ANDERSON, SOUTH CAROLINA

B E F O R E:

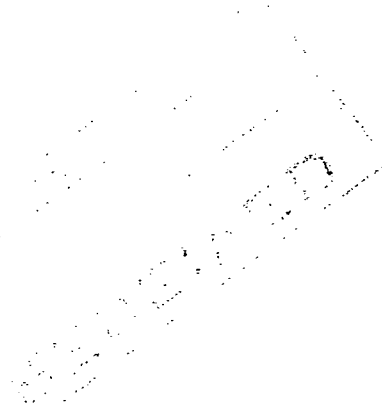
THE HONORABLE GERALD C. SMOAK, JUDGE.

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

DRUANNE WHITE, ESQUIRE
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

RICHARD WARDER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DONNA M. BRADY
CIRCUIT COURT REPORTER



1 TUESDAY, APRIL 21, 1998

2 (WHEREUPON, COURT CONVENED WITH ALL PARTIES
3 PRESENT, WHEN THE FOLLOWING PROCEEDINGS WERE HAD:)

4 MS. WHITE: 98-GS-04-94, STATE VERSUS WAYMON STEVEN
5 HARBIN, JR. INDICTMENT FOR MURDER. 98-GS-04-93, STATE VERSUS
6 WAYMON STEVEN HARBIN, JR. INDICTMENT FOR POSSESSION OF A
7 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
9 PETIT JURY PANEL, PLEASE GIVE ME YOUR ATTENTION. WE'RE ABOUT
10 TO BEGIN THE TRIAL OF THE CASE OF WAYMON STEVEN HARBIN, JR.
11 INDICTMENT FOR MURDER AND INDICTED FOR POSSESSION OF A
12 FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A
13 VIOLENT CRIME. IN THAT CONNECTION THE COURT'S GOING TO HAVE
14 TO ASK YOU SOME QUESTIONS. FIRST OF ALL, WOULD THE DEFENDANT
15 PLEASE STAND AND FACE THE JURY. (DEFENDANT STANDS)

16 THE COURT: ALL RIGHT, SIR. THANK YOU VERY MUCH,
17 SIR. HAVE A SEAT. ALL RIGHT. THE FOLLOWING IS A LIST OF
18 POTENTIAL WITNESSES BY THE STATE AND SOME OF THEM WHO MAY BE
19 IN COURT, SOME MAY NOT. SO, PLEASE GIVE ME YOUR ATTENTION,
20 PLEASE. JIM CRAWFORD OF ANDERSON COUNTY SHERIFF'S OFFICE.
21 LINDA -- WHAT'S THAT, VOLRATH; IS THAT CORRECT?

22 MS. WHITE: YES, SIR.

23 THE COURT: LINDA VOLRATH, ALISHA VOLRATH. STAND
24 WHEN YOUR NAME IS CALLED, PLEASE. LINDA VOLRATH. ALISHA
25 VOLRATH. DEBRA BRIDGES. KEN EBERNICKEL, ANDERSON POLICE

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-026-6313

1 DEPARTMENT. KATHY CRAFT, THOMAS COLLIER, KAREN BECK, RICHARD
2 LYNN CROMER. KIM BLACK, CAROLYN HARRIS. VELLO PAAVEL.
3 BUDDY ELLISON, LINDA DESHIELDS, DERRICK RICH. JESSE
4 PETERSON. FRANK MILLER. CUSTODIAN OF RECORDS BELL SOUTH,
5 DENO HORACE BOLT. CARLA GLENN, MONICA MOOREHEAD, CHRIS
6 WILSON. MATT SMITH, MATT MCCLELLION, RUSTY GARRETT, CHARLES
7 REID, MICHELLE HENDRICKS, JAMES CHEEKS, TRACIE CALL. SGT.
8 ART JONES, CHARLES PAUL, CHRIS VAUGHN, TOMMY CLAMP, MAJOR VIC
9 WOOTEN, SGT. DARRYL HILL, RICHARD BRYANT, RUFUS CLINKSCALES,
10 SCOTT WALKER, MELISSA AIKEN, DANIEL MULLINS, RAY VOLRATH,
11 ANDY TRIBBLE, TIM MOORE, SHAWN HUMAN, LAURA GRAHAM, NATHAN
12 CHAD HOLMES. JOHN CHARLE, III. JENNIFER CORNWELL. CHAD
13 PUCKHABER. JEFF BLACK. ANTHONY ANDER DUVALL. JERRY BROWN,
14 STEVE JONES, LARRY MICHAEL SANDERS, JOHN HENRY HUMAN. DR.
15 BRETT WOODARD. GENE JOSEPH GROSEE. AMY MCCLACHIE. KEN
16 BLAKELY. JOHN CHANDLER. AND WHAT'S NUMBER 61, MELANY WHAT'S
17 THAT?

18 MS. WHITE: JUDGE, I THINK YOU'RE GOING TO HAVE TO
19 SPELL IT. I'M NOT SURE I PRONOUNCE IT CORRECTLY.

20 THE COURT: S-Z-U-B-S-K-I. HOPE MARIE FERGUSON.
21 STEVE REEVES. BILLY TOLLISON. KIM MOORE. BEVERLY DARBY.
22 CURTIS MCCOY. GEORGE CREMER. JOHN CARPENTER, JOHN BUTCH
23 CANTONIE, JOE POWELL. GAIL HEATH. DAVID MCCLURE. GREG
24 HAYDEN. PETE ROGERS, DON HODGES.

25 THESE ARE POTENTIAL WITNESSES FOR THE STATE. IS

1 ANY PERSON ON THE JURY PANEL CONNECTED BY BLOOD OR MARRIAGE
2 OR A CLOSE PERSONAL ACQUAINTANCE WITH THE DEFENDANT OR ANY OF
3 THE STATE'S WITNESSES THAT I JUST CALLED OUT? IF SO, PLEASE
4 STAND.

5 (PROSPECTIVE JURORS STAND)

6 THE COURT: YES, MA'AM?

7 PROSPECTIVE JUROR GLENN: CURTIS MCCOY IS MY STEP
8 UNCLE.

9 THE COURT: MA'AM?

10 PROSPECTIVE JUROR GLENN: CURTIS MCCOY IS MY STEP
11 UNCLE. HE'S MARRIED TO MY AUNT.

12 THE COURT: ALL RIGHT. TAKE HER OUT.

13 THE CLERK: MISS GLENN?

14 PROSPECTIVE JUROR CRANE: I WORKED FOR THE
15 DECEASED'S BROTHER FOR A NUMBER OF YEARS, WESTPOINT STEVENS.

16 THE COURT: FOR THE DECEASED'S BROTHER? LET ME ASK
17 YOU A QUESTION THEN, SIR. WOULD THAT AFFECT YOUR ABILITY TO
18 LISTEN TO THE TESTIMONY AND EVIDENCE AND GIVE BOTH SIDES A
19 FAIR TRIAL?

20 PROSPECTIVE JUROR CRANE: NO, SIR.

21 THE COURT: IT WOULD NOT?

22 PROSPECTIVE JUROR CRANE: NO, SIR.

23 THE COURT: THANK YOU, SIR. YOU MAY HAVE A SEAT.

24 MS. WHITE: YOUR HONOR, MAY WE GET HIS NUMBER?

25 THE COURT: MA'AM?

1 MS. WHITE: MAY WE GET HIS NUMBER, YOUR HONOR?

2 THE CLERK: YOUR NAME PLEASE, SIR?

3 THE COURT: GIVE US YOUR NAME PLEASE, SIR, AGAIN.

4 PROSPECTIVE JUROR CRANE: BILLY W. CRANE,

5 THE COURT: THANK YOU, SIR. ARE ANY OF YOU

6 EMPLOYED BY THE DEFENDANT OR ANY OF THE STATE'S POTENTIAL
7 WITNESSES? IF SO, PLEASE STAND. WERE ANY OF YOU A MEMBER OF
8 THE GRAND JURY WHICH FOUND THE INDICTMENT IN THIS CASE? IF
9 SO, PLEASE STAND.

10 HAS ANY MEMBER OF THE JURY PANEL EXPRESSED OR
11 FORMED ANY OPINION ABOUT THIS CASE AS TO THE GUILT OR
12 INNOCENCE OF THE DEFENDANT? IF SO, PLEASE STAND.

13 DOES ANY MEMBER OF THE JURY PANEL HAVE ANY BIAS OR
14 PREJUDICE IN CONNECTION WITH THIS CASE OR ANY OF THE PARTIES
15 THERETO? IF SO, PLEASE STAND. (NO RESPONSE ELICITED)

16 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY
17 REASON WHY THEY COULD NOT GIVE THE STATE AND THE DEFENDANT A
18 FAIR AND IMPARTIAL TRIAL IN THIS CASE. IF SO, PLEASE STAND.
19 ANYTHING FURTHER FROM THE STATE?

20 MS. WHITE: NO, SIR.

21 THE COURT: FROM THE DEFENSE?

22 MR. WARDER: YES, SIR. MAY WE APPROACH THE BENCH?

23 THE COURT: YES, SIR.

24 (BENCH CONFERENCE HELD)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, GIVE

1 ME YOUR ATTENTION. THE DECEASED IN THIS CASE IS CURTIS
2 VOLRATH. AND I WOULD LIKE TO ASK YOU IF ANY ONE OF YOU KNEW
3 HIM OR ANY MEMBERS OF HIS FAMILY? CURTIS VOLRATH. IF SO,
4 PLEASE STAND.

5 (PROSPECTIVE JUROR STANDS)

6 THE COURT: YES, MA'AM? YOUR NAME?

7 PROSPECTIVE JUROR MULLINAX: I DON'T KNOW HIM, BUT
8 I KNOW MISS VOLRATH, SO I DON'T KNOW IF THEY HAVE ANY
9 CONNECTION OR NOT. I WENT TO SCHOOL WITH HER DAUGHTER.

10 THE COURT: ALL RIGHT. WOULD THE FACT YOU KNOW
11 HER, WOULD THAT AFFECT YOUR ABILITY TO LISTEN TO THE
12 TESTIMONY AND EVIDENCE, AND GIVE BOTH THE STATE AND THE
13 DEFENSE A FAIR TRIAL?

14 (PROSPECTIVE JUROR MULLINAX SHAKES HEAD FROM SIDE
15 TO SIDE)

16 THE COURT: YES, MA'AM?

17 PROSPECTIVE JUROR SMITH: I WORK WITH CATHERINE.

18 THE COURT: YOU WORK WITH HER?

19 PROSPECTIVE JUROR SMITH: YES, SIR.

20 THE COURT: ALL RIGHT. AND YOUR NAME?

21 PROSPECTIVE JUROR SMITH: DELORES SMITH.

22 THE COURT: I'M GOING TO LET HER OUT.

23 THE CLERK: MISS SMITH, JUST HAVE A SEAT. YOU'RE
24 JUST EXCUSED IN THIS CASE.

25 THE COURT: WE'RE GOING TO LET HER OUT OF THIS

1 CASE. THANK YOU. ALL RIGHT. THE DECEASED ALSO RAN A
2 CROCKER'S B. P. AND U-HAUL BUSINESS. AND THERE MAY BE SOME
3 OF YOU WHO DID BUSINESS THERE OR WHO WERE FAMILIAR WITH THIS.
4 IF YOU ARE, I WISH YOU WOULD PLEASE STAND. ANYBODY WHO DID
5 BUSINESS WITH CROCKER'S B. P. AND U-HAUL OR KNEW THAT THE
6 DECEASED RAN THIS BUSINESS? IF SO, PLEASE STAND. NO
7 RESPONSE. ANYTHING FURTHER FROM THE DEFENSE?

8 MR. WARDER: YES, SIR. I'D ALSO LIKE TO ASK ANY
9 ASSOCIATION WITH LAW ENFORCEMENT, ANY OF THEM, PAST LAW
10 ENFORCEMENT OR CLOSE FAMILY MEMBERS.

11 THE COURT: ALL RIGHT. DOES ANYBODY ON THE JURY
12 PANEL HAVE ANY CONNECTION, EITHER FAMILY OR OTHERWISE, WITH
13 ANY LAW ENFORCEMENT AGENCY, EITHER PAST OR PRESENT? IF SO,
14 PLEASE STAND. DO YOU HAVE ANY RELATIVES MAYBE WHO ARE LAW
15 ENFORCEMENT PEOPLE OR WHATEVER? YES, MA'AM. YOUR NAME,
16 PLEASE?

17 PROSPECTIVE JUROR BLANTON: NORMA BLANTON.

18 THE COURT: YES?

19 PROSPECTIVE JUROR BLANTON: I HAVE A NEPHEW WHO IS
20 A STATE TROOPER IN NORTH CAROLINA.

21 THE COURT: STATE TROOPER IN NORTH CAROLINA. ALL
22 RIGHT. WOULD THAT FACT AFFECT YOUR ABILITY TO LISTEN TO THE
23 TESTIMONY AND EVIDENCE AND GIVE BOTH THE STATE AND THE
24 DEFENSE A FAIR TRIAL?

25 PROSPECTIVE JUROR BLANTON: NO, SIR.

1 THE COURT: ALL RIGHT. THANK YOU MA'AM, YOU MAY
2 BE SEATED. YES, SIR?

3 PROSPECTIVE JUROR HAYES: MICHAEL HAYES. MY
4 BROTHER-IN-LAW IS A STATE TROOPER.

5 THE COURT: YOUR BROTHER-IN-LAW IS A STATE TROOPER?

6 PROSPECTIVE JUROR HAYES: (NODS HEAD UP AND DOWN)

7 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY TO
8 LISTEN TO THE TESTIMONY AND EVIDENCE AND GIVE BOTH THE STATE
9 AND THE DEFENSE A FAIR TRIAL?

10 PROSPECTIVE JUROR HAYES: NO, SIR.

11 THE COURT: IT WOULD NOT. THANK YOU, SIR. YOU MAY
12 HAVE A SEAT. YES, SIR?

13 PROSPECTIVE JUROR THOMAS: JESSE THOMAS. MY
14 BROTHER-IN-LAW IS A COUNTY TROOPER.

15 THE COURT: WOULD YOU STATE THAT AGAIN, PLEASE.

16 PROSPECTIVE JUROR THOMAS: HE WORKS FOR THE COUNTY.

17 THE COURT: HE WORKS FOR THE COUNTY. AS A WHAT?

18 PROSPECTIVE JUROR THOMAS: LAW OFFICER.

19 THE COURT: AND HE'S YOUR BROTHER?

20 PROSPECTIVE JUROR THOMAS: BROTHER-IN-LAW.

21 THE COURT: BROTHER-IN-LAW?

22 PROSPECTIVE JUROR THOMAS: YES, SIR.

23 THE COURT: HE WORKS FOR THE SHERIFF'S DEPARTMENT?

24 PROSPECTIVE JUROR THOMAS: YES.

25 THE COURT: TAKE HIM OUT, MS. CLERK.

1 THE CLERK: ONE-SEVENTEEN.

2 THE COURT: THANK YOU. YOU MAY HAVE A SEAT.

3 PROSPECTIVE JUROR SMITH: JEAN SMITH, I HAVE A
4 BROTHER WITH GREENVILLE COUNTY SHERIFF'S.

5 THE COURT: AT THE RICHLAND?

6 PROSPECTIVE JUROR SMITH: GREENVILLE.

7 THE COURT: GREENVILLE COUNTY. ALL RIGHT. WOULD
8 THAT FACT AFFECT YOUR ABILITY TO LISTEN TO THE TESTIMONY AND
9 EVIDENCE AND GIVE BOTH THE STATE AND THE DEFENSE A FAIR
10 TRIAL?

11 PROSPECTIVE JUROR: NO, IT WOULD NOT.

12 THE COURT: IT WOULD NOT. THANK YOU, MA'AM. YOU
13 MAY HAVE A SEAT.

14 PROSPECTIVE JUROR WOOTEN: JAMES WOOTEN.

15 THE COURT: YES, SIR.

16 PROSPECTIVE JUROR WOOTEN: I WAS A RESERVE OFFICER,
17 GREENVILLE CITY.

18 THE COURT: YOU WERE A RESERVE OFFICER?

19 PROSPECTIVE JUROR WOOTEN: YES, SIR.

20 THE COURT: YOU AREN'T ANY MORE?

21 PROSPECTIVE JUROR WOOTEN: NO, SIR.

22 THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY TO
23 LISTEN TO THE TESTIMONY AND EVIDENCE, GIVE BOTH THE STATE AND
24 THE DEFENSE A FAIR TRIAL?

25 PROSPECTIVE JUROR: (SHAKES HEAD FROM SIDE TO SIDE)

1 THE COURT: THANK YOU, SIR. YES, SIR, YOUR NAME?

2 PROSPECTIVE JUROR ARFLIN: ROGER ARFLIN.

3 THE COURT: YES.

4 PROSPECTIVE JUROR ARFLIN: I DON'T KNOW WHETHER SHE
5 STILL DOES OR NOT, BUT I HAVE A COUSIN THAT WORKED AT
6 ANDERSON COUNTY LOCK UP OUT THERE. I'M NOT SURE SHE STILL
7 DOES.

