

21632

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William P. Keesley, Circuit Court Judge

Case No. 2009-CP-32-1865
Appellate Case No. 2012-212676

Whelthy McKune,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
 -VS-) 03-GS-32-0001 & 0002

WHELTHY LARRY MCKUNE,)
DEFENDANT.)

JANUARY 12, 2004

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE

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

TAV SWARAT, ASSISTANT SOLICITOR
 ATTORNEY FOR THE STATE

CAMERON B. LITTLEJOHN, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS
 CIRCUIT COURT REPORTER

I N D E X

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NO EXHIBITS WERE INTRODUCED

1 Monday, January 12, 2004

2 THE COURT: All right, Madam Clerk.

3 THE CLERK: Indictment 2004-GS-32-001, The State vs.
4 Whelthy Larry McKune indicted for burglary in the first
5 degree. Indictment 2004-GS-32-002, The State vs. Whelthy
6 Larry McKune indicted for criminal conspiracy.

7 The defendant is put to bar and arraigned. Upon his
8 arraignment he pleads guilty as charged to both counts.
9 Signed and properly attested to, true billed, and he's
10 represented by Mr. Littlejohn.

11 Raise your right hand, sir, as best you can.

12 WHELTHY LARRY MCKUNE, after having been duly
13 sworn, testified as follows:

14 THE COURT: Mr. Littlejohn, you represent
15 Mr. McKune?

16 MR. LITTLEJOHN: Yes, Your Honor.

17 THE COURT: Have you had a chance to advise him of
18 his rights?

19 MR. LITTLEJOHN: Yes, Your Honor.

20 THE COURT: Do you feel like he understands his
21 rights?

22 MR. LITTLEJOHN: Yes, Your Honor.

23 THE COURT: Mr. McKune, I understand that you want
24 to plead guilty to two counts, first of burglary in the first
25 degree. Do you understand that you could get as much as life

1 in prison? The sentence carries 15 years to life. It is
2 classified as a serious offense under South Carolina -- most
3 serious offense under South Carolina law. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And it's a violent crime, classified as
7 a violent crime, and it is also classified as what is called
8 an 85-percent crime, which means that whatever sentence you
9 get you would have to serve at least 85 percent of it before
10 you can be released. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And, also, you wish to plead to
13 conspiracy. Do you understand you could get five years in
14 jail for that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: On each of these do you understand that
17 if you plead guilty you would give up your right to a jury
18 trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And has your lawyer been over with you
21 everything involved in a jury trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you feel like you understand it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions about it or do

1 you want me to go over any of it with you?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Are you pleading guilty of
4 your own free will, Mr. McKune?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you anything or
7 threatened you in any way, other than your lawyer's
8 discussions with the solicitors, to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you admit you're guilty of both of
11 these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And at this time, are you under the
14 influence of any drugs, or alcohol, or medication of any kind?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is there any medication that you should
17 be taking that you are not taking?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you satisfied with your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had his advice in this matter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you feel like he's done everything
24 you wanted him to?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And understanding everything that I've
2 asked do you still want to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Solicitor?

5 MR. SWARAT: Your Honor, this occurred on November
6 the 13th of 2002. Mr. McKune was involved with three other
7 co-defendants, an individual by the name of Quincy McCoy; John
8 Henry, who is going to be tried in front of Your Honor this
9 week; and also a man by the name of Terry Haltiwanger.

10 Mr. McKune was contacted by John Henry, asked him if
11 he would take that group over to get some marijuana from a
12 residence just off of 378 in Lexington County. The address
13 was 1018 Kingsberry Terrace. It was the home of Paul Keith
14 and his common law wife, Vickie Merritt.

15 Mr. McKune on the way over there learned that they
16 weren't going over there to buy marijuana they were going to
17 rob marijuana, and found out that two of the individuals were
18 armed with guns, Quincy McCoy and John Henry.

19 He still agreed to go along with the plan. He took
20 them over to that neighborhood. They drove through the
21 neighborhood, spotted a house and he dropped them off on a
22 side street about half a block away.

23 From there, John Henry and Quincy McCoy walked up to
24 the house. They were able to gain entry by accosting one of
25 the members of the household out in the yard. She was leaving

1 the house to go to store. She was getting in her car and they
2 approached her with guns, put the guns to her head and forced
3 their way back inside the house.

4 From that point, they tried to rob Paul Keith in the
5 presence of his wife and children. During that robbery Paul
6 Keith was shot and killed.

7 Mr. McKune then picked up Mr. McCoy and John Henry,
8 the two gunmen, transported Quincy McCoy to a hospital. He
9 had been shot in the crossfire at the time Mr. Keith was shot.
10 They dropped him off and then took John Henry back to his
11 residence. He left that location. That was the end of his
12 involvement with this case.

13 He acted solely as the get-away driver, but under
14 the law of accomplice liability the hand of one is the hand of
15 all. He's responsible for the actions of each of his
16 co-defendants and he's agreed to plead guilty to burglary in
17 the first degree, criminal conspiracy with no recommendation
18 as to sentencing.

19 He's not going to be sentenced at this time. He's
20 agreed to testify and testify truthfully and he's looking at
21 15 years to life before Your Honor.

22 THE COURT: Okay. Any other Thrift negotiations at
23 all?

24 MR. SWARAT: These are the only charges we're
25 bringing against Mr. McKune.

1 THE COURT: All right. I'll accept the plea and
2 find the defendant guilty as pled on burglary first and
3 conspiracy.

4 Did you want to say anything at this point,
5 Mr. Littlejohn, or do you want to wait?

6 MR. LITTLEJOHN: No. I'll reserve that for the time
7 of sentencing.

8 THE COURT: Okay. We'll defer sentencing then.
9 Thank you, sir.

10 (WHEREUPON, the hearing was concluded.)

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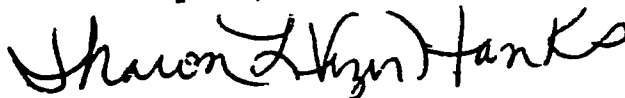
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 11th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 12th day of January 2004.

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

February 22, 2006



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

04-GS-32-0001

04-GS-32-0002

THE STATE OF SOUTH CAROLINA

:

-VS-

:

TRANSCRIPT OF RECORD

:

WHELTHY LARRY MCKUNE

:

FEBRUARY 9, 2004

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

A. TAV SWARAT, ESQUIRE
ATTORNEY FOR THE STATE

CAMERON B. LITTLEJOHN, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 THE CLERK: WHEALTHY MCKUNE. MR. MCKUNE, RAISE YOUR
2 RIGHT HAND, PLEASE.

3 MR. LITTLEJOHN: THIS IS JUST FOR SENTENCING.

4 THE COURT: IF HE WANTS TO SAY ANYTHING THOUGH.

5 WHEALTHY LARRY MCKUNE, AFTER BEING DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 THE COURT: ALL RIGHT. IN THIS MATTER I UNDERSTAND
8 THAT MR. MCKUNE HAS ALREADY PLED GUILTY, AND AS I RECALL, HE
9 TESTIFIED IN THE CASE OF MR. HENRY, I THINK.

10 MR. LITTLEJOHN: YES, YOUR HONOR.

11 THE COURT: AND SO AT THIS POINT WE'RE READY TO GO
12 FORWARD. SOLICITOR?

13 MR. SWARAT: THAT'S CORRECT, YOUR HONOR. YOUR
14 HONOR, I TOLD MR. LITTLEJOHN AND MR. MCKUNE THAT HE WAS
15 PLEADING GUILTY TO THOSE CHARGES STRAIGHT UP. HE'S LOOKING
16 AT 15 YEARS TO LIFE, WHATEVER YOUR HONOR GIVES HIM. I DID
17 TELL HIM THAT I WOULD LET THE COURT KNOW ABOUT HIS
18 COOPERATION WITH THE STATE BOTH PRIOR TO AND DURING TRIAL.

19 I WILL SAY THAT I MET WITH MR. MCKUNE ON ONE
20 OCCASION PRIOR TO TRIAL. HE SPOKE WITH ME FREELY. I'D SAY
21 HE WAS PROBABLY ABOUT 75 PERCENT TRUTHFUL WITH ME BASED ON
22 THE TESTIMONY OF OTHER WITNESSES AND ALSO MY INDEPENDENT
23 INVESTIGATION ON GETTING READY FOR TRIAL IN THIS CASE.

24 THERE WAS SOME TESTIMONY BY SOME OF THE CO-
25 DEFENDANTS THAT HE PROVIDED THE GUNS THAT WERE USED IN THIS

1 HOMICIDE. ALSO, AS YOU KNOW FROM THE TESTIMONY, HE -- HE WAS
2 THE GET-AWAY DRIVER THAT DROVE BOTH TO THE SCENE OF THE CRIME
3 AND ALSO DROVE ALL THE CO-DEFENDANTS AWAY FROM THE SCENE
4 AFTER THE CRIME. THERE WAS ALSO SOME TESTIMONY THAT HE
5 ENTERED THE BACK DOOR OF THE HOUSE AT SOME POINT DURING THE
6 TIME THAT THESE MEN WERE INSIDE INVOLVED IN TRYING TO ROB AND
7 KILLING MR. KEITH.

8 YOUR HONOR, THAT WAS ALSO CORROBORATED BY THE
9 FORENSIC INVESTIGATION INTO THIS CASE. NO QUESTION ABOUT IT,
10 THE BACK DOOR OF THIS RESIDENCE WAS KICKED IN FROM THE
11 OUTSIDE, NOT FROM THE INSIDE, AND THERE WAS SOME TESTIMONY BY
12 QUINCY MCCOY IN PARTICULAR THAT MR. MCKUNE WAS THE MAN THAT
13 KICKED IN THAT BACK DOOR.

14 YOUR HONOR, AS TO HIS PRIOR RECORD, HE DIDN'T HAVE
15 ONE PRIOR TO THIS HOMICIDE. I BELIEVE SINCE THEN HE'S HAD A
16 DRUG CONVICTION IN RICHLAND COUNTY AND WAS ON PROBATION WHEN
17 HE WAS ARRESTED. AND, YOUR HONOR, HE WAS ARRESTED IN JULY OF
18 LAST YEAR, 2003, AND WAS THE LAST OF THESE MEN TAKEN INTO
19 CUSTODY.

20 YOUR HONOR, STANDING WITH ME ARE ESQUEEN (PHONETIC)
21 MERRITT AND VICKY MERRITT. THEY WERE BOTH WITNESSES TO THE
22 EVENTS OF THAT NIGHT. ESQUEEN WAS NAMED AS A VICTIM IN THE
23 KIDNAPPING, AND I KNOW THEY WOULD BOTH LIKE TO ADDRESS THE
24 COURT AS TO MR. MCKUNE'S SENTENCING.

25 THE COURT: AND LET ME ASK: MR. MCKUNE WAS IN THE

1 HOUSE OR NOT IN THE HOUSE?

2 MR. SWARAT: THE TESTIMONY BY QUINCY MCCOY WHO IS
3 GOING TO BE SENTENCED IN FRONT OF YOUR HONOR TOMORROW IS THAT
4 HE DID ENTER THE HOUSE; YES, SIR. NEITHER ONE OF THESE
5 LADIES SAW HIM DURING THE CRIME.

6 THE COURT: OKAY. I DON'T KNOW HOW ACCURATE THAT IS
7 THEN IF IT CAME FROM MR. MCCOY.

8 MR. SWARAT: IT'S CORROBORATED BY THE FORENSIC
9 EVIDENCE, BUT, NO, SIR. YOU'D HAVE TO TAKE MR. MCCOY'S WORD
10 FOR IT.

11 THE COURT: HE WAS THE ONE THAT KEPT CHANGING HIS
12 STORY, WASN'T HE?

13 MR. LITTLEJOHN: YES, SIR.

14 THE COURT: AT LEAST ONE OF THEM DID; I CAN'T
15 REMEMBER WHICH ONE.

16 MR. SWARAT: I BELIEVE HE HAD THREE DIFFERENT
17 STORIES, ALL OF THEM PUTTING HIMSELF INVOLVED IN IT, AND MR.
18 HENRY. HE AND MR. MCKUNE ARE LIFELONG FRIENDS. THEY GREW UP
19 TOGETHER IN THE HENLEY HOMES AREA OF COLUMBIA RIGHT OFF OF
20 ROSEWOOD. IT'S MY UNDERSTANDING FROM TALKING WITH MR. MCCOY
21 THAT HE TRIED TO MAKE MR. MCKUNE LOOK BETTER THAN HE REALLY
22 WAS, BECAUSE THEY WERE LIFELONG FRIENDS, IN HIS INITIAL
23 STORIES TO THE POLICE.

24 THE COURT: ALL RIGHT. THANK YOU, SIR.

25 MR. SWARAT: YOUR HONOR, THIS IS ESQUEEN MERRITT.

1 **THE COURT:** YES, MA'AM.

2 **ESQUEEN MERRITT:** MY NAME IS ESQUEEN MERRITT, AND
3 THIS INCIDENT HAS PUT A TOTALLY IMPACT ON MY LIFE AND ON MY
4 CHILD'S LIFE. AND MY SON WAS IN THE HOUSE AT THE TIME. I
5 HAD TO SEND HIM BACK TO FLORIDA TO CUPERATE (SIC) BECAUSE
6 HE'S BEEN HAVING BAD NIGHTMARES. HE'S BEEN GOING TO
7 COUNSELING AND STUFF, AND HE FAILED SCHOOL INVOLVING THIS
8 INCIDENT. AND I GOT A BIG FEAR OF GOING OUT THE DOOR AT
9 NIGHT BY MYSELF. IT JUST PUT A WHOLE TOTALLY (SIC) IMPACT ON
10 MY LIFE. I'M GLAD THIS IS ALL OVER WITH SO I CAN GO AHEAD ON
11 WITH MY LIFE AND GET BETTER.

12 **MR. SWARAT:** THANK YOU. YOUR HONOR, THIS IS VICKY
13 MERRITT. SHE'S ALSO PAUL KEITH'S WIDOW.

14 **VICKY MERRITT:** IT AFFECTED ME AND MY KIDS' LIFE
15 BECAUSE MY SON HAD TO WALK IN THE LIVING ROOM AND SEE HIS DAD
16 LAYING ON THE FLOOR IN A POOL OF BLOOD. MY DAUGHTER HAD TO
17 RUN TO HIM TO MAKE SURE THAT HE WAS BREATHING. MY SON IS SO
18 TERRIFIED TO EVEN SLEEP BY HIMSELF, BUT WE ALL IS, ME AND MY
19 DAUGHTER. WE DONE BEEN TO COUNSELING. WE DONE BEEN
20 HOMELESS.

21 NOW WE DONE MOVED BACK INTO THE HOUSE, AND KNOWING
22 THAT HE'S PUT AWAY FOR THE REST OF HIS LIFE, WE CAN BE ABLE
23 TO WALK OUTSIDE OUR DOOR JUST TO GET IN OUR CAR. THAT'S ALL
24 I WANT TO SAY.

25 **MR. SWARAT:** THAT'S ALL FROM THE STATE.

1 THE COURT: OKAY. MR. LITTLEJOHN?

2 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. YOUR HONOR,
3 IF I MIGHT ADDRESS TWO THINGS FIRST. AS TO THE TESTIMONY
4 WHICH MR. MCKUNE GAVE HERE AS TO THE GUNS, HE HAS ALWAYS
5 DENIED HAVING ANYTHING -- ANY INVOLVEMENT IN THE GUNS. FROM
6 MY UNDERSTANDING OF THE DISCOVERY, ANY INFORMATION ABOUT HIM
7 BEING INVOLVED WITH THE GUNS CAME FROM MR. MCCOY WHO GAVE
8 NUMEROUS VERSIONS OF WHAT HAPPENED.

9 YOUR HONOR, AS TO HIM ENTERING THE HOUSE, HE HAS
10 ALWAYS DENIED HAVING ANYTHING TO DO WITH GOING IN THE HOUSE.
11 HE STAYED IN THE CAR, OTHER THAN GOING INTO A QUICK SHOP AND
12 GETTING SOME POTATO CHIPS WHEN THIS THING HAPPENED. THE ONLY
13 PERSON THAT SAYS ANYTHING ABOUT HIM GOING IN THE HOUSE IS
14 QUINCY MCCOY.

15 YOUR HONOR'S PROBABLY AWARE FROM THE TRIAL I WAS NOT
16 THERE WHEN MR. MCCOY TESTIFIED, BUT I COULD TELL FROM THE
17 NUMEROUS STATEMENTS, INCONSISTENT STATEMENTS, THAT HE GAVE
18 THAT MR. MCCOY HAD A REAL PROBLEM WITH TELLING THE TRUTH.
19 AND I THINK THAT IS ONE OF THE THINGS THAT HE WAS NOT TELLING
20 THE TRUTH ABOUT, AND HE IS THE ONLY PERSON. NONE OF THE
21 VICTIMS, NOTHING ELSE, INDICATES THAT WHEALTHY HERE WENT IN
22 THE HOUSE. AND SO WE WERE -- WE DENIED THAT AND WE HAVE
23 DENIED THAT.

24 YOUR HONOR, WHAT WE DON'T DENY IS THAT WHEALTHY HERE
25 DID TAKE PART IN THIS THING. YOUR HONOR, THIS YOUNG MAN IS

1 21 YEARS OLD. HE WENT THROUGH THE 10TH GRADE AT DREHER HIGH
2 SCHOOL. WHEN THIS PARTICULAR INCIDENT HAPPENED, HE WAS GOING
3 THROUGH ADULT EDUCATION CLASSES AT C.R. NEIL. HE'S BEEN
4 WORKING AT WELLFORD RENTAL COMPANY DOING CARPENTRY WORK,
5 PAINTING WORK, WITH HIS MOTHER WHO STANDS HERE BEHIND HIM AND
6 WAS DOING VERY GOOD WITH THAT JOB.

7 YOUR HONOR, AS WAS INDICATED, HE DOES HAVE ONE
8 PRIOR. HE WAS ON PROBATION. HE WAS DOING WELL WITH THAT
9 PROBATION. YOUR HONOR, THIS PARTICULAR SITUATION, AS YOU
10 HEARD, HE GOT INTO SOMETHING THAT WAS WAY MORE SERIOUS THAN
11 HE -- THAN HE EVER BARGAINED FOR. HE WAS WITH THESE OTHER
12 MEN. HE FOUND OUT ON THE WAY OVER TO WEST COLUMBIA THAT THEY
13 WERE GOING TO GO AND STEAL MARIJUANA FROM THE VICTIM. HE
14 WENT ALONG WITH IT.

15 HE STAYED IN THE CAR WHEN THEY GOT OUT, AND HE HAD
16 NO IDEA THAT THERE WAS GOING TO BE ANY KIND OF SHOOTING, THAT
17 ANYONE WAS GOING TO BE HURT OR KILLED IN THIS THING. HE
18 STAYED IN THE CAR, YOUR HONOR, AND WHEN IT ALL SHOOK DOWN AND
19 HE GOT ARRESTED AND CHARGED, HE DECIDED TO DO THE RIGHT THING
20 BY -- BY THE STATE AND BY THE VICTIM'S FAMILY AND COME IN AND
21 TELL THE TRUTH. HE TESTIFIED, YOUR HONOR, AND I WOULD SUBMIT
22 THAT HE TOLD THE TRUTH AS HE KNEW IT.

23 YOUR HONOR, OF COURSE, WE'RE LOOKING AT A SENTENCE
24 OF 15 TO LIFE. AS I INDICATED, THIS YOUNG MAN'S 21 YEARS
25 OLD. HE'S GOING TO SERVE 85 PERCENT OF WHATEVER THE COURT

1 GIVES HIM. YOUR HONOR, BASED ON THE FACT THAT HE WAS NOT
2 INVOLVED IN THE SHOOTING, HE WAS NOT INVOLVED IN THE
3 PLANNING, HE WAS ONLY THE PERSON THAT DROVE THE CAR AND GOT
4 INTO THAT AT THE VERY LAST MINUTE, I WOULD ASK THE COURT TO
5 PLEASE GIVE HIM A MINIMUM SENTENCE WHICH WILL BE AN EXTREMELY
6 HARSH SENTENCE TO HIM AND HIS FAMILY FOR HIS INVOLVEMENT IN
7 THIS.

8 YOUR HONOR, AS I INDICATED, HIS MOTHER IS HERE WITH
9 HIM. HER NAME IS CHERYL MCKUNE AND SHE'D LIKE TO SPEAK TO
10 THE COURT, AND ALSO WHELTHY'S AUNT WOULD LIKE TO SPEAK TO THE
11 COURT.

12 THE COURT: YES, MA'AM.

13 MR. LITTLEJOHN: HE HAS OTHER FAMILY MEMBERS HERE
14 THAT ARE SUPPORTING WHELTHY A HUNDRED PERCENT.

15 THE COURT: IF YOU WOULD, JUST GIVE ME YOUR NAME,
16 PLEASE, MA'AM.

17 CHERYL MCKUNE: CHERYL MCKUNE. GOOD AFTERNOON, YOUR
18 HONOR. MY DEEPEST CONDOLENCES, FIRST OF ALL, TO THE FAMILY
19 OF THE VICTIM. I AM TRULY SORRY BUT, YOUR HONOR, PLEASE, AS
20 WELL AS JUSTICE, SIR, I'M ASKING FOR MERCY FOR MY CHILD. HE
21 SUFFERS WITH A DISEASE, YOUR HONOR, THE SAME DISEASE THAT I
22 SUFFER WITH. THIS DISEASE IS COMPULSIVE AND OBSESSIVE BY
23 NATURE. THE OBSESSIVENESS IS THE FIXED IDEA, YOUR HONOR,
24 ONCE SOMEONE SAID, "LET'S GO GET MARIJUANA" -- HE ALREADY HAD
25 MARIJUANA. HE ALREADY HAD MONEY. THERE WAS NO NEED, BUT THE

1 DISEASE OF ADDICTION, YOUR HONOR, I SUFFER WITH IT ALSO. I'M
2 A RECOVERING ADDICT. I'VE BEEN CLEAN THREE YEARS.

3 AND DURING THIS TIME, YOUR HONOR, I HAD TO REACH A
4 BOTTOM BEFORE I REALIZED THAT THAT WASN'T THE WAY OF LIFE.
5 MY SON SUFFERS WITH THE SAME DISEASE, AND I'VE BEEN ASKING
6 HIM OVER AND OVER TO GET HELP AND HE DIDN'T EVEN UNDERSTAND
7 IT UNTIL NOW. HE WAS ASKED DID HE HAVE A DECISION ONCE HE
8 HEARD THAT THEY WERE GOING TO ROB THIS MAN, AND HE TOLD THEM,
9 NO, BUT HE DIDN'T UNDERSTAND WHY HE COULDN'T NOT TAKE THEM.

10 THE DISEASE HAD SET IN, AND I AM -- I'M -- I KNOW.
11 I'M A VICTIM OF THIS DISEASE. THE THINGS I'VE DONE, YOUR
12 HONOR, UNDER THE DISEASE ITSELF LIKE GO OUT AND NOT INTEND
13 TO. I GOT CAUGHT UP AND HE'S BEEN CAUGHT UP, AND HE COULDN'T
14 SAY NO BECAUSE THE FIXED IDEA WAS ALREADY THERE.

15 HE'S AN ADDICT, YOUR HONOR, AND HE NEEDS HELP. I
16 FEEL REHABILITATION TO MAKE A MAN COME OUT OF A SITUATION
17 LIKE THIS A RESPONSIBLE AND PRODUCTIVE MEMBER OF SOCIETY IS
18 WHAT WE'RE ALL SUPPOSED TO REALLY WANT. MY SON IS A GOOD
19 PERSON. I'M SO SORRY THIS HAPPENED, YOUR HONOR, AND I'M NOT
20 GOING TO TAKE UP ANY MORE OF THE COURT'S TIME. I'M JUST
21 PLEADING FOR MY SON. THANK YOU.

22 HELEN BAYLOR: I'M HELEN BAYLOR. I'M WHELTHY'S
23 AUNT, AND AGAIN I GIVE MY CONDOLENCES TO THE FAMILY FOR THE
24 SITUATION. I FEEL JUST AS HIS MOM DOES THAT HE HAS BEEN
25 CAUGHT UP IN THIS. WHELTHY IS A GOOD CHILD, AND I FEEL LIKE

1 HE'S JUST -- COULDN'T SAY NO AND I ASK FOR YOUR MERCY. THANK
2 YOU.

3 THE COURT: THANK YOU, MA'AM.

4 MR. LITTLEJOHN: DO YOU WANT TO SAY ANYTHING?

5 MR. MCKUNE: YES, YOUR HONOR. I WOULD LIKE TO TAKE
6 THIS TIME TO SPEAK. I WOULD LIKE TO EXPRESS MY DEEPEST
7 REMORSE TO THE VICTIM'S FAMILY AND LET THEM KNOW THAT WHAT I
8 DID WAS WRONG AND I MADE A MISTAKE, A BAD DECISION, YOUR
9 HONOR. AND I WANT TO ASK THAT THE VICTIMS FORGIVE ME FOR
10 THAT, AND I JUST WANT TO ASK THAT YOU PLEASE HAVE MERCY ON
11 ME.

12 THE COURT: ANYTHING ELSE, MR. LITTLEJOHN?

13 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. THANK YOU
14 FOR LISTENING.

15 THE COURT: ANYTHING ELSE FROM THE SOLICITOR?

16 MR. SWARAT: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. ON THE CONSPIRACY CHARGE
18 I'LL ORDER HIM COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR
19 A PERIOD -- A TERM OF FIVE YEARS. ON THE BURGLARY CHARGE I'M
20 GOING TO ORDER HIM BE COMMITTED TO THE DEPARTMENT OF
21 CORRECTIONS FOR THE TERM OF HIS NATURAL LIFE. THE TWO
22 SENTENCES WILL RUN CONCURRENTLY WITH EACH OTHER, AND WE'LL
23 GIVE HIM CREDIT FOR ANY TIME SERVED. THANK YOU.

24 MR. SWARAT: THANK YOU, YOUR HONOR.

25 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED. THERE

1 WERE NO EXHIBITS INTRODUCED.)

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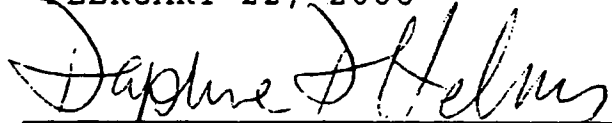
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25

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF FEBRUARY, 2004.

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

FEBRUARY 22, 2006

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

DAPHNE D. HELMS, COURT REPORTER

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

7 WHEALTHY MCKUNE,)

8 Defendant.)

TRANSCRIPT OF RECORD

04-GS-32-001, et al

9
10 October 17, 2006

11 Lexington, South Carolina

12
13
14 B E F O R E:

15 HONORABLE R. KNOX MCMAHON, Judge.

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

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Attorney for the State

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24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings were reported on
2 October 17, 2006).

3 THE COURT: Solicitor.

4 MR. SWARAT: May it please the Court, Your
5 Honor. The State calls Whelthy McKune.

6 THE COURT: Yes, sir.

7 MR. SWARAT: Your Honor, before you is
8 Mr. McKune with his attorney, Cam Littlejohn.
9 Mr. McKune is here on a motion to reconsider his
10 sentence that was filed by his attorney back in 2004.

11 Your Honor, Mr. McKune was sentenced on
12 charges of burglary in the first degree and criminal
13 conspiracy. Those indictment numbers are
14 2004-GS-32-0001, 0002.

15 Your Honor, he was sentenced by the Honorable
16 Marc Westbrook back in 2004. He received a life
17 sentence on the burglary first degree and received a
18 five-year sentence to run concurrent on the criminal
19 conspiracy.

20 Your Honor, since it's the defense counsel's
21 motion, I will let him take it from here.

22 THE COURT: Mr. Littlejohn.

23 MR. LITTLEJOHN: Thank you, Your Honor. Your
24 Honor, as indicated by Mr. Swarat, the Defendant here,
25 Whelthy McKune, was sentenced on February 9, 2004, for

1 his participation in a robbery scheme that turned out
2 with the killing of Mr. Keith.

3 Your Honor, by way of background and certainly
4 I can't explain all the details in the few moments that
5 we have here, but Whelthy here was recruited by some
6 other individuals to take them to West Columbia to be
7 involved in an armed robbery of a Mr. Keith and to steal
8 some marijuana from him.

9 Whelthy went to West Columbia driving his car,
10 and in the car with him there was Mr. Henry and
11 Mr. McCoy and Mr. Haltiwanger. Your Honor, as they
12 approached the victim's residence, Mr. McKune, the
13 Defendant here, stayed in the car with Mr. Haltiwanger
14 and dropped the other two defendants out.

15 Your Honor, it's my understanding that these
16 two defendants went into the home of Mr. Keith armed
17 with weapons. They attempted to rob Mr. Keith, and
18 during the robbery shots were fired. Mr. Keith was hit
19 numerous times, and as a result of those injuries he
20 later died.

21 Your Honor, Mr. McKune here ended up
22 cooperating with the State in regard to this case. I
23 think, as the evidence unfolded, it appeared that
24 Mr. McKune and Mr. Haltiwanger stayed in the vehicle
25 during the course of the robbery and the murder.

1 They came back, picked up the other two, and
2 after that events occurred that enabled the Lexington
3 County Sheriff's Department to figure out who had done
4 what.

5 Your Honor, when it all shook out, Mr. Henry
6 went to trial before Judge Westbrook. Mr. McKune
7 testified, as did Mr. McCoy and Mr. Haltiwanger, and
8 Mr. Henry was convicted. He received a life sentence.

9 Your Honor, Mr. McCoy was a codefendant and
10 went in the house and was involved in the shooting. He
11 received a 30-year sentence. Mr. Haltiwanger, who was
12 in the car with Mr. McKune, ultimately received a
13 15-year sentence after all three of these individuals
14 cooperated.

15 Your Honor, there is some dispute between the
16 State and us as to whether Mr. McKune had some
17 involvement in the events that occurred in the house,
18 Your Honor, it has been Mr. McKune's steadfast position
19 that after dropping the other two off at the house, he
20 remained with the getaway car, later came back and
21 picked up those two, and drove one of them to the
22 hospital who had been shot during the melee.

23 Your Honor, the State takes the position,
24 based on a statement by Mr. McCoy and some forensic
25 evidence that existed there at the house, that

1 Mr. Whelthy McKune might have gone back into the house.

2 However, I don't think there is any question
3 but that he was not one of the individuals that was
4 armed. He was not one of the individuals that
5 participated in the shooting.

6 Your Honor, we filed this motion after
7 Mr. McKune was sentenced. Obviously he received a
8 sentence of life without parole. Your Honor, it was my
9 understanding afterwards that Judge Westbrook had taken
10 the position that Mr. McKune was one of the people that
11 went into the house, and it has been our position all
12 along that he was not.

13 Your Honor, I might point out, as I mentioned
14 earlier, Mr. McKune here testified for the State. He
15 was debriefed. He gave a sworn statement. He was
16 presented as a State's witness in the trial of
17 Mr. Henry.

18 During that testimony, which the State well
19 knew Mr. McKune was going to testify that he did not
20 enter the house and only participated as a getaway
21 driver, perhaps because of his testimony, Mr. Henry was
22 convicted.

23 Your Honor, we have asked the Court to
24 reconsider Mr. McKune's life without parole sentence
25 based on what our position is that his role was that of

1 a getaway driver and not an actual participant in the
2 murder and armed robbery.

3 Your Honor, we well realize that under the
4 theory of the hand of one is the hand of all or any of
5 your accomplice theories, he would be guilty of his
6 involvement here.

7 But due to the fact that he was not a shooter,
8 that he did not go into the house, we think the
9 sentence he received was disparate, compared to the
10 sentences of the other codefendants, especially
11 Mr. McCoy who was -- went into the house and
12 participated in the shooting.

13 Your Honor, we have asked the Court to
14 reconsider what Mr. McKune got. We filed this motion
15 shortly after Mr. McKune was sentenced, well within the
16 ten days allowed. It was our hope at one time Judge
17 Westbrook would be able to hear this, but, of course,
18 that can't happen now.

19 Your Honor, we respectfully ask the Court to
20 reconsider the sentence, to make it more in line with
21 what the codefendants received, to give this young man a
22 break.

23 He has one prior blemish on his record before
24 this. He was involved in some marijuana over in
25 Richland County. I believe he got a probationary

1 sentence for that.

2 Your Honor, he has various family members here
3 who would like to speak to the Court if that would be
4 appropriate at this time, and we would like to give the
5 Court the benefit of that information.

6 I don't know if Mr. Swarat would like to speak
7 to the Court before we get into that or not.

8 THE COURT: Thank you, Mr. Littlejohn. You
9 made a statement that Judge Westbrook might have thought
10 the Defendant went in the house?

11 MR. LITTLEJOHN: Your Honor, I heard that --

12 THE COURT: Was there evidence to that effect
13 or anything besides that statement?

14 MR. LITTLEJOHN: Your Honor, I do not, for the
15 record. Judge Westbrook really didn't give any reasons
16 prior to pronouncing sentence. He just pronounced
17 sentence.

18 Quite frankly I was shocked with the amount of
19 sentence that Mr. McKune got. That is something that is
20 kind of based on lawyer experience and conjecture and
21 word of mouth. So I cannot definitively put my finger
22 on anything.

23 THE COURT: Let me make sure now,
24 Mr. Haltiwanger, what sentence did he receive?

25 MR. SWARAT: He received a 15-year sentence,

1 Your Honor.

2 THE COURT: And McCoy?

3 MR. SWARAT: Thirty years, Your Honor. I
4 believe both those sentences were violent.

5 THE COURT: And Mr. Henry received life
6 without parole?

7 MR. SWARAT: That's correct, Your Honor.

8 THE COURT: In the criminal conspiracy
9 indictment, there is an individual named Nyikrenda Keith
10 listed in the indictment. Who is that?

11 MR. SWARAT: Your Honor, it's fairly long and
12 convoluted. Nyikrenda Keith was the first cousin of the
13 deceased, Paul Keith. Initially how this started, about
14 a week before this homicide, Paul Keith and Nyikrenda
15 Keith got into an argument at a family function.

16 They were having a funeral proceeding for
17 their grandmother who had just recently passed away.
18 Paul Keith, the deceased, saw his first cousin Nyikrenda
19 and her boyfriend, Terry Haltiwanger, who is the other
20 person who was sentenced in this case, selling marijuana
21 in the parking lot at the funeral home.

22 He confronted her with that. He called the
23 police. His first cousin was arrested. As a result
24 they decided to take revenge on him, went and recruited
25 Mr. McKune, Quincy McCoy, and John Henry, who were

1 strangers to Mr. Keith, but agreed to go to this
2 household, to arm themselves, to break in, and confront
3 this family. They tried to rob him and eventually took
4 his life.

5 Mr. McCoy, just to give you an idea of the
6 level of conduct inside the house, Mr. McCoy shot
7 Mr. Keith in the leg with a .22 caliber rifle. That gun
8 was then taken away from him by Mr. Keith. Mr. Henry
9 shot Mr. Keith seven times with a .40-caliber pistol.

10 Mr. Henry also pointed the gun at a
11 six-year-old boy, the son of Mr. Keith, inside the
12 residence, and threatened to kill him. Your Honor,
13 Vickie Merritt, who is the widow of Mr. Keith, was also
14 a witness to the crime, is present in the courtroom and
15 would like to speak at the appropriate time.

16 Your Honor, I know that you would like to see
17 the transcript of this trial to assess some of the trial
18 testimony. I would point the Court's attention to two
19 witnesses in particular, Quincy McCoy, who explains the
20 involvement of Mr. McKune, and also Chris Stout, who is
21 a detective with the Lexington County Sheriff's
22 Department who processed the crime scene.

23 It's clear that a third person -- Mr. Henry
24 being the gunman, Mr. McCoy being a gunman -- a third
25 person came in through the back door, kicking in the

1 rear door. I believe the dead bolt was found to be
2 still engaged and the frame was broken in, I believe.

3 There is testimony by Mr. McCoy as to the
4 involvement of Mr. McKune, in addition to his duties as
5 being a getaway driver and driving them to the crime
6 scene to commit this crime. So I direct the Court's
7 attention to those two witnesses in particular.