8 THE COURT: WELL, WHAT'S HER NAME?

9 PROSPECTIVE JUROR ARFLIN: LAST NAME IS ARFLIN,
10 SANDY.

11 THE COURT: ALL RIGHT, SIR. WOULD THAT FACT AFFECT
12 YOUR ABILITY TO LISTEN TO THE TESTIMONY AND EVIDENCE AND GIVE
13 BOTH THE STATE AND THE DEFENSE A FAIR TRIAL?

14 PROSPECTIVE JUROR ARFLIN: NO, SIR.

15 PROSPECTIVE JUROR NUCKOLS: PHIL NUCKOLS. I GOT A
16 STEPSON A DETECTIVE FOR ANDERSON COUNTY.

17 THE COURT: ALL RIGHT, SIR. TAKE HIS NAME OUT.

18 THE CLERK: TRANSFER NUMBER 6, MR. NUCKOLS.

19 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE
20 DEFENSE?

21 MR. WARDER: NO, SIR.

22 THE COURT: ALL RIGHT. MISS CLERK, GIVE US A JURY.

23 THE CLERK: LADIES AND GENTLEMEN OF THE JURY PANEL,
24 WHEN I CALL YOUR NAME, I'D ASK THAT YOU TO PLEASE COME DOWN
25 AND STAND RIGHT HERE. FACE THE STATE'S TABLE AND THE DEFENSE

1 TABLE, AND WE WILL TELL YOU WHETHER YOU NEED TO HAVE A
2 SEAT IN THE JURY BOX OR NEED TO HAVE A SEAT IN THE COURTROOM.

3 MR. WARDER: YOUR HONOR, I HAVE ONE MOTION BEFORE
4 WE SELECT. I SHOULD APPROACH THE BENCH, YOUR HONOR.

5 THE COURT: ALL RIGHT, SIR.

6 (BENCH CONFERENCE HELD)

7 THE CLERK: NUMBER 42, KIMBERLY GRIFFITH, 42. IF
8 YOU WOULD COME DOWN, MISS GRIFFITH.

9 (PROSPECTIVE JUROR 42, WHITE FEMALE, STEPS FORWARD)

10 THE CLERK: WHAT SAY YOU FOR THE STATE?

11 MS. WHITE: PRESENT THE JUROR.

12 THE CLERK: SAY YOU FOR THE DEFENDANT?

13 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL
14 OF THIS MATTER.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THANK
16 YOU. NUMBER 63, SHANEKA JOHNSON, 63.

17 (PROSPECTIVE JUROR 63, BLACK FEMALE, STEPS FORWARD)

18 THE CLERK: SAY YOU FOR THE STATE?

19 MS. WHITE: PRESENT THE JUROR.

20 THE CLERK: SAY YOU FOR THE DEFENDANT?

21 MR. WARDER: PLEASE SWEAR MISS JOHNSON.

22 THE CLERK: HAVE A SEAT PLEASE, MISS JOHNSON, IN
23 THE JURY BOX. FIFTY-FIVE, GENA HODGES, 55.

24 (PROSPECTIVE JUROR 55, WHITE FEMALE, STEPS
25 FORWARD)

1 THE CLERK: SAY YOU FOR THE STATE?

2 MS. WHITE: PRESENT THE JUROR.

3 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

4 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL
5 OF THIS MATTER.

6 THE CLERK: YOU ARE EXCUSED. THANK YOU, MA'AM.
7 56, HAROLD HOLLAND, 56.

8 (PROSPECTIVE JUROR 56, BLACK MALE, STEPS FORWARD)

9 THE CLERK: SAY YOU FOR THE STATE?

10 MS. WHITE: PRESENT THE JUROR.

11 THE CLERK: SAY YOU FOR THE DEFENDANT?

12 MR. WARDER: PLEASE SWEAR MR. HOLLAND.

13 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE,
14 MR. HOLLAND.

15 THE CLERK: NUMBER 5, ROGER ARFLIN, NUMBER FIVE.

16 (PROSPECTIVE JUROR 5, WHITE MALE, STEPS FORWARD)

17 THE CLERK: WHAT SAY YOU FOR THE STATE?

18 MS. WHITE: PRESENT THE JUROR.

19 THE CLERK: WHAT SAY YOU FOR THE DEFENDANT?

20 MR. WARDER: PLEASE SWEAR THE JUROR.

21 THE CLERK: NUMBER 82, DAVID MCCALLA, JR, 82.

22 (PROSPECTIVE JUROR 82, WHITE MALE, STEPS FORWARD)

23 THE CLERK: WHAT SAY YOU FOR THE STATE?

24 MS. WHITE: PRESENT THE JUROR.

25 THE CLERK: SAY YOU FOR THE DEFENDANT?

1 MR. WARDER: PLEASE SWEAR THE JUROR.

2 THE CLERK: HAVE A SEAT IN THE JURY BOX, MR.

3 MCCALLA. ONE-TWELVE, JOHN H. STEELE, 112.

4 (PROSPECTIVE JUROR 112, WHITE MALE, STEPS FORWARD)

5 THE CLERK: SAY YOU FOR THE STATE?

6 MS. WHITE: PRESENT THE JUROR.

7 THE CLERK: SAY YOU FOR THE DEFENDANT?

8 MR. WARDER: PLEASE SWEAR MR. STEELE.

9 THE CLERK: HAVE A SEAT IN THE JURY BOX.

10 FORTY-FIVE, MARTIN HARBECK, 45.

11 (PROSPECTIVE JUROR 45, WHITE MALE, STEPS FORWARD)

12 THE CLERK: SAY YOU FOR THE STATE?

13 MS. WHITE: PRESENT THE JUROR.

14 THE CLERK: SAY YOU FOR THE DEFENDANT?

15 MR. WARDER: PLEASE SWEAR THE JUROR.

16 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

17 SEVENTY-THREE, HOLLIS LIZOTTE, 73.

18 (PROSPECTIVE JUROR 73, WHITE FEMALE, STEPS FORWARD)

19 THE CLERK: WHAT SAY YOU FOR THE STATE?

20 MS. WHITE: PRESENT THE JUROR.

21 THE CLERK: SAY YOU FOR THE DEFENDANT?

22 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL

23 OF THIS MATTER.

24 THE CLERK: YOU ARE EXCUSED. THANK YOU. 106,

25 KENNETH SHEARER, 106.

1 (PROSPECTIVE JUROR 106, WHITE MALE, STEPS FORWARD)

2 THE CLERK: WHAT SAY YOU FOR THE STATE?

3 MS. WHITE: PLEASE EXCUSE THE JUROR ON THIS CASE.

4 THE CLERK: YOU ARE EXCUSED. THANK YOU, MR.

5 SHEARER. ONE-TWENTY-FIVE, JOE WHITMIRE, 125.

6 (PROSPECTIVE JUROR 125, WHITE MALE, STEPS FORWARD)

7 THE CLERK: WHAT SAY YOU FOR THE STATE?

8 MS. WHITE: PLEASE EXCUSE THE JUROR IN THIS CASE.

9 THE CLERK: YOU ARE EXCUSED. THANK YOU, SIR.

10 TRANSFER ONE, LISA CATHEY, TRANSFER ONE.

11 (PROSPECTIVE JUROR T-1, WHITE FEMALE, STEPS

12 FORWARD)

13 PROSPECTIVE JUROR T-1: I WAS A HARBIN BEFORE I

14 MARRIED.

15 THE COURT: ALL RIGHT. JUST STAND RIGHT THERE,
16 PLEASE. THIS JUROR SAYS SHE WAS A HARBIN BEFORE SHE WAS
17 MARRIED, AND SHE DOESN'T KNOW IF THERE'S ANY RELATIONSHIP OR
18 WHATEVER BETWEEN HER AND THE DEFENDANT. SO, I -- WOULD YOU
19 LIKE TO QUESTION HER SOLICITOR OR THE DEFENSE?

20 MS. WHITE: YES, SIR. I'D ASK THAT SHE LOOK AND
21 SEE IF ANYBODY LOOKS FAMILIAR IN HIS FAMILY OR IF HE LOOKS
22 FAMILIAR AND IF SHE COULD BE FAIR AND IMPARTIAL.

23 PROSPECTIVE JUROR T-1: THEY DON'T LOOK FAMILIAR.

24 MY GRANDMOTHER WAS MARTHA HARBIN AND MY GRANDFATHER WAS

25 WAYMON HARBIN, BOTH DECEASED.

1 MS. WHITE: YOUR HONOR, THAT'S THE DEFENDANT'S
2 NAME.

3 PROSPECTIVE JUROR CATHEY: I DON'T KNOW ANY OF
4 THESE PEOPLE, BUT THOSE ARE MY GRANDPARENTS.

5 THE COURT: ALL RIGHT. WOULD YOU LIKE TO ASK HER
6 QUESTIONS?

7 MR. WARDER: NO, YOUR HONOR.

8 THE COURT: WOULD THIS AFFECT YOUR ABILITY TO
9 LISTEN TO THE TESTIMONY AND THE EVIDENCE AND GIVE BOTH SIDES
10 A FAIR AND IMPARTIAL TRIAL, MA'AM?

11 PROSPECTIVE JUROR T-1: I THINK IT WOULD.

12 THE COURT: ALL RIGHT. YOU THINK IT WOULD. HAVE A
13 SEAT, TAKE HER NAME OUT.

14 THE CLERK: SEVENTY-EIGHT, SARA MAULDIN, 78.

15 (PROSPECTIVE JUROR 78, WHITE FEMALE, STEPS FORWARD)

16 THE CLERK: SAY YOU FOR THE STATE?

17 MS. WHITE: PRESENT THE JUROR.

18 THE CLERK: SAY FOR THE DEFENDANT?

19 MR. WARDER: PLEASE SWEAR THE JUROR.

20 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE,
21 MA'AM. FIFTY-ONE, DWAYNE HICKS, 51.

22 (PROSPECTIVE JUROR 51, WHITE MALE, STEPS FORWARD)

23 THE CLERK: SAY YOU FOR THE STATE?

24 MS. WHITE: PRESENT THE JUROR.

25 THE CLERK: SAY YOU FOR THE DEFENDANT?

1 MR. WARDER: PLEASE SWEAR THE JUROR.

2 THE CLERK: HAVE A SEAT IN THE JURY BOX.

3 NINETY-NINE, JUDY POSS, 99.

4 (PROSPECTIVE JUROR 99, WHITE FEMALE, STEPS
5 FORWARD)

6 THE CLERK: SAY YOU FOR THE STATE?

7 MS. WHITE: PRESENT THE JUROR.

8 THE CLERK: SAY FOR THE DEFENDANT?

9 MR. WARDER: PLEASE SWEAR THE JUROR.

10 THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,
11 MA'AM. TRANSFER TWO, BILLY CRANE, TRANSFER TWO.

12 (PROSPECTIVE JUROR T-2, WHITE MALE, STEPS FORWARD)

13 THE CLERK: SAY YOU FOR THE STATE?

14 MS. WHITE: PRESENT THE JUROR.

15 THE CLERK: SAY YOU FOR THE DEFENDANT?

16 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL
17 OF THIS MATTER.

18 THE CLERK: YOU ARE EXCUSED. THANK YOU, SIR.

19 TRANSFER THREE, ROBERT GRAHAM, JR., T-3.

20 (PROSPECTIVE JUROR T-3, WHITE MALE, STEPS FORWARD)

21 THE CLERK: SAY YOU FOR THE STATE?

22 MS. WHITE: PRESENT THE JUROR.

23 THE CLERK: SAY YOU FOR THE DEFENDANT?

24 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL
25 OF THIS MATTER.

1 THE CLERK: YOU'RE EXCUSED, THANK YOU. NUMBER 26,
2 TRACIE CREWS, 26.

3 (PROSPECTIVE JUROR 26, WHITE MALE, STEPS FORWARD)

4 THE CLERK: SAY YOU FOR THE STATE?

5 MS. WHITE: PRESENT THE JUROR.

6 THE CLERK: SAY FOR THE DEFENDANT?

7 MR. WARDER: PLEASE SWEAR THE JUROR.

8 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

9 THE COURT: MR. BAILIFF, HE TAKES THE FOREMAN'S
10 SEAT.

11 THE CLERK: NUMBER 10, MARY BLACKWELL, NUMBER 10.

12 (PROSPECTIVE JUROR 10, BLACK FEMALE, STEPS FORWARD)

13 MS. WHITE: YOUR HONOR, MAY WE APPROACH THE BENCH?

14 THE COURT: YES, MA'AM. STEP UP HERE, PLEASE,

15 MA'AM.

16 (PROSPECTIVE JUROR 10 APPROACHES BENCH, ALONG WITH
17 THE ATTORNEYS)

18 THE COURT: ARE YOU RELATED TO ANY BLACKWELL THAT'S
19 BEEN PROSECUTED FOR MURDER?

20 PROSPECTIVE JUROR BLACKWELL: NOT THAT I KNOW OF.

21 THE COURT: OKAY. THANK YOU.

22 THE CLERK: SAY YOU FOR THE STATE?

23 MS. WHITE: PRESENT THE JUROR.

24 THE CLERK: SAY FOR THE DEFENDANT?

25 MR. WARDER: PLEASE SWEAR THE JUROR.

1 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE,
2 MISS BLACKWELL. T-10, SCOTT WILL, T-10.

3 (PROSPECTIVE JUROR T-10, WHITE MALE, STEPS FORWARD)

4 THE CLERK: SAY YOU FOR THE STATE?

5 MS. WHITE: PRESENT THE JUROR.

6 THE CLERK: SAY YOU FOR THE DEFENDANT?

7 MR. WARDER: PLEASE SWEAR THE JUROR.

8 THE CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE.

9 THE COURT: ALL RIGHT. WE NEED TO GET AN
10 ALTERNATE, MISS CLERK. THE DEFENSE HAS TWO, THE STATE---

11 THE CLERK: NUMBER FORTY-ONE, CARLTON GRIFFITH, 41.

12 (PROSPECTIVE JUROR 41, BLACK MALE, STEPS FORWARD)

13 THE CLERK: SAY YOU FOR THE STATE?

14 MS. WHITE: PRESENT THE JUROR.

15 THE CLERK: SAY YOU FOR THE DEFENDANT?

16 MR. WARDER: PLEASE SWEAR THE JUROR.

17 THE CLERK: HAVE A SEAT PLEASE, SIR. SIT IN THE
18 ALTERNATE'S CHAIR.

19 PROSPECTIVE JUROR GRIFFITH: SIT IN THAT CHAIR?

20 THE COURT: RIGHT. YOU SIT IN THAT CHAIR THROUGH
21 THE WHOLE TRIAL. AND, FOREMAN, YOU SIT IN THAT CHAIR THROUGH
22 THE WHOLE TRIAL. ANY MOTIONS PRIOR TO SWEARING THE JURY?

23 MS. WHITE: NO, SIR.

24 MR. WARDER: ONLY THE ONE MATTER I APPROACHED THE
25 BENCH ON.

1 THE COURT: WELL, FIRST OF ALL, LET'S HAVE THE --
2 MR. BAILIFF, TAKE THE JURY OUT BEFORE WE SWEAR THEM, PLEASE.
3 YOU ALL JUST WAIT A FEW MINUTES.

4 (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE
5 PRESENCE OF THE JURY:)

6 ALL RIGHT. MR. WARDER, YOU CAN PUT YOUR MOTION ON
7 THE RECORD NOW.

8 MR. WARDER: YOUR HONOR, PLEASE THE COURT? I HAD
9 MOVED TO HAVE THE PANEL DISMISSED, NOT TO STRIKE THE JURY
10 FROM THIS PANEL AFTER YOUR HONOR'S OPENING REMARKS TO THE
11 COURT. IN THOSE REMARKS YOUR HONOR HAD POINTED OUT THIS
12 SOLICITOR'S OFFICE HAD BEEN HELPFUL AND COOPERATED WITH THE
13 COURT, WAS IN FACT MORE COOPERATIVE AND MORE HELPFUL TO THE
14 COURT THAN SOLICITOR'S OFFICES YOU DEAL WITH IN OTHER PARTS
15 OF THE STATE. MY CONCERN IS, THE REASON FOR THE MOTION, I
16 THINK THOSE COMMENTS TO THE PANEL SEEM TO INDICATE THAT THE
17 SOLICITOR IS PART OF THE COURT'S TEAM OR THE SOLICITOR'S
18 OFFICE HELPS THE COURT AND IT'S KIND OF A JOINT EFFORT. I
19 THINK THAT MIGHT HAVE A PREJUDICE, CARRY OVER TO MY CLIENT.
20 SO, I OBJECTED TO THE PANEL THEN BEING CHOSEN, AND THE JURY
21 PANEL BEING CHOSEN FROM THAT PANEL. I THINK THOSE TEND TO
22 BOLSTER THE ESTEEM OF THE SOLICITOR'S OFFICE AND GIVE MORE
23 CREDIBILITY TO THIS PROSECUTION THAN IT MIGHT OTHERWISE HAVE.
24 THE COURT: THANK YOU VERY MUCH, BUT YOUR MOTION IS
25 DENIED, SIR. NO, SIR. I DON'T AGREE WITH YOU, SIR. I BEEN

1 HEARING THIS FOR 40 YEARS IN COURTROOMS ALL OVER THE STATE;
2 AND I WILL CERTAINLY BE IMPARTIAL IN THIS TRIAL, MR. WARDER.
3 SO, DON'T WORRY ABOUT THAT. THANK YOU VERY MUCH. ANYTHING
4 FROM THE STATE BEFORE THE JURY IS SWORN?