8 As to Judge Westbrook's mind set as to why he
9 gave Mr. McKune this sentence, I can only state that
10 Judge Westbrook had the ability and the opportunity to
11 see his demeanor at trial, Mr. McKune's, and listen to
12 his testimony, hear all the evidence in the trial, and
13 then render a sentence based on all that information.

14 What Mr. McKune pled guilty to was burglary in
15 the first degree, criminal conspiracy, with the
16 understanding that the State would not recommend any
17 particular sentence. He was facing 15 years to life,
18 and that the sentencing judge could give him anything in
19 between or up to a life sentence.

20 THE COURT: What did Nyikrenda Keith get?

21 MR. SWARAT: Fifteen years, Your Honor. She
22 was not present at the crime scene. She did act as an
23 accessory before the fact. There was a question of
24 whether or not Mr. Keith was supposed to be killed or
25 injured during the robbery.

1 It was her instruction to her boyfriend, Terry
2 Haltiwanger, and these other gunmen that he was to be
3 put in the hospital. There was some issue as to whether
4 or not it was to rise to the level that it got to.

5 THE COURT: Were McCoy, Henry, and McKune
6 strangers to Paul Keith?

7 MR. SWARAT: Yes, sir, they had never met him
8 before. There were three children present in the home,
9 two females, and Mr. Keith during the time of the
10 homicide.

11 THE COURT: Mr. Littlejohn, I will be glad to
12 hear from you, whoever you want me to hear from.

13 MR. LITTLEJOHN: Just briefly, before I
14 forget, if I might ask the Court to also look at the
15 testimony concerning the victim's family. I think it
16 will be indicated that the testimony was there were only
17 two people that were physically in the house and
18 involved in this.

19 Your Honor, of course, you will have the
20 benefit of having Mr. McKune's testimony because he did
21 testify for the State in that case.

22 THE COURT: All right, sir.

23 MR. SWARAT: Your Honor, may I address that
24 point?

25 THE COURT: Certainly.

1 MR. SWARAT: The initial confrontation in this
2 homicide took place in a back bathroom. Most of my
3 witnesses that saw the two gunmen stayed in the back
4 bedroom.

5 Mr. Keith was shot once in the back bedroom by
6 Mr. McCoy, shot in the leg with a .22-caliber rifle and
7 then forced out of the bedroom back into a living room
8 where he was shot multiple times by Mr. Henry outside
9 the presence of these other witnesses.

10 So they weren't in a position to have the
11 opportunity to see anybody else in the house, just to
12 make sure the Court is aware of the layout of the
13 residence. I'm not accusing Mr. Littlejohn of any
14 sleight of hand. I just wanted the Court to be aware of
15 all the circumstances.

16 THE COURT: I understand. Thank you.
17 Mr. Littlejohn.

18 MR. LITTLEJOHN: Thank you, Your Honor. First
19 off if I may, I'd like to hand up to the Court some
20 certificates that were given to Whelthy while he has
21 been incarcerated.

22 He has received a G.E.D. and also has
23 participated in some courses to further his profession.
24 Your Honor, he has also given me a copy of a certificate
25 of recognition for completion of the long-term offenders

1 program. I only have one copy. If I could hand that up
2 to the Court. We can give Mr. Swarat one.

3 (Hands to Court).

4 MR. LITTLEJOHN: Your Honor, I'd ask if I can
5 call two or three witnesses. Your Honor, first off, I'd
6 like to call David Welsford.

7 THE COURT: He can stand there.

8 Madame Clerk, would you please the gentleman
9 under oath, please.

10 DAVID WELSFORD is first duly
11 sworn.

12 THE COURT: All right, sir. I would be glad
13 to hear from you.

14 MR. WELSFORD: Whelthy worked for me before
15 all this happened. He's a good worker, and I'm looking
16 forward to having him back to work for me when he gets
17 out.

18 He could be a benefit for society, and he is a
19 great person. I think -- I would be glad for him to
20 come to work. He did some construction work, and I
21 would like to have him back out.

22 THE COURT: Did you address Judge Westbrook
23 prior to sentencing?

24 MR. WELSFORD: No, I did not.

25 THE COURT: Thank you, sir.

1 MR. LITTLEJOHN: Your Honor, I would like to
2 ask Helen Fields, Whelthy's aunt.

3 (Pause).

4 MR. LITTLEJOHN: Your Honor, I'm sorry,
5 Ms. Fields had to leave to go back to work. This is
6 Kathy Williams, who is also an aunt.

7 THE COURT: Ms. Williams.

8 MR. LITTLEJOHN: She is an aunt of Whelthy's.

9 CLERK: Raise your right hand, please.

10 KATHY WILLIAMS is first duly
11 sworn.

12 THE COURT: Yes, ma'am.

13 MS. WILLIAMS: I'm Whelthy's aunt, and I've
14 known Whelthy all my life. I never known him to be in a
15 lot of trouble or nothing like that. He calls me and
16 talks to me and stuff like that, you know.

17 Just something happened, you know. It's not
18 in our control, but I don't think he deserves life in
19 prison for being an accessory of that. Just please have
20 mercy on him. That's all because he's never been in a
21 lot of trouble.

22 THE COURT: Thank you, Ms. Williams. Thank
23 you for being here.

24 MR. LITTLEJOHN: Your Honor, if I may,
25 Ms. Veal had prepared a letter for the Court that I

1 would like to hand up. I do not have a copy. We will
2 make one for Mr. Swarat. She thought she might have to
3 go to work.

4 (Hands to Court).

5 THE COURT: Thank you, Mr. Littlejohn.

6 MR. LITTLEJOHN: Your Honor, lastly I'd ask
7 Whelthy's mother, Dianne Cheryl McKune, if she would
8 speak to the Court.

9 THE COURT: Ms. McKune.

10 CLERK: Raise your right hand, please, ma'am.

11 CHERYL DIANNE MCKUNE is first
12 duly sworn.

13 THE COURT: Yes, ma'am.

14 MS. MCKUNE: Good afternoon, Your Honor.

15 THE COURT: Good afternoon, ma'am.

16 MS. MCKUNE: First of all, I want to give my
17 deepest sympathies to the family of the man that was
18 killed. My son and I have talked about that a lot.
19 Your Honor, my son made a bad decision, and I told him
20 before he left: Don't take them. Don't take those kids
21 over there. But anyway he made a bad decision.

22 I am asking mercy, Your Honor, as well as
23 justice. I think a life sentence is harsh because I do
24 not, in every fiber of my being, I do not believe that
25 my son went in that house.

1 I know that he did take them, and I know that
2 he did bring them back, and I don't know the reason
3 behind that, but I know that he would never take a
4 person's life.

5 Your Honor, I did, I brought him up in the
6 church, and they do stray, but I don't believe that part
7 of him would have strayed that far. I do not believe my
8 son took part in taking the life of another person.

9 I don't want to say a lot, but I'm asking for
10 your mercy, and I'm asking for the family to please have
11 mercy, and that's it. That's all I have.

12 THE COURT: Thank you, ma'am. Thank you for
13 being here.

14 MR. LITTLEJOHN: I know there are a number of
15 family members here on Whelthy's behalf. If you would
16 indulge me for just a second.

17 THE COURT: All right, sir.

18 (Pause).

19 MR. LITTLEJOHN: Your Honor, at the conclusion
20 Whelthy would like to speak to the Court.

21 THE COURT: If you would come around here,
22 please, Mr. McKune. I would be glad to hear from you.

23 CLERK: Raise your right hand the best you
24 can.

25 WHELTHY MCKUNE is first duly

1 sworn.

2 THE COURT: Yes, sir.

3 THE DEFENDANT: First of all, I want to say
4 that I'm sorry for what happened --

5 COURT REPORTER: Judge, I'm sorry, I cannot
6 hear.

7 THE COURT: Mr. McKune, you will have to speak
8 up so that the court reporter and I can hear you; okay?

9 THE DEFENDANT: Yes, sir. I would like it to
10 be known that I did not enter the house on the night all
11 this happened. I know I made a bad decision by taking
12 them there, but I felt that I really didn't have a
13 choice at that time. I'm sorry for what happened.

14 THE COURT: Thank you, Mr. McKune. Anything
15 else, Mr. Littlejohn?

16 MR. LITTLEJOHN: That would be our
17 presentation, Your Honor. Thank you for hearing us.

18 THE COURT: Thank you, Mr. Littlejohn.
19 Solicitor.

20 MR. SWARAT: Your Honor, at this time I would
21 recognize Vickie Merritt. She is the widow of the
22 deceased and also was a victim that night.

23 THE COURT: Ms. Merritt, I would be glad to
24 hear from you. You can stand wherever you are
25 comfortable at, Ms. Merritt.

1 MS. MERRITT: That night when they came to my
2 house, our whole life changed. Your Honor, I don't feel
3 sorry for nobody. My kids was there. They seen their
4 father die that night.

5 It's coming up to the anniversary of my
6 husband, and I did put my son back in counseling now. I
7 think the hand of one is the hand of all. And just
8 because he got life, my son would never see his father
9 no more.

10 Our lives still haven't been the same since
11 that night they entered my home and shot him in front of
12 us, and I just don't think that the sentence should be
13 lower than life.

14 THE COURT: You think the sentence was
15 appropriate, Ms. Merritt?

16 MS. MERRITT: Yes, sir.

17 THE COURT: Anything else you would like to
18 say?

19 MS. MERRITT: That's it.

20 THE COURT: Thank you, ma'am.

21 MR. SWARAT: Your Honor, just briefly, I would
22 like to address some of the cooperation of Quincy McCoy
23 because I know the defense is somewhat comparing and
24 contrasting the conduct of Mr. McCoy and Mr. McKune and
25 also their sentences.

1 I will say from my memory that Mr. McCoy
2 cooperated immediately with law enforcement, I believe
3 the day after the homicide took place, gave statements
4 to them. There were a number of statements, and they
5 ran in level of minimizing his own conduct to getting
6 closer and closer to the real facts.

7 THE COURT: That's Mr. McCoy?

8 MR. SWARAT: That's Mr. McCoy. He also
9 participated in picking John Henry out of a photo
10 lineup, and I personally requested him to give me
11 information about the whereabouts of the .40-caliber
12 that was used to kill Mr. Keith.

13 He helped try to run down that gun, and we
14 tracked it to an individual that lived off Rosewood
15 Drive. Once we did that, a search warrant was executed
16 for that location, if my memory serves me correctly, and
17 a number of guns were seized. This gentleman was in the
18 market of buying and selling stolen guns.

19 So that individual was arrested and I believe
20 might have been prosecuted federally down the road. I
21 didn't really keep up with that after these guns were
22 recovered, but Mr. McCoy agreed to do that, cooperated
23 at trial.

24 Mr. McKune wasn't arrested until sometime much
25 later. I want to say it was close to eight months to a

1 year before he was arrested and never really cooperated
2 with law enforcement. That's somewhat of the different
3 levels of cooperation between the two of them.

4 I can't speak for Judge Westbrook. I don't
5 know the reason for the difference in the sentences, but
6 I wanted the Court to have that knowledge.

7 THE COURT: Mr. McKune cooperated at the trial
8 in the prosecution of Mr. Henry?

9 MR. SWARAT: He testified and, Your Honor, he
10 did meet with me one time with Mr. Littlejohn, I believe
11 at the Lexington County Detention Center. We had a
12 brief conversation.

13 I put him on the stand, would have put him on
14 stand anyway because he had given at least a partial
15 statement indicating which defendant had which gun
16 getting out of the car and going to the household. I
17 would have called him whether or not he cooperated or
18 not, but he did meet with me on one occasion with
19 counsel present.

20 THE COURT: There were -- or do you know --
21 were there only two weapons involved, the .22 and the
22 .40-caliber?

23 MR. SWARAT: That's the only evidence we had,
24 yes, sir.

25 THE COURT: You had no evidence of a third

1 weapon, but you did have evidence of a third individual
2 that may have gone in the back door; is that correct?

3 MR. SWARAT: That is correct, yes, sir.

4 THE COURT: All right. If you would provide
5 me with a transcript, Solicitor. Without objection,
6 Mr. Littlejohn, I would like to look through the
7 transcript.

8 MR. LITTLEJOHN: Yes, Your Honor. One thing
9 if I could.

10 THE COURT: Yes, sir.

11 MR. LITTLEJOHN: In replying to what
12 Mr. Swarat said, it won't be reflected in the
13 transcript, I would not imagine. While it is true that
14 Whelthy was not arrested for some time, the discovery
15 indicates that at some point he called up the
16 investigator and said: I understand you are looking for
17 me. He made arrangements to come meet him sometime
18 after that, and that's when he got arrested.

19 Your Honor, for months we were in negotiations
20 with the Solicitor's Office concerning Mr. McKune's
21 situation and his cooperation. So if he did not
22 cooperate until late, that would have to be blamed on
23 plea negotiations, rather than any hesitation on his
24 part.

25 THE COURT: All right. If you would provide

1 me with a transcript, I will take it under advisement.

2 Thank you for being here.

3 MR. LITTLEJOHN: Thank you, Your Honor. Thank
4 you for working us in.

5 THE COURT: I want to thank Mr. McKune's
6 family for being here.

7 MR. SWARAT: Thank you, Your Honor.

8 THE COURT: Ms. Merritt, thank you for being
9 here. I'm sorry you had to go through this again.

10 MR. SWARAT: Your Honor, I have that
11 transcript.

12 (Hands to Court).

13 THE COURT: Thank you very much.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 17th day of October, 2006.

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

May 16, 2007

L Coconut Pantsari

Court Reporter

COPY

Filed

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

Beir A. G. Swarat
Clerk of Court
Lexington, SC

Case No.: 2004-GS-32-001
2004-GS-32-002

Plaintiff,

v.

ORDER

FILE COPY

Whelthy L. McKune,

Defendant.

This matter came to be heard before this Court on November 17, 2006 on a Motion to Reconsider the sentence imposed by the late Honorable Marc H. Westbrook. Present at the hearing was the defendant along with his attorney Cameron B. Littlejohn, Jr. Assistant Attorney General August G. Swarat, II appeared on behalf of the State. Also present were members of the homicide victim's family.

The Court has extensively reviewed all statements by and on behalf of the parties, all documents provided, all the pleadings in this matter along with the transcript of the trial of The State v John Henry, a co-defendant in this case, and has listened carefully to the arguments of counsel.

Procedural History

John Henry, one of the co-defendants in this case was tried before Judge Westbrook January 12 – 16, 2004. Defendant Henry was convicted of Criminal Conspiracy, Burglary in the First Degree, Attempted Armed Robbery, Kidnapping and Murder. Henry was sentenced to 5 years, Life, 20 years, 30 years and Life without parole,

respectively. During the course of Henry's trial Defendant McKune was called as a witness by the State as were the other two co-defendants, Terry Haltiwanger and Quincy Marquett McCoy. This case involved the home invasion of Paul Keith's residence located at 1018 Kingsberry Terrace, Lexington and Mr. Keith's murder during the course of that burglary. On February 9, 2004, Judge Westbrook sentenced Defendant McKune to 5 years and life for Criminal Conspiracy and Burglary in the First Degree, respectively. On February 11, 2004 the Defendant filed a Motion to Reconsider. The record is unclear as to whether or not Judge Westbrook was provided a copy of the Motion to Reconsider. This Court was asked to hear the Motion to Reconsider due to the death of Judge Westbrook.

Analysis:

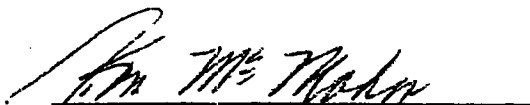
After extensive review by the Court, including but not limited to, the testimony of the defendant, all documents presented by the defendant and all matters brought before the Court, it is clear the trial judge's sentence is lawful and within the parameters of the law and that the defendant testified he understood he could get 5 years for the criminal conspiracy and life for the Burglary in the First Degree. State v. Henry, Transcript, p 440. Further, the Court finds no promises were made and that Judge Westbrook would have sentenced him to whatever was within that range he felt was appropriate. State v. Henry, Transcript, p.440.

It is the opinion of this Court that Judge Westbrook exercised his discretion in sentencing this defendant and that he did not abuse his discretion in any manner. Judge Westbrook heard the trial of State v. Henry and heard the testimony of the defendant. The

trial judge was in the best position to evaluate and observe the defendant, along with all the other witness who testified during the trial of the case.

THEREFORE IT IS ORDERED that the Defendant's Motion for Reconsideration is DENIED.

AND IT IS SO ORDERED.



R. Knox McMahon
Presiding Judge,
Eleventh Judicial Circuit

Lexington, South Carolina
December 10, 2007

1411eJohn

WITNESSES

LCSD
McIntosh, O.L.

DOCKET NO 2004 S-32- 00001

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2004

THE STATE

vs.

Whelthy Larry McKune

A-2003-32-01318

11/18/2003 8.34 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Mark E. Z. [Signature]

Foreperson of Grand Jury
Date: 11/18/04

VERDICT

CDR# 0079

Indictment for

Burglary in the First Degree
§16-11-311

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

INDICTMENT FOR
Burglary in the First Degree
§16-11-311

That Whelthy Larry McKune, along with Terry Haltiwanger, and/or Quincey McCoy, and/or John Henry, did in Lexington County on or about November 13, 2002, willfully and unlawfully enter a dwelling, belonging to **Paul Keith** and located at [REDACTED] in Lexington County, SC, without consent and with the intent to commit a crime therein, to wit: larceny and/or assault and the defendant entered during the nighttime and/or the defendant or co-defendant's were armed with deadly weapons during the unlawful entry, all in violation of §16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

ASSISTANT SOLICITOR

WITNESSES

LCSD
McIntosh, O.L.

DOCKET NO. 5004 S-32-0003

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2004

THE STATE

vs.

Whelthy Larry McKune

A-2003-32-01318

11/18/2003 8:59 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

John R. Battle
Foreperson of Grand Jury
Date: *11/18/04*

VERDICT

CDR# 0049

Indictment for

Criminal Conspiracy
§16-17-410

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

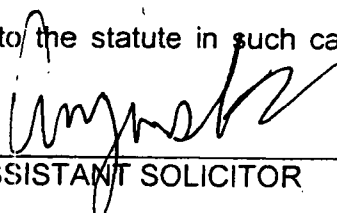
INDICTMENT FOR Co. C.C.C.P., G.S. § 16-17-410
Criminal Conspiracy
§16-17-410

A TRUE COPY

At a Court of General Sessions, convened on January 2004, the Grand Jurors of Lexington County present upon their oath:

That **Whelthy Larry McKune**, along with Nyikrenda Keith, and/or Terry Haltiwanger, and/or Quincey McCoy, and/or John Henry, did in Lexington County on or about November 13, 2002, unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with **Nyikrenda Keith, and/or Terry Haltiwanger, and/or Quincey McCoy, and/or John Henry**, for the purpose of accomplishing criminal acts; to wit: Burglary First and/or Armed Robbery, in violation of §16-17-410 of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

LEXINGTON

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

2004

INDICTMENT/CASE#

-GS-

STL

Date of Offense:

A/W#:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

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

TO:

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, w/ _____ incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/9/04☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2895 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
1% to County (if paid in installments)	\$	\$
TOTAL	\$	\$125.00

Clerk of Court/ Deputy Clerk

Court Reporter:

PTUP:

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

White - Clerk

Green - Corrections

Cunary - Probation

Pink - Defendant

SUCA/217 (7/2003)

Feb. 11 2004 10:15AM P3

FAX NO.: 8082181

FROM: LEX GENERAL SESSIONS

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 STATE VS WHEATHY MCKUNE
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip SCDC
 DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS
 2004
 INDICTMENT/CASE#: 0002
 A/W#: STL. INV.
 Date of Offense: 11/13/02
 S.C. Code #: 16-17-410
 CDR Code #: 0101419
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: CRIMINAL CONSPIRACY
 in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0101419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Christy H Solicitor Wheathy McKune Defendant CT3 Littlejohn Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/9/04
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
☐ set by SCDPPPS _____
 Recipient: _____
 *Fine: _____
 \$14-1-206 (Assessments 107.5%) \$ _____
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 \$56-5-2995 (DUI Assessment) \$12 \$ _____
 \$ 35.13 (Public Def/Prob) \$500 \$ _____
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 \$50-21-114(BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ 125.00

Thomas H. Connerford
 Clerk of Court/ Deputy Clerk
 Court Reporter: Sharon Viger

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Mark Markle
 Judge Code: 0101612
 Sentence Date: 2/9/04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 03/25/10

C0404

MCKINIE, WHEITHY - FRT # 942431MB9 STD# SC01306523 SCDC # 299717

FENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION...: BROAD RIVER CORR. INST.
 SECURITY/CUST.: 3 MINIMUM IN
 CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS
 CENTRAL MONITORING.: YES SEPREQ
 SOCIAL SECURITY #...: ██████████

DORM.....: M110188A
 RACE...: SEX...
 PROJ MAXOUT DATE: 99/99/9999
 PROJ PAROLE DATE: 00/00/0000
 FWC JOB...: LAUNDRY HELPER
 EDUC PGM.: NO CURR EDUC PROGRAM
 FWC LEVEL: 3F5 EEC LEVEL:
 ASSIGNMENT...: COMMISSARY

CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 28 DATE OF BIRTH...: ██████████

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			U/NU	CATEGORY
	YRS	MOS	DYS		START				
CRIMINAL CONSPIRACY	5	0	0	LEXINGTON	7/21/20	3	N		2
BURGLARY-1ST DEGREE	999	99	999	LEXINGTON	7/21/20	3	U		4

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINEES (HOLD, WANTED, NOTIFY):

NO DETAINEES

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

7/14/ 7 INTERFERING WITH COURT CONVICTED ADMIN

7/23/ 6 POSS. OR/ATTEMPT TO POSS DROPPED MAJOR

3/15/ 5 SEXUAL MISCONDUCT DROPPED MAJOR

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
4/ 2/ 9	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
4/ 2/ 9	KIRKLAND	INCARCERATED	MEDICAL
4/22/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/17/ 6	LEE	INCARCERATED	RETURN FROM COURT
10/17/ 6	LEXINGTON CO	WITH ABSENCE (AUL)	TO COURT
10/11/ 6	LEE	INCARCERATED	ADMINISTRATIVE
10/11/ 6	KIRKLAND	INCARCERATED	MEDICAL
3/ 2/ 4	LEE	INCARCERATED	ADMINISTRATIVE
2/11/ 4	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START DATE	END DATE	TERMINATION REASON	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
LAUNDRY HELPER	03/05/09	0/ 0/ 0		3F5
FOOD SERVICE AIDE	04/24/08	3/ 4/ 9	INMATE REQUEST	3F5
GENERAL WORKER	11/02/05	4/22/ 8	INSTIT TRANSFER	3F5
CARPENTER HELPER	10/12/04	11/ 1/ 5	COMPLETED EDUC PROGRAM	3F5
FOOD SERVICE AIDE	03/05/04	3/24/ 4	INMATE REQUEST	3F5

HISTORY OF EARNED EDUCATION CREDITS:

DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	10/12/04	1/18/ 5	COMPLETED EDUC PROGRAM
LVL 3 - FULL TIME (NO FWC)	03/25/04	10/11/ 4	INMATE REQUEST

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

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	03/24/10
OMCOMITA	RELEASE DATE SCREEN	C040481
SCDC# > 299717		LOC: BROAD RIVER
MCKUNE, WHELTHY -	SCDC CLASSIFICATION...: VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...: N	
	SEXUAL PREDATOR...: NOT APP	
	DNA STATUS.....: COMPLETED	
	GPS REQUIREMENT...: N	
	PREA DECISION.....:	
CURRENT SENTENCE:	CONSECUTIVE SENTENCE ...:	
LIFE	CURRENT SENT START DATE: 07/21/2003	
PROJECTED COMPLETION DATES		
MAXOUT DATE: 99/99/9999	CURRENT EWC ..:	
YOA SIX YEAR DATE:	CURRENT 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 ...: 000000		
PFKEYS:	5: HISTORY OF DATE CHANGES	

4-©	1 Sess-1	167.7.50.33	SCDC1555	3/11



*finding se
2008 358
19N*

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

December 17, 2008

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette
P.O. Box 12725
Columbia, SC 29211

Re: The State v. McKune, Whelthy Larry

Dear Ms. Blanchette:

The following Order has been endorsed on your Motion For Withdrawal, Pursuant To Rule 231(c), SCACR in the above entitled case on appeal.

"Granted.

Kaye G. Hearn, C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

December 17, 2008."

Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Lexington County after fifteen (15) days, exclusive of the date of filing this Order.

Very truly yours,
Kenneth A. Richstad
CLERK

KAR/nb

cc: Assistant Deputy Attorney General Salley W. Elliott
The Honorable Beth Carrigg
The Honorable R. Knox McMahon

RECEIVED
The South Carolina Court of Appeals 7 2009

ATTORNEY GENERAL
OFFICE

The State.

Respondent.

v.

Whelthy Larry McKune.

Appellant.

Judge R. Knox McMahon
Lexington County
Trial Court Case No. 2004-GS-32-00001
2004-GS-32-00002

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this
Court's Order dated December 17, 2008,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for
Lexington County.

KAYE G. HEARN, CHIEF JUDGE

BY Jeaneeth Barber
Clerk

Columbia, South Carolina

January 5, 2009

Original to: The Honorable Beth Carrigg

cc: Tricia A. Blanchette, Esquire
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Beth Carrigg
The Honorable R. Knox McMahon

2009C P 3201865 A TRUE COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 WHELTHY LARRY MCKUNE)
 Full name and prison number (if any) of Applicant.)
 #299717)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS
 For the County of Lexington, S.C.

2009 APR 21 A 9:37

BETH A. CARRIGE
 CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 East Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-32-0001: Burglary, 1st Degree
 - (b) 2004-GS-32-0002: Criminal Conspiracy
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

Spencer Miller

- (a) February 9, 2004: life
- (b) February 9, 2004: 5 years concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Motion for Withdrawal Granted
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 17, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Involuntary Guilty Plea.
- (b) Ineffective Assistance of Counsel.
- (c) _____

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

- (a) Failure of trial counsel to prepare and investigate.
- (b) Applicant did not have a full understanding of the charges against him.
- (c) Failure of counsel to present mitigating evidence.
- (d) Failure of counsel to make contemporaneous objections regarding plea agreement and move to withdraw guilty plea.

(e) Failure of trial counsel to properly prepare and present Motion for Reconsideration.

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No.

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

(a) which grounds have been presented:

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

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

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

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

(a) _____

(b) _____

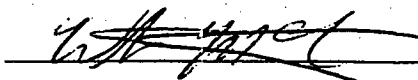
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Cameron B. Littlejohn, Jr., 1720 Main Street, Suite 202, Columbia, SC 29201
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea, Motion for Reconsideration and filing Appeal.
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

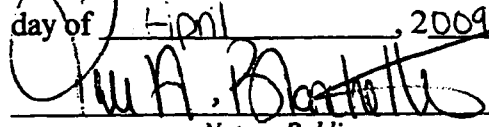
STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

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



SWORN to and subscribed before me this 14th
day of April, 2009
 (L.S.)
Notary Public

My Commission Expires: April 12, 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2009 APR 21 A 9:38

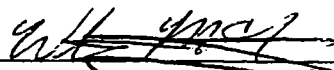
FILED

2009CF3201865

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

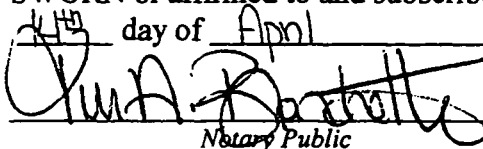
I, Whelthy Larry McKune, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.



Applicant

SWORN or affirmed to and subscribed before me this

 day of April 2009

Notary Public

My Commission Expires: April 12, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-1865
	)	
Whelthy McKune, #299717,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 21, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2004 term of the Lexington County Grand Jury for Burglary—1st Degree (2004-GS-32-0001) and Criminal Conspiracy (2004-GS-32-0002). He was represented by Cameron Littlejohn, Esquire. On February 9, 2004, the Applicant pled guilty as charged. He was sentenced by the Honorable Marc H. Westbrook to life imprisonment for the burglary charge, and a concurrent term of five (5) years for the conspiracy charge.

A timely notice of appeal was filed on the Applicant's behalf. The Applicant subsequently moved to withdraw his appeal, and the South Carolina Court of Appeals granted the Applicant's motion by order dated December 17, 2008.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "Failure of trial counsel to prepare and investigate."
 - b. "Applicant did not have a full understanding of the charges against him."
 - c. "Failure of counsel to present mitigating evidence."
 - d. "Failure of counsel to make contemporaneous objections regarding plea agreement and move to withdraw guilty plea."
 - e. "Failure of counsel to properly prepare and present motion for reconsideration."
2. Involuntary Guilty Plea

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 11, 2010.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Whelthy L. McKune, 299717,

☒ Plaintiff

v.

State Of South Carolina

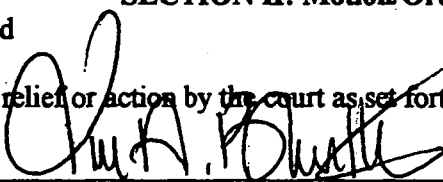
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-32-1865

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 12725 Columbia, SC 29211 phone: 803-988-0008 fax: 803-988-8070 e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: A. West Lee, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for ☒ Plaintiff / ☐ Defendant November 16, 2010 _____ Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

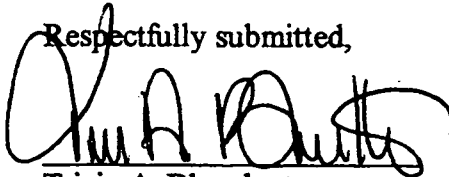
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	DOCKET NO.: 2009-CP-32-1865
WHELTHY L. MCKUNE, 299717,	)	
	)	
Applicant,	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
Respondent,	)	
_____	)	

The Applicant, by and through his Attorney, Tricia A. Blanchette, would amend his Application for Post Conviction Relief filed on April 21, 2009, by adding the following specific allegations:

1. Ineffective assistance of counsel for failure to prepare and investigate, specifically, but not limited to the following claims:
 - a. Failure to provide and review the complete discovery materials with the Applicant prior to the entry of his plea.
 - b. Failure to review the indictments with the Applicant and discuss the charges set forth therein.
 - c. Failure to conduct an independent investigation.
 - d. Failure to ensure that the Applicant was fully advised regarding the original plea offer to 15 years and to ensure that the rejection of such offer was knowingly and understandably made by the Applicant.
2. Ineffective assistance of counsel regarding the entry of the plea and separate sentencing hearing.
 - a. Failure to properly advise the Applicant regarding the State's position on sentencing and/or move to withdraw when the State's position differed from what was conveyed by counsel to the Applicant.

- b. Failure to object and/or move to withdraw when the State provided the plea court with a variance in the facts from the plea to sentencing hearing.
 - c. Failure to refute the State's position that the Applicant entered the home during the robbery at issue.
 - d. Failure to present viable mitigation on the Applicant's behalf.
3. Ineffective assistance of counsel regarding the reconsideration hearing.
- a. Failure to have the motion heard in a timely manner despite repeated requests from the Applicant.
 - b. Failure to present an argument regarding the State's change in position as to sentencing or the variance in the facts from the plea to sentencing hearing.
 - c. Failure to present any viable evidence to refute the State's position that the Applicant entered the home during the robbery.
 - d. Failure to address the knowing and voluntary nature of the Applicant's plea.
 - e. Failure to offer viable mitigation on the Applicant's behalf.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

November 16, 2010
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2009-CP-32-1865

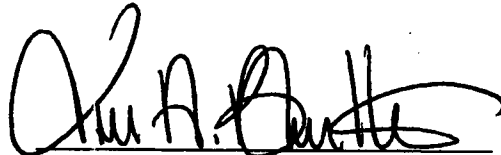
WHELTHY L. MCKUNE, 299717,)
Applicant,)
v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I hand delivered this 16th day of November 2010, a copy of the Amendment to Application for Post Conviction Relief to A. West Lee of the Attorney General's Office, at:

Office of the Attorney General
ATT: A. West Lee, Esq.
1000 Assembly Street, Room 519
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Applicant

November 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS

2009-CP-32-01865

WHELTHY McKUNE)

APPLICANT)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

RESPONDENT)

November 29, 2010
Lexington, South Carolina

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

TRICIA BLANCHETTE, ESQ.
Attorney for the Applicant

A. WEST LEE, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

SC Attorney General
RECEIVED

OCT 13 2011

Referred to Pelishenko - PCR

Answered Wm Lee ds

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: McKune.

2 MR. LEE: Yes, sir.

3 THE COURT: All right.

4 MR. LEE: Thank you, Your Honor.

5 This is Whelthy McKune versus the State of South
6 Carolina. It's 2009-CP-32-1865, and it comes to the Court
7 by way of application for post-conviction relief filed
8 April 21st, 2009.

9 The applicant was indicted at the January 2004
10 term of the Lexington County Grand Jury for burglary in
11 the first degree and criminal conspiracy. He was
12 represented by Mr. Cameron Littlejohn and on February 9th,
13 2004, the applicant pled guilty as charged. He was
14 sentenced by the Honorable Marc Westbrook to life
15 imprisonment for the burglary charge and a concurrent term
16 of five years for the conspiracy charge.

17 Timely notice of appeal was filed on the
18 applicant's behalf and the applicant subsequently moved to
19 withdraw his appeal and the South Carolina Court of
20 Appeals granted that request by order dated December 17th,
21 2008.

22 In his current application, the applicant
23 alleges he's being held in custody unlawfully based on
24 ineffective assistance of counsel and involuntary guilty
25 plea.

1 Specifically, he made allegations of failure of
2 trial counsel to prepare and investigate, applicant did
3 not have full understanding of the charges against him,
4 failure of counsel to present mitigating evidence, failure
5 of counsel to make contemporaneous objections regarding
6 plea agreement and move to withdraw guilty plea, and
7 failure of counsel to properly prepare and present motion
8 for reconsideration.

9 At this time I will turn it over to Ms. Tricia
10 Blanchette, the applicant's attorney, to expand or
11 elaborate upon those claims.

12 Thank you.

13 THE COURT: Yes, ma'am.

14 MS. BLANCHETTE: May it please the Court.

15 My name is Tricia Blanchette. I'm here today on
16 behalf of the applicant, Whelthy McKune.

17 On Mr. McKune's behalf I submitted a detailed
18 amendment on November 16th, 2010. It's my understanding
19 the Court has a copy.

20 THE COURT: Okay. I have it now.

21 MS. BLANCHETTE: Unless the Court would like
22 further explanation from me, I'd call my client to the
23 stand.

24 THE COURT: Would you come forward, please, sir.

25 WHELTHY MCKUNE, after being duly sworn,

1 testified as follows:

2 THE APPLICANT: For the record, my name is
3 Whelthy McKune.

4 DIRECT EXAMINATION

5 BY MS. BLANCHETTE:

6 Q Mr. McKune, where are you currently incarcerated?

7 A At Broad River Correctional Institution.

8 Q Did you file a PCR application docketed at No.
9 2009-CP-32-1865?

10 A Yes, ma'am.

11 Q And in this current application, what is it that
12 you're requesting that the Court give to you?

13 A A new trial.

14 Q And you understand, within your case, there is risk
15 in asking for a new trial?

16 A Could you repeat that?

17 Q You understand there is risk in asking for a new
18 trial? You're asking the Court to set aside your current
19 plea and conviction and start the process all over again?

20 A Yes, ma'am.

21 Q Okay. And understanding that, Mr. McKune, you still
22 want to go forward today?

23 A Yes, ma'am.

24 Q Okay. And did you enter a plea on January 12th,
25 2004?

1 A Yes, ma'am.

2 Q And who did you enter that plea in front of?

3 A The Honorable Judge Westbrook.

4 Q And then you were sentenced later on February 9th,
5 2004?

6 A That's correct.

7 Q And who were you sentenced by?

8 A Mr. Westbrook.

9 Q Okay. And you went back for reconsideration on
10 October 17th of 2006; is that correct?

11 A Yes, ma'am.

12 Q And who handled your reconsideration hearing?

13 A Mr. Cameron Littlejohn.

14 Q Okay. And who was the judge at that hearing?

15 A Judge Knox McMahon.

16 Q Okay. And just for clarification, did you have any
17 co-defendants in this case?

18 A Yes.

19 Q And who would those individuals be?

20 A Terry Haltiwanger, John Henry, and Quincy McCoy.

21 Q And in this case you ended up entering a plea on two
22 charges; is that correct?

23 A Yes, ma'am.

24 Q And what were those two charges, Mr. McKune?

25 A Conspiracy and burglary 1st degree.

1 Q And what was the sentence you received on those
2 charges?

3 A Five years for the conspiracy and a life sentence on
4 burglary.

5 Q Now, in this case, do you remember when you were
6 arrested?

7 A I think around July of '03.

8 Q Okay. And after you were arrested in July of '03,
9 did you retain or were you appointed an attorney?

10 A I retained counsel.

11 Q And who was it that you originally retained to assist
12 you with your case?

13 A Mr. Hugh Roberts.

14 Q And during that time did you attend a preliminary
15 hearing?

16 A Yes, I did.

17 Q And you attended that with Mr. Roberts?

18 A I'm not sure.

19 Q Okay. Now, did Mr. Roberts continue to handle your
20 case?

21 A No, he did not.

22 Q Okay. Could you explain to the Court what happened
23 as far as who handled your case?

24 A Well, after I got rid of Mr. Hugh Roberts, we hired
25 Mr. Littlejohn.

1 Q And when you say "we," who would that be?

2 A Me and my mother.

3 Q Okay. And you retained Mr. Cameron Littlejohn to
4 handle your case; is that correct?

5 A Yes, ma'am.

6 Q Do you recall meeting with Mr. Littlejohn prior to
7 your plea?

8 A Yes, ma'am.

9 Q Okay. And, Whelthy, did you do anything to obtain
10 records from those meetings with Mr. Littlejohn?

11 A Yes. During the time when I was going back I was
12 jotting down notes of things that I thought were important
13 that we spoke about.

14 Q Okay. And did you obtain any records from the jail
15 regarding those meetings?

16 A Yes, ma'am.

17 MS. BLANCHETTE: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 BY MS. BLANCHETTE:

21 Q Mr. McKune, could you just identify that for the
22 record, please?

23 A These are the sign-in log sheets from the Lexington
24 County Sheriff County Jail.

25 Q And you wrote and requested these from the jail?

1 A Yes, ma'am.

2 MS. BLANCHETTE: Your Honor, at this time I'd
3 move this as Applicant's No. 1.

4 MR. LEE: No objection, Your Honor.

5 THE COURT: All right. Mark them in the record,
6 please.

7 (WHEREUPON, Applicant's Exhibit No. 1 was marked
8 for identification and received into evidence.)

9 MS. BLANCHETTE: Your Honor, would you like a
10 copy?

11 THE COURT: That's fine, if you have one.

12 BY MS. BLANCHETTE:

13 Q Now, Mr. McKune, based upon those log sheets, it
14 shows how many meetings that you had with Mr. Littlejohn?

15 A Six in total.

16 Q And the first one listed here is August 8th, 2003; is
17 that correct?

18 A Yes, ma'am.

19 Q And what do you recall doing during that first
20 meeting with Mr. Littlejohn?

21 A Our first meeting was more of an introductory
22 meeting. He just informed me that my mother had hired him
23 and that he would be filing for discovery soon.

24 Q Did you have a chance to talk about the facts of the
25 case or your version of what happened?

1 A Yes. That day I give him my side of the story of
2 what happened.

3 Q Now, the records show that you met again on
4 August 20th, 2003. Is that what you recall?

5 A Yes, ma'am.

6 Q What happened at that meeting, McKune?

7 A I was trying to get a bond and he told me that he'd
8 do his best. And he was just telling me that he was going
9 to see what he can do, but we didn't really talk much that
10 day about that.

11 Q Now, did you go up for a bond hearing?

12 A Yes, I did.

13 Q Okay. And what happened at that bond hearing?

14 A First time I went up, I didn't get heard on that day.

15 Q And then did you go for a subsequent bond hearing?

16 A Yes.

17 Q And what happened at that subsequent bond hearing?

18 A Mr. Littlejohn told me that he thought it was a good
19 idea that I didn't go through with the hearing due to the
20 fact that he thought that I'd be coming to court real soon
21 and he thought it would be a waste of my mother's money.

22 Q Did he tell you at that time about any plea offers or
23 that he was working with the State to obtain a plea offer?

24 A Yes, he did.

25 Q Okay. Could you explain that, please?

1 A Well, he just told me that -- well, at the time I
2 took it that he wanted me to plead right then and there to
3 a 15-year plea deal, but I didn't have no understanding of
4 really what was going on at that time, so I told him no.

5 Q Had you received all the discovery yet in your case
6 and gone over it?

7 A No, ma'am.

8 Q Okay. Then you met again, based upon the logs, on
9 September 22nd, 2003?

10 A That's correct.

11 Q And what do you recall happening during that meeting?

12 A During that meeting Mr. Littlejohn brought the first
13 portion of my discovery materials and he also had the
14 solicitor, Mr. Swarat, and his investigator with him.

15 Q And do you recall why the solicitor and the
16 investigator were with Mr. Littlejohn?

17 A They came. They wanted me to tell them what happened
18 and I told them what happened, my side of the story. And
19 they also wanted to know did I know where the guns could
20 be located because there was testimony or somebody wrote
21 some statements saying that I supplied the guns to them
22 and they were trying to figure out did I know how to come
23 up with the guns.

24 Q And did you cooperate with the State and their
25 investigator upon the advice of your attorney to cooperate

1 with them?

2 A Well, at that time I couldn't tell them nothing about
3 the guns. I didn't have anything to do with the guns.

4 Q Okay. But did Mr. Littlejohn advise you to cooperate
5 and try to assist the State?

6 A Yes, ma'am.

7 Q Okay. Now, you met again, based upon the logs, on
8 January 5th, 2004; is that correct?

9 A Yes, ma'am.

10 Q And do you recall what happened at that meeting?

11 A At that meeting Mr. Littlejohn brung a second portion
12 of the discovery material and we spoke a little about the
13 first material he dropped off and told me look to over.

14 And also he came and we spoke about the theory
15 of the State's case where he was telling me about where
16 they was saying that I supplied the guns and that there
17 was some statements written that I kicked down the back
18 door of the residence in question, and also that he
19 thought that it was best if I accepted the plea that day
20 that was offered.

21 He told me that what they wanted me to do was --
22 well, it was clear to me that as far as sentencing, I was
23 going to be facing 15 to life because he had done told me
24 that they was going to be charging me with a conspiracy
25 and a burglary charge if I took the plea and that it

1 carried 15 years to life and that they would also let the
2 judge know how truthful I was throughout the process and
3 that Mr. Swarat would state to the judge that he didn't
4 oppose any recommendations Mr. Littlejohn made on my
5 behalf.

6 Q And then you met again two days later on January 7th
7 and did you discuss those same things again?

8 A Yes, pretty much. But at that time we were going
9 over more of the discovery together and he pointed out
10 some documents to me that were showing that the back door
11 of the residence was kicked in from the outside and there
12 was some pictures that was showing that. Because I always
13 denied kicking the door in or even leaving the car and he
14 said that there was pictures that the door was kicked in
15 from the outside and they had a forensic report showing
16 that the door was kicked in, and they said they had
17 forensic evidence that I kicked the door in.

18 Q Now, you met one day later on January 8th in 2004,
19 and what occurred during that meeting?

20 A Well, the meeting before I told Mr. Littlejohn that I
21 was going -- he wanted me to think about pleading guilty
22 and I told him that I need to speak to my family before I
23 made that decision. And the next meeting when he came,
24 that meeting was about discussing as far as how to
25 mitigate my punishment once I had decided to take the

1 plea.

2 Q And as far as discovery and the indictments in your
3 case, did you go over the indictments with Mr. Littlejohn?

4 A No, ma'am, we didn't have any indictments at the
5 time.

6 Q And what type of charges was it your understanding
7 that you were facing?

8 A When I first got charged I was charged with a lot of
9 accessory charges. But I found out about the conspiracy
10 and burglary I believe in January sometime when he came
11 back and visited me. That's when he told me that they was
12 going to be charging me with first degree burglary and
13 conspiracy. But if I didn't take them, then they were
14 going to add -- if I went to trial, they was going to add
15 murder, kidnapping and robbery to that.

16 Q Did you ever have the opportunity to fully go over
17 the indictments, whether it was accessory or to the
18 charges you pled with Mr. Littlejohn?

19 A No, ma'am. There was never any indictments.

20 Q And as of today, had you received a copy of those
21 indictments from Mr. Littlejohn?

22 A No, ma'am.

23 MS. BLANCHETTE: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, ma'am.

1 BY MS. BLANCHETTE:

2 Q Mr. McKune, could you identify this for the record,
3 please?

4 A Yes, this is what I got -- that I received from
5 Mr. Littlejohn.

6 Q And what date is on this letter?

7 A September 16th, 2004.

8 MS. BLANCHETTE: Your Honor, at this time I'd
9 move this as Applicant's No. 2.

10 MR. LEE: Without objection.

11 THE COURT: Mark it in the record, please,
12 ma'am.

13 (WHEREUPON, Applicant's Exhibit No. 2 was marked
14 for identification and received into evidence.)

15 BY MS. BLANCHETTE:

16 Q Mr. McKune, could you explain the reason you want to
17 bring this letter to the Court's attention today?

18 A I had wrote Mr. Littlejohn requesting a copy of the
19 indictments and this letter was written by his secretary
20 telling me that they didn't have any indictments, that I
21 would need to buy them from the Clerk of Court.

22 Q And what was your response to this letter indicating
23 that your attorney didn't have your indictments in his
24 file?

25 A Well, I was wondering how could he have prepared my

1 case without an indictment.

2 Q Now, did you have a chance to go over all the
3 discovery with your attorney prior to your plea and did he
4 explain to you the evidence that he was referring to?

5 A Well, we didn't go over all of it. We just went over
6 what he thought applied to his investigation he conducted
7 and the investigation that the State had done on their
8 side.

9 Q Now, Mr. McKune, where did you tell Mr. Littlejohn
10 you were during this robbery?

11 A In the car.

12 Q Okay. And you gave him every detail that you knew
13 about this case; is that correct?

14 A Yes, ma'am.

15 Q Now, did your attorney ever provide you with a SLED
16 file or any testing done by SLED?

17 A No, ma'am.

18 Q Did you later obtain that file on your own?

19 A Yes, ma'am.

20 Q Okay. And how did you go about doing that?

21 A Well, what brought me to the attention of the SLED
22 file, during our -- when we were talking about forensic
23 evidence, he told me that he didn't have it at the time
24 because when we were discussing the discovery material,
25 none of that was in there. And I was asking him where it

1 was and he told me that he would be receiving it soon, but
2 he never gave me the SLED file that he had told me about,
3 so that's why I got my mother to purchase it.

4 Q Okay. Now, since you've had time to prepare for this
5 PCR and for your hearing today, there are several
6 documents that you've reviewed that you'd like to bring to
7 the Court's attention; is that correct?

8 A Yes, ma'am.

9 MS. BLANCHETTE: Your Honor, may I approach the
10 witness?

11 THE COURT: Certainly.

12 BY MS. BLANCHETTE:

13 Q Mr. McKune, could you identify what those appear to
14 be for the record, please?

15 A These are statements out of my discovery material.

16 Q Okay. And who does it appear gave these statements?

17 A Esqueen Merritt.

18 THE COURT: I didn't understand what he said.
19 Who gave the statement?

20 BY MS. BLANCHETTE:

21 Q Whose name is on that statement?

22 A It's Esqueen Merritt.

23 THE COURT: Spell it for me.

24 THE APPLICANT: E-S-Q-U-E-E-N M-E-R-R-I-T-T.

25 THE COURT: Okay. Go ahead.

1 MS. BLANCHETTE: Your Honor, at this time I'd
2 move these as Applicant's No. 3.

3 MR. LEE: No objection, Your Honor.

4 THE COURT: Mark those in evidence, please.

5 (WHEREUPON, Applicant's Exhibit No. 3 was marked
6 for identification and received into evidence.)

7 BY MS. BLANCHETTE:

8 Q Mr. McKune, looking at this first statement, who did
9 you say gave this statement?

10 A Esqueen Merritt.

11 Q Okay. And is it dated at the bottom?

12 A Yes, ma'am.

13 Q Okay. And what is the date on this statement?

14 A November 13th, 2002.

15 Q Now, you've reviewed this statement and how many
16 individuals does she indicate entered the home during the
17 robbery?

18 A Two.

19 Q Okay. And at any time in this statement does it
20 mention a third person or the back door being kicked in?

21 A No, ma'am.

22 Q Now, if you could turn to the next statement, who
23 gives this second statement here?

24 A Mrs. Esqueen Merritt.

25 Q And what's date on this statement or does it refer to

1 a date?

2 A 11-15-02 written in the paragraph.

3 Q And in this statement does she give an identification
4 of an individual that entered the home?

5 A Yes.

6 Q And who was that individual?

7 A Mr. Quincy McCoy.

8 Q And at any time did she indicate a third individual
9 or that someone kicked in back door?

10 A No, ma'am.

11 Q And how does she indicate in these statements that
12 entry was made into the home?

13 A She let them in.

14 Q Okay. And how many people did she let in?

15 A Two.

16 Q If you could turn to the next statement, who gave
17 that statement?

18 A Ms. Vickie Merritt.

19 Q And what's the date on that statement?

20 A November 13th, 2002.

21 Q And how many male individuals does she indicate were
22 in the house?.

23 A Two.

24 Q And does she also indicate that one of your
25 co-defendants may have had a motive or had a prior issue

1 with the victim?

2 A Yes.

3 Q Could you explain that?

4 A She stated that they were at a cookout and that's how
5 all of it came about, but I never really knew much about
6 that.

7 Q And which co-defendant was that?

8 A Terry Haltiwanger.

9 Q Okay. And were you present at that cookout or that
10 previous fight?

11 A No, ma'am. I didn't even know Terry.

12 Q And then if you could turn to the next statement, who
13 gave that statement?

14 A Ms. Vickie Merritt.

15 Q And what's the date indicated on that statement?

16 A November 13th, 2002.

17 Q At the bottom of that statement, what's the date
18 indicated?

19 A 11-14-02.

20 Q Okay. And in that statement she gives a very
21 detailed description of how many robbers?

22 A Two.

23 Q And does she also make an admission regarding some
24 drugs in the home?

25 A Yes, ma'am.

1 Q Okay. Now, if you could turn to the final statement,
2 who gave that and on what date?

3 A Vickie Merritt.

4 Q And in that statement does she also identify one of
5 the robbers?

6 A Yes, ma'am.

7 Q And who is it that she identified?

8 A Quincy McCoy.

9 Q And does she indicate that there were two robbers and
10 Mr. McCoy shot the victim?

11 A Yes, ma'am.

12 Q Now, when Mr. Littlejohn was telling you that you
13 needed to take a plea, that the State was alleging that
14 you had gone in the back door, things like that, did you
15 go over these statements and the information contained in
16 the victims' statements?

17 A No, ma'am, we never went over these statements.

18 Q Okay. Are you alleging today that you should have
19 gone over these statements in detail with Mr. Littlejohn
20 before your plea and sentencing?

21 A Yes, ma'am, I think so.

22 MS. BLANCHETTE: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, ma'am.

25 BY MS. BLANCHETTE:

1 Q Mr. McKune, could you identify what this appears to
2 be for the record?

3 A This is a statement from Terry Haltiwanger of an
4 interview.

5 Q And you received this as part of the discovery
6 materials in your case?

7 A Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, at this time I'd
9 move this as Applicant's No. 4.

10 THE COURT: Any objection?

11 MR. LEE: No objection, Your Honor.

12 THE COURT: Mark it into evidence, please.

13 (WHEREUPON, Applicant's Exhibit No. 4 was marked
14 for identification and received into evidence.)

15 BY MS. BLANCHETTE:

16 Q Mr. McKune, did you have the opportunity to go over
17 this interview in detail with Mr. Littlejohn prior to the
18 entry of your plea?

19 A No, ma'am.

20 Q Now, if you could turn to page three of this
21 interview report. Does it indicate whether or not you
22 exited the car?

23 A Yes, he states who leave the car.

24 Q And does he indicate that you left the car?

25 A No, ma'am.

1 Q Now, if you could turn to page five. In the middle
2 of the page, does he give an explanation as to how the
3 back door got kicked out?

4 A Yes, ma'am.

5 Q Did you have an opportunity to go over this
6 information contained in Mr. Haltiwanger's interview with
7 your attorney?

8 A No, ma'am.

9 Q Does this information refute the fact that the State
10 was alleging that you went in the house and kicked the
11 back door in?

12 A Yes, ma'am.

13 Q Is there anything else you'd like to bring to the
14 Court's attention regarding that document?

15 A No, ma'am.

16 MS. BLANCHETTE: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, ma'am.

19 BY MS. BLANCHETTE:

20 Q Mr. McKune, could you identify what this appears to
21 be for the record?

22 A Lexington County crime scene report.

23 Q And again, Mr. McKune, did you have the opportunity
24 to review this in detail with Mr. Littlejohn prior to the
25 entry of your plea?

1 A Yes.

2 Q Now, is this one of the documents that he showed you
3 when he had concerns about the State alleging that the
4 back door was kicked in?

5 A Yes, ma'am.

6 Q Okay. And in this document does it give information
7 regarding that?

8 A Yes, ma'am.

9 Q And looking at the remarks, what does it state about
10 the back door?

11 A It says the back door was kicked in with a blood
12 trail that leads out the back door.

13 Q And was there one of your co-defendants that was
14 actually bleeding in this case or had been wounded?

15 A Yes, ma'am.

16 Q And who was that and how did that occur, do you know?

17 A Quincy McCoy got shot in the cross fire.

18 Q And here it indicates the back door was kicked in
19 with a blood trail that leads out the back door. Is it
20 your understanding Mr. McCoy was the only one of your
21 co-defendants that was bleeding?

22 A Yes, ma'am.

23 Q Did you talk about that fact and how it appeared --
24 about the fact that there was a blood trail in relation to
25 this door being kicked in or out?

1 A Yes, ma'am. It was just stated that the door was
2 kicked in from the outside of the house and that I let
3 them out the house, to basically run out the house.
4 That's what they were trying to say, what happened.

5 Q And did Mr. Littlejohn discuss the fact that they
6 indicated there was a blood trail leading out that door?

7 A No, we didn't really talk about no blood trail
8 leading out.

9 MS. BLANCHETTE: Your Honor, I believe I failed
10 to introduce this as Applicant's No. 5.

11 THE COURT: Any objection?

12 MR. LEE: No objection, Your Honor.

13 THE COURT: Mark that in evidence, please,
14 ma'am.

15 (WHEREUPON, Applicant's Exhibit No. 5 was marked
16 for identification and received into evidence.)

17 BY MS. BLANCHETTE:

18 Q Now, is there any other information in this report
19 that you'd like to bring to the Court's attention or that
20 you felt was important to review with Mr. Littlejohn?

21 A I asked him about the point of entry made, where they
22 said the point of entry was that the door was kicked in,
23 and I pointed out to Mr. Littlejohn that the victims had a
24 statement saying that they let the guys in the door and I
25 thought that that may had been a problem. So I thought

1 that they're writing that I kicked the back -- or the back
2 door was kicked in from the outside may have been a
3 mistake, too, but he told me, you know, that maybe it just
4 was a mistake and don't worry about it.

5 Q And today now that you're doing your PCR application,
6 do you feel like that was just a mistake or is that
7 something that you felt your attorney should have fully
8 investigated?

9 A I think it something he should have fully
10 investigated.

11 MS. BLANCHETTE: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. BLANCHETTE:

15 Q Mr. McKune, could you identify this document for the
16 record?

17 A Yes, ma'am. This is a statement by Quincy McCoy.

18 Q And what's the date on that statement?

19 A 11-15-2003.

20 Q I'm sorry, what was the year?

21 A November 15th, 2003.

22 MS. BLANCHETTE: Your Honor, at this time I'd
23 move this as Applicant's No. 6.

24 THE COURT: Any objection?

25 MR. LEE: No objection, Your Honor.

1 THE COURT: Mark it in evidence, please.

2 (WHEREUPON, Applicant's Exhibit No. 6 was marked
3 for identification and received into evidence.)

4 BY MS. BLANCHETTE:

5 Q Mr. McKune, did you have the opportunity to review
6 this statement with Mr. Littlejohn prior to your plea?

7 A Yes, ma'am. This is one of the statements he showed
8 me.

9 Q Now, are you aware of multiple statements that
10 Mr. McCoy gave in this case?

11 A Yes, ma'am.

12 Q Now, in this statement, does he give the name of the
13 driver?

14 A That's Kurtino Weathersbee.

15 Q Okay. And was Kurtino Weathersbee in fact the driver
16 in this case?

17 A No, ma'am.

18 Q Did Mr. McCoy later change his position about
19 Mr. Weathersbee?

20 A Yes, ma'am.

21 Q And who did he later indicate was that driver?

22 A I was the driver.

23 Q Now, do you have some concern about this statement
24 and the details he gives about Mr. Weathersbee that you'd
25 like to bring to the Court's attention?

1 A Yes. In this statement, McCoy -- well, from the
2 State's investigation, once they found out that
3 Mr. Kurtino wasn't the actual driver and from what
4 Mr. Littlejohn was explaining to me, it seemed like they
5 just -- once they found out he wasn't the driver, they
6 just put me in place of him and doing everything that they
7 say he done.

8 Q And did you bring that concern to Mr. Littlejohn's
9 attention?

10 A Yes, I told him that.

11 Q Okay. And did he look into that matter or try to
12 address that with the Solicitor's office for you as far as
13 you know?

14 A No, ma'am.

15 MS. BLANCHETTE: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes, ma'am.

18 BY MS. BLANCHETTE:

19 Q Mr. McKune, could you identify these documents for
20 the record?

21 A These are some investigative reports out of my
22 discovery material.

23 MS. BLANCHETTE: Your Honor, at this time I'd
24 move these in as Applicant's No. 7.

25 MR. LEE: No objection.

1 THE COURT: Mark those in evidence, please.

2 (WHEREUPON, Applicant's Exhibit No. 7 was marked
3 for identification and received into evidence.)

4 BY MS. BLANCHETTE:

5 Q Mr. McKune, did you have the opportunity to fully
6 review all these reports with Mr. Littlejohn prior to the
7 entry of your plea?

8 A No, ma'am, we never went over these statements.

9 Q Now, in the very first statement given by an Officer
10 Weed, is there a matter that you'd like to bring to the
11 Court's attention?

12 A Yes. This investigative report was saying that there
13 was a blood trail leading out the house and over the
14 fence.

15 Q Okay. And what was it that you'd wanted to have
16 discussed with Mr. Littlejohn regarding this report?

17 Let me rephrase that, Mr. McKune.

18 Why was that important to you?

19 A Because I never was bleeding and I wasn't at the
20 house.

21 Q And if you could turn to the next report given by
22 Officer Mount. Does it indicate how many robbers the
23 victims identified?

24 A Yes, ma'am.

25 Q And how many is that?

1 A Two.

2 Q And if you could turn to the next report also given
3 by Officer Mount. Does it explain who Mr. McCoy
4 originally identified as the driver?

5 A Which report is that?

6 Q I'm sorry. That's the report dated 9-15 of '03. It
7 might not be next in order there.

8 A Okay. Yes, ma'am.

9 Q And who is it that on 11-15 of '02 they report as
10 being the driver?

11 A Me.

12 Q I'm sorry, if you'd just review that. On the first
13 page of the report dated 9-15 of '03, it's a two-page
14 report.

15 A On the 19th?

16 Q On 9-15 of '03, it's a two-page report.

17 A That's Mr. Terry Haltiwanger.

18 Q Okay. And does he give your name or does he give
19 another individual's name at this point as being present?

20 A Yes, ma'am, Kurtino Weathersbee.

21 Q Okay. And does this report also indicate that
22 Mr. McCoy recanted the fact that Kurtino Weathersbee was
23 present?

24 A Yes, ma'am.

25 Q Okay. Now, there's also included in here a lengthy

1 report given by Officer McIntosh. It's a 13-page report.
2 If you could turn to page nine of that report. The middle
3 paragraph, where does it indicate -- or what does it
4 indicate regarding you staying in the car?

5 A Mr. McCoy said I stayed in the car during the
6 incident.

7 Q Now, Mr. McKune, based upon these documents, are you
8 making an allegation today as to something your attorney
9 should have done on your behalf?

10 A Yes, ma'am.

11 Q Could you explain that?

12 A I think that Mr. Littlejohn should have went and
13 talked to Mr. McCoy and Mr. John Henry about me staying in
14 the car the whole time.

15 THE COURT: Talked to McCoy and who?

16 BY MS. BLANCHETTE:

17 Q Could you repeat the other person's name?

18 A John Henry and Quincy McCoy and also Terry
19 Halthiwanger.

20 THE COURT: Did you say John Henry?

21 THE APPLICANT: Yes, sir.

22 THE COURT: Is that his last name, Henry?

23 THE APPLICANT: Yes, sir.

24 BY MS. BLANCHETTE:

25 Q Could you state the last name you said again?

1 A John Henry.

2 Q And did you name one other individual?

3 THE COURT: Spell the last name of the John
4 person.

5 THE APPLICANT: H-E-N-R-Y.

6 THE COURT: I'm sorry. Go ahead.

7 BY MS. BLANCHETTE:

8 Q Now, did you at some point receive a letter from one
9 of your co-defendants?

10 A Yes, ma'am.

11 Q Could you explain that?

12 A When I was in the county jail I received a letter
13 written by Quincy McCoy stating that he knew that -- he
14 was asking me in the letter to help him because he thought
15 that I was going to fair better in the situation with the
16 part I played in it and him knowing that I really didn't
17 have no plans or nothing and he was asking me to say
18 something for him, and I gave that letter to
19 Mr. Littlejohn.

20 Q And did you receive a copy of that letter back from
21 Mr. Littlejohn?

22 A No, ma'am.

23 MS. BLANCHETTE: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, ma'am.

1 BY MS. BLANCHETTE:

2 Q Mr. McKune, could you identify this for the record,
3 please?

4 A Yes, ma'am. This is the letter I wrote to
5 Mr. Littlejohn on December 27th, 2007.

6 MS. BLANCHETTE: Your Honor, at this time I'd
7 move this as Applicant's No. 8.

8 MR. LEE: No objection, Your Honor.

9 THE COURT: Mark it into evidence, please.

10 (WHEREUPON, Applicant's Exhibit No. 8 was marked
11 for identification and received into evidence.)

12 BY MS. BLANCHETTE:

13 Q Mr. McKune, could you briefly explain your purpose in
14 writing this letter?

15 A Yes. I was writing this letter to Mr. Littlejohn
16 trying to get the statement and any kind of notes he had
17 to me about the case.

18 Q And following this request for your file, did you
19 receive it?

20 A No, ma'am.

21 Q And was one of the items that you were trying to
22 obtain the letter that you referenced from Mr. McCoy?

23 A Yes, ma'am.

24 Q And you do not have that letter so we cannot provide
25 that to the Court today; is that correct?

1 A Yes, ma'am.

2 Q Now, as far as investigating your case, do you know
3 if Mr. Littlejohn conducted an independent investigation
4 or hired a private investigator?

5 A I don't know.

6 Q Now, you had indicated at one of your meetings with
7 him that you told him everything that happened. What was
8 it that happened in this case?

9 A On the day in question, I told Mr. Littlejohn that I
10 kept receiving numerous calls from John Henry. Eventually
11 I called him and agreed with John that I give him a ride
12 to Lexington County. And at that point when I got down to
13 the house it was John Henry, Terry Haltiwanger, and Quincy
14 McCoy came out and got in the car, and at that point we
15 left. I stopped by mother's house to get some gas money
16 and then we left towards Lexington.

17 And I was wondering why Mr. Haltiwanger was
18 sitting in my front seat at the time because I didn't know
19 him. So I asked John Henry about that and Mr. Henry told
20 me that he would be giving me the directions to Lexington.

21 So I'd say 15 to 20 minutes into the ride that's
22 when they started pulling out guns and John Henry told me
23 that they was going to rob his cousin of marijuana. And
24 we got into a whole argument because I'm trying to figure
25 out what he had guns in my car for.

1 And at that time I told Mr. John Henry that I
2 was going to get off the highway and that I was going to
3 leave, but he threatened, he cocked his gun and threatened
4 to pistol bust me upside my head if I tried to get off the
5 highway. So at that time I kept going.

6 Q If I could just stop you there. Did you say pistol
7 bust? Could you explain what that means?

8 A Oh, that's when you slap somebody upside the head and
9 shoot the gun at the same time.

10 Q Okay. Please keep going.

11 A And at that time I knew I was in a situation. So I
12 decided to go ahead and take them.

13 And what I was planning on doing, I thought all
14 three of them was going to get out the car wherever I was
15 taking them to and I was going to leave them, but it
16 didn't work out like that. Mr. Haltiwanger stayed in the
17 car with me and I told him my intentions that I was going
18 to leave them. And he told me that no, I wasn't going to
19 leave them, he had a silver handgun and he told me that I
20 was going to stay there or he was going to shoot me and he
21 was going to stay there himself because he was going to
22 stay and get his weed.

23 Q What happened after that?

24 A After that he told me to go up to the apartments,
25 some apartments in the area, and we went up there and sat

1 in the apartments for a little while. And I asked him can
2 I use the bathroom. So I got out the car and used the
3 bathroom.

4 He got out and sat on top of the hood watching
5 me use the bathroom. At that time we was out there for a
6 long time, so I told him that I think it was good if we
7 leave because we was getting suspicious sitting out there
8 like that. So I convinced him let's go up to the store
9 and he agreed.

10 So going towards the store, I got out the car
11 and went in the store thinking I was going in by myself
12 but he came in with me. And at that time I just went
13 along, but my intentions was I was trying to go and see if
14 there was any kind of way I can get out of the situation,
15 but once he came in the store with me I wasn't willing to
16 try nothing. They had families in the store and I wasn't
17 willing to make a bad situation worse.

18 Q What happened after your co-defendants returned to
19 the car?

20 A Coming back from the store?

21 Q Right. You can keep going. I'm sorry.

22 A After we left the store, we got -- I don't know
23 exactly where we was, but we was pulling up to a stop sign
24 and they was running down the street and Quincy was shot
25 and then jumped in the car.

1 Q And did you transport them anywhere?

2 A Yes. I took Mr. McCoy to the hospital. They didn't
3 want me to, but I took him to the hospital anyway and
4 dropped him off.

5 Q And you had told all of this information to
6 Mr. Littlejohn; is that correct?

7 A Yes, ma'am.

8 Q And you fully cooperated with the State to the best
9 of your ability?

10 A Yes, ma'am.

11 Q Okay. Now, you had indicated before there was a plea
12 off offer on the table for 15 years and what was your
13 reason for not accepting that?

14 A Well, at the time I didn't even know what I was going
15 to be charged with. I didn't know anything.

16 Q Now, when Mr. Littlejohn came to you in early January
17 and told you that you needed to -- or advised you that you
18 needed to plead guilty or you would have to go to trial
19 with Mr. John Henry, did he give you any indication as to
20 how the State would make recommendations at your plea?

21 A Well, at the time I didn't actually look at it as a
22 plea deal because it was clear that there wasn't no
23 negotiation, and they told me that I was going to be
24 pleading straight up and I was facing 15 years to life,
25 and I knew that. So I didn't look at it at the time as

1 any type of bargain because I was facing life if I pleaded
2 and I was facing life if I went to trial.

3 So the only reason I really pled was because of
4 the forensic evidence he said they had against me and the
5 fact that the solicitor said that he would state to the
6 judge that he didn't oppose any recommendation my lawyer
7 made, so I took both under consideration equally.

8 Q So it was your understanding that the State would not
9 oppose it if your attorney asked for the minimum sentence;
10 is that correct?

11 A No. I took it at from how it was explained and the
12 way I received it, he was going to actually state to the
13 judge that he didn't oppose it. But he stayed silent on
14 it.

15 Q He didn't oppose what? I'm sorry, I'm not
16 understanding what he didn't oppose.

17 A My lawyer's recommendation.

18 Q And what was your lawyer's recommendation, do you
19 know?

20 A Fifteen years.

21 Q And did your attorney make you any promises or advise
22 you about anything as to the benefit of taking this plea?

23 A Well, he thought it was a good idea being that -- I
24 was in denial of kicking down the door, but he told me
25 that he was just informing me of what the State had

1 against me and he thought it was in my best interest that
2 I take the plea.

3 Q Was he was at all concerned that you would receive a
4 life sentence if you pled guilty?

5 A No. He actually didn't think I would receive a life
6 sentence.

7 Q Now, Mr. McKune, you went forward with your plea on
8 January 12th, 2004. And on page five of the plea
9 transcript you said that you were pleading freely and
10 voluntarily. Is that what you recall?

11 A Yes, ma'am.

12 Q Do you have a copy of that transcript there with you
13 or do you need a copy?

14 A I have a copy.

15 Q Now, on page six of that transcript, the State
16 indicated that, as you stated, your co-defendants called
17 you for a ride. On your way over you learned it was going
18 to be a robbery. You dropped off your co-defendants and
19 John Henry and McCoy gained entry to the house. Is that
20 what you recall the State giving as the facts on page six?

21 A Ma'am?

22 Q Is that what you recall the State giving as the facts
23 at the plea on page six of that transcript?

24 A Yes, ma'am.

25 Q Now, turning to page seven, they indicate, as you've

1 testified, that you picked up your co-defendants and that
2 you transported Mr. McCoy to the hospital. Do you recall
3 those being the facts given at your plea by the State?

4 A Yes, ma'am.

5 Q Then if you could look specifically at page seven.
6 The State indicates your role -- and let me find the line
7 here -- on line 13 they indicate you acted -- I'm sorry --
8 "he acted solely as the getaway driver." Is that what you
9 recall?

10 A Yes, ma'am.

11 Q At any time during those facts did they indicate that
12 you had gained entry to the home?

13 A No, ma'am.

14 Q Did they ever indicate at your plea when the State
15 gave the facts that there were three robbers in the home?

16 A No, ma'am.

17 Q Was it ever stated by the solicitor in giving the
18 facts to the plea judge that you kicked in the back door?

19 A No, ma'am.

20 Q And at your plea hearing, did Mr. Littlejohn make any
21 comments on your behalf?

22 A No, ma'am.

23 Q Okay. And at that time did you agree with the facts
24 as given by the State?

25 A No, ma'am.

1 Q The facts on pages six on seven?

2 A No, I didn't fully agree with the facts at the time.

3 Q Okay. And what disagreement did you have with those
4 facts?

5 A Well, I just thought that the solicitor didn't tell
6 exactly why I agreed. He said that I agreed, but he
7 didn't inform the Court as to why I agreed and I just
8 thought that was the only thing.

9 Q And what further explanation did you think the
10 solicitor was going to give?

11 A I was expecting him to tell the judge about me being
12 threatened.

13 Q Now, there was time that passed in between your plea
14 and your sentencing. Why was that?

15 A Because they wanted me to testify at John Henry's
16 trial.

17 Q And did you do that?

18 A Yes, ma'am.

19 Q And your sentencing occurred on February 9th, 2004?

20 A Yes, ma'am.

21 Q And do you have a copy of that transcript there with
22 you?

23 A Yes, ma'am.

24 Q Now, on page two, the State indicated that your plea
25 was straight up and they were going to tell the Court

1 about your cooperation. Is that what you recall?

2 A Yes, ma'am.

3 Q They also indicated that you talked freely with them
4 before trial and you were approximately 75 percent
5 truthful?

6 A Yes, ma'am.

7 Q Did you take issue with that statement?

8 A Yes.

9 Q Would you like to explain that?

10 A I was a hundred percent truthful.

11 Q Now, turning to page three, they indicate that you
12 provided the guns, you were the driver, and you entered
13 the back door during the robbery.

14 Were those the same facts given to the judge at
15 your plea hearing?

16 A No, ma'am.

17 Q At the sentencing hearing, also the two victims were
18 present; is that correct?

19 A Yes, ma'am.

20 Q Now, on page three and four, there becomes a
21 discussion where the judge wants to know whether or not
22 you were present in the home. Is that what you recall?

23 A Yes, ma'am.

24 Q And the judge specifically asked if you were in the
25 house. And the State responded that McCoy said you were

1 but neither victim identified you. Is that what you
2 recall?