5 MS. WHITE: YES, SIR. YOUR HONOR, THE DEFENSE HAD
6 MADE A MOTION YESTERDAY OR AT SOME POINT, I GUESS IT WAS
7 YESTERDAY, FOR A CONTINUANCE. IN THEIR WRITTEN MOTION THEY
8 PUT THAT IF THE CONTINUANCE WAS NOT GRANTED, THAT THEY WANTED
9 THE PUBLIC DEFENDER TO ASSIST IN THE DEFENSE. YOUR HONOR, I
10 WOULD JUST ASK THAT THE COURT TALK TO THE DEFENDANT AND JUST
11 RESOLVE THAT, BECAUSE AS I UNDERSTAND IT, THEY DO NOT WANT
12 HIM.

13 THE COURT: YES, MA'AM. I THOUGHT MR. GAMBLE WAS
14 GOING TO BE HERE. WHERE IS HE?

15 MS. WHITE: YOUR HONOR, HE IS HERE SOMEWHERE.

16 THE COURT: WOULD YOU STAND, PLEASE, SIR? I'M
17 TALKING TO THE DEFENDANT, PLEASE STAND.

18 (DEFENDANT STANDS)

19 THE COURT: MR. GAMBLE WAS YOUR LAWYER, HE WAS
20 APPOINTED BY THE COURT, PUBLIC DEFENDER. WOULD YOU LIKE FOR
21 HIM TO SIT WITH YOU TODAY, SIR?

22 THE DEFENDANT: NO, THANK YOU, YOUR HONOR.

23 THE COURT: WOULD YOU NOT LIKE FOR HIM TO SIT WITH
24 YOU?

25 THE DEFENDANT: NO, SIR.

1 THE COURT: IS THAT SUFFICIENT, SOLICITOR.

2 MS. WHITE: YOUR HONOR, I'D JUST ASK IF THIS IS HIS
3 OWN DECISION, IF HE UNDERSTANDS THAT WE WILL PROVIDE THE
4 PUBLIC DEFENDER AND IF HE WISHES TO WAIVE THAT.

5 THE COURT: ALL RIGHT. YOU UNDERSTAND THAT WE WILL
6 PROVIDE THE PUBLIC DEFENDER TO SIT WITH YOU TODAY IF YOU
7 WOULD LIKE FOR IT. OF COURSE, IF THIS IS YOUR DECISION THAT
8 YOU DON'T WANT HIM, THEN I WILL ABIDE BY YOUR DECISION; BUT
9 IF YOU DO WANT HIM, JUST TELL ME, I'LL HAVE HIM COME IN AND
10 DO THAT.

11 THE DEFENDANT: I DON'T SEE WHERE HE'S GOING TO
12 HELP. I MEAN---

13 THE COURT: ALL I WANT TO KNOW IS IF YOU WANT HIM
14 OR YOU DON'T WANT HIM, SIR.

15 THE DEFENDANT: NO, SIR. NO, SIR, I DON'T.

16 THE COURT: ALL RIGHT. THANK YOU.

17 THE DEFENDANT: THANK YOU.

18 THE COURT: ALL RIGHT. OKAY. LET'S TAKE A FEW
19 MINUTES. THAT JURY HAS BEEN SITTING OUT HERE A LONG TIME
20 THIS MORNING. LET'S JUST TAKE A FEW MINUTES BEFORE WE START
21 AND SWEAR THE JURY.

22 (RECESS)

23 THE COURT: ALL RIGHT, SOLICITOR.

24 MR. WARDER: YOUR HONOR---

25 THE COURT: EXCUSE ME?

1 MR. WARDER: YOUR HONOR, IF IT PLEASE THE COURT,
2 I'VE SPOKEN WITH MY CLIENT. WE WOULD LIKE TO CHANGE OUR PLEA
3 AND WITHDRAW OUR PREVIOUSLY ENTERED PLEA OF NOT GUILTY AND
4 TENDER TO YOUR HONOR A PLEA OF GUILTY AT THIS TIME.

5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

6 MS. WHITE: AS I UNDERSTAND IT, THE DEFENDANT IS
7 PLEADING GUILTY TO 98-GS-04-93 AND 94.

8 THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT, SIR.
9 YOU'RE MR. WAYMON STEVEN HARBIN, JR. IS THAT YOUR NAME,
10 SIR?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: WOULD YOU RAISE YOUR RIGHT HAND, PLEASE
13 SIR?

14 WAYMON S. HARBIN, JR, BEING
15 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 THE COURT: MR. HARBIN, BEFORE I CAN ACCEPT YOUR
18 PLEA, I MUST -- I'M GOING TO ASK YOU A LOT OF QUESTIONS. AND
19 FIRST, MR. WARDER, YOU DO REPRESENT THE DEFENDANT?

20 MR. WARDER: I DO, YOUR HONOR.

21 THE COURT: HAVE YOU EXPLAINED TO THE DEFENDANT THE
22 CHARGES CONTAINED IN THE INDICTMENT AND POSSIBLE PUNISHMENT
23 AND HIS CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHT TO A JURY
24 TRIAL?

25 MR. WARDER: YES, SIR, I HAVE.

1 THE COURT: IN YOUR OPINION DOES THE DEFENDANT
2 UNDERSTAND THE CHARGES, THE PUNISHMENTS, AND HIS RIGHTS?

3 MR. WARDER: I'M CONVINCED HE DOES, YOUR HONOR.

4 THE COURT: AND HOW DOES HE WISH TO PLEAD, GUILTY
5 OR NOT GUILTY?

6 MR. WARDER: HE WISHES TO TENDER HIS PLEA OF
7 GUILTY, YOUR HONOR.

8 THE COURT: ALL RIGHT, SIR. DO YOU AGREE WITH THAT
9 DECISION TO PLEAD GUILTY?

10 MR. WARDER: YES, SIR, I DO.

11 THE COURT: FROM YOUR INVESTIGATION OF THE FACTS
12 AND CIRCUMSTANCES OF THIS CASE, DO YOU FEEL THAT THE STATE
13 COULD PRODUCE SUFFICIENT EVIDENCE TO CONVINCE A JURY OF THE
14 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT; AND THAT IF THE
15 DEFENDANT WERE TO STAND TRIAL, HIS CONVICTION WOULD BE
16 PROBABLE?

17 MR. WARDER: I DO FEEL THAT WAY.

18 THE COURT: ALL RIGHT, SIR. HAS THE DEFENDANT BEEN
19 ORDERED TO SUBMIT TO A MENTAL EVALUATION TO DETERMINE HIS
20 COMPETENCY TO STAND TRIAL?

21 MR. WARDER: NO, SIR.

22 THE COURT: HAS THERE EVER BEEN ANY ISSUE OF HIS
23 COMPETENCY, SIR?

24 MR. WARDER: NO, SIR.

25 THE COURT: ALL RIGHT, SIR. YOU ARE WAYMON STEVEN

1 HARBIN, JR. IS THAT CORRECT, SIR?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: ALL RIGHT, SIR. NOW, BEFORE I CAN
4 ACCEPT A PLEA OF GUILTY, IT'S NECESSARY FOR ME TO MAKE SURE
5 THAT YOUR PLEA OF GUILTY IS MADE FREELY AND VOLUNTARY.
6 THEREFORE, I NEED TO ASK SOME QUESTIONS. IF YOU DO NOT
7 UNDERSTAND THE QUESTIONS OR THE WORDS THAT I USE, YOU SHOULD
8 TELL ME SO THAT I CAN EXPLAIN THEM TO YOU. YOU MAY CONSULT
9 WITH YOUR LAWYER ABOUT ANY MATTER DURING QUESTIONING. AND IF
10 YOU FEEL THAT IT'S NECESSARY, YOU MAY ASK FOR AN OPPORTUNITY
11 TO TALK TO YOUR LAWYER. DO YOU UNDERSTAND, SIR?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: ALL RIGHT. HOW OLD ARE YOU, MR.
14 HARBIN?

15 THE DEFENDANT: TWENTY-TWO.

16 THE COURT: ALL RIGHT, SIR. HOW FAR DID YOU GO IN
17 SCHOOL?

18 THE DEFENDANT: ELEVENTH GRADE.

19 THE COURT: ALL RIGHT, SIR. AND WHAT KIND OF WORK
20 DO YOU DO?

21 THE DEFENDANT: STEEL AND WEAVING.

22 THE COURT: ALL RIGHT, SIR. HAVE YOU EVER BEEN
23 TREATED FOR THE ABUSE OF ALCOHOL OR DRUGS OR FOR MENTAL
24 ILLNESS?

25 THE DEFENDANT: NO, SIR.

1 THE COURT: HAVE YOU TAKEN ANY MEDICATION, DRUGS,
2 OR ALCOHOL IN THE LAST 24 HOURS?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: ARE YOU TODAY UNDER THE INFLUENCE OF
5 ANY MEDICATION, DRUGS, OR ALCOHOL?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: ARE YOU TODAY AWARE OF ANY PHYSICAL,
8 EMOTIONAL, OR NERVOUS PROBLEM THAT MAY KEEP YOU FROM
9 UNDERSTANDING WHAT YOU'RE DOING?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: ALL RIGHT, SIR. YOU HAVE HEARD YOUR
12 ATTORNEY TELL ME THAT HE HAS EXPLAINED TO YOU THE CHARGES
13 AGAINST YOU AND THE POSSIBLE PUNISHMENT AND YOUR
14 CONSTITUTIONAL RIGHTS AND THAT YOU UNDERSTAND THESE THINGS.
15 IS THAT CORRECT, SIR?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: ALL RIGHT. YOU'RE PLEADING GUILTY TO
18 THE OFFENSE OF MURDER AND YOU'RE PLEADING GUILTY TO
19 POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF OR
20 ATTEMPT TO COMMIT A VIOLENT CRIME. DO YOU UNDERSTAND THAT
21 SIR?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: ALL RIGHT. THE MAXIMUM POSSIBLE
24 SENTENCE FOR THE MURDER, OF COURSE, IS LIFE IMPRISONMENT.
25 AND THE MAXIMUM POSSIBLE SENTENCE FOR THE FIREARM, SOLICITOR,

1 IS WHAT?

2 MS. WHITE: FIVE YEARS, YOUR HONOR.

3 THE COURT: FIVE YEARS.

4 MS. WHITE: I BELIEVE THAT'S THE ONLY POSSIBLE
5 SENTENCE FOR THAT.

6 THE COURT: THAT'S THE ONLY SENTENCE. ALL RIGHT.
7 THANK YOU. DO YOU UNDERSTAND THAT, SIR?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT. ARE YOU NOW ON PROBATION OR
10 PAROLE?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: ALL RIGHT. THEN YOU DO UNDERSTAND THE
13 NATURE OF THE CHARGES AGAINST YOU AND THE RANGE OF POSSIBLE
14 PUNISHMENTS?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALL RIGHT. WHEN YOU PLEAD GUILTY YOU
17 GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS. NOW LISTEN
18 TO ME BECAUSE I'M GOING TO READ THESE RIGHTS TO YOU. FIRST,
19 YOU GIVE UP YOUR RIGHT TO REMAIN SILENT; THAT IS, YOUR RIGHT
20 AGAINST SELF-INCRIMINATION, YOUR RIGHT TO SAY NOTHING AT ALL.
21 YOU CANNOT BE COMPELLED TO TESTIFY OR TO PROVIDE EVIDENCE
22 AGAINST YOURSELF. DO YOU UNDERSTAND THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: SECOND, YOU GIVE UP YOUR RIGHT TO HAVE
25 A JURY TRIAL; THAT IS, YOUR RIGHT TO HAVE A JURY DECIDE

1 WHETHER OR NOT YOU ARE GUILTY BEYOND A REASONABLE DOUBT, AND
2 THEY WOULD BASE THEIR DECISION UPON EVIDENCE WHICH THE STATE
3 PRESENTS AND ON ANY EVIDENCE THAT YOU MIGHT WISH TO
4 INTRODUCE. IN A TRIAL YOU WOULD BE PRESUMED TO BE INNOCENT
5 AND THE STATE WOULD HAVE TO PRODUCE EVIDENCE THAT WOULD
6 CONVINCED ALL 12 MEMBERS OF THE JURY THAT YOU WERE GUILTY
7 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT, SIR?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT. THIRD, YOU GIVE UP YOUR
10 RIGHT TO CONFRONT AND BE CONFRONTED BY THE WITNESSES AGAINST
11 YOU; THAT IS, THE RIGHT TO SEE, HEAR, AND CROSS EXAMINE ANY
12 WITNESS THAT MAY BE CALLED AGAINST YOU DURING THE TRIAL AND
13 THE RIGHT TO SUBPOENA AND CALL WITNESSES IN YOUR OWN BEHALF.
14 DO YOU UNDERSTAND THAT, SIR?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALL RIGHT, SIR. DO YOU KNOW THAT WHEN
17 YOU PLEAD GUILTY THAT YOU GIVE UP THESE CONSTITUTIONAL
18 RIGHTS?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: IS THAT WHAT YOU WANT TO DO?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: ALL RIGHT, SIR. DO YOU UNDERSTAND THAT
23 YOU WON'T GET A JURY TRIAL IF YOU PLEAD GUILTY?

24 THE DEFENDANT: SIR?

25 THE COURT: DO YOU UNDERSTAND THAT YOU WILL NOT GET

1 WHETHER OR NOT YOU ARE GUILTY BEYOND A REASONABLE DOUBT, AND
2 THEY WOULD BASE THEIR DECISION UPON EVIDENCE WHICH THE STATE
3 PRESENTS AND ON ANY EVIDENCE THAT YOU MIGHT WISH TO
4 INTRODUCE. IN A TRIAL YOU WOULD BE PRESUMED TO BE INNOCENT
5 AND THE STATE WOULD HAVE TO PRODUCE EVIDENCE THAT WOULD
6 CONVINCED ALL 12 MEMBERS OF THE JURY THAT YOU WERE GUILTY
7 BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT, SIR?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT. THIRD, YOU GIVE UP YOUR
10 RIGHT TO CONFRONT AND BE CONFRONTED BY THE WITNESSES AGAINST
11 YOU; THAT IS, THE RIGHT TO SEE, HEAR, AND CROSS EXAMINATION
12 ANY WITNESS THAT MAY BE CALLED AGAINST YOU DURING THE TRIAL
13 AND THE RIGHT TO SUBPOENA AND CALL WITNESSES IN YOUR OWN
14 BEHALF. DO YOU UNDERSTAND THAT, SIR?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALL RIGHT, SIR. DO YOU KNOW THAT WHEN
17 YOU PLEAD GUILTY THAT YOU GIVE UP THESE CONSTITUTIONAL
18 RIGHTS?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: IS THAT WHAT YOU WANT TO DO?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: ALL RIGHT, SIR. DO YOU UNDERSTAND THAT
23 YOU WON'T GET A JURY TRIAL IF YOU PLEAD GUILTY?

24 THE DEFENDANT: SIR?

25 THE COURT: DO YOU UNDERSTAND THAT YOU WILL NOT GET

1 A JURY TRIAL IF YOU PLEAD GUILTY?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: ALL RIGHT, SIR. HAS ANYONE PROMISED
4 YOU ANYTHING OR HELD OUT ANY HOPE OF REWARD TO GET YOU TO
5 PLEAD GUILTY?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: HAS ANYONE THREATENED YOU OR USED FORCE
8 TO GET YOU TO PLEAD GUILTY?

9 THE DEFENDANT: NO, SIR.

10 THE COURT: HAS ANYONE USED ANY PRESSURE OR
11 INTIMIDATION TO CAUSE YOU TO PLEAD GUILTY?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP
14 YOUR MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

15 THE DEFENDANT: YES, SIR.

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

18 THE DEFENDANT: YES, SIR.

19 THE COURT: ALL RIGHT, SIR. ARE YOU SATISFIED WITH
20 THE MANNER IN WHICH YOUR LAWYER HAS ADVISED YOU AND
21 REPRESENTED YOU?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: ALL RIGHT. HAVE YOU TALKED WITH YOUR
24 LAWYER FOR AS OFTEN AND AS LONG AS YOU FEEL NECESSARY FOR HIM
25 TO PROPERLY REPRESENT YOU?

1 THE DEFENDANT: I CAN'T ANSWER THAT QUESTION.

2 THE COURT: WELL, SIR, THEN I CAN'T ACCEPT YOUR
3 PLEA UNLESS YOU CAN ANSWER THESE QUESTIONS. AND I'VE GOT TO
4 KNOW THAT THE PLEA IS FREE AND VOLUNTARY, SIR.

5 THE DEFENDANT: YES, SIR.

6 THE COURT: ALL RIGHT. DO YOU NEED MORE TIME TO
7 TALK TO YOUR LAWYER?

8 THE DEFENDANT: NO, SIR

9 THE COURT: ARE YOU COMPLETELY SATISFIED WITH YOUR
10 LAWYER'S SERVICES?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: DO YOU HAVE ANY COMPLAINT THAT YOU WANT
13 TO MAKE ABOUT YOUR LAWYER, THE SOLICITORS, OR ANY OF THE
14 POLICE OFFICERS?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: ALL RIGHT. HAVE YOU UNDERSTOOD MY
17 QUESTIONS?