3 A Yes, ma'am.

4 Q At that point did your attorney offer any information
5 to refute the fact that you were in the house?

6 A No, ma'am.

7 Q Did he provide the Court with any of these documents
8 that we've gone over today that reference two robbers and
9 identify McCoy and Haltiwanger?

10 A No, ma'am.

11 Q Did he use any SLED documents?

12 A No, ma'am.

13 Q Did he ask that the State provide this forensic
14 evidence that showed that you had entered the home?

15 A No, ma'am.

16 Q To this day, have you seen that evidence?

17 A No, ma'am.

18 Q Now, on page five, the victims ask that you be put
19 away for the rest of your life. Were you aware prior to
20 your sentencing that that was going to be requested by the
21 victims?

22 A No, ma'am.

23 Q What, if any, reaction did you have to that?

24 A I told Mr. Littlejohn that I didn't want to plead any
25 more.

1 Q And why was that?

2 A Because she said that I was going to receive a life
3 sentence.

4 Q And prior to the victims requesting that, did you
5 seriously consider life being an option as far as your
6 sentence?

7 A Well, not from what my lawyer told me. I knew I was
8 facing it, I knew it was a possibility, but from what he
9 stating, I never thought it would happen.

10 Q And when you told your attorney that you didn't want
11 to go forward with your plea, what, if anything, do you
12 recall him informing you?

13 A He told me that he would put a motion in.

14 Q Okay. Now, in mitigation, on page six your attorney
15 did indicate that you had denied your involvement with the
16 guns and going in the house?

17 A Yes, ma'am.

18 Q Were there other factors that you wanted him to bring
19 to the Court's attention?

20 A Yes. I wish he would have showed the evidence.

21 Q Were you also concerned that he didn't raise the fact
22 that you felt that you were in fear of your life?

23 A Yes.

24 Q Would you like to explain that further, what you
25 wanted him to bring to the Court's attention?

1 A Could you repeat the question?

2 Q As far as being in fear of your life or feeling
3 threatened, is that an issue you wanted him to tell the
4 Court about?

5 A Yes, ma'am.

6 Q And what specifically did you want him to tell the
7 Court?

8 A I wanted him to let the Court that know I was
9 threatened to be pistol whipped.

10 Q And also during mitigation, your mother said that you
11 were a drug addict. But did you ever discuss treatment or
12 anything for a drug problem?

13 A No, ma'am.

14 Q And what was the sentence that you received?

15 A Life sentence.

16 Q Now, did your attorney file the motion he indicated
17 he would file on your behalf?

18 A Yes, ma'am.

19 MS. BLANCHETTE: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 BY MS. BLANCHETTE:

23 Q Mr. McKune, could you please identify this for the
24 record?

25 A Yes, this is a copy of my reconsideration motion.

1 MS. BLANCHETTE: Your Honor, at this time I'd
2 move in Applicant's No. 8 (sic).

3 MR. LEE: No objection.

4 MS. BLANCHETTE: No. 9, I'm sorry.

5 THE COURT: Mark it in evidence, please.

6 (WHEREUPON, Applicant's Exhibit No. 9 was marked
7 for identification and received into evidence.)

8 BY MS. BLANCHETTE:

9 Q Now, this motion was filed on what date, Mr. McKune?

10 A February 11th, 2004.

11 Q Mr. McKune, could you identify this document for the
12 record, please?

13 A Yes. This is a letter written by Mr. Littlejohn's
14 secretary.

15 Q And what's the date on this letter?

16 A May 12th, 2004.

17 MS. BLANCHETTE: Your Honor, at this time I'd
18 move this as Applicant's No. 10.

19 MR. LEE: No objection.

20 THE COURT: Mark it in evidence, please.

21 (WHEREUPON, Applicant's Exhibit No. 10 was
22 marked for identification and received into
23 evidence.)

24 BY MS. BLANCHETTE:

25 Q And you received this letter -- who is it written

1 again, I'm sorry?

2 A It's Constance L. Jennings, paralegal.

3 Q And with this letter, did she send you a copy of the
4 document?

5 A Yes, ma'am.

6 Q And what was that that you received with the letter?

7 A I received a copy of my file, a copy of my files.

8 Q Did you receive actually a copy of the motion for
9 reconsideration?

10 A Yes, ma'am.

11 Q And had you received one previously to May 12th,
12 2004?

13 A No, ma'am.

14 Q Okay. And in this letter does she indicate some
15 reaction to your sentence that she shared with
16 Mr. Littlejohn?

17 A Yes, ma'am.

18 Q And what is that that's conveyed in this letter?

19 A She said that the sentence took them all completely
20 by surprise and she thought it was devastating and unfair.

21 Q And does she indicate that Mr. Littlejohn's doing
22 anything on your behalf?

23 A Yes, she said he was making calls on my behalf.

24 Q Okay. And do you know what came of those calls?

25 A No, ma'am.

1 MS. BLANCHETTE: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 BY MS. BLANCHETTE:

5 Q Mr. McKune, could you please identify this document
6 for the record?

7 A Yes, ma'am. This is a letter I wrote to
8 Mr. Littlejohn.

9 Q And what's the date on this letter?

10 A September 22nd, 2005.

11 MS. BLANCHETTE: Your Honor, at this time I'd
12 move this as Applicant's No. 11.

13 MR. LEE: No objection, Your Honor.

14 THE COURT: Mark it in evidence.

15 (WHEREUPON, Applicant's Exhibit No. 11 was
16 marked for identification and received into
17 evidence.)

18 BY MS. BLANCHETTE:

19 Q Mr. McKune, so you don't have to read the entire
20 letter, if you could just summarize what was the major
21 concern you were trying to bring to Mr. Littlejohn's
22 attention with this letter.

23 A I was informing Mr. Littlejohn that I thought that he
24 took too long in bringing the motion to court due to the
25 fact that the Honorable Judge Westbrook had passed away

1 and I thought that I'd be prejudiced in front of another
2 judge.

3 Q Did you ask him to obtain the transcript since you
4 knew that it would not be able to go in front of Judge
5 Westbrook any longer?

6 A Yes, ma'am.

7 Q And did you indicate that 19 months has passed and
8 you had not heard from him and you were concerned?

9 A Yes, ma'am.

10 Q Is there anything else in this letter that you'd like
11 to bring to the Court's attention?

12 A Yes. I felt that me and Mr. Littlejohn wasn't
13 communicating like we should and I was having to call my
14 mother to get any kind of information that I need to pass
15 or receive any kind of information and I was asking him to
16 write me directly.

17 MS. BLANCHETTE: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 BY MS. BLANCHETTE:

21 Q Mr. McKune, could you identify this for the record?

22 A Yes, ma'am. This is another letter I wrote
23 Mr. Littlejohn.

24 Q And what's the date on that letter?

25 A May 17th, 2006.

1 MS. BLANCHETTE: Your Honor, I'd move this as
2 Applicant's No. 12.

3 MR. LEE: No objection, Your Honor.

4 THE COURT: Mark it in evidence.

5 (WHEREUPON, Applicant's Exhibit No. 12 was
6 marked for identification and received into
7 evidence.)

8 BY MS. BLANCHETTE:

9 Q Mr. McKune, what was your reasoning for writing this
10 letter?

11 A I wrote this letter because I never received a
12 response from Mr. Littlejohn and I was just trying to get
13 any type of response to find out what was going on with
14 the motion.

15 Q And you finally had your reconsideration hearing on
16 October 17th, 2006; is that correct?

17 A Yes, ma'am.

18 Q And do you have a copy of that transcript there with
19 you?

20 A Yes, ma'am.

21 Q Now, at that hearing, Mr. Littlejohn did inform the
22 Court that it was your position that you had stayed in the
23 car; is that correct?

24 A Yes, ma'am.

25 Q He also pointed out the sentences on pages five

1 through seven that your co-defendants received?

2 A Yes, ma'am.

3 Q And he also indicated on page five and six that you
4 were in conflict with the State's position that you went
5 in the house?

6 A Yes, ma'am.

7 Q When he was asked by Judge McMahon what he had to
8 show that Mr. Westbrook -- or I'm sorry, the Honorable
9 Judge Westbrook thought you went in the house, did he have
10 anything to provide to the Court?

11 A No, he didn't. I did.

12 Q Could you explain that?

13 A I had recently bought the SLED files and I wanted him
14 to present that to the Court showing that I didn't
15 actually go in the house because it was my understanding
16 that Mr. Westbrook took the position that I went in the
17 house and that's why he gave me such a substantial
18 sentence.

19 Q And the State provided the Court with a copy of the
20 trial transcript and indicated that your co-defendant
21 McCoy was the one who implicated you as far as going in
22 the house.

23 Did you have an opportunity when you were
24 testifying at that trial to refute anything that Mr. McCoy
25 said?

1 A No, ma'am.

2 Q And why was that, Mr. McKune?

3 A I guess I wasn't on trial.

4 Q And what was your purpose when you testified at the
5 trial of John Henry?

6 A I just told my side of the story.

7 Q And did your attorney point that out, that you had
8 not had the opportunity to refute anything that Mr. McCoy
9 had said?

10 A No, ma'am.

11 Q Your attorney also explained that there was delay in
12 your cooperation due to trying to work out plea
13 negotiations. Were you aware of any of that?

14 A No, ma'am.

15 Q Now, are there specific things that you wanted your
16 attorney to do and bring to the Court's attention,
17 especially since you had waited so long for that hearing?

18 A Yes, ma'am.

19 Q And what were those things? What are the allegations
20 that you're making today that he should have brought to
21 the Court's attention?

22 A I think that he should have presented the SLED file
23 most importantly because that's the main reason I pled
24 really, because he told me they had forensic evidence. I
25 never seen that.

1 And also, the fact about the victim stating that
2 I was going to receive a life sentence, I didn't feel
3 comfortable with that.

4 Q And did he present any of the documents that we've
5 introduced as part of the record today?

6 A No, ma'am.

7 Q Did you ever provide any shoes or foot impressions to
8 the investigators or anything like that in this case?

9 A No, ma'am.

10 Q And at the time of your review of the SLED file, no
11 information was contained therein regarding your shoes or
12 foot impressions; is that correct?

13 A No, ma'am.

14 Q Is there anything else you wanted Mr. Littlejohn to
15 bring to the Court's attention at your reconsideration
16 hearing?

17 A That's really about it.

18 Q Did you have any concern regarding the change in the
19 facts from your plea when they said you were only the
20 getaway driver, to your sentencing when they were alleging
21 that you came in the back door?

22 A Yes.

23 Q And do you feel that he effectively brought that to
24 the Court's attention?

25 A No, ma'am.

1 Q Mr. McKune, is there anything else regarding the
2 reconsideration hearing that you would like to address
3 today?

4 A Well, at the reconsideration hearing, Mr. Littlejohn
5 placed me inside the house. He told the judge that I was
6 actually in the house.

7 Q And is there a specific point in the transcript you'd
8 like to bring to our attention?

9 A Page five, line 23, and on page six, lines one
10 through 12.

11 MS. BLANCHETTE: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. BLANCHETTE:

15 Q Mr. McKune, could you identify this document for the
16 record?

17 A Yes, ma'am. This is a motion I filed with the Clerk
18 of Court.

19 Q And what's the date on this?

20 A November 8th, 2006.

21 MS. BLANCHETTE: Your Honor, at this time I'd
22 move this as Applicant's No. 13.

23 MR. LEE: No objection, Your Honor.

24 THE COURT: Mark it in evidence.

25

1 (WHEREUPON, Applicant's Exhibit No. 13 was
2 marked for identification and received into
3 evidence.)

4 BY MS. BLANCHETTE:

5 Q Mr. McKune, what was your purpose in filing this
6 motion?

7 A I wasn't satisfied with Mr. Littlejohn at the
8 reconsideration hearing. So I filed this motion trying to
9 get him relieved as counsel.

10 Q And did anything happen regarding that motion that
11 you filed?

12 A No, ma'am.

13 MS. BLANCHETTE: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, ma'am.

16 BY MS. BLANCHETTE:

17 Q Could you identify this for the record?

18 A Yes. This is a letter I wrote to the Honorable
19 William P. Keesley on April 2nd, 2007.

20 MS. BLANCHETTE: Your Honor, at this time I'd
21 move this as Applicant's No. 14.

22 MR. LEE: No objection.

23 THE COURT: Mark it in evidence.

24 (WHEREUPON, Applicant's Exhibit No. 14 was
25 marked for identification and received into

1 evidence.)

2 BY MS. BLANCHETTE:

3 Q Mr. McKune, what was your purpose in writing this
4 letter?

5 A I was trying to get the motion heard to relief
6 counsel.

7 Q And was a hearing held on your motion?

8 A No, ma'am.

9 Q And was an order then entered on November 27th, 2007,
10 denying your reconsideration?

11 A Yes, ma'am.

12 Q And prior to that had you written to Judge McMahon
13 regarding a lack of decision in your case?

14 A Yes, ma'am.

15 Q Mr. McKune, if you could identify this for the
16 record, please.

17 A This is the letter I wrote Judge McMahon.

18 Q And that's dated what?

19 A November 25th, 2007.

20 MS. BLANCHETTE: Your Honor, at this time I'd
21 move this as Applicant's No. 15.

22 MR. LEE: No objection from the State.

23 THE COURT: Mark it in evidence.

24 (WHEREUPON, Applicant's Exhibit No. 15 was
25 marked for identification and received into

1 evidence.)

2 BY MS. BLANCHETTE:

3 Q And what was your purpose for writing this letter?

4 A I was trying to get the motion heard. I thought it
5 had been too long.

6 Q And this is the motion for reconsideration, you were
7 trying to get a decision on it?

8 A Yes, ma'am.

9 Q And, I'm sorry, the order was issued December 10th,
10 2007; is that correct?

11 A Yes, ma'am.

12 Q And that came after your letter dated November 27th,
13 2007?

14 A Yes, ma'am.

15 Q Now, following that decision, was an appeal filed in
16 your case?

17 A Yes, ma'am.

18 MS. BLANCHETTE: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes, ma'am.

21 BY MS. BLANCHETTE:

22 Q Mr. McKune, could you identify this for the record,
23 please?

24 A Yes. This is a letter Mr. Littlejohn wrote me.

25 Q What is the date on that?

1 A December 18th, 2007.

2 MS. BLANCHETTE: Your Honor, at this time I'd
3 move this as Applicant's No. 16.

4 MR. LEE: No objection, Your Honor.

5 THE COURT: Mark in it evidence.

6 (WHEREUPON, Applicant's Exhibit No. 16 was
7 marked for identification and received into
8 evidence.)

9 BY MS. BLANCHETTE:

10 Q Mr. McKune, by way of this letter, what does Mr.
11 Littlejohn advise you regarding the filing of your appeal?

12 A He advised me that I had ten days to file my appeal.

13 Q And did he indicate that he would be filing that for
14 you?

15 A No, ma'am.

16 MS. BLANCHETTE: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, ma'am.

19 BY MS. BLANCHETTE:

20 Q Mr. McKune, could you identify this for the record?

21 A Yes. This is a letter from the Court of Appeals.

22 Q And what's the date on this letter?

23 A January 8th, 2008.

24 MS. BLANCHETTE: Your Honor, at this time I'd
25 move this as Applicant's No. 17.

1 MR. LEE: Without objection.

2 THE COURT: Mark it in evidence.

3 (WHEREUPON, Applicant's Exhibit No. 17 was
4 marked for identification and received into
5 evidence.)

6 BY MS. BLANCHETTE:

7 Q By way of this letter, what is the Court of Appeals
8 advising Mr. Littlejohn?

9 A They're reminding him that he's still counsel on the
10 record unless he's relieved by Rule 235.

11 Q And that he, in fact, needed to file your appeal; is
12 that correct?

13 A Yes, ma'am.

14 Q And what happened with your appeal, Mr. McKune?

15 A I filed a pro se notice.

16 Q And was your appeal dismissed at any point?

17 A Yes, ma'am.

18 Q Okay. And did you do a voluntary dismissal in your
19 case?

20 A At the end, once I hired you.

21 Q And what was your reasoning for doing that?

22 A I hired you because Mr. Littlejohn got my direct
23 appeal dismissed because they said he was still the lawyer
24 of record and they wasn't accepting what I was sending
25 them and they said that he didn't file for no transcript

1 so they denied it.

2 Q And did you make an informed decision to pursue your
3 PCR in this case and to withdraw your direct appeal?

4 A Yes, ma'am.

5 Q Now, Mr. McKune, we have spent well over a year
6 preparing this case, met a number of times. Are there any
7 issues that I've failed to ask you about or that you would
8 like to bring to the Court's attention today?

9 A No, ma'am, that would be all.

10 Q All right. Please answer any questions the State has
11 for you.

12 A Yes, ma'am.

13 THE COURT: Cross.

14 MR. LEE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. LEE:

17 Q Mr. McKune, I believe Ms. Blanchette already asked
18 you this, but do you recall saying that you were pleading
19 guilty freely and voluntarily at your plea hearing?

20 A Yes, sir.

21 Q Do you recall saying that you were satisfied with the
22 services of your attorney?

23 A Yes, sir.

24 Q And if I heard you correctly, you stated that there
25 was originally a plea offer on the table in your case for

1 15 years; is that correct?

2 A Yes, sir.

3 Q And you knew that you were facing a minimum of 15
4 years to life on your charges?

5 A Yes, sir.

6 Q Okay. So that plea offer would have been for the
7 minimum?

8 A Yes, sir.

9 Q Okay. And I believe if I heard you correctly, you
10 said that if you went to trial the solicitor talked about
11 adding additional charges or additional allegations
12 against you?

13 A Yes, sir.

14 Q And those included what?

15 A Murder, robbery, and kidnapping.

16 Q Okay. Now, I think it was your testimony
17 regarding -- and you guys introduced a lot of documents,
18 so correct me if I'm wrong here, but I believe it was your
19 testimony that upon seeing the crime scene report which
20 talked about having a blood trail leaving the house, is
21 that what that said?

22 A Yes, sir.

23 Q There was a blood trail leaving the house, right?

24 A Yes, sir.

25 Q You brought it to Mr. Littlejohn's attention that the

1 victims made a statement that they let the perpetrators in
2 through the front door, correct?

3 A Yes, sir.

4 Q So you brought it to Mr. Littlejohn's attention that
5 the victim's statement said something different than the
6 State's position?

7 A Yes, sir.

8 Q Now, however, wasn't it also your testimony that you
9 didn't have access or you weren't given those statements
10 prior to your hearing, your guilty plea hearing?

11 A Did I have them statements prior to my guilty plea?

12 Q Yes. I thought it was your testimony that you didn't
13 get to go over those with your attorney?

14 A I went over them by myself in the county jail.

15 Q So you were given those statements by counsel?

16 A Yes.

17 Q Okay. And I believe it was your testimony that you
18 pled guilty because -- or at least in part because counsel
19 had informed you that there was forensic evidence linking
20 you to kicking in the back door; is that correct?

21 A Yes.

22 Q It was your testimony that -- or your position that
23 you stayed in the car the entire time, right?

24 A Yes, sir.

25 Q If you'd stayed in the car the entire time, how would

1 it have been physically possible if there was forensic
2 evidence linking you to the door?

3 A I was just accepting what my lawyer was telling me.
4 I believe he had my best interest at heart.

5 MR. LEE: Beg the Court's indulgence just one
6 second, Your Honor.

7 THE COURT: Yes.

8 (Pause.)

9 BY MR. LEE:

10 Q And I believe it was your testimony that counsel
11 didn't expect for you to get a life sentence; is that
12 correct?

13 A Yes.

14 Q But he never said, "I promise you you will not get a
15 life sentence," right?

16 A No, he never used them words.

17 Q Okay. And your motion to relief counsel was filed
18 after the reconsideration hearing; is that correct?

19 A Yes, sir.

20 Q And you ultimately-withdrew your direct appeal and
21 instead elected to pursue a PCR?

22 A That's correct.

23 MR. LEE: No further questions for this witness,
24 Your Honor. Thank you.

25 THE COURT: Redirect?

1 MS. BLANCHETTE: I have no questions, Your
2 Honor.

3 THE COURT: Mr. McKune, you've never come in
4 front of me?

5 THE APPLICANT: No, sir.

6 THE COURT: That letter that you introduced that
7 you said you sent to me, is that the only thing you've
8 ever sent to me?

9 THE APPLICANT: Yes, sir.

10 THE COURT: Do you know if any of the
11 co-defendants came in front of me?

12 THE APPLICANT: I'm not sure.

13 THE COURT: Did you know that I was not the
14 chief judge for administrative purposes in April of 2007?

15 THE APPLICANT: No, sir, I wasn't aware of that.

16 THE COURT: Any questions of the witness in
17 light of the Court's questions?

18 MR. LEE: Nothing from the State, Your Honor.

19 MS. BLANCHETTE: I have nothing, Your Honor.

20 THE COURT: Thank you, sir. You may step down.
21 Make sure you watch your step.

22 THE APPLICANT: Yes, sir.

23 THE COURT: Any other evidence from the
24 applicant?

25 MS. BLANCHETTE: Your Honor, if I could just beg

1 the Court's indulgence one moment.

2 THE COURT: Let's take a couple minutes break.

3 MR. LEE: Thank you, Your Honor.

4 MS. BLANCHETTE: Thank you, Your Honor.

5 (A break was taken.)

6 THE COURT: Anything else from the applicant?

7 MS. BLANCHETTE: Your Honor, if I may recall my
8 client very briefly just for one further question.

9 THE COURT: Sure.

10 Mr. McKune, you're still under oath. Just have
11 a seat back up here, please.

12 REDIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q Mr. McKune, based upon your application, your
15 amendment, your testimony today, and the evidence you've
16 presented to the Court, would you have accepted the guilty
17 plea or would you have proceeded to trial knowing what you
18 do now?

19 A I would have proceeded to trial knowing what I know
20 now.

21 Q Would you like to further explain that to the Court?

22 A Say that again?

23 Q Would you like to offer any further explanation of
24 that answer?

25 A As to why I would like to proceed to trial?

1 Q Yes.

2 A I believe if Mr. Littlejohn would have brung all that
3 to my attention, then I would have been better informed
4 and would have been able to make a better decision.

5 Q And you understand the risk in going forward with a
6 trial?

7 A Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: Any recross?

11 MR. LEE: Nothing from the State, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 MS. BLANCHETTE: Your Honor, the applicant has
14 no further witnesses. I would just ask the ability to
15 recall him in rebuttal, if needed, and then we have a
16 number of cases to hand up to the Court.

17 THE COURT: All right. Anything from the State?

18 MR. LEE: Your Honor, the State would call
19 Mr. Cameron Littlejohn to the stand.

20 THE COURT: Come around, please.

21 CAMERON B. LITTLEJOHN, JR., after being duly
22 sworn, testified as follows:

23 THE CLERK: Have a seat. State your name for
24 the record, please.

25 THE WITNESS: My name is Cameron B. Littlejohn,

1 Jr.

2 DIRECT EXAMINATION

3 BY MR. LEE:

4 Q Mr. Littlejohn, how long have you been practicing
5 law?

6 A Since November 11th, 1975.

7 Q And what percentage of that practice has been
8 criminal law?

9 A Eighty-five.

10 Q And I believe it was the applicant's testimony that
11 you were retained in this case; is that correct?

12 A That's correct.

13 Q And subsequent to being retained in the case, did you
14 have an occasion to meet with the applicant on several
15 occasions?

16 A I did.

17 Q And during the course of those meetings, did you talk
18 to the applicant about the charges that he was facing?

19 A We did. We discussed the charges.

20 Q The possible punishment for those charges?

21 A Yes.

22 Q His constitutional rights?

23 A Yes.

24 Q Such as his right to a jury trial, et cetera?

25 A Correct.

1 Q Okay. Did you get the applicant's side of the story?

2 A I did.

3 Q And do you recall what that side of the story was?

4 A Well, as Mr. McKune indicated on his direct
5 testimony, basically it's just like he said, he hooked up
6 with these guys in Columbia, he was driving the car, he
7 had with him McCoy, Haltiwanger and Henry, and somewhere
8 between Columbia and West Columbia he learned that they
9 were going to do a robbery and then they were going to rob
10 this guy of some marijuana.

11 Q And that was always his position?

12 A Always.

13 Q He was steadfast in that position?

14 A Yes, sir.

15 Q Okay. And did you file a Rule 5 discovery motion in
16 the case?

17 A I'm sure I did. I got all the discovery.

18 Q Do you recall what that discovery consisted of?

19 A It was all the Lexington County Sheriff's Department
20 incident reports, the investigative reports, the
21 forensics, the pathology reports, statements of the
22 victim's family members that were in the house when the
23 shooting took place, statements of co-defendants, and the
24 statement of Mr. McKune.

25 Q So Mr. McKune gave a statement?

1 A He gave a statement, yes, sir, if I recall.

2 Q Did you review the discovery with the applicant?

3 A I did.

4 Q And did you discuss the discovery with the applicant?

5 A Yes.

6 Q Now, based on your own review of the discovery and
7 your discussions with the applicant about said discovery,
8 did you come to an opinion about if the applicant went to
9 trial, whether or not the State would be able to prove the
10 applicant's guilt?

11 A I did.

12 Q And what was that opinion?

13 A Well, it appeared that Mr. McKune was the driver of
14 the vehicle. Just to put it in basic terms, he was
15 driving the vehicle, he took the other three over to West
16 Columbia, they were going to do a robbery, he became aware
17 of the robbery from Columbia to West Columbia.

18 I don't think that what happened was what he
19 envisioned at all, because he thought it was just going to
20 be a robbery, but apparently two of the co-defendants went
21 into the house and killed a man there.

22 And then after they left the house after one of
23 them got shot, they got back in the car with Whelthy,
24 Whelthy driving.

25 He took the shot defendant to the hospital and

1 then sometime after that the police put it all together
2 and came and -- well, they didn't come and arrest him. If
3 I recall, Whelthy found out they were looking for him and
4 he called them up and said, you know, I'm turning myself
5 in.

6 Q And so based on all that, did you feel like the State
7 had a strong case against the applicant?

8 A Well, based on his admission of being a participant,
9 the testimony of the two co-defendants, yes, he was -- he
10 stood a good chance of being convicted under the theory of
11 the hand of one is the hand of all, of being convicted of
12 murder, armed robbery, kidnapping --

13 Q Did you communicate --

14 A And burglary. Excuse me.

15 Q I apologize for interrupting.

16 Did you communicate that opinion with the
17 applicant?

18 A Yes.

19 Q And because of that, did you attempt to engage in
20 plea negotiations on the applicant's behalf?

21 A I didn't attempt. I engaged in plea negotiations
22 numerous times with Mr. Swarat, who was the assistant
23 solicitor handling the case.

24 Q And as a result of those negotiations, were you able
25 to obtain an offer on the applicant's behalf?

1 A The best offer the State was willing to give was a
2 plea to the burglary 1st and conspiracy and the State
3 would take no position on sentencing. So he was looking
4 at 15 to life.

5 Q Okay. So there was never an offer for 15 years on
6 the table?

7 A Not that I recall, no. For just a negotiated 15, no,
8 I don't believe so.

9 Q So he was facing 15 to life?

10 A Yes, sir.

11 Q In an attempt to mitigate a potential sentencing, did
12 you advise or counsel the applicant that cooperating with
13 the police would be in his best interest?

14 A Yes.

15 Q And did he do so?

16 A He did.

17 Q Okay. Just backing up for a second here, during your
18 discussions with the applicant prior to the plea hearing,
19 did he indicate any potential defenses that you might want
20 to investigate on his behalf or witnesses you may want to
21 talk to?

22 A No. We discussed the situation with the door being
23 broken in and that was kind of a sticky point of this
24 whole case.

25 Whelthy always denied coming to the house, going

1 in the house, period. He said he stayed in the car with
2 Mr. Haltiwanger, other than going into a 7-11 at some
3 point while they were waiting for McCoy and Henry to
4 finish what they were doing in the house. But he was
5 steadfast in his assertion that he never went to the
6 house, never kicked it in.

7 Now, on the other hand, the State had evidence
8 that the back door of this house had been kicked in at
9 some point by someone and apparently there was a blood
10 trail leaving out of that door. They had a McCoy
11 statement at some point that he thought Whelthy had come
12 in the back door, but McCoy had given a number of
13 different statements recognized by Judge Westbrook during
14 one of the hearings. So that was basically it.

15 The State was -- they were adamant that Whelthy
16 had broken in the back door and gone in while the
17 robbery/burglary/killing went on. He was steadfast in
18 that he did not.

19 Q Now, as a result of any of that, was there any
20 evidence that you could present at trial that would show
21 that he -- or at the hearing that he definitely did not go
22 in the house?

23 A Well, there was no real evidence to say that he
24 definitely did not go in the house. It was just the
25 State's theory that he -- that a third person went in the

1 house.

2 Their theory was that the two principal
3 perpetrators, McCoy and Henry, were let in the front door
4 and therefore there wouldn't have been any reason for them
5 to break in the back door. It was part of their theory
6 that the victims who gave statements were in a back
7 bedroom and never saw what had occurred insofar as the
8 back door being broken in. Other than that, it was
9 Whelthy's word against McCoy's statement and the fact that
10 the back door had been broken into.

11 Q And that's basically how it played out at the
12 sentencing hearing, it was State's theory versus the
13 applicant's?

14 A Exactly. And Judge -- I might mention Judge
15 Westbrook had presided over the trial of Henry shortly
16 before Whelthy was sentenced and so he had listened to all
17 the witnesses and heard all of the evidence presented by
18 the sheriff's department.

19 Q Okay. And so ultimately the applicant decided that
20 he wished to plead guilty, correct?

21 A Correct.

22 Q And did you force or pressure or coerce him into
23 doing so?

24 A No.

25 Q Certainly you advised him that you thought it would

1 be in his best interest?

2 A I did. I advised him of the potential penalties and
3 told him while I didn't think he would get a life
4 sentence, he was looking at a life sentence. I was hoping
5 he would get the minimum sentence based on his cooperation
6 and the role that he had played in this crime.

7 Q But ultimately, Mr. McKune had never denied that he
8 played some role in the crime, correct?

9 A That's correct.

10 Q So was it his free and voluntary choice to enter a
11 guilty plea?

12 A Yes.

13 MR. LEE: Beg the Court's indulgence one second,
14 Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 BY MR. LEE:

18 Q At the sentencing hearing and the subsequent
19 reconsideration hearing, did you present to the Court the
20 applicant's assertion that he never went in the house?

21 A Yes.

22 Q So at that point it was basically a question of who
23 the Court believed?

24 A Yes. I think that should be evident in the
25 transcripts.

1 Q Do you recall there being statements from the victim
2 in the case, the victims in the case?

3 A Yes.

4 Q And was that part of the discovery that you reviewed
5 with the applicant?

6 A Yes.

7 Q Do you recall the interview with Mr. Haltiwanger?

8 A I do.

9 Q And was that part of the discovery you reviewed with
10 the applicant?

11 A Yes.

12 Q Did you go over the investigative reports in the case
13 with the applicant?

14 A If I recall, I gave Mr. McKune all the discovery and
15 we went over, you know, different sections of it.
16 Specifically I can't tell you -- I mean there was a lot of
17 discovery in the case -- but I'm sure we went over the
18 pertinent parts.

19 Q It was the applicant's contention that you should
20 have gone and talked to the co-defendants in the case and
21 gotten their side of the story regarding his involvement
22 or level of involvement. Do you recall that being
23 something that you did or considered doing?

24 A I didn't do it. I really didn't consider it because
25 we had statements from those co-defendants in the file.

1 Henry obviously went to trial, so he was not cooperating
2 with anybody.

3 Q Now, supposedly there was an allegation that there
4 was a letter from one of the co-defendants supposedly
5 asking Mr. McKune to help him and the letter, I guess,
6 somehow indicated that he did not have a role beyond
7 driving the car. Do you recall the applicant giving you
8 that letter? It was from Mr. McCoy?

9 A I recall a letter like that. And if I remember, it
10 was after the fact and it would have been McCoy's -- I
11 don't know how many -- version of what happened during the
12 course of the trial, and I didn't see how McCoy was going
13 to be able to help Whelthy out based on his prior
14 inconsistent statements.

15 Q So based on his multiple inconsistencies you didn't
16 feel he would be helpful to your case?

17 A Yes. That was my thinking. If I didn't send him a
18 copy of it, it's something I just overlooked.

19 Q Now, the applicant testified that the victims were
20 present in the courtroom on the day of the plea or the
21 sentencing and asked that the applicant be given a life
22 sentence and the applicant testified that he at that point
23 advised you that he did not want to pursue his plea any
24 more. Do you recall that?

25 A I recall the victims asking for a life sentence,

1 which is not unusual, that victims often ask for a maximum
2 sentence in a particular case.

3 I do not recall specifically Whelthy asking to
4 withdraw his guilty plea. I know that would have been a
5 very difficult thing to do, if not impossible at that
6 point in the proceedings. He may have asked me. I do not
7 remember that conversation. I'm sorry.

8 Q Now, the motion for reconsideration, there was an
9 allegation that there was a lengthy passage of time in
10 between the sentencing hearing and the motion for
11 reconsideration.

12 A Yes.

13 Q What was the reason for that?

14 A Well, first off, based on the sentence that Whelthy
15 got, I filed a motion for reconsideration because I just
16 felt it was way too harsh and did that before the time
17 period expired.

18 My thinking on when I do that is, I let some
19 time pass in hopes that passions will cool and things will
20 simmer down and maybe it won't be quite as hot a
21 situation.

22 In letting it pass, unfortunately Judge
23 Westbrook was killed in an automobile accident.

24 The other thing that happened was that Tab
25 Swarat, if I recall, went to the Attorney General's office

1 from the Solicitor's office here, and nobody in the
2 Solicitor's office had handled this case.

3 And there were some delays in getting the motion
4 for reconsideration first heard by a judge that hadn't had
5 anything to do with the case and, secondly, getting
6 Mr. Swarat away from his AG duties to handle this case
7 over here.

8 Q So because of --

9 A Plus, I delayed it for a number of months just for
10 the reason I previously stated.

11 Q Right. So because of the delay there were some
12 things worked out that were negative to you, but it was
13 done as a strategic move to allow tempers to cool,
14 partially?

15 A Yes. I don't know what you mean by things went
16 negative against me.

17 Q Obviously there were problems presented with the
18 death of Judge Westbrook --

19 A Yes.

20 Q -- so that hindered you a bit, but the reason you
21 delayed was a strategic one?

22 A Yes. That did kind of throw a monkey wrench into
23 things.

24 Q Now, do you recall ever seeing the SLED file in the
25 case?

1 A Yes. If it was in discovery, I'm sure I did. I
2 don't recall it being much of a SLED file, but --

3 Q Now just -- there was a change in the facts alleged
4 between the plea hearing and the sentencing hearing. The
5 applicant alleged at the plea hearing the State said that
6 the applicant's sole involvement was that of the driver
7 and at the sentencing, they changed his involvement level.
8 Do you recall having a problem with that at the time?

9 A Well, at the plea hearing I did not because their
10 version was pretty much right on with our version. And
11 then I was surprised that Mr. Swarat took a harder
12 position as to what Whelthy's involvement was after the
13 trial. And I don't know whether he was trying to get him
14 a harsher sentence or he was expounding his theory that
15 Whelthy had not testified to and he was upset with Whelthy
16 for that reason, but I mean, he gave his version, we gave
17 our version.

18 MR. LEE: Beg the Court's indulgence one second.

19 (Pause.)

20 BY MR. LEE:

21 Q Now, there was a letter presented by the applicant
22 from I believe it was your paralegal expressing basically
23 your office's surprise and disappointment with the
24 sentence that the applicant received, correct?

25 A I don't recall that letter. I understand it's in

1 evidence. I haven't had a chance to review it.

2 Q Were you surprised by the sentence received by the
3 applicant?

4 A You'd probably find my jaw over there next to that
5 podium.

6 Q And certainly you would have advised the applicant
7 that because of his putting himself before the mercy of
8 the Court and his cooperation with the police, that you
9 thought that would work in his favor?

10 A Yes, definitely.

11 Q But did you ever promise him that he would not
12 receive a life sentence?

13 A No. I couldn't do that.

14 Q Certainly you weren't pleased with the outcome of the
15 case, no one ever is, especially with a sentence like this
16 one, but at the end of the day do you feel like you did
17 everything you could to effectively represent the
18 applicant?