18 THE DEFENDANT: YES, SIR, I HAVE.

19 THE COURT: IS THERE ANYTHING THAT YOU WOULD LIKE
20 TO ASK ME ABOUT WHAT WE'VE JUST BEEN OVER?

21 THE DEFENDANT: NO, SIR, THERE ISN'T.

22 THE COURT: ALL RIGHT. I KNOW THE BASIC FACTS IN
23 THIS CASE. I FIND THAT THERE IS A SUBSTANTIAL FACTUAL BASIS
24 FOR THIS PLEA. I FIND THAT THE DEFENDANT'S DECISION TO PLEAD
25 GUILTY IS FREELY, VOLUNTARY, KNOWINGLY, AND INTELLIGENTLY

1 MADE AND THE DEFENDANT HAS HAD THE ADVICE OF COUNSEL OF A
2 COMPETENT ATTORNEY WITH WHOM THE DEFENDANT SAYS HE IS
3 SATISFIED. SO, I WILL ACCEPT THE GUILTY PLEA. WOULD YOU NOW
4 TELL ME A LITTLE BIT ABOUT THE FACTS, SOLICITOR?

5 MS. WHITE: YES, SIR. YOUR HONOR, ON DECEMBER
6 10TH, 1997, THE VICTIM AND HIS WIFE, LINDA, WERE COMING HOME
7 FROM VISITING WITH HIS PARENTS. WHEN THEY GOT HOME, THEY
8 STARTED TO GO INTO THE DOOR. AS THE DOOR WAS OPENED, LINDA
9 HEARD SOME RUSTLING IN THE LEAVES. IT WAS DARK, ABOUT 10
10 P.M. AND WHEN SHE HEARD THE RUSTLING, SHE SAID, "THERE'S
11 SOMETHING IN THE LEAVES." THE NEXT THING SHE KNEW, HER
12 HUSBAND PUSHED HER INTO THAT HOUSE, WHEN A GUNSHOT RANG OUT.
13 HE WAS HIT, HE MANAGED TO GET INSIDE THE HOUSE, HE FELL TO
14 THE GROUND AFTER HE GOT INSIDE THE DOOR. IT WAS A SHOTGUN.
15 HE DID DIE THERE AT THE SCENE. BY THE TIME THE POLICE HAD
16 ARRIVED, HE WAS ALREADY DEAD.

17 YOUR HONOR, THE DEFENDANT HAD BEEN DATING THE
18 VICTIM'S DAUGHTER. THEY HAD JUST GOTTEN A RESTRAINING ORDER
19 BECAUSE HE HAD BEEN PHYSICALLY ABUSING HER, AND A JUDGE HAD
20 JUST GIVEN A RESTRAINING ORDER ON NOVEMBER 14TH OF THAT YEAR,
21 RESTRAINING HIM FROM COMING AROUND THE PARENTS OR THEIR
22 DAUGHTER, OR THE CHILD -- THEY HAVE A CHILD TOGETHER THAT WAS
23 ABOUT TWO. INCIDENTALLY, ONE THING I'D LIKE TO POINT OUT FOR
24 THE COURT IS HE USED A SHOTGUN. YOU KNOW HOW A SHOTGUN
25 SHOOTS, AND THE BABY WAS IN LINDA'S ARMS, YOU KNOW, THIS

1 CLOSE, WHEN THE SHOT RANG OUT (INDICATES), AND OBVIOUSLY
2 ENDANGERED HIS CHILD AND LINDA AS WELL AS THE VICTIM.

3 THE DEFENDANTS PRIOR RAP SHEET HAS A CDV IN MAY OF
4 '93, AN ASSAULT AND BATTERY IN JULY OF '94, A DUS IN NINE OF
5 '96, AND AN ASSAULT AND BATTERY IN FEBRUARY OF '97. YOUR
6 HONOR, AT THE APPROPRIATE TIME I BELIEVE SOME OF THE FAMILY
7 MEMBERS WOULD LIKE TO ADDRESS THE COURT.

8 THE COURT: WELL, I'LL BE GLAD TO HEAR FROM THEM
9 NOW.

10 MS. WHITE: ALL RIGHT, SIR. PLEASE STATE YOUR FULL
11 NAME FIRST. YOUR HONOR, LINDA HAD BEEN MARRIED TO THE VICTIM
12 FOR 20 SOME ODD YEARS.

13 MS. VOLRATH: YOUR HONOR I'M LINDA VOLRATH. THEY
14 TOOK AWAY MY LIFE, MY SECURITY, MY LOVE, AND ALL MY HOPE.
15 THANK YOU.

16 THE COURT: ANYBODY ELSE WANT TO SAY ANYTHING?

17 MS. WHITE: ALISHA? KRISTA? YOUR HONOR, THAT'S
18 ALL.

19 THE COURT: ALL RIGHT. MR. WARDER?

20 MR. WARDER: YOUR HONOR, THIS CASE TYPIFYS THAT AN
21 EVENT LIKE THIS PROFOUNDLY AFFECTS EVERYBODY INVOLVED. THE
22 DEGREE OF REMORSE MY CLIENT FEELS, YOUR HONOR -- THIS IS, I
23 KNOW FOR HIM AND FOR ALL OF HIS FAMILY, BEEN AS HARD AS ANY
24 SITUATION THEY'VE EVER HAD TO DEAL WITH. AFTER AN ACT LIKE
25 THIS IS DONE, IT'S SIMPLY IMPOSSIBLE TO TAKE IT BACK, YOU

1 KNOW, REGARDLESS OF WHAT, HOW BAD HE WANTED TO, THERE'S
2 NOTHING THAT WOULD CHANGE IT, YOUR HONOR. THE EVENTS OF THAT
3 NIGHT -- NOT ONLY WE'RE VERY SORRY FOR THE VICTIM'S FAMILY
4 BECAUSE WE KNOW IT PROFOUNDLY AFFECTED THEM, IT PROFOUNDLY
5 AFFECTED MY CLIENT, THE SENTENCE HE WILL HAVE TO SERVE WILL
6 PROFOUNDLY AFFECT HIM; HIS MOTHER AND FATHER SUFFER EVERY DAY
7 WITH HIM, IT'S JUST A MATTER OF LOVE, I THINK THAT -- WE URGE
8 THE COURT TO BE LENIENT. CERTAINLY THE BEST SENTENCE YOU CAN
9 GIVE IS A LENGTHY SENTENCE, YOUR HONOR. WE -- YOU KNOW, WE
10 URGE YOU TO CONSIDER A MINIMUM SENTENCE IN THIS CASE. I
11 THINK HIS FATHER WANTS TO SAY SOMETHING, YOUR HONOR.

12 THE COURT: YES, SIR. I'LL BE GLAD TO HEAR FROM
13 YOU.

14 MR. HARBIN: OVER THE YEARS THAT STEVEN AND LISA
15 HAD WENT TOGETHER, TIME AFTER TIME CURTIS HAD THREATENED
16 STEVEN'S LIFE, TO ME, TO HIS MOTHER, AND TO HIS FRIENDS. I
17 KNOW THAT WASN'T NO RIGHT TO TAKE CURTIS' LIFE. I FULLY
18 ADMIT THAT. BUT IT WAS EVERY TIME THAT THEM KIDS GOT IN AN
19 ARGUMENT, EITHER LINDA WAS PULLING A GUN OR CURTIS WAS
20 PULLING A GUN. EVERY TIME. I TRIED TO GET THEM TO MEET WITH
21 ME ONE TIME BEFORE, THEY WOULD NOT MEET WITH ME FOR US TO TRY
22 TO GET STUFF SETTLED AND CALMED DOWN, QUIT PLAYING WITH THE
23 GUNS. BUT THEY JUST KEPT ON AND ON. EVERY TIME STEVIE
24 TURNED AROUND, HIS LIFE WAS IN DANGER. I KNOW IT'S NOT RIGHT
25 FOR HIM TO TAKE CURTIS' LIFE, BUT THAT COULD HAVE SOMETHING

1 TO DO WITH IT, BECAUSE EVERY TIME HE DID TURN AROUND, HE WAS
2 THREATENED.

3 THE DEFENDANT: I DON'T WANT TO HEAR NO MORE. I
4 JUST WANT THIS OVER WITH. I GOT SOMETHING I WANT TO SAY.

5 THE COURT: YES, SIR. YOU CERTAINLY MAY.

6 THE DEFENDANT: AFTER YOU SENTENCE ME.

7 THE COURT: AFTER I SENTENCE YOU?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT. ON THE INDICTMENT FOR
10 MURDER, THAT'S 98-GS-04-94, YOU'RE CONFINED TO THE STATE
11 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS. AND ON
12 THE OTHER, THE SENTENCE OF THE POSSESSION OF A FIREARM OR
13 KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT
14 CRIME, FIVE YEARS. MAKE THAT CONCURRENT WITH YOUR 30 YEARS.
15 GOOD LUCK TO YOU.

16 WOMAN WITH DEFENDANT: WHAT DOES THAT MEAN, SIR,
17 CONCURRENT WITH---

18 MR. WARDER: AT THE SAME TIME.

19 THE COURT: YOU WANT TO SAY SOMETHING?

20 THE DEFENDANT: YES, SIR. LINDA, THIS IS GOING TO
21 BE REAL HARD FOR ME. THIS IS FROM ME TO YOU. THIS IS NOT TO
22 GRANT AND IT'S NOT TO ALISHA, WHICH I LOVE WITH ALL MY HEART.
23 THERE'S NOTHING I CAN HONESTLY DO TO STOP YOUR PAIN, STOP
24 YOUR HURT OR ANYTHING. I -- I CAN ONLY LOVE SO MUCH. AND I
25 KNOW HOW IT FEELS TO HAVE YOUR LIFE TAKEN AWAY FROM YOU. AND

1 I CAN HONESTLY SAY I CAN HONESTLY FEEL HOW YOU FEEL RIGHT
2 NOW. BECAUSE---

3 MS. VOLRATH: NO YOU DON'T STEVEN. I NEVER---

4 THE DEFENDANT: ---I'LL NEVER GET TO SEE MY LITTLE
5 BOY AGAIN.

6 MS. VOLRATH: I'LL NEVER GET TO SEE CURTIS AGAIN.

7 THE DEFENDANT: I AM SO SORRY FOR THAT. AN
8 ACCIDENT HAPPENED. IT WAS NOT SUPPOSED TO BE LIKE THAT. IT
9 WASN'T SUPPOSED TO BE LIKE THAT.

10 MS. VOLRATH: HOW WAS IT SUPPOSED TO BE?

11 THE COURT: OKAY. THAT'S ENOUGH. BETTER NOT START
12 ANY OF THAT. THANK YOU, SIR.

13 MS. WHITE: THANK YOU, JUDGE.

14 THE COURT: THANK YOU. IT'S ABOUT LUNCH TIME,
15 LADIES AND GENTLEMEN.

16 THE CLERK: YES, SIR, YOUR HONOR.

17 THE COURT: MR. WARDER, YOU DID A GOOD JOB FOR YOUR
18 CLIENT, SIR.

19 MR. WARDER: THANK YOU.

20 (WHEREUPON, THE JURY IS EXCUSED FROM FURTHER
21 SERVICE.)

22 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

23

24

25

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF ANDERSON) CERTIFICATE OF REPORTER

3
 4 I, THE UNDERSIGNED, DONNA MARIE BRADY, OFFICIAL COURT
 5 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
 6 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
 7 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
 8 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
 9 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL
 10 SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 21ST DAY
 11 OF APRIL, 1998.

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

14
 15
 16 Donna M. Brady
 17 DONNA M. BRADY

18 December 3, 1999
 19 DATE

20
 21
 22
 23
 24
 25

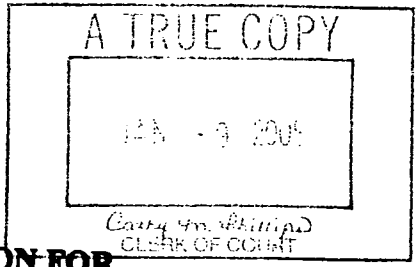
STATE OF SOUTH CAROLINA)
)
County of ANDERSON)

IN THE COURT OF COMMON PLEAS

Waymon Stephen Harbin, Jr.)
Full name and prison number (if any) of Applicant)
249126)

v.)

State of South Carolina)



APPLICATION FOR

POST-CONVICTION RELIEF

2008-CP-04- 00073

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
F4A #161, Rt.2, Box 100, McCormick, SC 29899
2. Name and location of Court which imposed sentence Anderson County Court
of General Sessions, 100 S. Main Street, Anderson, SC 29622-8002
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 980GS-04-93 Possession of Firearm During Violent Crime

(c) _____

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

(a) April 21, 1998 - Five (5) years concurrent

(b) April 21, 1998 - Thirty (30) years.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty n/a

(c) after a plea of nolo contendere n/a

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

No - Trial Counsel did not inform me of my right to appeal.

8. If you answered Ayes@ to (7), list:

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

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Trial Counsel Richard Warder never informed me of my appellate rights.

(b) Trial Counsel Richard Warder never filed notice of appeal.

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) My Guilty pleas was not knowingly and voluntarily made.

(b) Trial Counsel Richard Warder was ineffective

(c) Trial Counsel Richard Warder failed to investigate my case.

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

(a) See; Attached Memorandum in Support of PCR Application

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? yes

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

(a) the specific nature thereof:

i. PCR application 99-CP-04-956

ii. PCR application 2004-CP-04-656

iii. _____

iv. _____

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

i. Anderson County Court of Common Pleas, Anderson, SC

ii. Anderson County Court of Common Pleas, Anderson, SC

iii. _____

- iv. _____
- (c) **the disposition thereof:**
 - i. Conditional Order of Dismissal/ Final Order of Dismissal
 - ii. Conditional Order of Dismissal/ Final Order of Dismissal
 - iii. _____
 - iv. _____

- (d) **the date of each such disposition:**
 - i. August 25, 1999
 - ii. Sept. 22, 2005 / January 6, 2006
 - iii. _____
 - iv. _____

- (e) **if known, citations of any written opinions or orders entered pursuant to each such disposition:**
 - i. Harbin v. State 99-CP-04-956
 - ii. Harbin v. State 2004-CP-04-656
 - iii. _____
 - iv. _____

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

Yes

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

- (a) **which grounds have been presented:**
 - i. Voluntariness of guilty and ineffective assistance of
 - ii. trial counsel Richard Warder - however the applicant
 - iii. never was afforded an evidentiary hearing and his applicaton
was never heard on the merits.
- (b) **the proceedings in which each ground was raised:**
 - i. Applicant has never had an evidentiary hearing.
 - ii. _____
 - iii. _____

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

- (a) Lack of Voluntary guilty plea; ineffective assistance of
- (b) trial counsel has never been heard on the merits in either
- (c) prior filing because I have never had an evidentiary hearing.

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

- (a) your arraignment and plea? Yes Richard Warder
- (b) your trial, if any? n/a
- (c) your sentencing? yes, Richard Warder
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes, Bruce Byrholdt on this on

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

- (a) the name and address of each attorney who represented you:
 - i. Bruce A. Byrholdt, 117 West Benson Street, Anderson, SC
Robert Gamble, Box 8002, Anderson, SC
 - ii. Richard Warder 15 Primrose Street, Greenville, SC
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Byrholdt - Pre-trial, discovery and this PCR application
 - ii. Gamble = pre trial/discovery
 - iii. Warder - plea and sentencing

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

Request an evidentiary hearing on this application and that my guilty plea and sentence be vacated and I am granted a new trial

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, Waymond S. Harbin, Jr., 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.

Waymond S. Harbin, Jr.

SWORN to and subscribed before me this 4th day of January, 2008.

Bruce A. Scholtz (L.S.)
Notary Public

My Commission Expires: 8/18/2013

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

I, Waymond S. Harbin, Jr., 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.

Waymond S. Harbin, Jr.
Applicant

SWORN or affirmed to and subscribed before me this
4th day of January, 2008.

Russ a Scholtz
Notary Public

My Commission Expires: 8/18/2013

Additional Grounds Supporting Application for Post Conviction Relief and Request for an Evidentiary Hearing:

1. Richard Warder the attorney who represented me at my plea and sentencing became counsel of record on April 16, 1998. Mr. Warder filed a motion for continuance which to my belief was never argued on April 16, 2008. My case was called for trial on April 21, 1998, just five (5) days after Richard Warder moved to become my attorney and he failed to obtain a continuance, he did not have sufficient time to investigate or prepare a defense in my case.
2. I did not have the effective assistance of counsel because Mr. Warder had insufficient time and failed to properly investigate the facts of my case and to investigate defenses which would have been available to me.
3. I did not have the effective assistance of counsel upon which to make a knowing, intelligent and voluntary waiver of my constitutional rights to trial because Mr. Warder did not investigate the evidence in my case; did not obtain all evidence in the case, and failed to investigate possible defenses to the charges of murder and possession of firearm during commission of a violent crime.
4. My guilty plea was not knowingly, intelligently and voluntarily entered into because I did not have the effective assistance of counsel because Richard Warder failed to conduct any investigation into the facts of my case.
5. I have been denied due process of law under the prior applications for Post Conviction Relief as I have been pro se and have never been afforded an evidentiary hearing, even though prior orders have found that I appeared for such a hearing which is untrue. Final Order issued by Hon. J.C. Nicholson found that I appeared and was represented by counsel at an evidentiary hearing in Case No. 99-CP-04-956 which is incorrect.
6. I have been denied due process of law in that my 2004-CP-04-656 Post Conviction Relief Application was denied on the basis of successive applications and because I failed to timely respond to the Conditional Order of Dismissal this is incorrect. The Conditional Order of Dismissal was filed on September 22, 2005 and served upon me - I filed my Reply to the Conditional Order of Dismissal on October 10, 2005. Despite my filing the Final Order found that I did not timely respond to the Conditional Order of dismissal, this is incorrect.
7. The Statute of Limitations and Successive Application Doctrine should not apply in this case as I have never received an evidentiary hearing and I have never had my day in court to prove my allegations of ineffective assistance of counsel and invalid guilty plea

All I request is the opportunity for one evidentiary hearing to show that I did not have the effective assistance of counsel and that my plea was not voluntary, intelligent or knowingly entered on the charges of murder and possession of a firearm during the

SA

commission of a violent crime. I do not want more than one bite at the proverbial apple all I want is one chance to prove my case.

SB

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Waymon S. Harbin, Jr. 249126)
APPLICANT,)

AFFIDAVIT OF SERVICE

VS.)

2008-CP-04-00073

STATE OF SOUTH CAROLINA,)

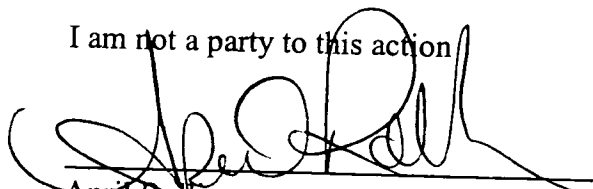
RESPONDENT.)

This is to certify that I, April Rollins, legal assistant to Bruce A. Byrholdt, of the Law Firm of **CHAPMAN, BYRHOLDT & YON, L.L.P.**, attorney for Applicant, did cause the **Application for Post Conviction Relief and Order to Proceed Without of Costs** to be served upon the following listed below, via US mail, postage paid, addressed as shown below this 9 day of Jan. 2008.

Henry McMaster
Attorney General
P.O. Box 11549
Columbia, SC 29211

Chrissie Adams
Anderson County Solicitor's Office
P.O. Box 8002
Anderson, SC 29622

I am not a party to this action


April Rollins

SWORN TO BEFORE ME THIS
9 DAY OF JAN. 2008.

Miriam Hamrick
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/5/2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2008-CP-04-073

Waymon S. Harbin, Jr., # 249126,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

RETURN AND MOTION TO DISMISS

Respondent, making its Return to the application for post conviction relief (PCR) filed January 9, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the January 1998 term of the Anderson County grand jury for murder (98-GS-04-94) and possession of a firearm during the commission of a violent crime (98-GS-04-93). He was represented by Richard Warder, Esquire. On April 21, 1998, Applicant pled guilty. He was sentenced by the Honorable Gerald C. Smoak, Sr., to confinement for periods of thirty (30) years and five (5) years concurrent. Applicant did not appeal his conviction or sentence.

Applicant subsequently filed an Application for PCR and the State filed its Return. An evidentiary hearing was held at which Applicant was present and was represented by counsel. By Order dated June 12, 2000, the application was denied and dismissed.

Applicant subsequently filed a second PCR application on February 24, 2004. The State made its Return and Motion to Dismiss on June 15, 2004, asking that the application be dismissed with prejudice for being successive and for being untimely filed. In this Application, Applicant alleged that he was being held in custody unlawfully for the following reasons:

- 1. Denial of due process;
- 2. Involuntariness of guilty plea;
- 3. Ineffective assistance of counsel; and
- 4. Lack of subject matter jurisdiction and bar of statute of limitations.

A Conditional Order of Dismissal was signed by the Honorable J.C. Nicholson, Jr., on September 22, 2005. The Conditional Order was served on Applicant by personal service on January 25, 2006. Applicant failed to respond to the Order and a Final Order of Dismissal was issued on January 6, 2006.

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's plea, Applicant's prior applications for post- conviction relief, and the orders denying Applicant's prior applications. Any of the above not so attached will be forwarded upon receipt.

II.

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

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

III.

The State submits that the current Application for PCR must be summarily dismissed because it is successive to Applicant's prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

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, 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.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

IV.

The State further submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. §§ 17-27-10 to -160 (1976 & Supp. 1997). The Act 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.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

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). Applicant was convicted of the offenses he challenges in this Application on April 21, 1998. Applicant did not appeal his conviction and sentence. This Application was filed on January 9, 2008; well 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 PCR 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 judgement as a matter of law." Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

V.

Thus, the State requests that the Court summarily dismiss this Application for PCR as a matter of law.

VI.

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

WHEREFORE, having made its Return, the State requests that Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

By. 
ATTORNEYS FOR RESPONDENT

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

March 5, 2008.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COURT OF GENERAL SESSIONS

WAYMON HARBIN, JR.,)
APPLICANT,)
vs.)

TRANSCRIPT OF RECORD
2008-CP-04-73

STATE OF SOUTH CAROLINA)
RESPONDENT.)

MARCH 26, 2009
ANDERSON, SOUTH CAROLINA

B E F O R E :

THE HONORABLE CORDELL MADDOX, JUDGE.

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

GREGORY P. JONES, ASSISTANT ATTORNEY GENERAL
Attorney for the State

BRUCE A. BYRHOLDT, ESQ.
Attorney for the Applicant

Donna Brady, RPR
Official Court Reporter

INDEX OF WITNESSES

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Direct By Mr. Byrholdt 41

RICHARD WARDER, ESQUIRE

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E X H I B I T S

(No exhibits entered.)

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Thursday, March 26, 2009

(Whereupon, court convened with all parties present,
when the following proceedings were had:)

THE COURT: Yes, sir?

MR. JONES: May it please the Court, Your Honor?

The next case the state is going to call is Waymon S. Harbin versus State of South Carolina. Your Honor, this matter comes to the Court by way of the state's motion to dismiss an application for post conviction relief that was filed on January the 9th of 2008. The State is moving to dismiss this application because it was filed outside the statute of limitations and is barred by the doctrine of successiveness.

For some procedural background, Your Honor, the applicant was indicted in January of 1998 for murder and possession of a firearm during the commission of a violent crime. He pled guilty on April 21st, 1998. He was represented by Richard Warder. He was sentenced to 30 years confinement. The applicant did not file an appeal to his sentence or conviction.

Subsequently, applicant filed his first application for post conviction relief on May 4th, 1999. The State filed its motion to dismiss on August 23, 1999. A conditional order of dismissal was issued by Judge Hall on August 25th 1999. The State sent service, sent the

1 COD to the applicant on September 14, 1999. The
2 applicant failed to timely respond and that application
3 was subsequently dismissed in a final order that was
4 issued on June 12, 2000.

5 The applicant then filed another PCR application on
6 February 24, 2004. The State moved to dismiss that
7 application. Another COD was issued by Judge Nicholson
8 this time around and it was issued on September 22, 2005.
9 The applicant failed to adequately respond this time and
10 a final order of dismissal was issued on January 6th,
11 2006. Subsequently, thereafter he filed an appeal.

12 Appellate counsel submitted a Johnson appeal and a
13 motion to relieve as counsel by order dated August 23,
14 2007. The Supreme Court, after a thorough review of the
15 record, dismissed the appeal and remittitur was issued on
16 September 10, 2007.

17 That brings us to his current application where the
18 applicant is alleging ineffective assistance of counsel,
19 involuntary guilty plea, and also that he never received
20 his day in court. However, the State submits that the
21 applicant never received his day in court because his
22 first application was filed outside the statute of
23 limitations.

24 This application is also filed outside the statute
25 of limitations and also it is successive to his previous

1 applications and successive to the PCR appeal that he
2 filed back in August 23, 2006.

3 THE COURT: Okay. Yes, sir?

4 MR. BYRHOLDT: May it please the Court? I agree
5 with what the attorney general said except for the
6 following. And I think we have to go back -- no question
7 this is a successive application. But Weymon has never
8 had his day in court. And if you go back to the original
9 application, it was filed in 1999 and -- I mean, he's
10 incarcerated -- he sent it in within the time period. If
11 you look at the court's file, Linda DeShields was the
12 clerk at that time. It came in on April 20th which was
13 within the one year.

14 Unfortunately, Miss DeShields then sends it back to
15 him for a, she needed a notary. He returns it, and it
16 gets clocked in five days late. But the Court's file
17 reflects that they received it on April 20th of '99,
18 which is within the one year. Unfortunately, no one
19 looked at the court file. They couldn't have because
20 otherwise the conditional orders of dismissal would never
21 have been signed off in the first place.

22 And the problem there is, it's just a factual
23 mistake that went into case one. And from then on, on
24 case two, it just repeatedly, they said he wouldn't, you
25 know, had his day in court and filed his application, it

1 was untimely. But the record is clear. If you look at
2 the Court's file, there is a letter from Mr. Waymon
3 Harbin, this is the 1999 file. I asked the clerk's
4 office to bring up each one.

5 THE COURT: Yeah. We got it.

6 MR. BYRHOLDT: And without doubt that is in the
7 file. And I think it was just error for it to be
8 summarily dismissed, especially in that application. He
9 was pro se, had requested appointment of a lawyer, which
10 was never done.

11 Beyond that, when the conditional order of dismissal
12 is finally delivered to him in prison, within the 20 days
13 he files a response. And the final order says there was
14 no response ever filed. The order shows there was one.
15 And it's unfortunate that since 1999 Mr. Harbin has been
16 trying to get his day in court to address the issue on
17 whether his plea was voluntary and whether he had the
18 effective assistance of counsel because the case started
19 as a trial, a jury was picked, and then all of a sudden
20 the plea is gone.

21 And the unfortunate thing in that, as Mr. Warder got
22 hired on Friday, comes into court on Monday, asks for a
23 continuance, Judge Smoak denies it. And there's no way
24 you can get ready for a jury trial in three days on a
25 murder charge. It just cannot be done. And, you know,

1 we would ask the Court to deny the state's motion to
 2 dismiss. Give Mr. Harbin his day in court. Let us
 3 address it briefly. And I think without doubt, when the
 4 Court hears the evidence from Mr. Warder, the Court
 5 really will have no option but to grant him a new trial.

6 I told him all that does is put him back to square
 7 one. He still will be facing murder charges. I mean,
 8 there's just no way possible that -- it was just a series
 9 of mistakes that has affected this young man and his
 10 family.

11 THE COURT: All right. Based upon the facts and the
 12 fact that PCR was filed timely and, you know, these
 13 things happen, we'll go ahead. I'll deny your motion to
 14 dismiss. We'll go ahead and hear testimony. How about
 15 that?

16 MR. BYRHOLDT: Call Richard Warder to the stand.

17 RICHARD WARDER, ESQUIRE, being first
 18 duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. BYRHOLDT:

21 CLERK OF COURT: If you'll state your full name and
 22 spell your last name for the record, please, sir.

23 THE WITNESS: Richard Warder, W-A-R-D-E-R.

24 Q Mr. Warder, how long have you been practicing law in
 25 South Carolina?

1 A Thirty-five years.

2 Q All right. Did you have an occasion back in 1998 to
3 be retained by Mr. Harbin's family to represent him
4 on a charge of murder?

5 A Yes.

6 Q Do you recall when you were retained?

7 A No.

8 Q Would you agree that it was shortly before the trial
9 happened? You got, the family got you involved in
10 what I'd call the 12th hour? And do you recall being
11 called for trial and asking the court to continue
12 your case to give you time to prepare?

13 A Which one of the those questions do you want me to
14 answer?

15 Q Do you have your file with you?

16 A I have my PCR file.

17 Q Can you tell us how many times you met with
18 Mr. Harbin?

19 A I can't tell you that. I can't tell you how many
20 times I met with him. It was a very short time, we
21 met a lot of times for the time period.

22 Q Do you have any recollection on when you were
23 retained, how long before trial?

24 A It was shortly before the trial.

25 Q Could it have been as short as the Friday before the

1 trial that was due to start on Monday?

2 A I really don't have a recollection of that.

3 Q Did you file discovery?

4 A I obtained discovery but I don't know whether we
5 filed discovery with the solicitor's office. I
6 imagine I did, but I don't have a file to---

7 Q Could you have obtained the file from Robert Gamble,
8 the public defender, that had the case before you?

9 A I obtained discovery I think. I'm not sure how I did
10 it, but I obtained all the discovery.

11 Q How many witnesses did you interview in preparation
12 for this murder trial?

13 A Well, once again, I can't tell you. I had my
14 investigator that met with my client. I met with him
15 and we went over the statements with him. I mean,
16 this wasn't a who done it. I mean, he said he did
17 it. It was whether or not we technically had a
18 defense that the state couldn't prove the case. In
19 other words, this is not one where you're trying to
20 determine who the perpetrator is or what happened.
21 This is one where the client says, "I did it."

22 Q Did you ever look into any defenses such as
23 provocation, which would have had a possibility of
24 reducing it from murder to manslaughter? You didn't,
25 did you?

1 A There was no evidence of heat of passion that I was
2 able to arrive, provocation I don't think would
3 necessarily take it from.

4 Q My question is did you ever discuss that with
5 Mr. Harbin?

6 A Yes. We discussed how that happened, all of the
7 facts.

8 Q And you interviewed the witnesses or you read
9 statements that they gave?

10 A I read statements. I don't think I interviewed the
11 witnesses.

12 Q So then you were prepared to go to trial on Monday?

13 A If I had to go to trial, I would have went to trial
14 on Monday. Yes.

15 Q Then why would you have asked for a continuance,
16 Mr. Warder? If you were ready to go to trial, if I
17 asked you to assume you were hired on Friday?

18 A Can I answer the first question, then you ask me to
19 assume?

20 Q Answer my questions.

21 A Okay. The first question you asked was, why would
22 you file a motion for continuance if you were ready
23 to go to trial. Of course the answer is that I would
24 liked to have had more time. We filed the
25 continuance I think before the day of the trial, at

1 some earlier -- maybe the Friday I was hired. And,
2 of course, we would have liked to enlarge that time.
3 But we hadn't been heard on it when we arrived for
4 the day of the trial. And on that day there became
5 an opportunity that we could plead for 30 years
6 rather than life, go for the risk of life. And we
7 took that. We decided to plead for the 30 years.

8 Q All right. Did you tell Mr. Harbin that he'd be out
9 in 25 years?

10 A No.

11 Q So you deny telling him that?

12 A No.

13 Q And you're telling this Court today under oath that
14 even though you asked for a continuance, you were
15 ready to go to trial?

16 A I had -- the public defender was there to sit with
17 us. I could have tried the case had I had to. The
18 family knew it was a short time. We were all
19 prepared on that.

20 Q But my question is if you were prepared, why would
21 you ask for a continuance?

22 A I asked for the continuance at the time -- at the
23 very time we took the case. I would have liked to
24 have had more time. If I had to go to trial, I would
25 have been prepared.

1 Q Well, you were going to trial. You pulled a jury.
2 Do you recall that? It was not a plea.

3 A I was not going to trial when I pulled the jury.
4 Don't (witness gestures). I was pulling the jury
5 because I had to pull the jury before they took a
6 break. The solicitor wanted to get the jury before
7 we done anything further in the case. So we got the
8 jury.

9 Q In your 35 years of practice, Mr. Warder, have you
10 ever taken a murder case and tried it three days
11 later?

12 A Have I what?

13 Q Ever taken a murder case in and tried it three days
14 later? In your 35 years of practice?

15 A I honestly don't know the answer to that.

16 Q Yes or no?

17 A I don't know the answer. I don't remember the time
18 between every murder case I've taken and the date of
19 trial.

20 Q As a practicing lawyer for 35 years, do you believe
21 you can adequately prepare for a murder case in a
22 week?

23 A No.

24 Q Okay. Mr. Warder, have you ever been disciplined by
25 the Supreme Court for---

1 MR. JONES: Objection, Your Honor, irrelevant.

2 MR. BYRHOLDT: It goes to credibility, Your Honor,
3 and goes in preparation for trial.

4 MR. JONES: Unless he can specifically tie it to
5 this case.

6 THE COURT: What's the question?

7 MR. BYRHOLDT: I've asked him if he has ever been
8 disciplined by the Supreme Court for failing to timely
9 file appeals, failing to communicate with clients in
10 criminal cases. It's either yes or no.

11 MR. JONES: He hasn't specifically tied it to this
12 case, Your Honor. I still object as this question being
13 irrelevant for what we're here for today.

14 MR. BYRHOLDT: I'll withdraw it, Your Honor.

15 THE COURT: Yeah, withdraw it.

16 Q Do you recall how many times you, yourself, met with
17 Mr. Harbin?

18 A No, not exactly.

19 Q Do you recall how many times -- you say you used an
20 investigator to meet with Mr. Harbin. Do you know
21 how many times your investigator met with Mr. Harbin?