19 A Well, no representation is perfect, but I thought I
20 did the best I could to present his case in the light most
21 favorable to him. And, you know, I was in hopes by
22 entering the plea that he would have gotten a
23 substantially less sentence. Had he gone to trial, I feel
24 pretty certain that he would have been convicted.

25 Q But ultimately sentencing is in the judge's

1 discretion alone, correct?

2 A There's no doubt about that.

3 MR. LEE: No further questions at this time,
4 Your Honor.

5 Please answer any questions opposing counsel may
6 have.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MS. BLANCHETTE:

10 Q Mr. Littlejohn, you indicated that you received all
11 the discovery in this case; is that correct?

12 A Yes, ma'am.

13 Q And I'm sorry, I may not have heard your answer. Did
14 you indicate that you received the indictments and had
15 those as part of your file?

16 A I don't know whether I had the indictments or not.
17 There was -- Mr. Swarat was going back and forth on the
18 charges. To the best of my recollection, I received
19 copies of them the day we pled and I thought I showed them
20 to Whelthy so that he could answer the question if it was
21 asked, have you seen the indictments.

22 MS. BLANCHETTE: And, Your Honor, may I approach
23 the witness?

24 THE COURT: Yes, ma'am.

1 BY MS. BLANCHETTE:

2 Q During the applicant's case we introduced a copy of a
3 letter from your paralegal, Constance Jennings, as
4 Applicant's No. 2.

5 A Uh-huh.

6 Q Do you know why she would have indicated that the
7 indictments were not in your file?

8 A I don't know that I've ever seen this letter.
9 Constance wrote a very nice letter.

10 No, like I say, I don't know that I had copies
11 of the indictments in the file. Sometimes that happens
12 that they aren't furnished during the course of discovery.
13 But I always try to make sure that the defendant sees the
14 indictment, or reads it at least, before he enters a plea,
15 and I think that happened in this case.

16 Q And was he originally charged with accessory in this
17 case?

18 A Ms. Blanchette, I don't have the warrants in front of
19 me. If you've got them in the file, it would show what he
20 was charged with originally.

21 Q Okay. Now, you indicated during your direct
22 testimony that Mr. McKune gave a statement. Do you have a
23 copy of that statement?

24 A I don't.

25 Q Okay. And are you absolutely sure that he gave a

1 statement in this case?

2 A Based on my recollection he gave a statement. I
3 don't recall whether it was an oral statement or a written
4 statement.

5 Q And you indicated that you had received the SLED file
6 in this case; is that correct?

7 A If it was in the discovery, yes.

8 Q Now, during his direct testimony, Mr. McKune went
9 through a number of discovery items, specifically the
10 victims' statements. Would you dispute the fact that they
11 only indicated there were two robbers in the home?

12 A No.

13 Q And is there a reason you didn't bring that to the
14 Court's attention when it became a dispute in the facts
15 with the State?

16 A Well, if you recall, Judge Westbrook presided over
17 the trial which occurred before Whelthy's sentencing, so
18 he heard all the witnesses' testimony.

19 Q And during that trial, Mr. John Henry was the person
20 on trial; is that correct?

21 A That's correct.

22 Q And did you or Mr. McKune have the opportunity during
23 the course of that trial to refute any of the facts or
24 defend Mr. McKune's position in front of Judge Westbrook?

25 A During the trial?

1 Q During John Henry's trial?

2 A No.

3 Q Okay. So the opportunity that you would have had to
4 refute anything that was brought up at trial was actually
5 at the sentencing hearing; is that correct?

6 A That's a safe statement, uh-huh.

7 Q So did you use any of the discovery materials at the
8 sentencing hearing to refute what was presented at trial
9 or what the State was giving as the facts at the
10 sentencing hearing?

11 A I think the record will reflect what I presented to
12 the Court.

13 Q Now, regarding this letter from Mr. McCoy, you don't
14 recall receiving it or you did, I'm sorry?

15 A No, I recall some letter like that, but I don't -- it
16 was so late in the proceedings and based on Mr. McCoy's
17 prior inconsistencies, I didn't see how it was going to
18 help Whelthy.

19 Q Did you use a private investigator or conduct an
20 independent investigation in this case?

21 A I did not.

22 Q And as far as a 15-year offer, you have no
23 recollection of that?

24 A No. I don't recall us ever getting a 15-year offer.
25 It was always 15 to life. And Mr. Swarat -- that's why I

1 had many, many plea negotiation discussions with him
2 because he wouldn't come off of that.

3 Q Do you recall if you specifically advised Mr. McKune
4 regarding the State's recommendation of time as far as the
5 guilty plea?

6 A I told him that the State would take no position,
7 that they were -- they would take a plea from 15 to life,
8 but they would take no position on sentencing. And I
9 think the record reflects they took no position on
10 sentencing.

11 Q Now, at the plea hearing on January 12th, 2004, the
12 State gave a recitation of the facts and they specifically
13 indicated on page seven of that transcript that your
14 client acted solely as the getaway driver. Did you agree
15 with that statement?

16 A Yes.

17 Q Now, at sentencing, the State provided the Court with
18 a different or a variation of the facts. Was there a
19 reason that you did not object when the State gave a
20 different variation of the facts at sentencing than they
21 gave at the plea?

22 A Well, typically you don't object during a plea or a
23 sentencing proceeding, you refute or respond to what the
24 State has presented and vice versa. So normally, I mean,
25 you wouldn't object. If you see in the transcript, we did

1 attempt to refute the State's theory that Whelthy had gone
2 in the back door.

3 Q Now, you stated on direct that it was your position
4 that Mr. McKune's guilty plea was knowing and voluntary.
5 But would you also agree that when he entered his guilty
6 plea, the State indicated that he acted solely as the
7 getaway driver?

8 A Those were the facts presented at his guilty plea,
9 yes, as I recall.

10 Q And do you also agree that the State gave different
11 or a variation of the facts and implicated him further at
12 the sentencing hearing?

13 A Ms. Blanchette, that's my recollection. Of course,
14 the transcripts would reflect what was said.

15 Q And would you agree or disagree that you would need
16 to object to preserve that issue for your client for
17 appellate review as far as a variation in the facts and
18 the knowing and voluntary nature of his guilty plea?

19 A That is a good question. I'm not sure. I'm not sure
20 whether you'd need to object to preserve it. Probably so.

21 Q And did you raise the variation in the facts from the
22 plea to the sentencing, did you specifically raise that
23 issue at the reconsideration hearing?

24 A Ms. Blanchette, obviously the transcript will tell us
25 what was said during that -- I mean, again, I think we got

1 into the same back and forth about who broke in the back
2 door, yes.

3 Q Now, at the reconsideration hearing, the State
4 indicated and you also indicated that there was forensic
5 evidence to show that Mr. McKune -- or that the State was
6 alleging that Mr. McKune entered the back door. Do you
7 specifically know what that forensic evidence was?

8 A If I recall, they had pictures of the door where it
9 had been what they contended was kicked, the door had been
10 pushed in, breaking the lock. And if I recall, they -- I
11 believe there was a footprint on the door.

12 Q And as far as a footprint being on the door, do you
13 know if Mr. McKune was ever tested or gave footprint
14 impressions or anything like that while he was under --
15 while you were representing him?

16 A I do not -- I don't think so.

17 Q Do you have any specific recollection as to why you
18 didn't bring up the fact that Mr. McKune felt threatened
19 as he explained today?

20 A I don't -- quite frankly, I don't recall. I remember
21 Whelthy saying something about when he learned that they
22 were going to do the robbery, somewhere between Columbia
23 and West Columbia, that he was apprehensive because they
24 had guns. I don't recall any statement about him, them
25 threatening to hit him beside the head or anything that

1 really rose to the level of threats that would counteract
2 the actions he had taken.

3 Q Based upon the sentence that Mr. McKune received, was
4 there any benefit of this guilty plea?

5 A Well, quite frankly, no. If he had gone to trial and
6 gotten convicted, he probably would have gotten the same
7 sentence.

8 Q Now, you indicated on direct, and correct me if I'm
9 wrong, that there was some strategy in your reason for
10 delaying the reconsideration hearing; is that correct?

11 A Yes.

12 Q Now, the sentencing was February 9th, 2004, and the
13 reconsideration didn't take place until October 17th,
14 2006. So there was a huge lapse of time there. Was that
15 all strategy or could you explain that?

16 A No. The first part of it was strategy. I mean, I
17 was not pushing to get the motion heard because it was
18 pretty obvious Whelthy, even if he got a reduction in
19 sentence, was still going to be serving some time so it
20 wasn't like the motion was going to get him out of jail
21 immediately. Because obviously he was still looking at a
22 minimum mandatory on the burglary.

23 But then when Judge Westbrook tragically was
24 killed in an accident, like I said, that threw -- that
25 just kind of made it administratively difficult to get the

1 case scheduled, along with Mr. Swarat's change of
2 employment.

3 Q Now, during Mr. McKune's testimony we introduced two
4 copies of letters he wrote to your office saying he hadn't
5 heard from you for 19 months, he needed to know what was
6 going on with this case. Do you recall communicating with
7 him during that lapse in time from sentencing to
8 reconsideration?

9 A Quite frankly, no. I think I talked to his mother a
10 couple of times.

11 Q Turning to the reconsideration hearing, Judge McMahon
12 specifically asked you if you had something to explain why
13 you thought Judge Westbrook thought that your client went
14 in the house. And the record shows that you said you
15 didn't have anything besides your shock. Had you had any
16 communication with the judge following sentencing or had
17 any inclination as to why your client received a life
18 sentence?

19 A No. I have no idea.

20 Q And during Mr. McKune's direct examination, we also
21 introduced a letter from your office indicating that you
22 were making phone calls on his behalf. Do you recall what
23 those phone calls were?

24 A If memory serves, I was trying to work on Mr. Swarat
25 and see if he would agree to a reduction of sentence

1 because of the sentence that Whelthy got, with all due
2 respect to the Court, I felt was really disproportionate
3 to what his role was in this offense and also based on his
4 cooperation.

5 Q And following the reconsideration hearing, again a
6 great amount of time lapsed before there was a decision.
7 Did you have any communication with your client during
8 that time?

9 A Ms. Blanchette, I don't recall. I don't recall.

10 Q And were you aware of the fact that he had filed a
11 motion pro se to relieve you as counsel?

12 A I believe I became aware of that at some point, yes.

13 Q And do you know if there was ever a hearing or ruling
14 made on that pro se motion?

15 A Ms. Blanchette, there wasn't a hearing on it. I
16 don't remember exactly how it got resolved. I don't even
17 remember when it was. Was it --

18 Q And that was filed November 8th, 2007.

19 A Okay. So that was prior to the hearing on the
20 reconsideration? I don't have the dates.

21 Q The hearing on the reconsideration was October 17th,
22 2006.

23 A Okay.

24 Q The motion to relieve counsel was filed November 8th,
25 2007.

1 A Okay. But that was prior to Judge McMahon's ruling.

2 Q That's correct.

3 A Okay. What was your original question?

4 Q Were you aware of a hearing or a ruling made on the
5 motion to relief counsel?

6 A No.

7 Q And were you aware of the fact that Mr. McKune wrote
8 to Judge McMahon about his failure to make a decision on
9 the motion for reconsideration?

10 A I believe I do recall that.

11 Q And did you have any communication that you recall
12 with your client, with the State, or with the Court
13 regarding Mr. McKune's letter asking the judge to make a
14 decision?

15 A Ms. Blanchette, I don't remember.

16 Q And as far as the appeal in this matter, do you
17 recall advising Mr. McKune that he would have to file
18 that?

19 A If that's what the letter says.

20 MS. BLANCHETTE: Your Honor, if I could just beg
21 the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

1 THE COURT: Redirect.

2 MR. LEE: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LEE:

5 Q There was a question about whether or not you needed
6 to object in order to preserve -- basically preserve the
7 issue for appeal.

8 It was testified to earlier today that the
9 applicant withdrew his direct appeal voluntarily and
10 elected to pursue a PCR case, correct?

11 A That was the testimony that I recall, yes.

12 Q Were there certain things that you would have done
13 such as perhaps pursuing footprint impressions or things
14 of that nature had the applicant elected to pursue -- had
15 the applicant elected to go to trial?

16 A Definitely, yes.

17 Q Okay. But again, whose decision was it to enter a
18 guilty plea?

19 A Well, it was ultimately Mr. McKune's, yes.

20 Q And just speaking to whether or not there was a
21 benefit to entering the guilty plea, was there talk of
22 adding additional charges if the applicant elected to
23 proceed to trial?

24 A Yes. If he had gone to trial, Mr. Swarat said he
25 would pursue murder charges, armed robbery and kidnapping .

1 charges in addition to the burglary, 1st degree.

2 MR. LEE: Okay. That will be all my questions.
3 Thank you.

4 THE COURT: Recross.

5 MS. BLANCHETTE: Yes, Your Honor, very briefly.

6 RECROSS-EXAMINATION

7 BY MS. BLANCHETTE:

8 Q Based upon the logs that were introduced, Mr. McKune
9 testified that you met several times the week of
10 January 5th and it was his understanding that he would
11 be going to trial with Mr. John Henry if he didn't take
12 the plea. Is that what you recall?

13 A I believe that's correct, yes.

14 Q So would you have had adequate time to start an
15 independent investigation at that point if he did not take
16 the plea?

17 A It's been done before, yes.

18 MS. BLANCHETTE: Your Honor, I have no further
19 questions.

20 THE COURT: Anything else of the witness?

21 MR. LEE: Nothing further from the State, Your
22 Honor.

23 THE COURT: Mr. Littlejohn, do you know of any
24 involvement I've had with any of these co-defendants?

25 THE WITNESS: Judge, I don't recall. We came up

1 for a bond hearing at one time, but I think we withdrew
2 the motion to reconsider bond. I don't know if that was
3 in front of you, but apparently that motion was never
4 heard.

5 THE COURT: Thank you. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 MR. LEE: No further witnesses from the State,
8 Your Honor.

9 MS. BLANCHETTE: Your Honor, if I may briefly
10 recall my client just on one issue.

11 THE COURT: Sure.

12 You're still under oath, Mr. McKune.

13 WHEALTHY MCKUNE, after being recalled and
14 reminded he is still sworn, testifies as follows:

15 FURTHER REDIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q Mr. McKune, Mr. Littlejohn stated during his direct
18 examination that you gave a statement in this case. Did
19 you give a statement in this case?

20 A No, ma'am.

21 Q Is there any further information you'd like to give
22 the Court regarding that matter?

23 A No, ma'am.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

1 THE COURT: Cross.

2 MR. LEE: Nothing on cross. Nothing from the
3 State.

4 THE COURT: You say statement. You mean a
5 written statement?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Do you all have any questions in
8 light of the Court's question?

9 MS. BLANCHETTE: No, Your Honor.

10 THE COURT: Anything from the State?

11 FURTHER RECROSS-EXAMINATION

12 BY MR. LEE:

13 Q Is it your position that you also didn't give an oral
14 statement?

15 A I gave an oral statement at the hearing, John Henry's
16 trial.

17 Q Nothing prior to that?

18 A Nothing prior.

19 MR. LEE: Nothing further from the State, Your
20 Honor. Thank you.

21 THE COURT: Thank you, sir. You may step down.
22 Do you all wish to argue?

23 MS. BLANCHETTE: Your Honor, I just have several
24 cases to hand up and I can give a very brief explanation
25 as to why I'm handing up those cases.

1 THE COURT: Okay.

2 MS. BLANCHETTE: Your Honor, the first case that
3 I will be providing is Roddy versus State. The reason for
4 that, in that PCR case, our Supreme Court indicated that
5 the PCR court must consider the entire record in
6 determining the voluntariness of a guilty plea, and that
7 is an issue that can be addressed on PCR.

8 In looking at that, it needs to be made sure
9 that the defendant understood everything, including the
10 judge's questions, the facts of the crime, and the
11 potential punishment.

12 The reason I'm handing that up is I'm asking
13 this Court to look at the plea hearing when it's entered
14 and the facts that the State gives and that my client
15 agrees to those facts, that there is a major variation in
16 the facts at the sentencing and that Counsel did not make
17 any type of objection or bring that to the Court's
18 attention regarding the voluntariness of the plea based
19 upon that variation of the facts.

20 I'm also handing up a copy of Kolle versus
21 State. There it was found that the expression of
22 satisfaction at one's plea is conditional upon the
23 knowledge the defendant had at the time.

24 And I think we've argued today or put up through
25 my client that the knowledge that he had at the time of

1 his plea is greatly different than what he has now.

2 I'll also be handing up a copy of Lounds versus
3 State that says that for an attorney to have a reasonable
4 trial strategy or provide reasonable representation, they
5 must conduct some type of independent investigation which
6 wasn't done in this case.

7 I'm also handing up a copy of U.S. versus Smith
8 which is a recent Fourth District case that just
9 emphasizes the fact that sentencing is a critical stage
10 and a defendant is entitled to effective assistance of
11 counsel at sentencing.

12 And finally I'll be handing up three cases,
13 Rolan versus State, Jordan versus State, and Thompson
14 versus State that deal with the withdrawal of a guilty
15 plea and finding counsel ineffective when they do not
16 withdraw a guilty plea.

17 And those are the cases that I'll be handing up
18 to the State (sic) on my client's behalf. And if this
19 Court has any questions of me, I'd be happy to answer
20 those.

21 THE COURT: All right. Thank you.

22 Anything from the State?

23 MR. LEE: Your Honor, by and large the State
24 will rest on the record.

25 The State would submit that the record will show

1 that the applicant's guilty plea was freely and
2 voluntarily entered and that counsel's representation,
3 including his multiple meetings with the applicant, his
4 engaging in plea negotiations on the applicant's behalf,
5 and his reviewing things like the discovery, et cetera,
6 with the applicant constituted effective assistance.

7 Specifically with reference to applicant
8 attorney's reference to Lounds V State in terms of there
9 needing to be an independent investigation done for
10 effective assistance of counsel, the State would submit
11 that case law in this state reflects that filing a Rule 5
12 Brady discovery motion and reviewing that discovery,
13 reviewing the State's evidence in the case actually
14 constitutes independent investigation sufficient for
15 effective assistance of counsel. I don't have a cite for
16 that.

17 However, by and large again, the State would
18 submit that we will just rest on the record.

19 Thank you.

20 THE COURT: Is there information in the record
21 about Mr. McKune supplying the weapons? Is there anything
22 in this record?

23 MS. BLANCHETTE: Your Honor, as far as the
24 record in front of you, I believe the State submitted that
25 at the sentencing hearing, and that is all that I would

1 have to go off of. And that would be page two and three
2 of the sentencing hearing.

3 THE COURT: They didn't take pictures of the
4 back door? You can't tell from the pictures whether it
5 was kicked in or not, or you all don't know?

6 MS. BLANCHETTE: Your Honor, I wasn't provided
7 those pictures as any part of discovery in this case.

8 MR. LEE: I certainly haven't seen any pictures.

9 THE COURT: You haven't seen pictures either?

10 MR. LEE: No, sir.

11 THE COURT: All right. I will review this
12 record and notify you of my decision in writing.

13 As you all have gathered by my questions,
14 there's something gnawing at me because I just seem to
15 have heard this before. And I don't know in what capacity
16 I would have heard it, but it sounds awfully familiar. I
17 can't find anything on the computer so far that indicates
18 that I had any involvement in the case.

19 That letter that was entered as an exhibit, I
20 may be able to find something. They've changed out our
21 software since then, they may have changed our computer
22 since then, I can't recall the exact dates, but the
23 information that would have been on my computer at that
24 time, nothing's showing up on the hard drive right now.
25 That doesn't necessarily mean I wouldn't have it on a DVD

1 somewhere if I had responded to that letter.

2 That letter came in apparently, if it was mailed
3 at the time it was sent, it came in at or around the time
4 that I always take a week off for vacation. It came at a
5 time when I was not the chief judge either of civil or
6 criminal. And while my better practice and the practice I
7 try to adhere is to make some sort of response to the
8 letters I get, we get so many of them that when something
9 comes in that I really didn't have any role to play, what
10 I would generally do if I did not have time to draft a
11 letter back or some sort of transmittal memo, I would just
12 leave it at the office of the chief judge. Judge McMahon
13 was the chief judge of criminal and, of course, it was
14 mentioned in the letterhead that he had something under
15 advisement, I believe, related to this on the
16 reconsideration.

17 Also, Judge Johnson, who is also now deceased,
18 was the chief judge of civil.

19 What I sometimes would do when things were
20 hectic is I would just take it to those offices -- Judge
21 McMahon's is right back here, Judge Johnson's was around
22 that corner -- and just tell them I got this in and it's
23 something you need to deal with.

24 I can't say for sure what happened on that
25 letter. I don't ever remember seeing it, but that doesn't

1 mean I didn't get it.

2 But what I am troubled by is the fact that all
3 this seems so familiar. And I don't know if I had
4 involvement in this in some capacity, if that would
5 require me to recuse myself on the case.

6 Now, as a housekeeping matter, and I'll throw
7 this out there, I did not realize Mr. Swarat was involved
8 in this case.

9 As you all know, we have these social profiles,
10 social networking sites now on the Internet. And the rule
11 that exists in South Carolina at the current time is that
12 a judge can be on a social networking site with an
13 attorney or investigator or law enforcement officer as
14 long as there's no discussion about the case, any case.

15 I'm on one of those social networking sites,
16 Mr. Swarat's also on one of those social networking sites.
17 Most of what I put on there is about football or sports,
18 but he is one of my Facebook friends. He and I certainly
19 have never talked about this or any other case.

20 I don't know the last time I saw him; it's
21 probably been years. There was a situation where a young
22 attorney was diagnosed with cancer and during that time
23 there were some obvious efforts by many of us to keep up
24 with his progress -- he's doing well now to what I
25 understand -- but I am going to disclose that to you all.

1 And if there's a problem with that and you want
2 me to recuse myself, you can't wait until after I rule
3 now, because I have no idea how I'm going to rule. I'm
4 disclosing it now. But if you all want me to step aside,
5 you let me know right away.

6 MS. BLANCHETTE: Your Honor, I have no objection
7 to that matter.

8 I did want to bring one thing to the Court's
9 attention. If it is determined that you have any
10 knowledge of the John Henry trial, I just wanted to bring
11 it to the Court's attention that I have not been provided
12 a copy of that transcript nor was it my understanding it
13 was included in the judge's packet. So if any knowledge
14 from that trial is going to be considered in this case, I
15 just ask that I be provided a copy and the opportunity to
16 respond.

17 THE COURT: I didn't -- Mr. Henry apparently was
18 sentenced by Judge Westbrook. That's what's showing up on
19 the computer is he was sentenced by Judge Westbrook. I
20 can't imagine that I would do the trial and he would do
21 the sentencing.

22 MS. BLANCHETTE: That's correct, Your Honor. I
23 just wanted to bring it to your attention that I didn't
24 have a copy of that transcript.

25 THE COURT: All right. Well, I was a little bit

1 curious as to what Mr. McKune testified to in that trial,
2 but the evidence that was presented in this hearing was
3 that he was consistent throughout, that he was only in the
4 vehicle.

5 All right. I will try to find the DVDs.
6 Hopefully if there was anything on there that I saved it
7 will show up and I will let you know if I find anything.
8 Otherwise, I will just go ahead and review this record and
9 make the best ruling I can.

10 Thanks very much.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (The proceedings were concluded.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
15
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1
2
3
4 CERTIFICATE OF REPORTER5 STATE OF SOUTH CAROLINA)
6)
7)8 COUNTY OF LEXINGTON)
9)
10)

11 I, CAROL M. THUEME, RPR, Official Court Reporter for
12 the 11th Judicial Circuit of the State of South Carolina,
13 do hereby certify that the foregoing is a true, accurate
14 and complete Transcript of Record of the proceedings had
15 and evidence introduced in the trial of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Lexington County, South Carolina, on the 29th day of
18 November, 2010.

19 I do further certify that I am neither of kin,
20 counsel nor interest to any party hereto.
21

22
23 October 10, 201124
25 

CAROL M. THUEME, RPR
Circuit Court Reporter

Sheriff

James R. Metts, Ed. D.



LEXINGTON COUNTY SHERIFF'S DEPARTMENT

June 3, 2008

Whelthy McKune, #299717
BRCI Murray #192
4460 Broad River Road
Columbia, South Carolina 29210

Re: Freedom of Information Request

Dear Mr. McKune:

I am in receipt of your Freedom of Information request and your personal money order for seventy three and no/100 dollars made payable to James R. Metts for the retrieval of documents. We have undertaken a diligent search for the sign-in logs for when your attorney visited you at the detention center and the temporary release sheets reflecting when you were transported outside the detention center. Please find enclosed copies of sign-in logs and temporary release sheets provided by Captain O'Neill, Lexington County Detention Center. Captain O'Neill was unable to locate the July 2003 temporary release sheets. Should further questions arise, please do not hesitate to write me at the address below.

Best regards,

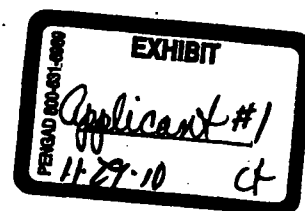
John W. Tate /kal

John W. Tate
General Counsel

/kal
enclosures



A Nationally Accredited Law Enforcement Agency
P.O. Box 639 Lexington, South Carolina 29071 (803) 785-8230, Fax # (803) 785-1162



2003

SIGN - IN LOGS

DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
8/8	1:15		Jin Gu		Per 1020
8/8	1:15		Sergio Perez		Per 1020
8/8	1:10		Rusty Rantz		Walter Rantz
8/8	2:20		Darryl		Michael
8/8	2:00	4:00	Anne Zmogh	957-6878	Leah
8/8	2:25		Indigo Maxwell		FINGER PRINTING
8/8	14:45		D. M. Pherson		Don't
8/8	2:45		C. Littlejohn		Spencer Gooden
8/8					
8/8	3:00		D. Thompson		
8/8	3:35		Allen Swensid	765-5070	De Carvalho
8/8	4:34		Alex Moron	843-712-7450	Chris Moron - Union
8/8	4:50	5:00	Steve Velez	357-1570	John Henry
			Jennie Pumphrey	905-7...	
8/8	7:09		KRISTIN P SNIDER	703 969 4786	KYLE VOGUE MOM
8/8	7:10		Fredrick Jones	435-0525	Fredrick Jones
8/8			~~Kristin P Snider~~		
8-10	8:15		Glorie Steele	356-2506	Wanda B. Steele
8-11	8:55		Cari Kammel	330-206-7444	Finger Printing
8-11	9:00		Eric Johnson		DIEC
8-11	9:00		Wanda B. Steele		Finger Printing
8-11	9:35		Linda Black		finger printing

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DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
8/20	3:15	4:15	JAMES MCKINNEY	843-662-3155	FLUIN BILLOTT - Att'y
"	"	4:15	"	"	ORIAN Keith - Att'y
"	"	4:15	"	"	JOHNNY DAVIS - Att'y
8/20	3:15	3:45	Lisa Williams	957-223	Prison
8/20	4P	4:45P	Anderson LSS	957-733	Alan Smalls
8/20	4:10	4:35	BOETTTS		Justin
8/20			Williams	957-873	Land
8/20	4:00	5:00	CBS Littlejohn	747-155	Spices W. McCune
8/20	7:30	9:00	Lionel Littlejohn	747-7276	Keith Anderson
8/21	9:45	9:15	Harrison Sanders/Swartz	765-2626	Swartz / Legal
8/21	9		WATSON		with visit
8/21	9:50	11	WALLIS AIVES		Attorney
8/21					
8/21			JERRY SCREE	252-787	Garry Nelson
8/21	10:55		Catering Kadern		Att'y
8/21	11:00	11:30	Jim Mason / Att'y	252-3063	Keith Anderson / Legal
8/21	11		Paul Brown	397-4615	Keith
8/21/03	1:30	3:15	Bill Reer	339-3914	Chaplain
8/21/03	1:30	1:38	Rene Shanks		Paul Coreton
8/21/03	1:35		W. Hardy	359-455	Robert X. Chapin
8/21/03	1:35	2:00	Ther Williams	355-1550	Stevie Dase
8/21	1:40	3:00	Rh White	253-3509	Luckett interview

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DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
10/22	2:15		J. Screen	252-757	Shirley Nelson Removal of Green
9/22	3:40		James C. D'Soffe	957-8873	Rodrigo Castillo Antonio Martinez
9/22	4:10		CRB Littlejohn	799-1668	W. McKee, A. Gordon
9/22	4:25	5:05	Lawrence Green	939-0800	John Green
9/22	9:10				
9/22	7:40	9:20	Jennifer Wolk	936-607	Tracy Smith
9/23	9:10	9:50	D. BOTT		THES
9/23	9:10		Langdon Long	765-5070	Richard Dublin
	10-		Maria Reese		Public Def Agency
9/23	1:25	3:40	Fred Kevor		Chaplain Vis
9/23	1:30	2:30	Bill Reed	359-3410	Chaplain
9/23	1:45	3:00	Wade Harrill		Marken Dyer
9/23	1:45	1:45	Jim Mingo Jr	739-8000	SMH - SCMH
	1:50		Maria Reese		PD office
9/23	2:10	2:20	Andrew Peters		Chris Lach
9/23	2:20	2:45	A. Neal Mitty	683-3917	T. BAW
9/23	2:10		James J. Farnham		Wesley Davis
9/23					James J. Farnham
9/23					James J. Farnham
9/24	9:30	11:45	Paul Henry Alexander	957-8873	A. Williams, F. Dora
9/24	9:40	10:40	Elizabeth Harris	359-4137	Weyman Post
9/24	9:43	9:55	James J. Farnham	565-58054	
9:50			Jennifer Williams	556-6743	Finger-print card

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DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
1/5	10:18	10:30	Jack Sullivan	265-2626	Harrison Miller
1/5	10:35		Brad Kirkman	957-8873	
1/5	11:16	11:40	Bill Nelles	777-9766	Norma Stoney
1/5	11:16		John Delgado	254-7764	Norma Stoney
1/5	11:50		Pang Crowell		
1/5	2:40	3:40	Ben Salley / USIO	257-7764	Andrew Lewis II
1/5	2:10	~~2:40~~	Lowell Bernsten	799-7900	
1/5	2:45	4:35	~~Edin Bergho~~ Carl Asquith	256-0500	Carl Asquith
1/5	2:55	5:00	Mike Decker	256-4000	Tamasha Beckley / Gore
1/5	3:00	3:20	Michelle Whitlock	359-2551	Serve 2 warrants & notice of hearing
1/5	3:35	4:05	TIM SHEALY	794-0456	CLEARFUCH
1-5					
1-5	4:18		Bill Nelles	777-9766	Paul A. Huxley
1-5	4:20	4:30	Pete Star	252-4800	Chris Smith
1-5	4:20	4:30	Tammy Scott		
1-5	4:30		COZ Littlejohn		W. McKinnon
			Marie Reese	957-8873	PD Interviews
1/6	10:15	10:30	Harrison Sanders	765-2426	Puka Powers / Legal
1/6	10:15	12:00	Scott Hays / Lexipol	957-8873	W. J. HAYES, J. SENN, L. THOMPSON, & WARRIS
1/6	11:38	4PM	John Reed	216-0117	3rd floor
1-6	1:50	1:55	Arnold Evans	957-3881	Wing Ct
1-6	11:58	1:45	W. J. Hays	957-3881	Wing Ct

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DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
1-6-04	2:10		Jan Hopkins	714-557	Fingerprinting
1-6-04	2:53		Jeff Johnson	957-3274	"
1-6-04	3:20	4:10	B. L. G. L.	457-8873	
1/6	4:00	4:30	CBS Little Sun		G. Green
1/7	9:00		Landon Long	765-5070	Keat Wingate
1/7	10:05		Jennifer Bachman	794-1651	fingerprinting
1/7	10:00	10:45	Linda Townsend	354-0888	F-POD (w/med)
1/7	10:10	10:50	Pastor A. Anderson	532-9933	Patterson with arms
1/7	10:10	11:45	Amber Smith	957-8773	PD
			William Keise		PD (w/med)
1/7	10:45	11:45	Robert Kiera		William Marshall
1-7	10:45		Kathy Smith	765-5070	O'Hood, Brown
1-7	10:45	10:55	Ryan Smith	772-4615	Beverly Smith
1-7	10:45	10:45	LEO Smith	772-4015	LEO Smith
1/7	11:20	12:10	CBS Little Sun		W. W. K. L.
1/7	11:55	12:10	Jay Smith	843-393	F. Quattletan
	1:40	2:40	Tracy C. Kell	555-5573	Paul H. Det
	1:50		Thayne Rushing	254-8052	Allen Brent Robinson
1/7	2:10		Daniel Pinkins	204-9007	John Perkins
1-7	2:53	3:20	Joe Villan	358-1570	Tisha Henry
1-7	2:45		R. H. K.		ad 17.