22 A No. I don't recall exactly.

23 Q At the trial did Mr. Gamble agree to sit with you or
24 did you tell him he was not needed?

25 A I'm sorry? I didn't hear the question.

1 Q When you selected the jury -- at the time you were
2 selecting the jury, were you intending to go to
3 trial?

4 A No.

5 Q It was a plea already?

6 A At that time we thought we'd plead guilty.

7 Q And the pulling of the jury was just in case the plea
8 fell through, you could go start the trial?

9 A The jury was here. The solicitor was insisting that
10 we draw the jury. The judge went ahead to draw the
11 jury. So we drew the jury. And I guess that would
12 have been the intention of the other side, not
13 necessarily my intention. I think we had a motion
14 that we hadn't argued for a continuance yet.

15 Q What was your basis for the continuance?

16 A The shortness of the time.

17 MR. BYRHOLDT: Nothing further. Thank you.

18 THE COURT: All right. Yes, sir.

19 CROSS EXAMINATION

20 BY MR. JONES:

21 Q Yes. Mr. Warder, in your 35 years of practice how
22 many murder cases have you done?

23 A I've handled over a hundred.

24 Q And have you ever tried any murder cases where
25 voluntary manslaughter/involuntary manslaughter was

1 the issue?

2 A Yes.

3 Q So you knew what legal provocation was? You knew
4 what cooling-off period was?

5 A (Witness nods head up and down.)

6 Q And were those elements present in this case from the
7 facts you knew of?

8 A No.

9 Q How did you learn the facts of this case?

10 A How did I learn the facts of this case?

11 Q Yes, sir.

12 A I learned the facts from my client. I learned the
13 facts from discovery. I learned the facts from
14 talking to the attorney that had worked with this
15 case. I learned the facts from everything that was
16 available.

17 Q So you did the review the file that Mr. Gamble gave
18 you?

19 A Yes. I talked to him. And I can't remember whether
20 I got another file from the solicitor's office or
21 whether I got a copy of his file. I'm unclear about
22 that.

23 Q Okay. Now, based on your 35 years of trying murder
24 cases and based on the facts of the case from what
25 your client told you and from your review of the

1 file, do you think you would have been prepared for
2 trial even if you went to it, went through with it?

3 A And the fact that we could have had Mr. Gamble sit
4 with us?

5 Q Yes.

6 A Yes. I could have tried the case and I could have
7 been prepared enough to try the case.

8 Q What would have been your trial strategy if you went
9 forward with the trial?

10 A The trial strategy would have been the sufficiency of
11 the evidence and trying to get where you can to get
12 reasonable doubt. The facts were bad.

13 Q Right.

14 A It was -- but we would try and create and impeach
15 where we could.

16 Q And why were the facts bad as you recall?

17 A As I recall it was a case where he had shot the
18 father of my client's girlfriend when they came back
19 to the house.

20 Q Isn't it true the applicant told you he was waiting
21 for the victim when he approached the house?

22 A Yes, sir.

23 Q And you learned all these facts in the case from the
24 applicant?

25 A I learned them from everywhere. I don't -- you know,

1 the applicant was certainly a large part of that.

2 Q Now, did he ever tell you that he wanted to go to
3 trial?

4 A If the case had been where we couldn't get assurances
5 that we could have got 30 years instead of life, we
6 would have went to trial. You wouldn't plead to a
7 murder if you thought you were pleading to a life
8 sentence. There would have been no benefit to the
9 client. There would have been no reason.
10 Every case would have had some chance of a not guilty
11 verdict in any set of facts. The jury could just
12 decide. So you never would have pled if it wasn't
13 something. When 30 years become one of the options,
14 then he didn't want to go to trial. He wanted to
15 take it.

16 Q And he was aware of that 30-year option, correct?
17 And you discussed that with him?

18 A At the time of the plea he was aware of that. Yes.

19 Q And he, of his own will, decided to accept that offer
20 of 30 years?

21 A Yes.

22 Q And did you explain to him that he was waving his
23 constitutional rights, such as rights to trial?

24 A Yes.

25 Q And you explained to him that he was waiving all of

1 his defenses?

2 A Yes. We were pleading guilty.

3 Q And he was okay with that?

4 A Yes.

5 Q And was it the defendant's decision to plead guilty?

6 A Yes.

7 MR. JONES: No further questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BYRHOLDT:

10 Q You answered the attorney general's question that you
11 tried a hundred murder trials roughly?

12 A Yes.

13 Q You've tried that many to verdict --

14 A No.

15 Q -- or you've pled out that many cases?

16 A Neither one of those. I've handled more than a
17 hundred murder cases.

18 Q How many have you tried? Less than ten?

19 A No. I think I tried six capital.

20 Q After the jury was selected, you moved to have Judge
21 Smoak disqualify himself because of---

22 A Yes.

23 Q ---his comments?

24 A I think I moved because he complimented the
25 solicitor's office in some fashion, and I said that

1 was prejudicial.

2 Q And he denied your motion?

3 A Yes.

4 Q How do you think that was going to affect the trial
5 when you tell a Judge, "You're not being fair to us,
6 you're favoring the other side," when you have to try
7 a murder case? Is that going to affect the trial of
8 the case?

9 A No. I don't think Judge Smoak would have been --
10 decided other things against me because I made that
11 motion. And the motion certainly had to be made to
12 protect the record.

13 Q All right. Did Mr. Harbin ever tell you that the
14 victim in the case put a gun in his mouth and
15 threatened to blow his head off? During your
16 investigation of this case?

17 A You mean on some other occasion?

18 Q I think shortly prior to the occasion of the killing.

19 A I have no recollection either way, whether on some
20 other occasion -- he didn't say that that happened in
21 connection with this set of facts.

22 Q Had that been done, assuming he did tell you that,
23 and he was young at the time this happened, correct?
24 I mean, he was a young adult?

25 A You mean at the time of the trial?

1 Q Yes.

2 A He was 22, he was young.

3 Q All right. Do you think that might have given rise
4 to an argument of legal provocation or something like
5 that if someone had put a pistol in your mouth and
6 threatened to blow your head off.

7 A How long before the trial?

8 Q Let's assume -- let's assume earlier that day. Did
9 you ever explore that possibility?

10 A We discussed the facts of the day, and I don't
11 remember that as being one of the facts.

12 Q That's all the questions I have for you, Mr. Warder.
13 Thank you, sir.

14 THE COURT: Okay. You can step down.

15 MR. BYRHOLDT: No problem with Mr. Warder being
16 excused. He's been up here since eleven this morning.

17 MR. JONES: We still might need him, Your Honor.

18 THE COURT: I'm sorry, Mr. Warder. I know you've
19 been out there.

20 MR. BYRHOLDT: Call the applicant to the stand.

21 **WAYMON S. HARBIN, JR., being first**
22 **duly sworn, testified as follows:**

23 **DIRECT EXAMINATION**

24 BY MR. BYRHOLDT:

25 Q Waymon, watch your step up there please. I'd ask you

1 to speak up.

2 THE COURT: Sit down. Just be careful right there.

3 Q Would you give us your full name for the record and
4 spell your last name.

5 A Waymon S. Harbin. Or Waymon Steven Harbin,
6 H-A-R-B-I-N. I'm a Jr.

7 Q Mr. Harbin, you entered a plea to murder back in 1998
8 when you were represented by Mr. Warder; is that
9 correct?

10 A Yes.

11 Q Can you tell the Court how many times you spoke with
12 Mr. Warder or anyone on his behalf prior to you going
13 to court? I know this is hard for you.

14 A I need my family to leave the courtroom.

15 MR. BYRHOLDT: You want them to leave? Would you
16 guys step out, please.

17 (Family members comply.)

18 I apologize. Mr. Harbin told me he may be
19 emotional.

20 THE COURT: That's all right. Don't worry about it.
21 Take your time.

22 Q How much time did you spend with Mr. Warder or his
23 investigator prior to going to court the Monday you
24 plead?

25 A Without telling a lie, I can recollect in my mind

1 just one. I don't want to say, it could have been
2 two.

3 Q Okay.

4 A After that it was all with Danny Hyatt, his
5 investigator. We took down facts and stuff.

6 Q And did you go over your entire case as well as what
7 you knew?

8 A Everything that I could possibly know and knew, past,
9 present, you know, all the way up from whatever.

10 Q All right. When you went to court that Monday what
11 was your intent?

12 A To go to trial.

13 Q All right. What happened when you got there that
14 changed your mind? Tell the Court what happened that
15 morning.

16 A Well, I want to go back to that weekend.

17 Q Okay.

18 A Mr. Hyatt said we had a case, they didn't have
19 nothing, they can't identify a shooter, they got no
20 murder weapon. They have no physical evidence. They
21 pulled a hat at the scene of the crime, they pulled
22 my DNA, it did not match. It looked good, I'm going
23 home. We got a solid case, everything is fine. We
24 have nothing to worry about.
25 I walk into trial, the Judge stands up and says,

1 "What's, my courtroom, do I owe this honor? I got
2 the head solicitor Mr. Ducworth sitting with the
3 assistant solicitor." It's not in the paperwork. I
4 looked at it. Looked for it. I asked my lawyer
5 shouldn't we say something about that?

6 And he said, "Hold off."

7 We pick a jury. After that I noticed the lady in the
8 jury box, I said, "Doesn't she work for Head Start
9 Schools? Isn't that what she said her job was?"

10 And he said, "Yeah."

11 I said well, "Curtis fixed" -- I always went to
12 Curtis or they brought the buses to me and I helped
13 them. So, she said she didn't know the victim. Yet,
14 they brought all their stuff over there and we went
15 over there to them. So I'm thinking there is some
16 relevancy here. There they know each other, you
17 know, it's not going to be a fair thing.

18 So I asked him, I said, "Look, you know, I've had you
19 since Friday, you know, why didn't they give us a
20 continuance?" You know what I'm saying? We could be
21 more prepared for this.

22 Q All right. Let me ask you this. Did Mr. Warder
23 discuss with you whether or not he was going to
24 request a continuance?

25 A No. I don't want to say no, but because I can't tell

1 a lie on the man, even though---

2 Q Was a continuance asked for Monday morning?

3 A Monday we went into another courtroom, a smaller
4 courtroom, and he asked for a continuance and it was
5 denied.

6 Q Do you recall why Mr. Warder asked Judge Smoak for a
7 continuance?

8 A Because we wanted more time to prepare and more time
9 to contact people that we haven't been able to
10 contact over the weekend because they wasn't --
11 they're off doing their -- you know how people go out
12 on the weekends, they're not at home, they're at
13 other people's houses. You know, you got all the
14 kids and stuff. They're not around.

15 Q Did you believe that Mr. Warder was ready to go to
16 trial that Monday morning?

17 A No.

18 Q Now, at some point something changed your mind.
19 Because no question you entered a guilty plea, right?

20 A Right.

21 Q Tell the Court why you entered a guilty plea instead
22 of proceeding on to trial.

23 A Well, I asked Danny Hyatt to ask Mr. Warder to say
24 something about the judge, because this didn't seem
25 right to me, you know, it's not fair to me, you know.

1 And so he raised up and asked for a change of
2 venue -- not change venue, but the Judge step down
3 and recuse himself or whatever. And I'm not sure if
4 this happened before or after but Mr. Gambrell [sic]
5 come in on my right-hand side. And the judge asked
6 if we would like for Mr. Gambrell to help my lawyer.
7 And I -- it's not my decision. I don't know nothing
8 about laws. That's the reason we hire lawyers, you
9 know. And I'm real confused, you know.
10 I'm like, "What do you want me to do? Do we need
11 him? It's your decision."
12 He said, "It's your decision, but I don't need him."
13 I said, "So you can do this?"
14 He says, "Yeah."
15 I say, "Well, let's do it, you know. This is your
16 decision." You know, because I can't -- "If you need
17 him then, yes, I want him. But if you don't need
18 him, then I'm prepared to go with you."
19 He says, "We don't."
20 And I said, you know -- so, when we asked the judge
21 to recuse himself or to step down, whatever, the
22 judge asked, have I been offered anything.
23 And we said, "No."
24 And the Judge says, "We're going to chambers."
25 And the next thing I know, it happened so quick, we

1 done picked the jury. We done picked the jury, now
2 we're going to chambers for some reason after we done
3 picked the jury. There was no offer on the table
4 before the jury was picked.

5 Q Okay. And then you go out and there's an offer?

6 A He comes back, I'm sitting right there in that seat
7 right there. He comes back, and he says, "They're
8 offering you 30 years."

9 I said, "No." I specifically said, "No."

10 And he says, "Huh?"

11 I said, "No."

12 He says, "What do you mean?"

13 I said, "I'll take 20 years. I'll just go on with
14 that." I said, "I'll take 20 years and I'll lay
15 down. I'll suck it up, do whatever I have to do for
16 my family."

17 He said, "Well, let me go back."

18 He come back probably, I wouldn't even say five
19 minutes, he said, "Look, 30 years is all you're
20 getting. Druanne is pushing for a life sentence.

21 She don't want to give you manslaughter." He said,
22 "She's pushing for 30 years, murder."

23 I said, "Can I talk to my family?" I went back and
24 had a conversation with my mother. They say an hour.

25 It felt like five minutes to me, you know. I talked

1 with them.

2 He come back there and he said, "You'll do 30 years,
3 85 percent. Twenty-five and a half years. You'll be
4 out when you're 47 not 52.

5 And I said, "I don't know."

6 My brother came over to me, said what he said. We
7 all stepped with my mother.

8 We come out and he said, "Look, Waymon," he said,
9 "Look, Mr. Harbin, you take this plea, within a year
10 we'll be back in court and I'll get you 15, you'll be
11 home in seven.

12 I said, "Huh? You can do that?"

13 He said, "Look, there's things we can do." Just go
14 up here and listen. I didn't feel like I was getting
15 a fair trial. He looked over at me, told me I was
16 not going to get a fair trial, was going to get a
17 life sentence because the way the court was going
18 that day.

19 And I'm like, this is crazy, you know. The next
20 thing I know, we're getting offered -- I tell you
21 that I don't feel like I'm getting a fair trial and
22 he says I'm not going to get one. And I look at
23 Mr. Hyatt, and I'll never forget the look in his
24 eyes. I said, "Mr. Hyatt" -- I'm holding his hand --
25 I said "Why are we going to trial? If we're not

1 going to get a fair trial, why can't we do something
2 about it?"

3 I'm thinking there's a law you can pass, you know, or
4 you can raise a motion, you can objection to, you
5 know, there's not. I wouldn't have accepted 30
6 years, mandatory minimum of 30 years without having
7 no chance of doing nothing. You know, I've done
8 enough hardship on my family. I'm doing my best to
9 go home. You know what I'm saying?

10 Q I understand. Do you feel that Mr. Warder was
11 prepared to go to trial on your case?

12 A No.

13 Q Do you know whether he talked to -- you say he talked
14 to Mr. Gamble at some point apparently?

15 A The only knowledge that he talked to Mr. Gambrell is
16 when he -- see, I'm not going to perjure myself. I
17 don't know if it was you or him that told me to allow
18 them to pull my hair for the DNA test. If
19 Mr. Gambrell came up with his investigator, the
20 little short brown-headed dude, when they pulled my
21 hair, as far as him talking to Mr. Gambrell, I don't
22 know. I don't have no knowledge of that. And I
23 don't have no knowledge that he ever talked to you.

24 Q Did I represent you on that case early on?

25 A Early on. In the beginning.

1 Q For about six months or so?

2 A Six months or so. Well, from December/January, right
3 up to February. And then we started with the money
4 issue. We had to get up the proper funds. You know,
5 I told you I couldn't make your retainer and all the
6 other fees, possible. And you said, "Well, we'll try
7 to work something out."

8 We still wasn't able to come up with it. So we had
9 to go with the public defender. And everything
10 happened so fast. It was you, Gambrell, him, like
11 that, (snaps fingers). And, you know, I don't see
12 how anybody would have proper enough time to prepare.

13 MR. BYRHOLDT: Weymon, if you would, answer any
14 questions the Attorney General or the Court would have
15 for you.

16 THE WITNESS: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. JONES:

19 Q Mr. Harbin, at your guilty plea hearing you took the
20 oath to tell truth, the whole truth, and nothing but
21 the truth, correct?

22 A Yes, I did.

23 Q And you told the truth that day, right?

24 A Excuse me?

25 Q You told the truth when you pled guilty that day,

1 correct?

2 A Yes, sir.

3 Q And you're telling the truth today, correct?

4 A Yes, sir.

5 Q While under oath, correct?

6 A Yes, sir.

7 Q Now, didn't you tell the judge you understood that
8 you were facing a maximum of life in prison for the
9 murder charges?

10 A What, December?

11 MR. BYRHOLDT: Your Honor, we'd stipulate that
12 whatever is in the transcript is what he---

13 THE WITNESS: I apologize to the Court, but I really
14 can't hear. I had surgery on my ears.

15 THE COURT: He asked you whether or not you told the
16 judge that you understood the maximum sentence was life
17 in prison.

18 THE WITNESS: Yes.

19 BY MR. JONES:

20 Q And you told the Judge---

21 A And I feel -- I'm sorry. I feel that the only reason
22 I got the 30 years was not because of my lawyer, no
23 disrespect towards him, but only because of what we
24 said to the judge and asked him to step down. And
25 then all of a sudden he asked the prosecutor, did

1 they offer anything to save the court any time and
2 money. And when they said, "No," we went in
3 chambers.

4 I don't believe I would have received the 30 years
5 even with my lawyer because there was no offer before
6 we went to court. That's the reason I believe I got
7 the 30 years. I don't believe he saved me from a
8 life sentence. I believe the judge saved me from a
9 life sentence. That's what I believe. And that's
10 just the honest truth. It's no disrespect to Mr.
11 Warder. But had the judge not called counsel in
12 chambers to save the state money, I don't believe I
13 would have received the 30 years.

14 Q Okay. Today you're saying that you weren't satisfied
15 with your attorney?

16 A No.

17 Q Well, why did you tell the plea judge that you were
18 satisfied? But you told the plea judge that you were
19 satisfied with your attorney, didn't you?

20 A It's my understanding that what I told the judge, he
21 asked me was I treated, did I feel like I was treated
22 fair.

23 Q Answer my question.

24 A I'm trying to.

25 Q Did you tell the plea judge that you were satisfied

1 with your attorney?

2 A Whatever the record states. I don't remember.

3 Q Do you have a copy of your plea transcript up there
4 with you?

5 A No, sir. I do not.

6 THE COURT: What page are you on? I'll give it to
7 him.

8 MR. JONES: Your Honor, on page 28, starting at line
9 19.

10 A What I do appreciate is all my attorney could do
11 within the three days allowed to him. Do you
12 understand what I'm saying? I appreciate whatever he
13 did. And I respected whatever he did. But do I---

14 THE COURT: I'm going to give you that. Go down to
15 19. That's what he's asking you about.

16 Q Now, on page 28, starting on line 19.

17 A Right.

18 Q The judge asked you, were you satisfied with your
19 attorney.

20 And then you tell the judge, "Yes."

21 A I think I looked for my mom, and my mom---

22 Q Did you tell the judge, "Yes"?

23 A Can I explain myself, sir?

24 THE COURT: Answer, yes, if the answer is yes.

25 Answer the question, then I'll let you explain.

1 THE WITNESS: All right. Yes, sir.

2 THE COURT: All right. Now you can explain if you
3 want to.

4 A I looked at my mom. I told her -- actually I just
5 said, you know, because we discussed it in the back,
6 I said, "How can I be happy with anything?" You know
7 what I'm saying?

8 And she just said, "Baby, go on, take it, you know,
9 take the time."

10 So I said, "Yes, sir."

11 When I was also asked was I felt like the court
12 treating me fairly?

13 I said, "How do I answer that question?"

14 And the judge said, "I cannot give you what you been
15 offered unless you answer these questions."

16 Q Mr. Harbin, you're saying that after the judge asked
17 you the question if you were satisfied with your
18 attorney, they stopped the plea proceedings?

19 A Yes, sir.

20 Q And you went back and talked to your mother?

21 A No. I didn't talk to my mother, was standing beside
22 me. My mother was on my left, my father was on my
23 right.

24 Q Okay. Now, earlier we went into the fact that you
25 only met with your attorney maybe one time, correct?

1 A At the most twice. I'm not, you know, I'm pretty
2 sure they got, Anderson County jailhouse can say when
3 he came. I'm not sure. I don't want to lie on the
4 man.

5 Q But you told the judge that you had enough time to
6 speak with your attorney, correct?

7 A If I said that, I'm lying. If I said I had enough
8 time with my attorney, I'm lying.

9 Q Okay. On the same page, starting at line 13. The
10 judge asked you, "Have you had enough time to make up
11 your mind?"

12 A That's not, that's not -- when the Judge said, "Do
13 you have enough time to make up your mind as to
14 whether or not you wanted to plead guilty," that's
15 not with my lawyer.

16 Q I'm sorry, Mr. Harbin, starting at line 23. The
17 Court says, "Have you talked with your lawyer for as
18 often and as long as you feel necessary for him to
19 properly represent you?"

20 And you said---

21 A I cannot answer that question.

22 Q And then the judge reasked you the question. And
23 what did you say?

24 A It says, "Well, sir, I cannot accept your plea unless
25 you answer the question. And I've got to know that

1 the plea is free and voluntary."

2 So, of course, I have to say yes in order to accept
3 this plea.

4 Q And you said yes because you wanted that 30-year
5 sentence, didn't you?

6 A Only because I felt like my lawyer just told me that
7 the judge was not going to give me a fair -- let me
8 explain myself. I'm answering your question. Yes, I
9 answered that, yes, I was. Because, under
10 explanation, my lawyer turned to me when I asked why
11 we could not get the judge to step down, and I felt
12 like we wasn't going to get a fair trial. And he
13 turned to me, he said, "You're not going to get a
14 fair trial, you're going to carry a life sentence."
15 The judge did something for a few seconds. I'm not
16 sure Mrs. White did anything. I can't recall. I
17 vaguely even remember her being in the courtroom I
18 was so concentrated on my lawyer and what the judge
19 was saying. The Judge says, has -- it goes down,
20 "Has he been offered anything?" And then they recuse
21 theirself and take a break and come back and take the
22 plea.

23 Q So you thought it was in your best interest to plead
24 guilty, correct?

25 A Yes, sir.

1 Q I mean, I take it in my best interest because my
2 lawyer is telling me I'm getting a life sentence
3 because we're not going to receive a fair trial with
4 the counsels that we had. Had we had another counsel
5 up here or another judge up here and had what been
6 said to the district attorney -- we had a jury we had
7 not even selected yet and he says, "To what does my
8 courtroom owe this honor that the head solicitor
9 would sit in with the assistant solicitor?"
10 This is a high profile case. Mr. Harbin -- I'm going
11 to say this was -- he said something about me, that's
12 where I get kind of fuzzy about what he said about
13 me. We had not picked the jury. In my mind, I told
14 my lawyer right there, "He's basically stating I'm
15 guilty to the jury."
16 Do you understand what I'm saying? I've already felt
17 like, right there, we already have one step against
18 us, or two steps. The first was the continuance we
19 did not receive. The second was when we already --
20 basically just bashed me in front of the jury we had
21 not selected. And then later on when we asked can we
22 step down, that's ticking the Judge off, making him
23 upset. You understand what I'm saying? So I feel
24 like that's strike three.
25 He turns to me and tells me I'm not going to get a

1 fair trial, that's strike four. I would take any
2 offer laid on the table at that point in time, sir.
3 That's the reason I took that. Because I didn't
4 believe the Court system nor my lawyer was going to
5 be able to give me a fair trial.

6 It's not nothing against him, it's just lack of time
7 enough to prepare. I was happy with what he could do
8 for me at the time that he did, but it wasn't enough
9 to me. But he also told me back then that I would
10 come back within a year.

11 When I contacted him later on, which we'll probably
12 get to whenever you get ready -- I'm not sure. I
13 don't know how this works. This is new to me. I'm
14 kind of aggressive because I don't know what else to
15 do besides speak my mind. I apologize if I come
16 across rude.

17 When you got all those strikes against you and your
18 lawyer tells you that you can be back in court within
19 a year, and to have that time cut -- when you can be
20 back in court within a year and you can have that
21 time cut in half and you can take the hardship from
22 your family. I am remorseful for what happened. I
23 feel so sorry for the families and everybody. I've
24 talked to the families to this day because I am
25 remorseful. There's nothing I can do to change that.

1 Okay. I apologize for that. I apologized
2 repeatedly. Anybody that I been able to talk to, I'm
3 sorry. Anybody that hasn't, I'd apologize to them if
4 they ever contact me.

5 Other than that, I have done everything in my power
6 to make sure that I've done everything right in the
7 best interest of my family. I took, I thought I
8 could come back and take the hardship for my family
9 within that year, like I said. But when I contacted
10 Mr. Richard Warder, he sent me my paperwork, I asked
11 him, I said that Allendale Correctional Institution
12 is telling me I'm doing a mandatory 30 years, not
13 85 percent, not 25 and a half years. If I'm not
14 mistaken, the judge said that on the record. If I'm
15 not mistaken.

16 It's in the newspaper clipping that I have over there
17 that I brought with me. It's in the back of my file.
18 It states that the Judge says, I would do 30 years,
19 25 and a half years, 85 percent. I would not have
20 accepted that because I felt like they were giving me
21 a break there. Then if they break me to
22 manslaughter, the next break would give me a chance
23 to come home.

24 MR. JONES: Okay. Thank you, Mr. Harbin. No
25 further questions, Your Honor.

1 THE COURT: Any follow up?

2 MR. BYRHOLDT: Just a couple.

3 REDIRECT EXAMINATION

4 BY MR. BYRHOLDT:

5 Q When the judge questioned you about your plea, did
6 you answer the questions the way you were told to
7 answer the questions to get the plea through?

8 A Yes.

9 Q An at one point the judge asked you and you told the
10 judge you couldn't answer that question.

11 A Not rightfully speaking. No, sir.

12 Q And then you at the next question answered, "Yes, I'm
13 satisfied"?

14 A I was forced to answer that question. Otherwise, I
15 don't feel like I would have got through that day.

16 Q That's all the questions I have, Mr. Harbin.

17 THE COURT: Thank you. Step down. Be careful
18 stepping down.

19 THE WITNESS: I apologize for any---

20 THE COURT: That's all right.

21 MR. BYRHOLDT: Beg the Court's indulgence --

22 THE COURT: Yeah.

23 MR. BYRHOLDT: -- one moment, Your Honor.

24 MR. JONES: So you that you may be aware I'm going
25 to call Mr. Warder for a few more questions.

1 THE COURT: Okay.

2 MR. BYRHOLDT: Call Waymon Harbin, Sr.

3 WAYMON HARBIN, SR., being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BYRHOLDT:

7 Q Mr. Harbin, I'll ask you to speak up. Give us your
8 full name, please.

9 A Waymon Steven Harbin, Sr.

10 Q And you're the applicant's father?

11 A Yes, sir.

12 Q Back in 1998 were you involved in retaining
13 Mr. Warder's services?

14 A Yes, sir.

15 Q Do you know how long he was involved in the case
16 before the case was called for trial?

17 A It wasn't just but a few days. I can't recall
18 exactly the dates or nothing. It's been a good
19 while.

20 Q All right. Did you talk -- anyone, either Mr. Warder
21 or anyone on his behalf, come and talk to you about
22 what happened in the case?

23 A There was some gentleman, I don't know exactly who he
24 was. He told me he was working for him and had spoke
25 to me.

1 Q Did you provide any information to that person about
2 your son having a gun being put in his mouth and
3 threatened to have his head blown off?

4 A Yes, sir.

5 Q Was that ever brought up in the plea or at any time?

6 A No, sir.

7 Q Were you present when the case was called that Monday
8 morning?

9 A Yes, sir. Yes, sir.

10 Q Was it the intent of your son to go to trial?

11 A Yes, sir.

12 Q But at some point that changed?

13 A Yes, sir.

14 Q Were you involved in any plea discussions in the
15 back?

16 A Yes, sir.

17 Q Were you present -- were there any representations
18 made to your son about when he would get out of
19 prison?

20 A Yes, sir.

21 Q Tell the Court what you heard back there.

22 A He told Stevie that -- well, we call him Stevie. He
23 told Stevie that he had done talked to the lady
24 district attorney or whatever her name is Joann --

25 Q Ms. White, the solicitor?

1 A Yeah. He talked to them, and the judge and he could
 2 either take one of two routes, 30 years or life,
 3 either which one he wanted. When he went in front of
 4 the judge, he answered yes and no. That was it.

5 Q All right. On the 30 years were there any
 6 representations made to Stevie, your son, on how much
 7 time he would serve on that 30 years?

8 A He would do 27 and a half or either 25. I can't
 9 remember exact amount, but it was in the twenties, 25
 10 to 27 range.

11 Q But no one ever raised the issue on whether Stevie
 12 had had a gun put in his mouth and threatened?

13 A No, sir.

14 Q Answer any questions the State or the judge would
 15 have for you, Mr. Harbin.

16 A Yes, sir.

17 MR. JONES: No questions of this witness, Your
 18 Honor.

19 MR. BYRHOLDT: Your Honor, that would be the
 20 applicant's case.

21 THE COURT: Anything in reply?

22 MR. BYRHOLDT: Watch your step down, Mr. Harbin?

23 RICHARD WARDER, ESQUIRE, having been
 24 previously sworn, further testified as follows:

25 DIRECT EXAMINATION

1 BY MR. JONES:

2 Q Mr. Warder, did you ever tell the applicant that he
3 would serve less than 30 years if he received a
4 30-year sentence?

5 A I'm sorry? I'm having a hard time hearing you.

6 Q Did you ever tell the applicant -- you told the
7 applicant about the plea negotiations, correct?

8 A Yes.

9 Q And you told him about the 30-year offer, correct?

10 A Yes.

11 Q Did you ever tell him that he was going to serve less
12 than 30 years?

13 A No.

14 Q The applicant claimed that you told him that in one
15 year you're going to waive your magic wand and
16 somehow get 15 years.

17 MR. BYRHOLDT: Objection, Your Honor, to the form of
18 question. There's nothing about waiving a magic wand or
19 anything else.

20 THE COURT: Well, overruled. Go ahead.

21 BY MR. JONES:

22 Q Did you ever tell the applicant that a year after his
23 guilty plea you would get 15 years?

24 A No.

25 Q Also during the guilty plea or before the guilty plea

1 did you ever -- did you tell the applicant how to
2 answer questions?

3 A No.

4 MR. JONES: No further questions, Your Honor.

5 THE COURT: Yes, sir?

6 CROSS EXAMINATION

7 BY MR. BYRHOLDT:

8 Q Did you tell Mr. Harbin that if he didn't answer the
9 questions correctly, the judge would not take his
10 plea? Because apparently---

11 A I'm sure I didn't tell him that.

12 Q Okay. At least at one point when the judge asked him
13 if he had enough time to spend with his lawyer, he
14 said, "I can't answer that question." And then a few
15 seconds later, all of a sudden, the answer is "Yes,
16 I've had enough time." Can you explain that?

17 A No. I can't explain why I did that.

18 Q Nothing further. Thank you.

19 THE COURT: Thank you.

20 MR. JONES: The state rests.

21 THE COURT: All right. Anything further?

22 MR. BYRHOLDT: Not from the applicant, Your Honor.

23 THE COURT: Okay. All right. I'm going to take it
24 under advisement and reread these transcripts. I've read
25 it once. I want to reread it. I'll let you know.

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Okay. Thank you.

* * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
 Waymon S. Harbin, Jr.249126)
 APPLICANT,)
 VS.)
 STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
ORDER
 2008-CP-04-00073

A TRUE COPY
 SEP - 1 2009
 Cathy M. Phillips
 CLERK OF COURT

FILED IN THE CLERK'S OFFICE AND
 DEPT. OF CORRECTIONS AND
 INSTITUTIONS

2009 AUG 26 A 10: 39

FILED-CLERK'S OFFICE
 ANDERSON SC

LOB

This matter is before the Court on the State's Motion to Dismiss and Applicant Waymon S. Harbin's, Jr. (Harbin), Application for Post Conviction Relief. There have been two prior orders which dismissed the Applicant's request for Post Conviction Relief. After a complete and thorough review of the record, this Court finds the Applicant has never had his day in court for an evidentiary hearing on Post Conviction Relief. He is incarcerated at McCormick Correctional Institution and he has never been brought to court for any evidentiary hearing. Applicant would assert that the Statute of Limitation should be tolled in this matter because he never received an evidentiary hearing. Moreover, Applicant was never appointed counsel to assist him and as a pro se litigant he timely responded to the Respondent's Conditional Motions to Dismiss. I find justice requires that he be allowed to present his evidence that his guilty plea was not knowingly, intelligently and voluntarily entered and that he did not have the effective assistance of counsel because Mr. Warder had only been hired a few days before this trial was scheduled and did not have any opportunity to investigate the case.

I find that justice requires the State's motion to dismiss based upon the statute of limitations and subsequent PCR application should be denied and Applicant should have an evidentiary hearing.

This Court held an evidentiary hearing on March 19, 2009. The Applicant and his former attorney Richard Warder testified at the hearing. I find that Applicant did not have the effective assistance of counsel based upon the following reasons:

FINDINGS OF FACT

1. Applicant was charged with murder. Mr. Warder was retained by Applicant's family on or about April 15, 1998. On April 16, 1998, Mr. Warder filed a motion for a continuance asserting he had just been retained, that he needed time to review discovery material and properly prepare for trial. The Court denied his motion for a continuance and the case was called for trial on Tuesday, April 21, 1998. Mr. Warder has less than five (5) days to prepare to defend a charge of murder in a jury trial.

2. On April 16, 1998, Mr. Warder requested a continuance of the case before the Honorable Gerald Smoak which was denied. Mr. Warder requested the continuance in order to have time to prepare Applicant's defense to the charge of murder.