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DATE	TIME IN	TIME OUT	NAME/COMPANY REPRESENTING	PHONE #	INMATE'S NAME / PURPOSE OF VISIT
	15:10		GARFIELD STUART		Legal
1/7	3:45	4:15	BOND / SARKIAND	951-5513	Legal
1/7	4:08	4:25	Michelle Lapeland	786-4156	Legal
1/7	4:20		Allen Burnside	765-5070	K. Watts
1/7	8:10	9:00	John Brwiller	252-553	Tracy Bennett / Atty
1/8	8:25	8:55	DWAYNE PLYER		SERVICE
1/8	8:40	9:05	Steve Smith	252-4806	Atty. Selig
1/8	8:25	12:05	LEE DAVEN	276-8820	Newberry, D. Hines
1/8	9:18	1:40	TEXCHINE INC MIKE FRID	800-768-8205	Handy Bpaul
1/8	9:30	10:15	CO3 Littlejohn		W. McKenna
1/8	10:30	11:00	B. H. H. H.	799-5117	W. H. H.
1/8			ATTORNEY / LAWYER S. H. H. H.		THOMAS, BATES, H. H. H.
1/8	1:40	2:30	JO R. H. H.	216-6117	POA A. D. H. H.
1/8	2:30				
1/8	3:50	4:30	Joe McCulloch	779-0005	Donny Puchert
1/9	9:35	12:05	Lee Connolly	331-F108	S. Adams, P. Chittell
1/9	9:40				T. Leggett, H. G. H. H.
1/9	9:42	12:00	Carl Scott	771-0984	Legal
1/9	9:50		Jerry W. Peace	(864) 942-8823	Legal
1/9	9:55		DEMETRI G. ANDERSON	804 942-8822	LEGAL
1/9	1:30	2:00	Robert Harte	813 648-0853	Legal
1/9	1:35		John Harte	864 011-0000	Legal

TEMPORARY RELEASE FORM

ST-1

B

187

TEMPORARY RELEASE FORM

09-18-03

SHIFT

A

HE. OUT	DESTINATION & PRISONERS' NAME	OFFICER'S SIGNATURE	TIME RETURNED
9-17-03	1018 Newberry County Ruff C. pod E	<i>[Signature]</i>	1333
0550	Smith, Jerron 1st	<i>[Signature]</i>	~~1609~~
0550	Inabinet, Jacqueline pod f	<i>[Signature]</i>	~~1130~~
0836	Caine II, Daniel M.	<i>[Signature]</i>	~~1130~~
0836	Miranda, Sammie	<i>[Signature]</i>	~~1130~~
0836	Santos, Guillermo	<i>[Signature]</i>	~~1130~~
0915	TAYLOR, ROBERT JOSEPH	<i>[Signature]</i>	~~1113~~
11	Prosser - MICHAEL	<i>[Signature]</i>	~~1500~~
11:35	COPPIN KEVIN A - USMS	<i>[Signature]</i>	~~1500~~
12:26	RESE, CURTIS - USMS	<i>[Signature]</i>	~~1500~~
11	MURPHY, KENNETH - USMS	<i>[Signature]</i>	~~1500~~
50	GSC Adams, Sherman	<i>[Signature]</i>	~~1500~~
324	Snodley Glover, Anthony	<i>[Signature]</i>	1501
335	GIBSON JARVIS LCSD	<i>[Signature]</i>	1355
410	LCSD MORRIS T	<i>[Signature]</i>	1425
410	GSC Watson, Isaac	<i>[Signature]</i>	1735
410	GSC McKee, Whitney	<i>[Signature]</i>	1735
410	GSC Gadd, Stephanie	<i>[Signature]</i>	1705

TEMPORARY RELEASE FORM

1/12/04

SHIFT A

TIME OUT	DESTINATION & BUSINERS' NAME	OFFICER'S SIGNATURE	TIME RELEASED
0815	GSC WHELTLY MCKUNE	Conry Jan	1010
0945	URS-APT. Murphy, Bobby	M. J. J. J.	1155
0925	GSC HENRY, JOHN	Conry Jan	12:10 (M/A)
1040	GSC HARRIS, KENNY	Conry Jan	1330
	McLINTON, TERRANCE		↓
	ALSTON, KASIAN		↓
	LEE, MARTIN		1125
	WARD, MATTHEW		1125
10:30	Lex 50 Richard Dublin	Markel Stauden, FBI	1430
1110	GSC GLEATON, KATHLEEN	Conry Jan	1330
	WILLIAMS PATRICIA		↓
1213	Coln City Harris, Angela	Paul D. B. B.	0360
1400	GSC DAVENPORT, RICHARD	Conry Jan	1720
	JENKINS, WILLIAM		1720
	GEIGER, JOHN		1720
	CRAYER, ROBERT		1720
	ADAMS, SHERICK		1455
	GLEATON, KATHLEEN		1720
	WILLIAMS, PATRICIA		1720
1425	BROWN, REGINALD	Conry Jan	1720
	WYATT, JERRY		1720
1455	DUBEA, JANET	Conry Jan	1720
1510	CANCERS Wilson Marcus	x. L. H. B.	1635
1520	EC PUCKETT, DANNY JOE	Conry Jan	1610
1630	Newberry	Walker, Linda	
		Davis, Linda	

15 JAN 04

SIFT

B

IN OUT	DESTINATION & PRISONERS NAME	OFFICER'S SIGNATURE	TIME RELEASED
0530	CAYCE EPD Brown, Trevor	Anderson	1600
	FPOD meetze, Jennifer		
	EPD Moore, Patrick		
	APD Johnson, Opit		
0810	GS 1ST HENRY, John	Farr	
0810	WCPD CPD Leggett, Jessie	Phelps	11:30
0815	GS 3RD McKune, Wally	Levens	0915
0815	RCBD Robinson, Allen	Patty Wood	1310
0920	Dist 4 REVEREND - MELVIN	SCORCE	1025
0834	Dist 4 Kelly, Jimmy B	Land	1025
0900	Dist 4 Campbell, Angela M	Smith, a 117	1105
0915	Dist. 2 ^{rel} Green, William	W.D. Ly	1110
120	GSB BARR, Daryl	Cory Jan	1240
	BLACK, BERNARD		
	FRIDAY, JOHN		
	HALL, Tom		
	AVANTS, OWEN	Cory Jan	1515
30	Cooper Graddock, Thomas		
15	GSB McKune, Wally	Cory Jan	1515
5	CPD Mabee, Wayne	X R. J. Connors	1520
2	GS APD McCoy, QUINCY	FARR	1700 C-far

2-9-04

SIFT

A

ME OUT	DESTINATION & PRISONERS' NAME	OFFICER'S SIGNATURE	TIME RELEASED
1500	Duane Mack, Fred Munoz, Jose Guzman, Garcia Garcia, Fernando Coclaugh, LaTray London, Robert Reese, Curtis Barnett, Robert	[Signature]	1500
1000	GSC BRANON, KEITH JR	[Signature]	1245
1000	LCSD GAGNON, RICK	Kevin Wilson	1045
1325	Adams (Russell Duntzler)	Dr. Nummors	1450
1355	FC BROOKS, PEARA MCWILLIAMS, JUSTIN SMITH, OMA CROSBY, WILLIAM MOLSON, BARRY WILLIAM, DARREN MCKUNE, WHEATAY WADSWELL, PAUL SMITH, TRAVIS THOMPSON, JOHN GREEN, GEORGE	[Signature]	1500 1745 1630 1745 1745 1630 1630 1630 1745 1745 1630
1608	LCSD Sharpe, Kenneth	Lee C Marshall Jr	1630

McD Press

Cameron B. Littlejohn, Jr.

Attorney at Law
1720 Main Street
Suite 202
Columbia, SC 29201

Telephone
(803) 799-1888

Fax
(803) 799-5888

September 16, 2004

Whelthy McKune, #299717
Lee CI Sumter N. 1240
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Whelthy:

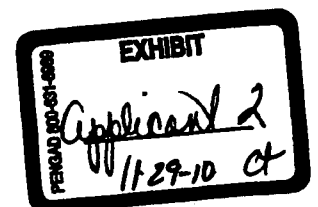
I hope that this letter finds you in the best of health. I received your letter on yesterday requesting a copy of your indictments. Unfortunately, for whatever reason, we were not given a copy of your indictments. I called the Clerk of Court in Lexington County to request a copy for you. I was told that someone would have to come to the Clerk's Office and pay a fee of around \$3.00 to receive the copies. I called your mom and left this information on her answering machine. I will double check to make sure that she received the message. Hopefully she will be able to get the copies for you. If not, please let me know and I will try and make arrangements to go to Lexington to receive the indictments.

Let me know if you are in need of anything else. Stay encouraged. As you know faith works and prayer unlocks many doors. Things are definitely looking up for you. You, your mom and your family are in my prayers.

Sincerely,

Constance L. Jennings
Legal Assistant

CLJ:



I am [REDACTED] years of age, and I live at [REDACTED] 9

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

WITNESS:

EXHIBIT

Applicant 3

NGAO 800-881-0999

Y Esqueen Meritt
Signature of person giving voluntary statement.

Pg 2 of 2 pgs

after I heard the shot the taller
 guy ask Paul to come in the front
 room and Paul went after about
 5 second I heard gun shots about 6 or
 7 times and then I heard nothing else.
 I stayed in the room for about 3 min
 my sister Vickie call me and told me to
 come here I was so scared I waited
 about 3 min and then me and baby
 son in the room with them. And
 I saw I look back and seen Paul lying
 on the floor in the living room. We
 stayed still for a minute because we
 were scared and then my sister Vickie
 ran out the door to the neighbor house
 to call the Police. E.m

End of Statement

I have read this page, initialed corrections or changes, if any, and received a copy of this
 page. I certify that the facts contained herein are true and correct to the best of my know-
 ledge.

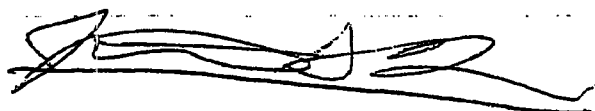
Esquerra Norrell
 Signature of person giving voluntary statement

Sworn to before me this ___ day of ___ 19__.

11/13/02

Notary Public of South Carolina

witness





VOLUNTARY STATEMENT

Victim / Witness

Case # 0287472

DOB [REDACTED] Sex [REDACTED] Home Phone # [REDACTED] Beeper Phone # [REDACTED] Location [REDACTED]
SS # [REDACTED] Race [REDACTED] Work Phone # [REDACTED] Other Phone # [REDACTED] Time [REDACTED]

Name of someone who will know how to reach you, should you ever move: [REDACTED] Home Phone # [REDACTED]
Where do they work? [REDACTED] Where do they live? [REDACTED] Work Phone # [REDACTED]

I, ESQUEEN MERRITT, am not under arrest, nor am I being detained for any criminal offenses concerning
the events I am about to make known to O. L. McINTOSH
Victim/Witness Name (First, Middle, Last) Deputy/Investigator Name

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am [REDACTED] years of age, and I live at [REDACTED] H
em Street Address City State Zip Code

I was at the hearing today on 11-15-02 and the guy Quincy McCoy was the guy that had held me (Esqueen Merritt) at gun point Wednesday night as I was getting ready to enter the car. He ask me where's Paul and I said in the house while still having the gun at me. He ask me to unlock the door. I was scared so I unlock the door and we went in the house and Quincy went straight in the room where Vickie and Paul were at. xE.M

END of STATEMENT

xE.M

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and received a copy of each page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this _____ day of _____, 20____

☐ Witness or ☐ Notary Public

Esqueen Merritt
Signature of person giving voluntary statement

VOLUNTARY STATEMENT
(Not Under Arrest)

I, Vickie Merritt, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to J. B. B. B.

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am years of age, and I live at

Me, my son & Paul were sitting on the bed when two guys came in. One in the bedroom the other standing in the ~~door~~ doorway. The tall guy said you the one that keep fucking with my nephew and ask for some money. Paul said he didn't have any money. The tall guy said I will shot your son. Then Paul got up and the tall guy shot him in the thigh. They then told Paul to get my pocketbook (purse) and lets go. They kept telling him to go in the living room. Once they got in the living room we heard six shots. After the shots things got quiet, but me, my sister, her son and my son and daughter stayed in the bedroom for 5 to 10 minutes to make sure they were gone. We came out the bedroom and seen Paul lying in the living room shot so I ran to the neighbor house and called the police.

I have read each page of this statement consisting of page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at this 13 day of November 2002.

WITNESS:

WITNESS:

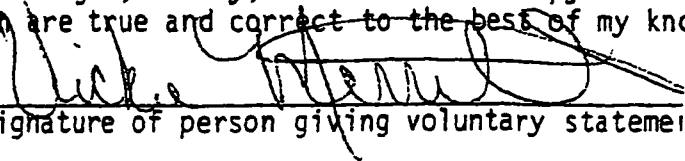
Vickie Merritt
Signature of person giving voluntary statement.

Pg 1 of 1 pgs

VM Last Saturday November 9, 2002. We were
 over Paul aunt Theodas house when Paul
 aunt Penny (Roberta Williams), Telly and Trel^{Keith} tie
 Telly got into an argument Penny told Paul
 is she ever see him over Aunt Christine Keith
 house she will shoot him. Trel and Telly pulled
 off. Paul told Lexington Co. that Telly had
 drugs in the car. Lexington Co followed Telly to
 Park North Apt. Paul went to Park North
 thats where Paul aunt Penny ~~and~~ VM Harvel Coleman
 and Telly had some words. Telly had been
 out of jail for about 6 mths. VM

Roberta Williams
 489-1664

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


 Signature of person giving voluntary statement

Sworn to before me this day of 19 .

Notary Public of South Carolina

DATE NOVEMBER 14th, 2002 PLACE LEXINGTON COUNTY SHERIFF'S DEPT. TIME STARTED 1140 A.M.

I, the undersigned, VICKI MERRITT, am [REDACTED] years of age, my date and place of birth being the [REDACTED] day of [REDACTED], 19[REDACTED] at [REDACTED]. My present address is [REDACTED].

Before answering any questions or making any statements, JONATHAN P. GABERT, a person who identified himself as a DETECTIVE (LEXINGTON COUNTY SHERIFF'S DEPT.),

DULY WARNED AND ADVISED ME:

1. That I have the right to remain silent and not make any statement at all.
2. That any statement I do make can be used against me in court.
3. That I have the right to have an attorney present at any time during questioning.
4. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
5. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT:

On November 13th, 2002 PAUL KEITH ARRIVED HOME AT APPROX. 1930HRS. WITH A HALF-FULL SANDWICH BAG CONTAINING APPROX. 1 OUNCE OF MARIJUANA. PAUL TOLD ME THAT SOMEONE HAD GIVEN HIM THE MARIJUANA AND THAT HE INTENDED ON SELLING IT TO HELP US OUT WITH THE BILLS. PAUL THEN GRABBED ADDITIONAL SANDWICH BAGS AND THREW THEM ON OUR BED BEFORE ASKING ME TO GO TO THE STORE AND BY A CIGAR SO WE COULD TEST THE MARIJUANA. I WAS TIRED SO I ASKED MY SISTER ESQUEEN MERRITT WHO LIVES WITH US IF SHE WOULD MIND GOING FOR ME. ESQUEEN THEN WALKED OUT OF THE HOUSE WHILE PAUL AND I REMAINED IN THE BEDROOM. APPROX. TWO MINUTES PASSED WHEN I NOTICED A RED BEAM OF LIGHT IN THE HALLWAY. THE TALLER DARKER SKIN GUY CAME INTO OUR ROOM AND SAID "YOU'RE THE ONE FUCKING W/ MY NEPHEW." HE THEN THREATENED TO KILL PAUL'S SIX (6) YEAR OLD SON TYJUAN STATING "IF YOU DON'T GIVE ME WHAT

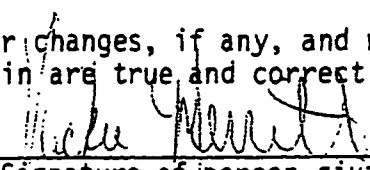
Witness Jonathan P. Gabert
Notary Public _____
My Commission expires _____

Xiluka Merritt
Person giving Statement
11-14-02
Date

Pg 2 of 3 pgs

I WANT THEN I'LL SHOOT YOUR SON.' PAUL IMMEDIATELY GOT UP OFF THE BED TO DEFEND HIS SON. THE SUSPECT THEN GRABBED MY PURSE FROM OFF THE DRESSER AND DUMPED THE CONTENTS ON THE FLOOR. THE TALL GUY GOT MAD BECAUSE THERE WAS NO MONEY. HE MUST HAVE SEEN MY CHECK CARD AND THEN SAID "WHERE'S IT AT? WHERE'S IT AT?" THE TALL GUY THEN SHOT PAUL IN HIS LEFT THIGH AND SAID "PECK IT UP, LET'S GO!" THEY BOTH KEPT TELLING PAUL, "LET'S GO!" OVER AND OVER. THE SHORTER LIGHT SKINNED GUY ASKED "DO YOU WANT ME TO KILL HIM?" PAUL LEFT THE ROOM W/ THE TWO MEN AND ENTERED THE LIVING ROOM AREA AND THAT IS WHEN WE HEARD MORE GUN SHOTS. I WAS STILL IN THE BEDROOM WITH TY'JUAN AND MY SISTER WAS IN TY'JUAN'S ROOM WITH HER SEVEN YEAR OLD SON CHARLESTON ISHMEAL MY DAUGHTER TYEKIA NERRITT (12YOA) WAS HIDING IN HER BEDROOM CLOSET BY HERSELF. IT GOT VERY QUIET SO I CALLED TYEKIA TO COME TO WHERE I WAS WHICH SHE DID. I THEN CALLED FOR FOR SISTER AND HER CHILD TO JOIN US WHICH THEY DID ALSO. WE WAITED FOR APPROX. 5 MINUTES BEFORE GOING INTO THE LIVING ROOM WHERE WE FOUND PAUL LAYING ON HIS RIGHT SIDE FACING TOWARDS OUR KITCHEN. MY DAUGHTER TYEKIA RAN TO PAUL AND HELD

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this ___ day of ___ 19__.

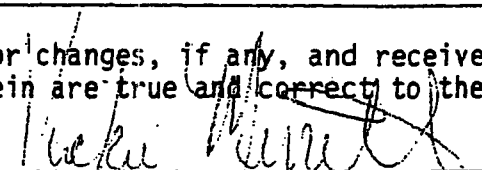
Notary Public of South Carolina

Pg 3 of 3 pgs

HIS HAND AS I WAS HEADING OUT THE FRONT DOOR TOWARDS A NEIGHBORS HOUSE FOLLOWED BY MY SISTER AND HER SON, I RAN TO MY NEIGHBOR TONYA'S HOUSE AND USED HER PHONE TO CALL 911. TYERIA ARRIVED A FEW MINUTES (APPROX 5) LATER. THE TALL GUY WAS DARK ~~SKIN~~ SKINNED AND APPROX. 6 FEET TALL AND 160-180 POUNDS. HE HAD ON A BLACK JACKET, BLACK SWEATER CAP, AND DARK JEANS WITH GOLD IN HIS MOUTH. HE WAS THE ONE THAT SHOT PAUL FIRST USING A SHORT BLACK GUN. THE SECOND GUY WAS MUCH SHORTER, WITH LIGHT COLORED SKIN, AND WAS WEARING CAMOUFLAGE. HE WAS CARRYING A LONGER BLACK GUN WITH A RED INFRARED SCOPE THAT HE APPARENTLY DROPPED ~~BE~~ BECAUSE IT WAS LYING NEXT TO PAUL. A NEIGHBOR TOLD ~~POLICE~~ POLICE THAT THEY SAW A DARK GRAY OR BLACK CAR WITH A FRESH PAINT JOB AND 20" RIMS (NO BASKETS) PARKED OFF KING BEAR TERRACE

I OPENLY ADMIT TO NOT TELLING THE TRUTH TO DETECTIVES ABOUT THE MARIJUANA OUT OF FEAR OF LOSING MY CHILDREN. I LIED TO LAW ENFORCEMENT OFFICIALS WHO WERE CONDUCTING AN INVESTIGATION INVOLVING THE DEATH OF PAUL KEITH.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.


Signature of person giving voluntary statement

Sworn to before me this ___ day of ___ 19___.

Notary Public of South Carolina



VOLUNTARY STATEMENT

Victim / Witness

Case # 0287472

DOB [REDACTED] Sex [REDACTED] Home Phone # [REDACTED] Beeper Phone # [REDACTED] Location [REDACTED]
SS # [REDACTED] Race [REDACTED] Work Phone # [REDACTED] Other Phone # [REDACTED] Time [REDACTED]

Name of someone who will know how to reach you, should you ever move: _____

Home Phone # _____

Where do they work? _____

Where do they live? _____

Work Phone # _____

I, Vickie Merritt, am not under arrest, nor am I being detained for any criminal offenses concerning

Victim/Witness Name (First, Middle, Last)

the events I am about to make known to O.C. McIntosh

Deputy/Investigator Name

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve.

I am [REDACTED] years of age, and I live at [REDACTED]

Street Address

City

State

Zip Code

I Vickie attended Bond Court and identify Quincy as the person in my bedroom. He threatened my son and shot Paul in the thigh. Then Quincy told Paul to pick up my purse and lets go. Quincy kept telling Paul lets go. At that time the other guy came in and ask Quincy do you want me to kill him. After that time they went in the living room and we heard gun shots.

END of STATEMENT

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and received a copy of each page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this _____ day of _____, 20____

☐ Witness or ☐ Notary Public

Vickie Merritt
Signature of person giving voluntary statement

My Commission expires _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INTERVIEW OF TERRY DERON HALTIWANGER

STATEMENT TAKEN ON November 16, 2002

STATEMENT PREPARED BY: Charlotte Avery, Secretary, L C S D

McIntosh: Terry Haltiwanger, I advise you of your Miranda Warnings. First one being that I have the right to remain silent and not make any statements at all. Do you understand I need you to circle it and put your initials beside it. That any statement I do make can be used against me in court. That I have the right to have an attorney present at any time during questioning. And to note Attorney John

Haltiwanger: Jimmie

McIntosh: Jimmie Rogers is present in the room. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

Haltiwanger: Okay.

McIntosh: Okay, this time Terry if you would ah start from the beginning. Tell me exactly what went on between you and your three co-defendants. Tell me ah how you met those three guys and we'll go from there.

Haltiwanger: Ah, I met the three, my three co-defendants through a guy named Kevin and ah we was at the house, at somebody's house over there off of Beltline and just talking and hanging out. It came up about Latrel telling me there was four pounds in Mr. Keith's house.

McIntosh: Now, did they bring the information about the drugs or did you bring information up about the drugs?

Haltiwanger: Ah, who, the guy?

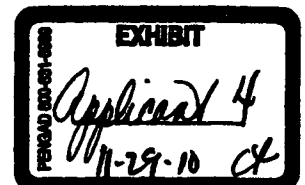
McIntosh: Yes.

Haltiwanger: Oh, I brought it up.

McIntosh: Okay. And at that point what happened?

Haltiwanger: Ah, they was like, they was like they was ready.

McIntosh: Okay. And at that point ah did y'all leave that house at Beltline to go to the location at Kingsberry?



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Personally appeared before me: Terry Deron Haltiwanger

Page - 2 -

Haltiwanger: Yes, Sir.

McIntosh: And who all went to Kingsberry?

Haltiwanger: Ah, me and three other co-defendants.

McIntosh: And ones, whose names you have at this point. What are their names? And how do you (inaudible) the names you know them by.

Haltiwanger: I know one by LJ and McCoy by McCoy. I mean I never knew his name

McIntosh: Okay.

Haltiwanger: Until now.

McIntosh: And the fourth individual?

Haltiwanger: The fourth individual I never, never even knew his name.

McIntosh: Okay. Whose car are you in going to Kingsberry?

Haltiwanger: I don't know. It was a dark colored Chevy with the big chrome rims. I don't know who exactly whose car it was.

McIntosh: Who was driving that car?

Haltiwanger: That's what I don't know about. I don't know the gentleman's name.

McIntosh: That's the individual whose name you do not know is the one that's driving.

Haltiwanger: The one that's driving.

McIntosh: Okay. You leave the house off of Beltline. You go to Kingsberry. Do you know exactly at that point where the house is on Kingsberry.

Haltiwanger: No.

McIntosh: How do you find out where the house is?

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Personally appeared before me: Terry Deron Haltiwanger

Page - 3 -

Haltiwanger: I called Latrel Keith.

McIntosh: And what did she tell you?

Haltiwanger: She told me exactly where the house was at.

McIntosh: Did she tell you the number or just exactly what house, or what did the house look like?

Haltiwanger: No, she described to me detail, detail by detail exactly how to get to the house.

McIntosh: Okay, now, when you get to the house, who gets out of the car?

Haltiwanger: LJ and McCoy.

McIntosh: They're the only two that get out of the car?

Haltiwanger: Yes, Sir.

McIntosh: When they get out of the car, who has weapons?

Haltiwanger: I don't know exactly who had what. But they went in. But LJ had a pistol when he came back.

McIntosh: Okay. Where did you go when those two got out of the car?

Haltiwanger: When they got out of the car?

McIntosh: Right.

Haltiwanger: I went back up to the apartments and me and the driver stepped outside the car and I sat on the hood of the car.

McIntosh: And you stayed in that area until the driver started back to look for these guys?

Haltiwanger: Yes.

McIntosh: Where did you y'all meet up with them again at?

Haltiwanger: At a stop sign.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Personally appeared before me: Terry Deron Haltiwanger

Page - 4 -

McIntosh: And when they got to that stop sign, who was there?

Haltiwanger: LJ and McCoy.

McIntosh: What condition was McCoy in when you got there?

Haltiwanger: He was shot.

McIntosh: Where was he shot?

Haltiwanger: Ah, in the leg.

McIntosh: Did he say how he got shot?

Haltiwanger: Ah no. Later on when we was leaving he ah, LJ explained that he shot him by mistake.

McIntosh: Okay. Now when these two guys that got out of the car, did you give them instructions on what to do when they got in the house?

Haltiwanger: No, Sir.

McIntosh: Did you tell them that there was drugs in the house?

Haltiwanger: Ah, I told them before that. I mean not once they got of the car.

McIntosh: So going over there they knew drugs were in the house?

Haltiwanger: Yes, Sir.

McIntosh: Okay. Did you tell them how much drugs you wanted out of that house?

Haltiwanger: No, Sir. I told them that ah Latrel Keith, my girlfriend, wanted half a pound.

McIntosh: A half of pound of

Haltiwanger: Marijuana.

McIntosh: Marijuana. Did you at any point tell them that you wanted Paul Keith in the hospital?

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Personally appeared before me:

Terry Deron Haltiwanger

Page - 5 -

Haltiwanger: No, Sir.

McIntosh: So you didn't have any instructions for them to hurt Paul Keith?

Haltiwanger: No, Sir.

McIntosh: When they got back to the car, what did they tell you occurred in that apartment house?

Haltiwanger: Ah, they said that they only got a couple sacks of reefer and that he, Mr. Keith, grabbed McCoy, a gun that McCoy had in his hand, which one I don't know and wouldn't let it go and McCoy started shooting and then LJ started shooting. They just said they had to kick out the back door. The back door was supposed to be nailed shut or something. And they kicked out the back door to get out.

McIntosh: At that point did they know how seriously injured Mr. Keith was?

Haltiwanger: No.

McIntosh: After leaving that area, where did y'all go?

Haltiwanger: Ah took me back to my car and ah

McIntosh: And your car was where?

Haltiwanger: At a house off Belkline.

McIntosh: And that's the same location where you met up with these guys?

Haltiwanger: That same location where I met them.

McIntosh: Okay. Do you have any idea where they went after that?

Haltiwanger: No, Sir.

McIntosh: Okay. Where did y'all drop, was McCoy dropped off before you were dropped off or after you were dropped off?

Haltiwanger: He was dropped before I, dropped off before I was dropped off.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Personally appeared before me: Terry Deron Haltiwanger

Page - 6 -

McIntosh: Where did you drop him off at?

Haltiwanger: Ah the driver let him out at the hospital.

McIntosh: Okay. About what time was that or do you recall?

Haltiwanger: I don't recall.

McIntosh: These guys that you ah met with and went to Kingsberry with, is there a relationship between you and them?

Haltiwanger: No, Sir.

McIntosh: So you had just met them the night that this incident occurred?

Haltiwanger: Well, ah when Latrel first told me about it, about the marijuana, um, I talked to LJ over the telephone.

McIntosh: Okay. How much do you know about LJ?

Haltiwanger: Nothing.

McIntosh: Okay. Is there any other additional information that you would like to give me at this point in reference this incident and everybody involved?

Haltiwanger: That Latrel Keith was the one who planned it that let us know that there was supposed to be four pounds of marijuana in the house Wednesday.

McIntosh: And she did this because of what?

Haltiwanger: Because he called the police on her selling drugs at the grandmother's funeral, not funeral but ah get together.

McIntosh: The day that his grandmother died. Okay, I believe that is, will conclude this interview at this time. Ah what I'm going to do at this moment is additional information. ah Terry. was this a plan to kill Paul Keith?

Haltiwanger: No, Sir. It was not a plan to kill Paul Keith.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Personally appeared before me: Terry Deron Haltiwanger

Page - 7-

McIntosh: This was basically the plan to do what?

Haltiwanger: To rob him of the marijuana.

McIntosh: Was there supposed to be any money in the house also?

Haltiwanger: Ah, Latrel stated that he probably has ah little cash in there.

McIntosh: And so, your intentions when you got these guys was that to take his drugs and money?

Haltiwanger: Ah, yes.

McIntosh: You didn't ask these guys to shoot Paul Keith in any manner?

Haltiwanger: No, Sir. I did not ask nobody to shoot ah I repeat it several times that there not be any gun, guns involved any way. And ah I know I asked (inaudible) to shoot nobody.

McIntosh: When they returned to the car, did they indicate it was an accident or what?

Haltiwanger: They indicated that ah that if they grabbed, one of them guns, grabbed McCoy gun and McCoy started shooting. And then that's when LJ said when he tried to pull, pull him off of McCoy, to get it so McCoy can keep his gun that he wouldn't let go. He kept coming towards him so he started shooting.

McIntosh: At this point, is there anything additional that you would like to add in reference to this incident on the night of November the 13th.

Haltiwanger: Ahm, no, Sir.

McIntosh: At this point this will conclude the interview with Terry Haltiwanger, with his attorney, Jimmie Rogers present. This is Detective Oscar McIntosh. Today's date is November 16th. It is now 1305 p.m.

**CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION**

CASE #: 0287472

OFFENSE: HOMICIDE

REGION: NORTH

VICTIM: PAUL KEITH

LOCATION: [REDACTED] WEST COLA, SC

DETECTIVE PRESENT: Y ☒ N ☐

DETECTIVE NAME: DET MACINTOSH

TIME CALL RECEIVED: 2008

TIME OF ARRIVAL: 2015

TIME DEPARTED: 0645.

LATENTS: Y ☐ N ☒

PHOTOGRAPHS: Y ☒ N ☐

TIRE/FOOTPRINTS: Y ☒ N ☐

SCENE DESCRIPTION: BRICK HOUSE

WEATHER CONDITIONS: CLEAR

POINT OF ENTRY: FRONT DOOR

HOW ENTRY MADE: KICKED IN

POINT OF EXIT: BACK DOOR

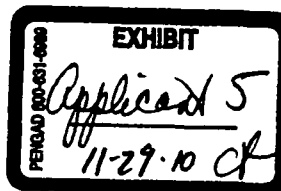
UNUSUAL CIRCUMSTANCE:

REMARKS: BLOOD IN LIVING ROOM WHERE VICTIM WAS FOUND

- * 9 SPENT ROUNDS AND 1 NONE SPENT ROUND FOUND
- * 22 CAL RIFLE BLACK PUT ON THE COUCH BY DEP BURNS FOUND NEXT AT THE VICTIM
- * BLACK CLIP FOUND BY THE LOVE SEAT WITH ROUNDS STILL IN THE CLIP
- * BULLET HOLE IN THE FRIG.
- * BULLET HOLE IN THE DOOR FRAME THAT COMES TO REST IN RED CHAIR
- * BACK DOOR KICKED IN WITH BLOOD TRAIL THAT LEADS OUT THE BACK DOOR AND ACROSS THE FENCE IN THE NEXT DOOR AND LEADS TO DOWNEY DR
- * BLOOD IN THE KITCHEN AREA
- * 22 CAL ROUND FOUND IN THE BACK BEDROOM WHERE THE VICTIM WAS SHOT FIRST IN THE LEG
- * ALL THE FOOT PRINTS IN THE LIVING ROOM ARE EMS CREWS
- * BLOOD SAMPLE TAKEN FROM KITCHEN FLOOR BY THE BACK DOOR
- * BLOOD SAMPLE TAKEN FROM THE FREG.
- * BLOOD SMAPLE TAKEN FROM THE FENCE OUT SIDE THE BACK DOOR WHERE SUSPECT JUMP THE FENCE
- * COLLECTED PART OF LEAD PROJECTILE FROM THE FREG.
- * USED AMINO. BLACK FOUND TWO PARTIAL FOOTPRINTS ON THE KITCHEN FLOOR\

CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: DET MACINTOSH
REPORTING OFFICER: CHRIS STOUT

TIME: 0645
DATE: 11-13-02



**CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION**

CASE #: 0287472

OFFENSE: HOMICIDE

REGION: NORTH

VICTIM: PAUL KEITH

LOCATION: [REDACTED] WEST COLA, SC

- * PHOTOS TAKEN OF THE FOOTPRINTS
- * COLLECTED TWO SAMPLES OF CARPET OUT OF THE LIVING ROOM FLOOR WITH FOOTPRINTS
- * BACK BEDROOM SEARCHED BY SGT FRIER, DET MACINTOSH, DET MOUNT AND DEP BURNS
- * RECOVERED ROUCHS AND SCALES
- * GSR DONE ON ESQUEEN MERRITT
- * ALL ITEMS NUMBERED AND PHOTOGRAPHED
- * COLLECTED BULLET FROM PANTRY (LEAD PROJECTILE)
- * COLLECTED BULLET FROM THE RED CHAIR (LEAD PROJECTILE)

CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: DET MACINTOSH
REPORTING OFFICER: CHRIS STOUT

TIME: 0645
DATE: 11/13/02

**CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION**

CASE #: 0287472

OFFENSE: HOMICIDE

REGION: NORTH

VICTIM: PAUL KEITH

LOCATION: [REDACTED] WEST COLA, SC

LIST OF EMS CREW MEMBERS THAT WENT INTO THE HOUSE

JASON HENTZ SHOE SIZE 10

MANDY ZEIGLER SHOE SIZE 7 MED.

DAVID SHULL SHOE SIZE 8 1/2 WIDE

OSHEA MORRIS SHOE SIZE 8 1/2

GARY SEIBERT JR SHOE SIZE 10 1/2

**CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: DET MACINTOSH
REPORTING OFFICER: CHRIS STOUT**

**TIME: 0645
DATE: 11/13/02**

**CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION**

CASE #: 0287472

OFFENSE: HOMICIDE

REGION: NORTH

VICTIM: PAUL KEITH

LOCATION: ~~442 E. COLUMBIA ST.~~ WEST COLA, SC

LIST OF ITEMS TAKEN FROM RESIDENCE :

ITEM # 1 .40 CAL SPENT ROUND FOUND BY THE TWO RUGS
ITEM # 2 .40 CAL SPENT ROUND FOUND IN THE CHAIR ON SOME COLTHS
ITEM # 3 BLACK CLIP WITH .22 CAL ROUNDS IN THE CLIP
ITEM # 4 .22 CAL ROUND FOUND AT THE CORNER OF THE RUG IN LIVING ROOM
ITEM # 5 .40 CAL SPENT ROUND FOUND NEXT TO THE COUCH BY THE FLOWERS
ITEM # 6 .40 CAL SPENT ROUND FOUND NEXT TO THE COUCH BY THE FLOWERS
ITEM # 7 .40 CAL SPENT ROUND FOUND NEXT TO THE COUCH BY THE FLOWERS
ITEM # 8 .40 CAL SPENT ROUND FOUND ON THE COUCH UNDER PILLOW
ITEM # 9 .40 CAL SPENT ROUND FOUND ON THE COUCH NEXT TO THE PILLOW
ITEM # 10 .22 CAL RIFLE FOUND ON THE COUCH
ITEM # 11 .40 CAL SPENT ROUND FOUND IN THE DOOR WAY INTO THE KITCHEN
ITEM # 12 1 DOLLAR BILL FOUND BY THE FRONT DOOR
ITEM # 13 RAZOR BLADE FOUND BY THE COUCH
ITEM # 14 .22 CAL SPENT ROUND FOUND IN THE LIVING ROOM NEAR VICTIM
ITEM # 15 .22 CAL SPENT ROUND FOUND IN THE BEDROOM
ITEM # 16 PLASTIC BAGS FOUND IN THE BEDROOM
ITEM # 17 GREEN ASH TRAY WITH MARIJUANA ROUCHS FOUND IN THE BEDROOM
ITEM # 18 CARPET SAMPLE FROM DOOR WAY OF THE KITCHEN
ITEM # 19 CARPET SAMPLE FRONT OF LOVE SEAT
ITEM # 20 LEAD PROJECTILE FROM FREG.
ITEM # 21 BLOOD SAMPLE FROM FENCE OUTSIDE THE BACK DOOR
ITEM # 22 BLOOD SAMPLE FROM KITCHEN AREA
ITEM # 23 BLOOD SAMPLE FROM FREG.
ITEM # 24 CLOROX JUG FOUND BY THE BACK DOOR WITH BLOOD ON IT
ITEM # 25 SCALES FOUND IN THE BEDROOM
ITEM # 26 CIGAR PAPER WITH MARIJUANA
ITEM # 27 MARIJUANA FOUND IN THE BEDROOM
ITEM # 28 RAZOR BLADES FOUND IN THE BEDROOM
ITEM # 29 RAUCHS FOUND IN THE GREEN ASH TRAY IN THE BEDROOM
ITEM # 30 PLANT MATERIAL FOUND IN THE BEDROOM
ITEM # 31 GSR ON ESQUEEN MERITT
ITEM # 32 VHS TAPE
ITEM # 33 PURPLE RUG FOUND IN THE LIVING ROOM
ITEM # 34 LEAD PROJECTILE FROM THE RED CHAIR
ITEM # 35 LEAD PROJECTILE FROM THE PANTRY AREA
ITEM # 36 BLOOD SAMPLE FROM THE ROAD
ITEM # 37 BLOOD SAMPLE FROM THE BUILDING OUTSIDE THE HOUSE
ITEM # 38 BLOOD SAMPLE FROM TRIGGER GUARD OF THE GUN
ITEM # 39 BLOOD SAMPLE FROM THE PISTOL GRIP OF THE GUN
ITEM # 40 BLOOD SAMPLE FROM THE BARREL OF THE THE GUN
ITEM # 41 19 .22 CAL ROUNDS TAKEN FROM ITEM # 3

CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: DET MACINTOSH
REPORTING OFFICER: CHRIS STOUT

TIME: 0645
DATE: 11/13/02

**CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION**

CASE #: 0287472

OFFENSE: HOMICIDE

REGION: NORTH

VICTIM: PAUL KEITH

LOCATION: [REDACTED] WEST COLA, SC

MEASUREMENTS OF ITEM REMOVED FROM THE RESIDENCE :

ITEM # 1 TO THE KITCHEN WALL 5'
ITEM # 1 TO THE BEDROOM WALL 5' 3"
ITEM # 2 TO THE KITCHEN WALL 1' 8"
ITEM # 2 TO THE BEDROOM WALL 5' 9"
ITEM # 3 TO THE KITCHEN WALL 8' 8"
ITEM # 3 TO THE BEDROOM WALL 7' 9"
ITEM # 4 TO THE KITCHEN WALL 3' 4"
ITEM # 4 TO THE BEDROOM WALL 7' 9"
ITEM # 5 TO THE KITCHEN WALL 6' 6"
ITEM # 5 TO THE BEDROOM WALL 12' 1"
ITEM # 6 TO THE KITCHEN WALL 8' 11"
ITEM # 6 TO THE BEDROOM WALL 12' 8"
ITEM # 7 TO THE KITCHEN WALL 8' 2"
ITEM # 7 TO THE BEDROOM WALL 13' 1"
ITEM # 8 TO THE KITCHEN WALL 8' 1"
ITEM # 8 TO THE BEDROOM WALL 14' 7"
ITEM # 9 TO THE KITCHEN WALL 4' 10"
ITEM # 9 TO THE BEDROOM WALL 14' 5"
ITEM # 10 TO THE KITCHEN WALL 3' 10"
ITEM # 10 TO THE BEDROOM WALL 14' 4"
ITEM # 11 TO THE KITCHEN DOORWAY 7'
ITEM # 11 TO THE RIGHT SIDE OF DOORWAY 6'
ITEM # 12 TO THE KITCHEN WALL 8' 2"
ITEM # 12 TO THE BEDROOM WALL 4' 10"

CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: DET MACINTOSH
REPORTING OFFICER: CHRIS STOUT

TIME: 0645
DATE: 11/13/02

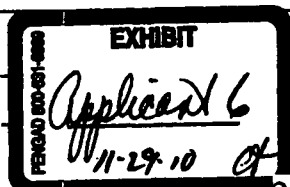
DATE 11/15/02 PLACE Richland Co. S.O TIME STARTED 0112 A.M.I, the undersigned, Quincy Marquett McCoy am years of age, my date and place of birth being the day of , 19 , at .My present address is .Before answering any questions or making any statements, O.L. McIntosh, a person who identified himself as a INVESTIGATOR,

DULY WARNED AND ADVISED ME:

- ① That I have the right to remain silent and not make any statement at all.
- ② That any statement I do make can be used against me in court.
- ③ That I have the right to have an attorney present at any time during questioning.
- ④ That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
- ⑤ That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT: High School Grad.

L.J. + Kutino picked me up along with the person who set it up
I do not know his name. we left to go to Lexington we
got in front at the destination and I froze up and refused to
leave the car then at that time Kutino put the gun to
my head and said "Oh yeah your motherfucker ass going to get this money
So at that time I got out the car along with L.J. + Kutino
Kutino went to the back me + L.J. went to the front at this
time a female came outside so L.J. put the gun to her face and said
"take us where it is I am still frozen stiff out of fear on
the side of the house + L.J. screams bring your ass on so
I came in the front door Kutino kicked down the back
door and raced up the hallway to where ^{*room} L.J. was. I
was still in the living room scared so Kutino screamed
go and check the closet I refused and tried to run out
the house thats when L.J. shot me in my leg and I fell.

Witness Notary Public My Commission expires 

* Quincy McCoy
 Person giving Statement
11/15/2002
 Date

Pg 2 of 2 pgs

out of the back door ~~to~~ was trying to run to any car to help but I ran in to L.J. Martino and the other guy in the car. He grabbed me threw me in the back seat and proceeded toward Richland County. I begged to go to the hospital he told me "No with your bite ass" at first the the guy who set it up told them to let me out at the hot spot so I walked from the hot spot to Richland Memorial ~~Hospital~~ ~~Hospital~~. Once I got released from the hospital I went to my aunts house in Bayberry News with my girlfriend ^{where} ~~there~~. The police picked me up from and my friend named Tara picked me up from the hospital and took me there.

END of STATEMENT

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

[Signature]

Signature of person giving voluntary statement

Sworn to before me this ___ day of ___ 19__.

Notary Public of South Carolina

INVESTIGATIVE REPORT

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of 1 PAGE

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: KEITH - DAWSON

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME:

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$

CANCEL NCIC ENTRY: YES NO

ON 11-13-02 AT APPROX 2231 HRS R/O RESPONDED TO

REFERENCE A SHOOTING INCIDENT WITH ONE PERSON DOWN. UPON ARRIVAL OF R/O, DEP BURKIS (WHO WAS FIRST ON SCENE), DEP LEWIS + DEP TRIANO. A B/M (VICTIM) WAS OBSERVED LYING FACE DOWN, UNCONCIOUS AND BREATHING, COVERED IN BLOOD IN THE LIVING ROOM OF T/H. R/O AND RE-MENTIONED PERSONNEL DID A PROTECTIVE SWEEP OF THE RESIDENCE AND DETERMINED THERE WERE NO OTHER PERSONS INSIDE. SCENE WAS SECURED FOR F.M.S. PERSONNEL WHO LATER ARRIVED ON SCENE + TRANSPORTED VICTIM TO RICHARD MEMORIAL. R/O THEN ASSISTED IN PERIMETER OF AREA FOR POSSIBLE SUSPS AND SECURING OF EVIDENCE ON DAWSON DR (BLOODY FOOTPRINTS).

EXHIBIT

Applicant 7
11-29-10

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☐ NO ☐YES ☐ NO ☐☐ ACTIVE☐ ARRESTED UNDER 18☐ EX-CLEAR UNDER 18☐ UNFOUNDED☐ ARRESTED 18 AND OVER☐ EX-CLEAR 18 AND OVER☐ ADMNST.
CLOSEDREASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

WEEK - FT

11-14-02

251

[Signature]

11-14-02

251

AGENCY I.D.
SCO320000LEWISTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORTCASE NUMBER
0287472☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of 2 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME. KEITH, PAUL

DATE OF BIRTH: [REDACTED]

STREET ADDRESS: [REDACTED]

RACE: [REDACTED]

SEX: [REDACTED]

CITY - STATE - ZIP: WEST COLUMBIA, SC 29169

INCIDENT TYPE: HOMICIDE

AGE: [REDACTED]

ORIGINAL SUSPECT:

NAME:

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$ _____

CANCEL NCIC ENTRY: YES _____ NO _____

ON 11-13-02 AT APPROX 2045 HOURS, I/O RESPONDED TO [REDACTED] IN REFERENCE TO A SHOOTING INCIDENT INVOLVING PAUL KEITH. WHILE ON SCENE, I/O SPOKE TO ESQUEEN MERRITT, ALSO A RESIDENT AT I/L, WHO WAS PRESENT DURING THE INCIDENT. SHE ADVISED THAT SHE WAS LEAVING THE I/L TO GO TO THE STORE, WHEN TWO BLACK MALES WHO SHE DID NOT KNOW APPROACHED HER FROM THE RIGHT SIDE OF THE HOUSE. THE TWO MALES POINTED GUNS AT HER AND ONE OF THEM ASKED WHERE PAUL WAS. SHE REPLIED THAT HE WAS IN THE HOUSE AND THEY TOLD HER TO LET THEM IN. AS ESQUEEN UNLOCKED THE DOOR, THE TWO MALES BRUSHED PAST HER AND WENT STRAIGHT TO PAUL AND HER SISTER VICKY'S BEDROOM. ESQUEEN COULD HEAR THE TALLER OF THE TWO MALES ASKING PAUL "WHERE IS IT AT?". PAUL WAS REPLYING, "I AIN'T GOT NOTHING". THE EXCHANGE WENT ON FOR A FEW MINUTES. THE SHORTER OF THE TWO MALES STOOD IN THE DOORWAY OF THE BEDROOM WHERE ESQUEEN HUDDLED WITH HER 8 YOA SON. ESQUEEN HEARD A SHOT AND HEARD THE TALLER MALE TELL PAUL TO GO TO THE FRONT OF THE HOUSE. SHE THEN SAW PAUL GO LIMPING DOWN THE HALL. BOTH OF THE MEN WENT TO THE FRONT OF THE HOUSE WITH PAUL WHILE SHE STAYED IN HER SON'S BEDROOM. ESQUEEN HEARD THE SOUNDS OF A STRUGGLE AND ABOUT 6 OR 7 GUNSHOTS. AFTER THAT SHE HEARD NOTHING, AND WAS AFRAID TO GO AND CHECK ON THINGS. VICKY BEGAN TO CALL TO HER FROM THE OTHER BEDROOM AND TELL HER TO COME IN THERE WITH HER. AFTER A FEW MINUTES, ESQUEEN TOOK HER SON AND WENT INTO THE BEDROOM WITH VICKY. SHE LOOKED DOWN THE HALL AS SHE WENT AND SAW PAUL LYING ON THE LIVING ROOM FLOOR AND NOT MOVING. SHE COULD ALSO SEE BLOOD ON THE FLOOR. ESQUEEN AND VICKY STAYED IN THE BEDROOM AND AFTER A FEW MINUTES, VICKY WENT OUT TO CHECK ON PAUL. SHORTLY AFTER, VICKY AND ESQUEEN WENT TO A NEIGHBOR'S HOUSE TO TELEPHONE FOR HELP. SHE SAID THAT AS THEY WERE EXITING SHE COULD HEAR THAT PAUL'S BREATHING WAS HEAVY AND LABORED.

SEP. 16. 03

01

I/O ASKED ESQUEEN TO DESCRIBE THE TWO MALES SHE HAD SEEN. SHE SAID THAT THE FIRST WAS A BLACK MALE ABOUT 502 TO 503 AND A MEDIUM BUILD (APPROX. 160 LBS). HE HAD LIGHTER COLORED SKIN AND WAS CLEAN SHAVEN. ESQUEEN SAID THAT SHE

SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ARRESTED UNDER 18		EX-CLEAR UNDER 18	
YES ☐	NO ☐	YES ☐	NO ☐	☐	☐	☐	☐	☐	☐
				☐ UNFOUNDED	☐ ARRESTED 18 AND OVER			☐ EX-CLEAR 18 AND OVER	
				☐ ADMINIST. CLOSED					
REASON FOR EXCEPTIONAL CLEARANCE. 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST									
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER				
MOUNT, J. G.	01-08-03	314							
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER				

AGENCY I.D.
SCO320000

INVESTIGATIVE REPORT

CASE NUMBER
0287472

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ STATUS CHANGE	☐ ADD T ONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PAGE <u>2</u> of <u>2</u> PAGES

ORIGINAL COMPLAINANT ☐ OR VICTIM ☐	
NAME: <u>[REDACTED]</u>	DATE OF BIRTH: <u>[REDACTED]</u>
STREET ADDRESS: <u>[REDACTED]</u>	SEX: <u>[REDACTED]</u>
CITY - STATE - ZIP: <u>[REDACTED]</u>	AGE: <u>[REDACTED]</u>
INCIDENT TYPE: <u>[REDACTED]</u>	
ORIGINAL SUSPECT:	
NAME: <u>[REDACTED]</u>	DATE OF BIRTH: <u>[REDACTED]</u>
STREET ADDRESS: <u>[REDACTED]</u>	RACE: <u>[REDACTED]</u> SEX: <u>[REDACTED]</u>
CITY - STATE - ZIP: <u>[REDACTED]</u>	AGE: <u>[REDACTED]</u>

RECOVERED PROPERTY DOLLAR AMOUNT: \$

CANCEL NCIC ENTRY: YES NO

REMEMBERED HIM TO HAVE BEEN WEARING CAMOUFLAGE PANTS AND A SHINY BLACK JACKET WITH THE HOOD UP. SHE DID NOT THINK THAT HE WAS WEARING GLOVES. THIS MALE NEVER SAID "PAUL" DURING THE INCIDENT. ESQUEEN SAID THAT HE HAD BEEN CARRYING THE BLACK GUN LEFT AT THE SCENE.

ESQUEEN DESCRIBED THE SECOND BLACK MALE AS 506 OR 507 AND SLENDER (APPROX. 140 LBS). HE WAS DARK IN COMPLEXION AND CLEAN SHAVEN. HE WORE FLAT BLACK PANTS AND HAD ON A JACKET ZIPPED UP. SHE ALSO DID NOT REMEMBER THE SECOND MALE AS HAVING GLOVES ON. SHE ALSO REMEMBERED THAT THE SECOND MALE HAD TWO OR THREE OPEN FACED GOLD TEETH. HE HAD BEEN CARRYING A BLACK AND SILVER SEMI-AUTOMATIC PISTOL WITH A LASER SIGHT.

SEP 16.03

02

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
YES ☐	NO ☐	YES ☐	NO ☐	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST						
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
MOUNT, J. G. <i>[Signature]</i>	01-08-03	314				
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	

LEXINGTON COUNTY SHERIFF'S OFFICE

Agency I.D.
SC0320000

INVESTIGATIVE REPORT

CASE NUMBER

0287472

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of 1 PAGES.

ORIGINAL COMPLAINT ☐ OR VICTIM ☒

NAME: KEITH, PAUL

DATE OF BIRTH: [REDACTED]

STREET ADDRESS: [REDACTED]

RACE: [REDACTED]

CITY-STATE-ZIP: WEST COLUMBIA, SC 29169

AGE: [REDACTED]

INCIDENT TYPE: HOMICIDE

ORIGINAL SUSPECT:

NAME:

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY-STATE-ZIP:

AGE:

ON 11-18-02 AT APPROXIMATELY 1110 HOURS, I/O SPOKE WITH TISHA KEITH, PAUL KEITH'S SISTER, AT HEADQUARTERS. SHE ADVISED THAT ON THE DATE OF PAUL'S MURDER, TERRY HALTIWANGER CALLED HER ON THE PHONE AND ASKED HER WHERE PAUL LIVED. SHE TOLD HIM THAT PAUL STAYED OFF OF LEAPHART ROAD, NEAR THE WAFFLE HOUSE, BEHIND THE WAFFLE HOUSE. TISHA ALSO TOLD HALTIWANGER WHAT CARS SHOULD BE THERE AT THE RESIDENCE. TISHA SAID THAT HALTIWANGER THEN WARNED HER, "IF YOU TELL ANYONE, I WILL COME AFTER YOU AND YOUR KIDS, I KNOW WHERE YOU LIVE." TISHA SAID THAT SHE THEN TRIED TO CALL PAUL, BUT HIS CELL PHONE WAS OFF.

ON 11-19-02 AT APPROXIMATELY 1340 HOURS, I/O AND DET. MCINTOSH TOOK TERRY HALTIWANGER FROM THE DETENTION CENTER AND TRANSPORTED HIM TO THE RESIDENCE WHERE HE SAID HE WAS WITH L.J. AND THE UNKNOWN DRIVER ON THE DATE OF THE INCIDENT. HALTIWANGER GUIDED I/O AND DET. MCINTOSH TO 2301 WILLOW STREET AND IDENTIFIED THE HOUSE AS WHERE HE HAD GONE WITH L.J. (JOHN HENRY) AND THE DRIVER (BELIEVED AT THAT TIME TO BE KURTINO WEATHERSBEE. IT WAS LATER DETERMINED THAT THE RESIDENCE WAS THAT OF WEALTHY MCKUNE'S MOTHER. WEALTHY MCKUNE WAS ALSO IDENTIFIED AS THE DRIVER AND FOURTH SUSPECT AFTER QUINCY MCCOY ADMITTED TO FALSELY IDENTIFYING KURTINO WEATHERSBEE.

SE 16.03

11

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRITION DENIED		VICTIM/WITNESS DECLINES COOPERATION	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
MOUNT. J. [Signature]		09-15-03		313					

LEXINGTON COUNTY SHERIFF'S OFFICE

Agency I.D.
SC0320000

INVESTIGATIVE REPORT

CASE NUMBER

0287472

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of 2 PAGES.

ORIGINAL COMPLAINT ☐ OR VICTIM ☒

NAME: KEITH, PAUL

DATE OF BIRTH: [REDACTED]

STREET ADDRESS: [REDACTED]

RACE: B

SEX: M

CITY-STATE-ZIP: WEST COLUMBIA, SC 29169

AGE: [REDACTED]

INCIDENT TYPE: HOMICIDE

ORIGINAL SUSPECT:

NAME:

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY-STATE-ZIP:

AGE:

ON 11-15-02 AT APPROXIMATELY 0115 HOURS, I/O WENT WITH DET. MCINTOSH TO RICHLAND COUNTY SHERIFF'S DEPARTMENT HEADQUARTERS TO INTERVIEW QUINCY MCCOY. DET. MCINTOSH BEGAN BY ADVISING MCCOY OF HIS MIRANDA RIGHTS. MCCOY THEN SAID THAT HE ALONG WITH "L.J.", "KURTINO", AND ANOTHER BLACK MALE WHO MCCOY DID NOT KNOW, WENT TO PAUL KEITH'S RESIDENCE ON KINGSBERRY TERRACE. THE UNKNOWN MALE TOLD THE OTHERS THAT HE WAS CLOSE TO PAUL KEITH'S FAMILY AND MCCOY BELIEVED THAT THE MALE WAS FROM THE LEXINGTON AREA. THEY STARTED OUT FROM L.J.'S HOUSE ON HIGH CIRCLE RIDING IN AN OLDER MODEL CHRYSLER OR CHEVROLET DRIVEN BY KURTINO. HE, L.J., AND KURTINO WALKED UP TO PAUL KEITH'S HOUSE WHILE THE UNKNOWN MALE STAYED IN THE CAR. MCCOY ADVISED THAT HE TOLD THE OTHER TWO THAT HE DID NOT WANT TO GO INTO THE HOUSE, BUT L.J. POINTED THE GUN AT HIM AND MADE HIM. ONCE INSIDE, MCCOY TRIED TO LEAVE AND L.J. SHOT HIM IN THE LEG FOR REFUSING TO SEARCH THE HOUSE AND FLEEING. ACCORDING TO MCCOY, HIS BEING SHOT ALLOWED PAUL KEITH TO GRAB KURTINO'S GUN. DURING THE STRUGGLE, MCCOY RAN OUT THE BACK DOOR. AS HE WAS EXITING, HE HEARD MULTIPLE GUN SHOTS. L.J. AND KURTINO CAUGHT UP AND THEY ALL RODE AWAY BACK TOWARD THEIR AREA OF RICHLAND COUNTY. MCCOY SAID THAT THEY TALKED ABOUT THE INCIDENT WHILE IN THE CAR. HE SAID THAT L.J. HAD SHOT PAUL KEITH. AT SOME POINT EITHER BEFORE OR AFTER THE INCIDENT, THE UNKNOWN MALE SAID THAT HE HAD A CONFRONTATION WITH MCCOY PRIOR AND THAT HE WANTED THE THREE TO REMOVE A QUARTER POUND OF WEED AND LEAVE PAUL IN THE EMERGENCY ROOM. THE OTHERS THEN DROPPED MCCOY OFF BEHIND THE HOT SPOT NEAR PALMETTO RICHLAND HOSPITAL. HE SAID THAT HE WALKED TO THE RICHLAND EMERGENCY ROOM FOR TREATMENT TO HIS LEG. UPON RELEASE, HE HAD BEEN STAYING AT HIS AUNT'S (BETINA SALLEY) RESIDENCE AT 119 BAYSHELL DRIVE, COLUMBIA. MCCOY PROVIDED DET. MCINTOSH WITH A WRITTEN STATEMENT. WITH THE ASSISTANCE OF RICHLAND INVESTIGATOR BARRY WRIGHT, MCCOY VIEWED A PHOTO-LINEUP AND POSITIVELY IDENTIFIED KURTINO AS KURTINO DAMON WEATHERSBEE.

SE: 1603

08

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRITION DENIED		VICTIM/WITNESS DECLINES COOPERATION	
REPORTING OFFICER(S) MOUNT, J. [Signature]		DATE 09-15-03		UNIT NUMBER 313		APPROVING OFFICER		DATE	

LEXINGTON COUNTY SHERIFF'S OFFICE

Agency I.D.
SC0320000

INVESTIGATIVE REPORT

CASE NUMBER

0287472

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 2 PAGES

LATER ON 11-15-02, I/O OBTAINED THE FOLLOWING WARRANTS ON TERRY HALTIWANGER AND KURTINO WEATHERSBEE ISSUED BY JUDGE SONS:

**HALTIWANGER: H-127818 BURGLARY-1ST
H-127819 ARMED ROBBERY
H-127820 MURDER
H-127821 CRIMINAL CONSPIRACY

**WEATHERSBEE: H-127824 BURGLARY-1ST
H-127825 ARMED ROBBERY
H-127826 MURDER
H-127827 CRIMINAL CONSPIRACY

SEP 16 03

09

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		☐ OFFENDER DEATH		☐ NO PROSECUTION		☐ EXTRADITION DENIED		☐ VICTIM/WITNESS DECLINES COOPERATION	
REPORTING OFFICER(S) MOUNT. <i>[Signature]</i>		DATE 09-15-03		UNIT NUMBER 313		APPROVING OFFICER		DATE	

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 | 2 | 8 | 7 | 4 | 7 | 2 | | |

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY

PAGE 1 of 13 PAGES.

☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTYORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP: W. COLUMBIA, SC 29169

AGE:

INCIDENT TYPE: ASSAULT - AGGRAVATED

ORIGINAL SUSPECT:

NAME: MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

11/13/02: I/O was dispatched to incident location in reference to shooting incident. Prior to arrival I/O was directed to go to Richland Memorial Hospital due to the victim being transported to that location. Upon arrival the victim was in the trauma room being treated by hospital personnel. Shortly after arrival the victim was moved to the operating room where an attempt was made to save the victim. I/O waited in the surgical waiting area for further word on the victim. While there several members of the victim's family showed up. The victim's common law wife, Vickie Merritt and the victim's brother James Keith were the first to arrive. After other family members began arriving they began to talk about a confrontation that had happened between the victim and a cousin on the date that the victim's grandmother died. They talked about how this cousin and other members of her family had made threats against the victim's life. This family member was later identified as Laterl Keith. After waiting for several hours the surgical Doctor contact I/O and requested to meet with the family. At this time he informed the family that the victim did not make it through surgery and that he had passed at approx 11:18 p.m. I/O waited until all family members left the hospital before leaving to return to Lexington County. I/O then met with Lt. B. Aiken, Sgt S. Frier, and Det. J. Mount and returned to the incident location.

11/14/02: I/O learned from Sgt Frier that at approx 0300 the Sheriff's Dept had received a call from Columbia Police Dept that they had been out with a subject at Richland Memorial Hospital with a gunshot wound to his leg. At the time that they were out with this subject they were not aware of the information that had been put out by Lexington Co, Sheriff's Dept. Sgt Frier went to Richland Memorial Hospital where he obtained the identity of this subject. He was identified as Quincey M. McCoy, [REDACTED], Columbia, SC 29204, DOB 05/21/1982, black male 5' 6", 150 lbs. Later during the day a picture was obtained of this subject and placed in a photo lineup. The subject was picked in this photo lineup by Esqueen Merritt who was a victim in this incident. Esqueen Merritt was the female that the subject's confronted in the front yard and forced back into the house at gun point. After the subject was identified by Esqueen Merritt the following warrants were obtained for his arrest. H-127808 Murder, H-127809 Burglary First Degree and H-127810 Robbery and Attempted Robbery While Armed with Deadly Weapon. The subject was placed on NCIC and information was given to the local media on this subject.

11/15/02: I/O was notified by the dispatcher that the subject had turned himself into the Richland Co. Sheriff's Dept and requested that I/O respond to that location. I/O and Det J. Mount responded to Richland Co. Sheriff's Dept and met with Inv. Barry Wright who was with the subject. All parties were introduced and I/O initiated and interview with the subject. The subject was advised of his rights using a suspect statement form to which he acknowledged

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ UNFOUNDED ☐ ADMIN. ☐ CLOSED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
YES ☒ NO ☐		YES ☒ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST									
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
McINTOSH, O. L.		07/21/03		306		FAGLIE, P. C.		301	
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 | 2 | 8 | 7 | 4 | 7 | 2 | | |

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTYPAGE 2 of 13 PAGES.☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTYORIGINAL COMPLAINANT ☐ OR VICTIM ☒NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE

his understanding and agreed to talk with I/O. The subject said that the person who sat this robbery up was in the car when they went to the house but, he stayed in the car. He did not go in because the victim knew him. This person met them at a house on High Circle where another one of the subject lives. This subject was identified as LJ only this subject claims to not know this subjects name. However, the subject believes that subjects name to be Larry Jones. This subject said that when they got to the victims house he and LJ were to only ones to get out of the car. He and LJ confronted a female in the front yard and forced her back into the house. The subject said that he froze and LJ yelled at him to come into the house. Subject identified a ~~third subject as~~ Kurtino Damon Weathersbee who he said kicked in the back door to the house. Subject said that LJ shot him in the leg when he froze and would not do what he said. Subject said that he job was to search the house for drugs and money. Subject said that after he was shot the victim went for the gun that Weathersbee had and that is when the shooting began. He then ran from the house out the back door that was kicked in by Weathersbee. Subject said that after he ran from the house he ran until he got to a spot where he hide until the first car came by. When he ran out to this car it was the other subjects who picked him up and departed the area. Subject said that he got into the back seat of this car and LJ was in the front. LJ turned and pointed the gun at him with the red beam in his chest and said that he messed up and caused this to go bad. He said that LJ then pulled the trigger however, there were no bullets in the gun. They went back to Columbia and he was dropped off near Beltline Blvd and Colonial Dr. where he ran to the hospital. The subject provided a written statement which was written as follows: LJ and Kurtino picked me up along with the person who set it up, I don't know his name. We left to go to Lexington we got in front at the destination and I froze up and refused to leave the car then at that time Kurtino put the gun to my head and said, "Oh yeah your motherfucking ass going to get this money". So at that time I got out the car along with LJ and Kurtino. Kurtino went to the back me and LJ went to the front at this time a female came outside so LJ put the gun to her face and said, "take us where it is" I am still frozen stiff out of fear on the side of the house and LJ screams bring your ass on so I came in the front door Kurtino kicked down the back door and raced up the hallway to where LJ was. I was still in the living room scared so Kurtino screamed go and check the closet I refused and tried to run out the house that's when LJ shot me in my leg and I exited out of the back door. I was trying to run to any car to help but I ran into LJ, Kurtino and the other guy in the car. They grabbed me threw me in the back seat and proceeded toward Richland County I begged to go to the hospital they told me "no with your bitch ass". At first the guy who set it up told them to let me out at the Hot Spot so I walked from the Hot Spot to Richland Memorial Hospital. Once I got released from the hospital I went to my aunts house in Bayberry Mews with my girlfriend where the police picked me up from. And my friend name Tara picked me up from the hospital and took me there. The guy that set the whole thing up quoted, "it's about four (4) pounds of weed and a couple ounces of dope all I want is a quarter pound

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☒ NO ☐YES ☒ NO ☐
☐ ACTIVE
☐ UNFOUNDED
☐ ADMIN.
☐ CLOSED

☐ ARRESTED UNDER 18
☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

McINTOSH, O. L.

07/21/03

306

FAGLIE, P. C.

301

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 2 8 7 4 7 2

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 13 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT

NAME MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP

AGE

and his ass in the emergency room". He also said that he and the victim had an altercation and the victim sent the police to his sisters house and he stated that he could not go in because he dated the victim cousin or sister one or the other.

The subject did pick Kurtino Weathersbee out of a photo lineup. The subject was arrested and transported back to Lexington County Detention Center. Prior to returning the subject showed I/O the house that he believes LJ lives in. This house is located at [REDACTED] he also showed I/O where a female friend of LJ lives and this is where he may hang out.

At approx 1145 I/O checked the subject out of the Detention Center and escorted him to the Investigators area. Once in an interview room the subject was allowed to place a call in an effort to get the correct name of LJ. The subject was able to contact a individual name Wheathy McKune who provided the name John Henry. The subject was then allowed to contact family members and he was then escorted back to the Detention Center.

Based on the information provided by Quincy McCoy a photo lineup was prepared and Vickie Merritt and Esqueen Merritt were contacted and requested to met with Sgt Frier and I/O. When they arrived at the Sheriff's Dept each one was asked to view the line up to see if they could identify anyone that may have been in their home. Both victim's viewed the photo lineup separately however, neither one could identify a subject in this lineup. Both photo lineups were marked "No Ident".

At this point both victim went to the first appearance hearing for the subject. Upon their return they both provided written statement which read as follows. (Vickie Merritt) I Vickie Merritt attended Bond Court and identify Quincy as the person in my bedroom. He threaten my son and shot Paul in the thigh. Then Quincy told Paul to pick up my purse and lets go. Quincy kept telling Paul lets go. At that time the other guy came in and ask Quincy do you want me to kill him. After that time they went in the living room and we heard gun shots.

Esqueen Merritt) I was at the hearing today on 11/15/02 and the guy Quincy McCoy was the guy that held me. (Esqueen Merritt) at gun point Wednesday night as I was getting ready to enter the car. He ask me where's Paul and I said in the house while still holding the gun at me. He ask me to unlock the door and I was scared as I unlock the door and we went in the house and Quincy went straight in the room where Vickie and Paul were at.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ UNFOUNDED ☐ ADMIN. CLOSED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
YES ☒	NO ☐	YES ☒	NO ☐						
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST									
REPORTING OFFICER McINTOSH, O. L.		DATE 07/21/03	UNIT NUMBER 306	APPROVING OFFICER FAGLIE, P. C.		DATE	UNIT NUMBER 301		
REPORTING OFFICER		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		

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SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER
0 2 8 7 4 7 2

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE 4 of 13 PAGES.
☐ STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY		

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒	
NAME KEITH, PAUL	DATE OF BIRTH:
STREET ADDRESS:	RACE SEX
CITY - STATE - ZIP:	AGE:
INCIDENT TYPE:	
ORIGINAL SUSPECT:	
NAME MCCOY, QUINCY MARQUETTE	DATE OF BIRTH:
STREET ADDRESS:	RACE SEX
CITY - STATE - ZIP:	AGE:

11/16/02: Terry Haltiwanger who was identified by Quincy McCoy through a photo lineup as the person who set this incident up contacted the Sheriff's Dept and turned himself in. The subject entered the Sheriff's Dept and refused to answer any question without his Attorney present. Sgt Frier contacted the subjects Attorney who responded to the Sheriff's Dept where he was given a briefing by Sgt Frier. The Attorney Jimmy Rogers then spoke with his client in private. Mr. Rogers and the subject then agreed to an interview with Sgt Frier and I/O (Inv McIntosh). The subject said that Latrel Keith and Paul Keith (victim) who are cousins had words and Paul had put her on her. He said that she wanted the robbery to happen and that it was her ideal to put this into motion. Everything fell together on Wednesday and he went to the Speedway where Latrel works and got her house where he had met LJ. He and Latrel knew that Paul had gotten four (4) pounds of marijuana. He had met LJ through a friend name Kevin Jacobs and they went to a house off Beltline where they subject was shown a photo lineup in which he picked out LJ who now is identified as John Henry. Subject said that when they went to the house he and the driver stayed with the car. Subject said that he did not know the drivers name. The driver was identified by Quincy McCoy as Kurtino Weathersbee. Subject said that LJ AKA John Henry and Quincy went to the house. Subject said that he met these guys on the day of the incident. When asked about the car he said that the car was a big older model car with two doors and big rims with spokes. When asked who had guns he said that LJ (John Henry) had both guns when he and Quincy got the car. At the end of this interview a taped interview was conducted with the subject Attorney present.

11/17/02: Quincy McCoy was checked out of the Detention Center and escorted to the Investigator area where an interview was conducted. The subject was advised of his rights and then told that Terry Haltiwanger had been arrested. He was told that at this time there was a difference in the accounts of what had happened and that he needed to set the record straight. At this time the subject admitted that he did shot the victim in the leg when he entered the house. However, he still says that he was forced to do this and he stills says that he froze and was shot by LJ (John Henry). He also said that John Henry is the person that shot and killed the victim. The subject agreed to provide a taped interview which was completed with Sgt Frier and Inv McIntosh presented. After this interview was conducted the subject was allowed to call his father who lives in North Carolina. His father, Kerry Hall encouraged the subject to be truthful with the investigators and to tell them everything they needed to know. The subject then told I/O that the car used in this incident belongs to Whelthy McKune AKA Big Whelthy. Mr. McKune was contacted and said that the car belongs to Kurtino Weathersbee and that he did not know where the car was. However, he believes that the car may be in the area know as the reserves. He also believes that Kurtino Weathersbee may be in that area.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
YES ☒	NO ☐	YES ☒	NO ☐	☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
				☐ ADMIN. CLOSED		
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST						
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
McINTOSH, O. L.	07/21/03	306	FAGLIE, P. C.		301	
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 2 8 7 4 7 2

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 5 of 13 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE

11/18/02: I/O contacted Nyikrenda Latrel Keith and requested that she meet with I/O and Sgt Frier in reference to this case. Ms. Keith is the cousin of the victim and the girlfriend of defendant Terry Haltiwanger. Ms. Keith is being called to the Sheriff's Dept to question her in reference to her part in this incident. Upon her arrival Ms. Keith was asked if she knew that the victim had any drugs and she said that she did not know. She said that Terry Haltiwanger is the one who wanted to rob the victim. She said that this was about the incident that occurred when her grandmother died and that she told Haltiwanger to just forget about. She said that Haltiwanger told her that he would find someone to do it. She said that on the night this incident occurred that Haltiwanger came to her job and got her car and said that he was going to his mother's to take a shower and to see his baby. She said that Haltiwanger took her cellular phone and that he usually has it with him. She said that Haltiwanger had asked her where the victim lived however, she did not know so she told him to call the victims sister Tisha Keith. She said that on the night of the incident Haltiwanger came to the store where she works and said that things had gone bad. She said that she asked him what thing and he told her that it was best that she did not know. Sometime there after Sgt Frier and Det J. Mount went to the store and spoke with her and she said that she did not have any knowledge of what had happened. On 11/16/02 Ms. Keith provided a written statement in which she said that on the day of this incident she knew that Terry Haltiwanger was planning to rob Paul Keith. She said that Terry Haltiwanger told her that he was there but, that he had stayed in the car. She said that she lied to Sgt Frier to protect Terry Haltiwanger because she knew that he was involved. Ms. Keith was arrested and escorted to the detention where she was booked in and held until warrants were obtained. Sgt Frier met with Judge Sons and presented the probable cause and the following warrants were issued: H-127882 Accessories Before fact of Armed Robbery and H-127883 Common Law Accessory After the Fact of Murder.

Sgt Frier contacted Tisha Keith who is the sister of the victim and requested that she meet with I/O in reference to this incident. Upon her arrival Ms. Keith was very emotional and over come with grief. She provided a written statement in which the following facts were given. On Wednesday night I got a phone call from Terry. He asked me where did my brother stay by Leaphart Rd. I told him I was not sure all I know is it is by some apartments. It was off a road. He said stop playing you know where he stay at. I told him I can't find his house it was complicated. He hung up. Later he called back he asked if Paul drove a Gallant I said no he drives a Saturn. He said Okay Tisha don't tell anyone that you talker to me tonight. I'm not playing and I know where you and your children stay. After a while I tried to call Paul cell phone but I didn't get an answer. Around 12:00 a.m. my mother came by, she said my brother was dead. Then I realize that Terry was serious about what he said to me and I felt afraid. He knows where I stay and my cousin stay's with him. His friend stay across the street from me. I was

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☒ NO ☐YES ☒ NO ☐☐ ACTIVE☐ ARRESTED UNDER 18☐ EX-CLEAR UNDER 18☐ UNFOUNDED☒ ARRESTED 18 AND OVER☐ EX-CLEAR 18 AND OVER☐ ADMIN.☐ CLOSEDREASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

McINTOSH, O. L.

07/21/03

306

FAGLIE, P. C.

301

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 | 2 | 8 | 7 | 4 | 7 | 2 | | |

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 6 of 13 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCEY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE

scared for me and my children. I didn't know that my brother had drugs in the house. I didn't tell anyone about the drugs suppose to be in the house. Terry Never asked me about any drugs. Letrel didn't ask me about any drugs. She told I/O that after she found out that her brother was dead she took what Terry Haltiwanger said very serious and did not tell anyone that he had called her or what he had said. She said that even though Terry Haltiwanger is in jail she is still afraid of him and that he may have someone come after her.

After the bond hearing for Nyikrenda Keith I/O met with Charlene Robinson who is a cousin to the victim who said that she was present on 11/05/02 during the altercation between Nyikrenda Keith and Paul Keith. She provided a written statement in which the following facts were given: On Nov 5, 2002 me and my aunt (Roberta Williams) was sitting in the car drinking beer so Paul and Letrel was arguing so I got out the car and told Paul to go some where and be quite. So we got back in the car and Terry told my aunt that the last thing he going to do is to get Paul and my aunt say it's not worth it.

11/19/02: I/O and Det J. Mount checked Terry Haltiwanger out of the Detention Center this was done with the approval of his Attorney Jimmy Rogers who provided a letter stating that the defendant could be take out to show I/O where the vehicle that was used may be. The defendant took I/O's to Willow St off Colonial Drive and showed a house where they stopped that night. The address for this house is 2301 Willow Street there were no vehicles in the yard and the vehicle that was used was not there. The defendant was brought back to the Detention Center without incident time elapse was one (1) hours.

A subpoena was submitted to Palmetto Richland Memorial Hospital on 11/15/02 to obtain a copy of the treatment records for Quincy McCoy and to get a sample of his blood that was taken on the night of this incident. I/O was contacted and there records were picked up however, a sample of blood was not obtained. A result of the blood was provided as part of this record. Records indicates that the subject received a gun shot wound to the lower right leg area. The subject was treated and released from the hospital.

12/02/02: I/O received information that Kurtino D. Weathersbee had been arrested by Columbia P.D. The subject had taken a vehicle from a victim and she had reported it to the police. The subject was arrested at the PineHaven Apartments on Trinity Rd. in Columbia. This is a residence where Richland County Sheriff's Dept made entry looking for the subject after a tip that he was there. I/O and Inv Mount went to the Alvin S. Glenn Detention Center and met with Lt. Smith and Inv McDonald of Richland County Sheriff's Dept. We then met with and conducted an

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☒ NO ☐YES ☒ NO ☐☐ ACTIVE☐ ARRESTED UNDER 18☐ EX-CLEAR UNDER 18☐ UNFOUNDED☒ ARRESTED 18 AND OVER☐ EX-CLEAR 18 AND OVER☐ ADMIN.☐ CLOSEDREASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

McINTOSH, O. L.

07/21/03

306

FAGLIE, P. C.

301

REPORTING OFFICER

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UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE

INVESTIGATIVE REPORT

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REPORT☐ ADDITIONAL
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CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTYORIGINAL COMPLAINANT ☐ OR VICTIM ☒NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCEY MARQUETTE

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CITY - STATE - ZIP:

AGE

interview with the subject. The subject denies having been at the incident location and denies knowing the other subjects involved. He does however, admits to having met John Henry aka LJ. But, he denies having been with him during this incident. When the subject was asked of his where about's on the night of this incident he provided a list of names saying that he was at the Grand Motel, 3003 Two Notch Rd with these persons. He was also asked about the vehicle to which he denies having had access to. The subject said that he owns a Malibu which was on blocks at the house where he was arrested. The subject had not been before the Bond Judge prior to this interview and when the interview was over the subject was left at the Detention Center. The investigators from Richland County Sheriff's Dept then took the subject to their office for further interview. During the interview at the Detention Center the subject confessed to some other charges along with the taking of the car from the female on 12/01/02. Later during the day I/O and Inv Mount traveled to Pinehurst apartments to attempt to locate the vehicle that the subject said he owns. A check of this complex was conducted however no vehicles were located on blocks and no vehicles were located matching the vehicle the subject said he owns. A check was also conducted of an apartment complex on Universal Dr. that the subject is known to frequent. This vehicle was not located at this apartment complex either. We then checked the Grand Motel to see if these persons that the subject said he was with registered there. We met with Dana Finley who confirmed that Daisy Jones was a registered guest but that the others that the subject named were not. Ms. Finley advised that she remembers Daisy Jones because they had problems with her having men in and out all night. Ms. Finley said that visitors are suppose to sign in at the front desk when they come in however none of Daisy Jones visitors signed in. Therefore, it would be Ms. Jones word along with the other males named by the subject to say if he was there or not. During the interview with he was asked if he knew anyone that lived on Willow Street. The subject was somewhat caught off guard that he did not know anyone. However, Willow Street is only a few blocks from where his grandmother lives on Liberty Street. This house on Willow St is a house that according to Terry Haltiwanger they stopped at after the incident. A check of this address on Willow Street was conducted and it was learned that a Cheryl Diana McKune lives at this address. It is believed that Ms. McKune may be the mother of Whelthy Larry McKune who according to Quincey McCoy is the owner of the car that was used in this incident.

12/18/02: I/O was notified by the dispatcher the officers from Columbia PD had arrested John Henry who is one of the suspects in this case. The suspect was being held at the North Region Headquarters for Columbia PD. I/O responded to that location along with a marked unit to transport the subject back to Lexington County. Upon arrival it was learned that the subject had been arrested at his mothers house located at [REDACTED]. Officers J. M. Fletcher and J. Brown were the arresting officers. Officer J. M. Fletcher advised that the subjects

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YES ☒ NO ☐		YES ☒ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST									
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SC0320000

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NAME KEITH PAUL

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mother called the police and turned the subject in. Officer Fletcher also said that the subjects mother gave them a gun and said that it belonged to the subject. This weapon however, was a 9mm handgun not the gun used in this incident. The weapons was taken and turned into the evidence section of Lexington County. When I/O entered the room where the subject was being kept he stated in a spontaneous statement that he did not get out of the car at incident location. He also stated that the subject Kurtino Weathersbee was not present during this incident. He told I/O that on incident night he and Whelthy McKune had been riding around and met Terry Haltiwanger and Quincy McCoy at a house located at [REDACTED]. An interview was not conducted at Columbia PD due to the fact that their on coming shift needed the room to conduct their roll call. The subject was transported back to Lexington County Sheriff's Dept where an interview was conducted. Prior to the interview being conducted the subject was advise of his Miranda Warnings using a suspect's rights card provided by SCLEOA. During this interview the subject (John Henry) admitted that he was at the incident location but that he stayed in the car and that he did not enter the house. He said that they parked in front of the house and subjects Terry Haltiwanger and Quincy McCoy entered the house. He also said that the forth subject was Whelthy McKune who was also the owner/driver of the car. He said that he and Whelthy McKune stayed in the car in front of incident location. The subject said that when they met at the house on High Circle Terry Haltiwanger told them that he knew where they could get some drugs and that he would share it with them. He said that while they were en-route to the victims house Terry Haltiwanger called the victims sister who told Terry where the victim lived. The subject said that the victims sister had something to do with this. The subject said that after they left incident location they dropped Quincy McCoy off at Richland Memorial Hospital and Terry Haltiwanger said that he was going to his girls job. The subject, John Henry did provide a written statement in which he admits to being at the victims house with the other subjects. However, the subject will not admit to going into the house. The subject also told I/O that the subject Kurtino D. Weathersbee was not present and had nothing to do with this incident. The subject, John Henry puts Whelthy McKune in the vehicle at incident location and said that he did not get out of the car. After the subject provided a written statement he was escorted to the Detention Center where he was booked in for the night. He also spoke with the on duty health care nurse and told her that he has a mental problem in that he hears voices and has a history of trying to harm himself. The subject was placed under a mental health watch until such time that he could see a Doctor.

12/19/02: The subject was brought before Judge Sons for his first appearance hearing. Present during this hearing was the girlfriend of the victim, Vickie Merritt. When the subject, John Henry entered the court room Vickie Merritt looked at the subject and then turned to I/O with tears in her eyes and said, "That is the man that was in my bedroom". This statement by the victim/witness confirms the statement by Quincy McCoy that places himself and

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and John Henry as the two subjects that entered the house and shot the victim.

12/20/02: I/O received a request from the subject John Henry to come talk with him about the woman who was in the court room. When I/O met with the subject in the Detention Center he stated that the woman who was in the court is someone who he has sold drugs to in the past. He said that she has a very bad drug habit and that she was buying drugs from him on a regular basic. The subject then went on to talk about how he did not get out of the car at incident location. The subject said that he does not want to go to jail for something someone else did.

After speaking with John Henry I/O spoke with Quincy McCoy in reference to Whelthy McKune. It should be noted that Quincy after his arrest told I/O that the car that they went to incident location in was owned by Whelthy McKune. I/O once again asked Quincy who was in that car when they went to incident location. Based on this conversation and other conversations with Quincy McCoy it appears that he is trying to protect Whelthy McKune. I/O told Quincy that he now knows that the forth person in the car was Whelthy McKune and it was at this point that he told I/O that the forth person was in fact Whelthy McKune. He also said that Whelthy McKune and Terry Haltiwanger stayed in the car at incident location.

12/27/02: I/O received a request from Terry Haltiwanger needing to speak with Investigator Frier or McIntosh and that it was very urgent. I/O met with Terry Haltiwanger who wanted to talk about his case. He said that there is a lot more to this case then we know. The subject now wants to say that more of the victims family to include his girlfriend are involved in this. However, the subject said that he did not want to tell everything that he knows with a murder charge hanging over his head. I/O told the subject that he would speak with the Solicitors Office about this because he (I/O) was not in a position to do or change anything in reference to this case. I/O also asked the subject about the forth person that was with them when they went to the victims house. The subject said that he did not know this person name. I/O asked if the subject would look at a photo lineup to see if he could pick this person out and he said that he would. I/O placed a photo lineup with the pictures of six (6) black males in front of the subject. The subject pointed to the person pictured in position #6 as the forth person that was with them. He said that this is the person who was driving the car and the one who stayed in the car with him. The person pictured in position #6 is known as Whelthy McKune. The subject was then shown a picture of Kurtino Weathersbee and the subject said that he did not know this person.

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YES ☒ NO ☐		YES ☒ NO ☐		☐ UNFOUNDED ☐ ADMIN. ☐ CLOSED		☒ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST									
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NAME KEITH PAUL

DATE OF BIRTH:

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INCIDENT TYPE:

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NAME MCCOY, QUINCY MARQUETTE

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01/04/03: I/O received an Inmate Request Form from John Henry on 12/27/02 wanting to speak with I/O in reference to turning State Evidence on his codefendants. I/O met with John Henry on this date at which point he said that he wanted to give state evidence. He said that his codefendant Quincy McCoy had given him a statement which said that he was not involved in this incident. The subject also once again said that the victims girlfriend knows him because he has sold her drugs in the past. Saying that when he sold her drugs she was with Terry Haltiwanger. The defendant once again told I/O that the forth subject in the vehicle on incident date was Whelthy L. McKune. The defendant told I/O that he and Whelthy McKune had been together most of the day and had been riding around smoking marijuana. The defendant said that because of the drugs that they had used that day he can not remember how they got to the victims house. Subject said that they got onto the interstate at Monticello Rd and got off by the Lexington Hospital. Defendant could not say if they got off one interstate and onto another. I/O informed the defendant that he needs to tell I/O the truth about what happened and he said that what he is telling I/O is the truth and that he does not want to go to jail for something someone else did. I/O escorted the defendant back to the Detention Center. Once at the Detention Center I/O requested that Quincy McCoy be brought down so that I/O could speak with him. I/O asked McCoy if he had provided John Henry with a statement saying that he was not involved in this incident and Defendant McCoy said that he had not given defendant Henry a statement. He said that Defendant Henry had been sending him messages asking that he provide this statement. He said that if Defendant Henry should show a statement to compare it with the statement already provided by he and I/O will see that the handwriting is different. After speaking with Defendant McCoy I/O attempted to contact Whelthy McKune through his cell phone however, there was no answer and a message was left for him to return the call.

01/06/03: I/O received a call from Whelthy McKune at which time he was asked to met with I/O as soon as possible. He said that he did not have a ride to get to Lexington and that he had to go to work. He was told that it is very important that he speak with I/O. He wanted I/O to come to his house to speak with him. I/O advised him that it would be in his best interest to come to the Sheriff's Dept. He wanted to know what I/O wanted to speak with him about and how I/O got his number. I/O told him that one of the subjects that we have in jail in reference to a murder gave his name and number. He then said that he didn't know anything about a murder. He then said that he would try to get to the Sheriff's Dept before I/O leaves for the day.

He called back later and said that he did not have a ride and that his mother would not be home until around 1700. He then said that he could meet with I/O first thing in the morning. I/O told him that, that would be fine but he needed to speak with him soon.

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YES ☒	NO ☐	YES ☒	NO ☐	☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
				☐ ADMIN. CLOSED		
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NAME KEITH, PAUL

DATE OF BIRTH:

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RACE

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CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

02/02/03: I/O received request from John Henry and Quincy McCoy to come to the jail to speak with them in reference to this case. On this date I/O went to the Detention Center and had John Henry brought down in order for I/O to speak with him. When John Henry was brought down he was escorted to The Bravo Pod where he was advised of his rights to which he acknowledged. John Henry then presented I/O with a statement that he said was given to him by Quincy McCoy and also signed by him. Based on the hand writing in this statement I/O told John Henry that this statement was written by him. John Henry then acknowledged that he did write the statement but it was signed by Quincy McCoy. The signature on this statement is not the signature of Quincy McCoy. John Henry then went on to ask I/O to help him out. John Henry wants I/O to believe that he did not enter the home of the victim on incident date. He told I/O that Terry Haltiwanger and Quincy McCoy entered the house and that Terry Haltiwanger is the one who shot the victim. He also said that when Terry Haltiwanger and Quincy McCoy came out of the house that they came out the front door and that Terry Haltiwanger was carrying a trash bag with something in it. John Henry then told I/O that after they left incident location Terry Haltiwanger gave them a pound of marijuana. The statement that John Henry had a copy was made and the original was given back to John Henry because he wanted to give it to his lawyer. The subject was then escorted back to his cell.

After speaking with John Henry I/O had Quincy McCoy brought down. McCoy was asked if he had provided a written statement to John Henry and he said that he had not given a statement to John Henry. He said that John Henry did ask him to give a statement but he refused. Quincy provided his signature to show that the statement that John Henry has was not signed by him. At this point Quincy began to tell I/O that the wife/girlfriend of the victim could not be trusted and may have some involvement in this incident. Quincy told I/O that he had called a friend from the jail who in turn told him that she knew a guy who was having an affair with Vicki Merritt. When he called this friend she called this guy who then called Vicki Merritt. Quincy said that during this conversation Me Merritt told this guy that the victim had been molesting her daughter. She also said something to the effect th care that he was dead. Quincy then told I/O that prior to this incident Vicki Merritt was having an aff. Haltiwanger. Quincy said that this information had been given to his Attorney and that the Attorney c... him to give this information to Law Enforcement. However, Quincy said that he wants to cooperate with Law Enforcement because he did not want to participate in this crime but he was forced into it at the last minute by John Henry. Quincy was asked why in the beginning he gave Kurtino Weathersbee's name instead of Whelthy McKune. Quincy said that the day his picture was placed on TV that Whelthy McKune came by his aunts house and told him to say that Kurtino Weathersbee was involved. Because Whelthy McKune knows where his family lives and his girlfriend that he felt that he needed to do what he was told. Quincy at this point told I/O that Whelthy McKune

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NAME KEITH, PAUL

DATE OF BIRTH:

STREET ADDRESS:

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CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

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was present in the vehicle on incident date. He also said that this vehicle was driven by Whelthy McKune and is owned by Whelthy McKune. Quincy then told I/O that the cellular phone that McKune owns the number has been changed. I/O attempted to call that cell phone and on each call received a busy signal.

03/31/03: I/O spoke with Vicki Merritt who is the victims girlfriend in reference to the conversation with Quincy McCoy. Ms. Merritt told I/O that she is not seeing anyone at this time and that she did not have a conversation like McCoy is saying. She said that had the victim been molesting her children she would have reported him to the Sheriff's Dept. She said that she has another relative that was charged in Aiken County but there has never been a problem with the victim.

04/16/03: I/O and Det Mount stopped by [REDACTED] which is the address listed as the home address for Whelthy McKune. This subject was not at home however, I/O spoke with his mother. She told I/O that the subject did not live there any longer. She said that she was not aware that Law Enforcement was looking for him. When asked if she knew the other subjects involved in this incident she acknowledge knowing Quincy McCoy and John Henry. She said that the name Terry Haltiwanger was not known to her. She was asked about the vehicle that Whelthy McKune was driving which was identified to her as a 1971 Buick dark in color. She said that the vehicle was in a shop and was not running and had not been running for sometime. She however, did not tell I/O what shop or where the shop was located. She said that the subject was working for a moving company and that he would call from time to time. Ms. Cheryl McKune was asked to have the subject contact I/O the next time that he calls.

07/16/03: I/O received a call from Inv. Bullock, Columbia PD who advised that the subject Whelthy McKune had been involved in a Home Invasion where he was the victim. Inv. Bullock advised that a friend of Whelthy McKune had been shot in this incident however, his injuries were not life threatening. Inv. Bullock gave I/O an address where the subject had been staying. This address is [REDACTED], Columbia. Inv. Bullock advised that their agency would be conducting a check of this address in an attempt to locate the subject.

07/18/03: I/O checked the criminal history of the subject to see if there were any new arrest of Whelthy McKune. I/O found that the subject had an outstanding drug charge that had gone to court to which he received two years probation. I/O contacted the Richland County Probation office and spoke with Tara Boozer who advised that she would have the subject come in for a drug test and at that time he would be detained for this agency.

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YES ☒ NO ☐		YES ☒ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE NO ARREST									
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
McINTOSH, O. L.		07/21/03		306		FAGLIE, P. C.			
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	

SCO320000

LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORT

CASE NUMBER

0 2 8 7 4 7 2

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 13 of 13 PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME KEITH PAUL

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE:

ORIGINAL SUSPECT:

NAME MCCOY, QUINCY MARQUETTE

DATE OF BIRTH:

STREET ADDRESS:

RACE

SEX

CITY - STATE - ZIP:

AGE

07/21/03: I/O was contacted by Tara Boozer, Richland County Probation & Parole and was advised that Whelthy McKune was in her office. I/O responded to that location where the subject, Whelthy McKune was arrested and transported to Lexington County Detention Center without incident. He was advised of his rights and told I/O that he did not want to take until he spoke with a Lawyer. At this point no further conversation was conducted with the subject.

This case is closed: Cleared by Arrest.

SUBJECT IDENTIFIED

SUBJECT LOCATED

YES ☒ NO ☐YES ☒ NO ☐☐ ACTIVE☐ ARRESTED UNDER 18☐ EX-CLEAR UNDER 18☐ UNFOUNDED☒ ARRESTED 18 AND OVER☐ EX-CLEAR 18 AND OVER☐ ADMIN.
CLOSEDREASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM/WITNESS DECLINES COOPERATION 4 ☐ EXTRADITION DENIED 5 ☐ JUVENILE, NO ARREST

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

MCINTOSH, OSCAR L

07/21/03

306

FAGLIE, P. C.

301

REPORTING OFFICER

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Mr. Cameron B. Littlejohn, Jr., Esquire
Attorney at Law
1720 Main Street, Suite #202
Columbia, South Carolina
29201

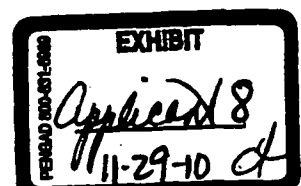
RE: PRODUCTION OF DOCUMENTS.

Dear Mr. Littlejohn,

Please permit this correspondence to serve as my formal request for production of documents, pursuant to Rule 1.16(d), Rules of Professional Conduct; see Rule 407, South Carolina Appellate Court Rules, SCACR.

Rule 1.16(d), provides in pertinent part: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ... surrendering papers and property to which the client is entitled ...". It is my position that this office's case/manual file, that was amassed during it's representation, contains matters that are relevant and pertinent to the preparation of my Post-Conviction Application issues and claims.

As you should be aware, I have filed a Notice of Appeal, as relates to the Order denying the Motion For Reconsideration. I have serve a copy of that notice upon this



office, because you were the guilty plea counsel, and counsel in the reconsideration matter. I was served by the Clerk, then received a copy of the Order from your office. Taking into consideration that I had petitioned the court to relieve your office as counsel of record, and in keeping with the language of Rule 502(e)(3), SCACR, that provides your office was relieved when the notice to appeal was filed ... I seek to have all matters not previously released or disclosed to me, served upon me. I would respectfully request that this office provide me with the following information or documents: indictments, sentencing sheets, all forensic evidence (to include, but not limited to, statements, photos, sketches, maps, drawings, notes, handwritten notes, letters, transcripts, etc.).

I would request that if this office would object to any portion of this formal request, that a written correspondence stating with specificity addressing every reason(s) and/or justification(s) for any such objection(s) be served upon me. I would further request that compliance and/or objection be made within thirty (30) days, exclusive the date of service of this formal request, and served upon me.

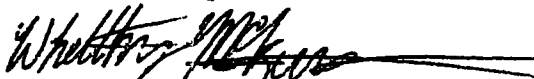
If I can be any further assistance to this office, in these matters, please do not hesitate to contact me at the above referenced address. Thank you for your time and attention to these matters.

December 27, 2007

rds/WLM

cc: FILE
LITTLEJOHN

Respectfully Submitted,


Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

Indictment No(s): 04-GS-32-001, 04-GS-32-002

vs.

Plaintiff

2004 FEB 11

A 11:38

**DEFENDANT'S MOTION FOR
RECONSIDERATION OF SENTENCE**

WHELTHY MCKUNE, THOMAS H. COMERFORD
CLERK OF COURT
LEXINGTON
Defendant.

Pursuant to a plea agreement with the office of the Solicitor, the Defendant entered guilty pleas to criminal conspiracy and burglary 1st degree (Indictment No(s): 04-GS-32-001 and 04-GS-31-002). Pursuant to this plea agreement, the Defendant testified on behalf of the state in the case of State v. John Henry.

This matter came for sentencing on February 9, 2004. At that time this Honorable Court sentenced the Defendant to five (5) years on the charge of criminal conspiracy and imprisonment for life on the burglary 1st charge.

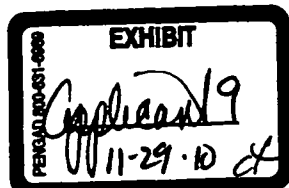
The Defendant now moves the Court to reconsider the sentences imposed on these two(2) charges. The Defendant would further request that the Court grant him a hearing wherein the reasons and grounds for this motion can be presented to the Court. A hearing would be necessary in this matter so that the Defendant can have an opportunity to present additional issues for the Court's consideration in determining the Motion.

Respectfully submitted,

Cameron B. Littlejohn

Cameron B. Littlejohn, Jr.
1720 Main Street, Suite 202
Columbia, SC 29201
(803)799-1888 ~ (803)799-5888

ATTORNEY FOR THE DEFENDANT



February 11, 2004

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE OF SOUTH CAROLINA,)
Plaintiff)
vs.)
WHELTHY MCKUNE,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

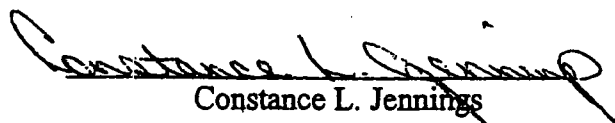
FILED
Indictment No(s):04-GS-32-001, 04-GS-32-002

2004 FEB 11 A 11:56

AFFIDAVIT OF SERVICE
THOMAS A. WELFORD
CLERK OF COURT

I, Constance L. Jennings, being first duly sworn, says that she works with the attorney for Defendant, with offices at 1720 Main Street, Suite 202, Columbia, South Carolina; that on the 11th day of February, 2004, she caused to be delivered, hand delivery, a copy of Defendant's Motion For Reconsideration Of Sentence to the individual below named at his/her address, to wit:

Eleventh Judicial Solicitor's Office
August G. Swarat II, Senior Assistant Solicitor
105 South Lake Drive
Lexington, South Carolina


Constance L. Jennings

Cameron B. Littlejohn, Jr.

Attorney at Law
1720 Main Street
Suite 202
Columbia, SC 29201

Telephone
(803) 799-1888

Fax
(803) 799-5888

May 12, 2004

Whelthy McKune #299717
Lee Ci Sumter N. 1240
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Defendant's Motion for Reconsideration of Sentence

Dear Whelthy:

Enclosed please find a copy of the Reconsideration of Sentencing Motion filed in your case on February 11, 2004.

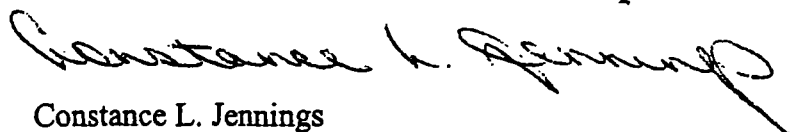
I apologize for the delay in getting a copy of this to you for your files. I thought that I had a copy of your indictment in the file also, but what I found was just some additional discovery material (telephone records). I am enclosing a copy of your warrants also. If you need a copy of anything in your file, please let your mom know and she will contact me to send it to you.

I know that things look bleak right now, but I want you to know that between your mom and I, we are keeping your case open before Mr. Littlejohn. He has been making calls on your behalf. Your sentence was something that took us all completely by surprise. It was devastating to us and so very unfair. I know that what we felt could not compare to what *you* were going through at that time. Please, don't lose faith in the system working for you but more importantly, don't give up on God. When you least expect it, he has a way of turning things around. Everything that the devil meant for evil, God turns it around for our good. Know that you are NOT forgotten. Someone is always praying for you. Your name, along with the name of your mom, is in the prayer box at my church where it is prayed for daily.

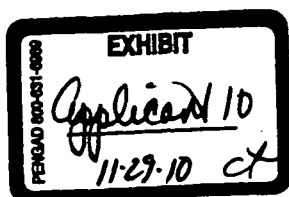
If I can be of service to you, please do not hesitate to ask. Your mother is a wonderful woman and her prayers will get you through. Always appreciate her. She loves you so very much.

With my kindest regards, I am

Sincerely,



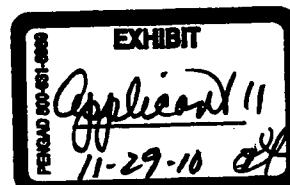
Constance L. Jennings
Paralegal/Legal Assistant



Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Cameron B. Littlejohn, Jr., Esquire
Attorney at Law
1720 Main Street, Suite #202
Columbia, South Carolina
29201

RE: MOTION FOR RECONSIDERATION.



Dear Mr. Littlejohn,

Please allow this correspondence to serve as a formal
communique' relating to the Defendant's Motion For
Reconsideration Of Sentence, dated February 11, 2004.

There has come to my attention, in a recent turn of
events, that the Honorable Marc Westbrook, Presiding Judge, who
presided over my plea and sentencing, is now deceased. This will
most definitely cause complications with a fair and impartial
determination upon the facts and issues of my sentence
reconsideration.

My position arises from our Supreme Court's decision in
Elam v. S.C. Dep't. of Transportation, Opinion No. #25869
(Shearouse Adv. Sh. No. #39 at 52-54)(S.C.Sup.Ct. filed September
13, 2004), interpreting a motion for reconsideration as a Rule
59(e) motion. Taking into light that the motion for
reconsideration to my sentence, is in fact, a motion to
alter/amend judgment, and falls within the provisions of Rule
59(e), of the South Carolina Rules of Civil Procedure, SCRPC.

With that in mind, we must ascertain the intent of the Supreme Court, pursuant to its inherent authority set forth within Article V, §4, of the South Carolina Constitution, per an Order, dated June 19, 1997, stating: "IT IS ORDERED that, upon filing of a post-trial motion under Rules 50, 52, 59, and 60(a), SCRPC, by a party in a jury or non-jury action, the party shall within ten (10) days provide a copy of the motion to the trial judge. IT IS FURTHER ORDERED that all post-trial motions shall be disposed of promptly by written order of the trial judge. The Chief Judge for Administrative Purposes shall ensure compliance with this Administrative Order."

Now that we have established that the trial judge (Westbrook) has become deceased, it is evident that a new judge must be appointed or assigned to the motion for reconsideration. This is where I envision the greatest amount of prejudice and maybe even an abuse of discretion. The newly appointed judge will not be aware of the facts, evidence, testimony or arguments that have already been preserved on the transcripts record, dated January 12, 2004, and February 9, 2004. We desperately need a copy of the transcripts. It is imperative to the preservation of justice in this type of setting. Especially under the extraordinary circumstances that have arisen. Without them, the new judge will be "shooting in the dark". And I need for you, or your office, to file a motion in the Court of General Sessions to have the transcripts produced and transcribed, without costs. That court still retains competent jurisdiction over this case, due to the 59(e) motion, and must order the transcripts prepared.

S.C. Code Ann. §17-3-10 et seq., provides that such funds are available to ensure that such costs are available for indigent defendants. I am still a defendant, and I do not have any funds for such purposes. I have been a ward of the State, in prison, since February 9, 2004. We are severely disadvantaged without the transcripts. You know as well as I that the new judge will need these records to mete out the justice that we are so

desperately seeking and deserving.

I am further requesting that all communications are to be directed to me, personally, to whatever facility I am confined to. I have become aware that although my mother (Cheryl McKune) has retained your services, and compensated for them, you are my attorney and you represent me. My mother has several children at home and can not effectively relay messages or bits of information, due to the fact that she is not an attorney, nor does she have the time and resources to do such things. I feel that by your not communicating with me directly, can imposed strains upon the attorney-client relationship that should exist between us. See Rule 1.4, Rules of Professional Conduct, Rule 407, SCACR. I am suppose to be in a position to assist in my defense and preparations of all pleadings related to my criminal case. Yet, I have been informed, through my mother, of such communications. I am not attempting to attack your ability as a professional nor as an attorney. It is not meant in such a fashion. I need to be kept abreast of all occurrences relating to this case. To do any other way would be contrary to the communication duty owed me. I cannot help myself if I can not be placed on notice or made aware of what is going on.

I would further stress one more point to you. The Order of June 19,1997, that has been previously stated, mandates that these types of post-trial motions are to be disposed of promptly. Now that we have waited over nineteen (19) months to have the judge respond, has got me caught in another controversy. Since the filing for the reconsideration, the judge that had jurisdiction over the motion has passed, and I fear the next judge will not be as receptive to my plea for leniency! Or may not be well informed to accept my position in this matter. I can foresee the prejudice that has already been created by circumstances beyond my control, relating to the trial judge's untimely death. Now having to take matters before another judicial authority, and the amount of time that has transpired

which can be construed as overly excessive, I am faced with a totally different set of circumstances and dilemma.

At some point, I need for you to help me understand what we need to do. I have already been informed by you, prior to the plea, that you could guarantee me that I would not receive a Life sentence, yet, that is what I received. The plea was for fifteen (15) years. Nothing makes sense to me anymore. And it would be evident by the current turn events that things could get extremely more hectic. And this could become very disadvantageous to my case and this pending motion. We need to communicate. And at your earliest convenience, please forward a correspondence stating with specificity addressing the matters that are pertaining to this formal communique'.

Thank you for your time and attention to these matters. If I can be of any further assistance to you in these matters, please do not hesitate to contact me at the above-styled address.

September 22, 2005

Respectfully Submitted,



Whethly Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

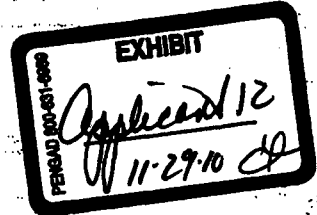
rds/WLM

cc: FILE
LITTLEJOHN

Whelthy L. McKune #299717
Lea I-511-2205
990 Wisacky Hwy.
Bishopville, S.C. 29010

May 17, 2006

Cameron B. Littlejohn, Jr. Esq.
1720 Main Street
Columbia, S.C. 29201



RE: Formal and Final Correspondence with Notice.

Dear Mr. Littlejohn,

I am submitting my Formal and Final Correspondence to you with a formal notice requesting for you to disclosed all and every form of litigation you submitted to the Court concerning the Motion for Reconsideration that you filed February 11, 2004.

Mr. Littlejohn as I stated so clearly to you in the last letter sent to you September 22, 05 there been strains applicable to my situation and case due to the facts Judge Westbrook being deceased, and I have yet to receive any direct correspondence from you in regards about this matter and its a violation of the Provisions of S.C. Professional Conduct Rules, I've been advised if I'm ~~not~~ prevailing Status

of the Reconsideration motion outcome I will be faced with an obstacle versing the PCR rules and procedurals, which will be the Statute of Limitation: as you are fully aware this motion has been filed over (2) two years and no return of the motion was given as of this day, be as it may my rights to do further litigating my case have been hindered accordingly to the Rules of our Supreme Court promulating the procedures of receiving a fair review of issues in the lower court for the Appellate Court to examine, see the Kay Supa.

Mr. Littlejohn I am wise enough to not act as ~~an~~ lawyer to contest your abilities as you being Counsel on record in my case, but in stating the facts concerning my position in this matter, there are not any noted progress made in my case, and the records reveals this to be fact, and my rights to litigate my case further shall not be impeded no longer by your filed motion if not resolved in a prompt and timely fashion accordingly to the rules to have this motion heard by the Circuit judge. I expect by desires to hear from you directly in regards of this cruel matter at your earliest conveniences.

May 17, 2006

Respectfully Submitted,

~~Whitney McKune~~
Whitney McKune

Whelthy, Larry, McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29310

CLERK OF COURTS OFFICE, LEXINGTON COUNTY
FOR THE ELEVENTH JUDICIAL CIRCUIT
Honorable Beth A. Carrigg, Clerk
Lexington County Judicial Center
205 East Main Street
Lexington, South Carolina
29072

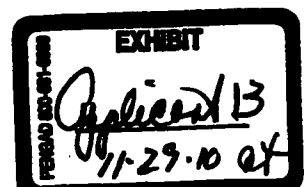
RE: State v. McKune, #2004-GS-32-0001..

Dear Ms. Carrigg,

Enclose are the following for filing in the
above-captioned case:

- (1). Notice Of Motion And Motion To Relieve Counsel;
- (2). Affidavit of Cheryl McKune;
- (3). Defendant's Affidavit In Support Of Motion To
Relieve Counsel; and
- (4). Certificate of Service.

If I can be of any further assistance to this Office,
in these matters, please do not hesitate to contact me at the



above-referenced address. Thank you for your time and attention to these matters.

November 8, 2006

rds/WLM

cc: FILE
CLERK
SOLICITOR
LITTLEJOHN

Respectfully Submitted,

Whelthy L. McKune

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

)

)

#2004-CS-32-0001

)

)

vs.

)

NOTICE OF MOTION AND
MOTION TO RELIEVE COUNSEL

)

)

Whelthy Larry McKune
#299717,

)

Defendant.

)

COMES NOW, Whelthy Larry McKune #299717, the
above-captioned Defendant, moving this Court for the relief
sought within this Notice Of Motion And Motion To Relieve
Counsel.

Defendant retained representation of Cameron B.
Littlejohn, Jr., Esquire, for matters relating to criminal
allegations before the Court of General Sessions, Eleventh
Judicial Circuit, Lexington County.

On October 17, 2006, an evidentiary hearing was held
relating to a post-trial motion, i.e. Motion For Reconsideration,

that had been outstanding since February 2004. It was during this hearing that Defendant would be led to believe, by trial counsel, that counsel's interests were not those of an individual who was performing the advocacy role. There are many facts and occurrences which leads this Defendant to be of a belief that this representation is not in his best interest, and should be dissolved by this Court.

Furthermore, this Court should examine and consider the attached Affidavits that are demonstrative of the desire and need to have all representation of Mr. Littlejohn, terminated by Order of this Court.

CONCLUSION:

WHEREFORE, Defendant would respectfully make demand of this Court that an Order be executed, relieving counsel of any further obligations or duties, as relates to the case, suo
judice.

November 8, 2006

Respectfully Submitted,

Whelthy L. McKune

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

#2004-GS-22-0001

vs.

AFFIDAVIT OF CHERYL
MCKUNE

Whelthy Larry McKune
#299717,

Personally appeared before me, Cheryl McKune, the Affiant, who being duly sworn, under penalty of perjury, deposes and says:

(1). I am, Cheryl McKune (hereafter, "Affiant"), the Affiant to this Affidavit, and biological parent to the above-named Defendant.

(2). Affiant is the individual who retained and contracted the services of trial counsel, i.e. Cameron E. Littlejohn, Jr., Esquire, for representation in the above captioned matter.

(3). On October 17, 2006, during an evidentiary hearing, in a post-trial motion, i.e. Motion For Reconsideration, trial counsel would