3. Mr. Warder testified at the evidentiary hearing that he was prepared to proceed to trial on Tuesday, April 21, 1998 despite the fact he had requested a continuance because he needed time to prepare a defense. If Mr. Warder was ready for trial why did he request a continuance. The record in this case reflects more than 83 items of discovery materials which had been produced to a former attorney of the Applicant of more than 350 pages of documents plus physical evidence which was in the custody of the Anderson County Sheriff's office.

4. I further find that Applicant's guilty plea was not freely, voluntarily, knowingly and intelligently entered because he did not have the effective assistance of trial counsel who would have conducted a thorough investigation of the case because of the extremely short amount of time Mr. Warder was involved in the case, trial counsel's failure to review more than 350 pages

of discovery material, trial counsel's failure to review the physical evidence in the case.

LCB

5. I further find that had trial counsel had sufficient time to prepare a defense and prepare for trial that it was reasonable a different result would have been achieved.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the PCR claim pursuant to S.C. Code of Laws Sec. 17-27-30 (1976, as amended).

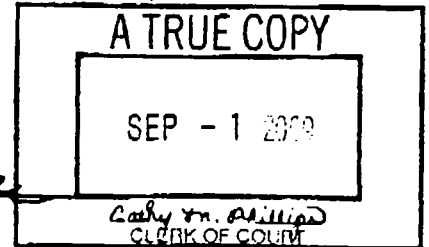
2. PCR applicant may attack voluntariness and intelligence character of his guilty plea by establish he had the ineffective assistance of counsel. An applicant for PCR must establish that trial counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability the result would have been different. Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (SC 2003)(citations omitted).

IT IS THEREFORE ORDERED, that the convictions of Waymon S. Harbin, Jr. in case nos. 1998-GS-04-93 and 94 are hereby vacated and he is granted a new trial.

IT IS SO ORDERED.

J. Cordell Maddox

**J. CORDELL MADDOX,
CIRCUIT JUDGE**



AUG. 14 2009
ANDERSON, SC

FILED-CLERK'S OFFICE
ANDERSON SC
2009 AUG 26 A 10:39
GENERAL SESSIONS AND
GENERAL SESSIONS

101

WITNESSES

Crawford/ACSD

DOCKET NO. 98-GS-0493

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

January _____ TERM 1998

Direct Indictment

Reference:

ARREST WARRANT NO. E286658

DDW

THE STATE

vs.

Waymon Steven Harbin, Jr.

TRUE ACTION OF GRAND JURY
DATE

1/13/98

[Signature]

Foreman of Grand Jury

Commitment

4-21-98

VERDICT

~~Indictment for Assault and Battery With Intent To Kill and Possession of Firearm or Knife During Commission of or Attempt to Commit Violent Crime~~

16-23-490[0549]

Foreman of Petit Jury

Date:

George M. Ducworth, Solicitor

A TRUE COPY
JAN 14 2008

STATUE#: _____ OFFENSE CODE: 254

Now comes the Defendant, Waymon Steven Harbin Jr.
Who in open Court, pleads guilty to the charge in the within Warrant(s)/Indictment(s) and consents to the
Sentence of this Court, This 21 day of April 1998.

Waymon S Harbin Jr.
Defendant Signature

SENTENCE

The Defendant, Waymon Steven Harbin Jr. is hereby committed to the South Carolina
Department of Corrections/Anderson County Jail for a term of Five (5) Months (Years) (Hours) and/or the
Payment of a Fine of \$ _____ provided upon the service of _____ Months/Years/Hours
and/or the Payment of a Fine of \$ _____ (plus Court cost as applicable), the balance
suspended with probation for _____ Months/Years.

SPECIAL CONDITIONS: sentence to run concurrent
with 98-ES-04-94.

RESTITUTION: (YES/NO) Amount: _____ Pay to Anderson County Clerk of Court for:

(Victims Name, Address, Phone #)

(Payment Schedule)

Date: April 21, 1998

[Signature]
Judge of the Tenth Judicial Circuit

A TRUE COPY
JAN 14 2008
Clerk of Court

Commitment: _____

107

WITNESSES

Crawford/ACSD

DOCKET NO. 98-05-04-94

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

January TERM 1998

DDW THE STATE

vs.

Waymon Steven Harbin, Jr.

WARRANT NO. E286658

ACTION OF GRAND JURY

1/13/98
[Signature]
an of Grand Jury

VERDICT

n of Petit Jury

Date:

Indictment for Murder

16-3-10/16-3-20[0116]

George M. Ducworth, Solicitor

A TRUE COPY
JAN 14 2008

Commitment

STATUE#: _____ OFFENSE CODE: 0114

Now comes the Defendant, Waymon Steved Harbin Jr
Who in open Court, pleads guilty to the charge in the within Warrant(s)/Indictment(s) and consents to the
Sentence of this Court, This 21 day of April 19 98.

Waymon S Harbin Jr.
Defendant Signature

SENTENCE

The Defendant, Waymon Steved Harbin Jr is hereby committed to the South Carolina
Department of Corrections/Anderson County Jail for a term of Thirty ⁽³⁰⁾ Months ~~Years~~ ~~Hours~~ and/or the
Payment of a Fine of \$ _____ provided upon the service of _____ Months/~~Years~~/~~Hours~~
and/or the Payment of a Fine of \$ _____ (plus Court cost as applicable), the balance
suspended with probation for _____ Months/~~Years~~.

SPECIAL CONDITIONS: _____

RESTITUTION: (YES/NO) Amount: _____ Pay to Anderson County Clerk of Court for:

(Victims Name, Address, Phone #) _____

(Payment Schedule)

Date: April 21, 1998

[Signature]
Judge of the Tenth Judicial Circuit

A TRUE COPY
JAN 14 2008

Commitment: _____

104

ARREST WARRANT

E- 286658

STATE OF SOUTH CAROLINA
 County/ Municipality of
Anderson

THE STATE
against

Waymon Stephens Harbin Jr.
Address: 211 Mulberry
Anderson, SC

SSN: 247-49-4120
M Race: W Height: 509 Weight: 155
State: SC DL #: 007237898
B: 7/8/75 Agency ORI #: 04000
Securing Agency: ACSO
Securing Officer: J.H. Crawford
Offense: Murder
Offense Code: _____
File/Ordinance Sec. 10-3-10

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

Signature of Judge _____ (L.S.)

RETURN

Copy of this arrest warrant was delivered to
defendant WAYMON STEPHENS HARBIN JR.
12-12-97 2:14pm
A.T. Vaughan
Signature of Constable/Law Enforcement Officer

JRN WARRANT TO:

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Anderson)

AFFIDAVIT

116

Personally appeared before me the affiant J.H. Crawford
being duly sworn deposes and says that defendant Waymon Stephens Harbin Jr.
did within this county and state on 12/10/97 violate the
State of South Carolina (or ordinance of County/ Municipality of Anderson)
in the following particulars:

DESCRIPTION OF OFFENSE: Murder

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

That the Defendant did with malice aforethought
and while armed with a deadly weapon to wit
a firearm, cause the death of Curtis Franklin
Walrath by shooting him. This offense occurred in
Anderson County, Cal #97-58071.

Sworn to and subscribed before me)
on 12/11/97)
W.W. Deering (L.S.))
Signature of Issuing Judge

Signature of Affiant J.H. Crawford
Affiant's Address 303 Carnon Road
Anderson SC 29625
Affiant's Telephone 260 4400

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Anderson)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe
on _____ defendant _____
did violate the criminal laws of the State of South Carolina (or ordinance of _____
 County/ Municipality of Anderson) as set forth below:

DESCRIPTION OF OFFENSE:

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

W.W. Deering (L.S.))
Signature of Issuing Judge)
Judge Code: 857

Judge's Address 1009 County Home Road
Anderson SC 29625
Judge's Telephone 260-4362

Issuing Court: Magistrate Municipal Cir

ORIGINAL

Form Approved by
S.C. Attorney General
July 25, 1995
960A 518
COP
JAN 1998
ATE

CLASSIFICATION SUMMARY REPORT DATED 01/17/08

C024686

SCDC# 249126 HARBIN, JR., WAYMON STEVEN

FBI# 367930TA1

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION .: MCCORMICK CORR INST
SECURITY/CUST.: 3 CODE NOT IN TABLE
CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
MED CLASS: 3 MED PROB/WORK RESTRICT
MENTAL CLASS: MH-S (MENTALLY STABLE)
CURRENT PROGRAM.: NO CURRENT PROGRAM
AGE...: 32

DORM.....: A0049Z
TOBACCO USER....: N
PROJ MAXOUT DATE: 12/05/2027
PROJ PAROLE DATE: 00/00/0000
EWC JOB...: NO CURRENT JOB
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 0 EEC LEVEL:
ASSIGNMENT...: LOCKED - UP

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

Table with columns: CURRENT OFFENSES, SENTENCE (YRS, MOS, DYS), COUNTY, SENTENCE (START, V/NV, CAT), INDICT. Rows include FIREARMS PROVISION, MURDER, and PRIOR COMMITMENTS OVER 90 DAYS.

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

02/21/03 FIGHTING WITH A WEAPON DROPPED CHARG INMATE WEAPON

NON-ASSAULTIVE DISCIPLINARIES:

Table with columns: DATE, DESCRIPTION, STATUS, CATEGORY. Lists various disciplinary actions from 11/14/07 to 07/11/98.

HISTORY OF MOVEMENTS:

Table with columns: DATE, INSTITUTION, STATUS, CATEGORY. Lists movement history from 08/21/07 to 07/11/07.

DCDC#	NAME	STATUS	REASON
249126	HARBIN, JR., WAYMON STEVEN		(CONTINUED)
06/15/07	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/15/07	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
02/20/07	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/20/07	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
10/12/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
10/11/06	LEE	INCARCERATED	ADMINISTRATIVE
10/11/06	TUDMEY REGIONAL	AUTH ABSENSE (AWL)	MEDICAL
10/10/06	LEE	INCARCERATED	MEDICAL
09/26/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
09/26/06	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
08/21/06	MCCORMICK	INCARCERATED	RETURN FROM COURT
08/21/06	TUDMEY REGIONAL	AUTH ABSENSE (AWL)	TO COURT
07/27/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
07/27/06	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
06/02/06	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/02/06	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
10/11/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
10/11/05	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
09/01/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/30/05	LEE	INCARCERATED	MEDICAL
08/18/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/18/05	GREENVILLE CO	AUTH ABSENSE (AWL)	TO FUNERAL
08/18/05	LEXINGTON CO	AUTH ABSENSE (AWL)	TO FUNERAL
08/18/05	SUMTER CO	AUTH ABSENSE (AWL)	MEDICAL
08/05/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/05/05	RICHLAND CO	AUTH ABSENSE (AWL)	MEDICAL
02/24/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/24/05	RICHLAND CO	AUTH ABSENSE (AWL)	MEDICAL
01/04/05	MCCORMICK	INCARCERATED	ADMINISTRATIVE
01/04/05	RICHLAND CO	AUTH ABSENSE (AWL)	MEDICAL
09/21/04	MCCORMICK	INCARCERATED	ADMINISTRATIVE
09/21/04	KIRKLAND	INCARCERATED	MEDICAL
08/02/04	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/02/04	KIRKLAND	INCARCERATED	MEDICAL
07/21/03	MCCORMICK	INCARCERATED	ADMINISTRATIVE
01/08/03	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
09/30/02	LIEBER	INCARCERATED	ADMINISTRATIVE
03/08/02	LEE	INCARCERATED	ADMINISTRATIVE
03/07/02	KIRKLAND	INCARCERATED	MEDICAL
02/08/02	LEE	INCARCERATED	ADMINISTRATIVE
02/07/02	KIRKLAND	INCARCERATED	MEDICAL
06/26/01	LEE	INCARCERATED	ADMINISTRATIVE
01/05/01	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/01/00	PERRY	INCARCERATED	RETURN FROM COURT
12/01/00	RICHLAND CO	AUTH ABSENSE (AWL)	TO COURT
10/13/00	PERRY	INCARCERATED	ADMINISTRATIVE
10/12/00	KIRKLAND	INCARCERATED	MEDICAL
06/14/99	PERRY	INCARCERATED	ADMINISTRATIVE
06/23/98	ALLENDALE	INCARCERATED	ADMINISTRATIVE
04/22/98	KIRKLAND	INCARCERATED	R&E PROCESSING
04/22/98	PERRY R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	08/30/07	12/07/07	PLACED IN ST/SP CUSTODY	3F5
LANDSCAPE LABORER	07/20/07	08/29/07	INMATE REQUEST	3F5
LANDSCAPE LABORER	10/13/06	07/19/07	INSTIT TRANSFER	3F5
LANDSCAPE LABORER	03/03/04	10/12/06	INSTIT TRANSFER	3F5

00004 247120 HARBIN, JR., WAYMON STEVEN (CONTINUED)

WARDKEEPER ASSISTANT	04/29/03	05/12/03	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	03/13/03	03/27/03	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	01/09/03	02/21/03	PLACED IN ST/SP CUSTODY	3F5
PLUMBER	10/15/02	01/08/03	INSTIT TRANSFER	3F5
GENERAL WORKER	03/14/02	09/30/02	INSTIT TRANSFER	3F5
GENERAL WORKER	09/06/01	03/13/02	CUSTODY REVIEW	5F5
GENERAL WORKER	06/27/01	09/05/01	CUSTODY REVIEW	7F5
FOOD SERVICE AIDE	09/01/00	11/27/00	PLACED IN ST/SP CUSTODY	3F5
PLUMBER HELPER	07/19/00	08/22/00	PLACED IN ST/SP CUSTODY	3F5
PLUMBER HELPER	02/09/00	07/18/00	CUSTODY REVIEW	5F5
LAUNDRY HELPER	11/03/99	02/08/00	LATERAL TRANSFER	5F5
WARDKEEPER ASSISTANT	09/01/99	10/15/99	PLACED IN ST/SP CUSTODY	5F5
WARDKEEPER ASSISTANT	06/16/99	08/07/99	PLACED IN ST/SP CUSTODY	5F5
CUSTODIAL WORKER	03/19/99	06/14/99	INSTIT TRANSFER	3F5
SHIPP & RECEIVING CL	09/14/98	03/18/99	INMATE REQUEST	3F5
SHIPP & RECEIVING CL	08/03/98	09/03/98	MEDICAL	3F5

HISTORY OF EARNED EDUCATION CREDITS:

SEC	START DATE	END DATE	TERMINATION REASON
DESCRIPTION	11/19/02	01/08/03	INSTIT TRANSFER

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/17/08
 OMCOMITA RELEASE DATE SCREEN C024686
 SCDC# > 249126 LOC: MCCORMICK
 HARBIN, JR., WAYMON STEVEN SCDC CLASSIFICATION..: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
 SEXUAL PREDATOR...:
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT..: N
 CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ..: N
 030-00-000 CURRENT SENT START DATE: 12/12/1997
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 12/05/2027 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 003635

PFKEYS: 5: HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33 TNET1678 3/11

COUNTY OF ANDERSON,

STATUE#: _____ OFFENSE CODE: 0116

Now comes the Defendant, Waymon Stevan Harbin Jr

Who in open Court, pleads guilty to the charge in the within Warrant(s)/Indictment(s) and consents to the Sentence of this Court, This 21 day of April, 19 98.

Waymon S Harbin Jr.
Defendant Signature

SENTENCE

The Defendant, Waymon Stevan Harbin Jr is hereby committed to the South Carolina Department of Corrections/Anderson County Jail for a term of Thirty ⁽³⁰⁾ ~~Months~~ Years/Hours and/or the Payment of a Fine of \$ _____ provided upon the service of _____ Months/Years/Hours and/or the Payment of a Fine of \$ _____ (plus Court cost as applicable), the balance suspended with probation for _____ Months/Years.

SPECIAL CONDITIONS: _____

A TRUE COPY

APR 21 1998

RESTITUTION: (YES/NO) Amount: _____ Pay to Anderson County Clerk of Court for: Linda A. [Signature]
CLERK OF COURT

(Victims Name, Address, Phone #)

(Payment Schedule)

Date: April 21, 1998

[Signature]
Judge of the Tenth Judicial Circuit

Commitment: _____

COUNTY OF ANDERSON

STATUTE#: OFFENSE CODE: 0549

Now comes the Defendant, Waymon Steven Harbin Jr.

Who in open Court, pleads guilty to the charge in the within Warrant(s)/Indictment(s) and consents to the Sentence of this Court, This 21 day of April 1998.

Waymon S Harbin Jr. Defendant Signature

SENTENCE

The Defendant, Waymon Steven Harbin Jr. is hereby committed to the South Carolina Department of Corrections/Anderson County Jail for a term of Five (5) Months/ Years/ Hours and/or the Payment of a Fine of \$ provided upon the service of Months/ Years/ Hours and/or the Payment of a Fine of \$ (plus Court cost as applicable), the balance suspended with probation for Months/ Years.

SPECIAL CONDITIONS: sentence to run concurrent with 98-ES-04-94.

A TRUE COPY

APR 21 1998

Linda J. DeShields CLERK OF COURT

RESTITUTION: (YES/NO) Amount: Pay to Anderson County Clerk of Court for:

(Victims Name, Address, Phone #)

(Payment Schedule)

Date: April 21, 1998

Judge of the Tenth Judicial Circuit

Commitment: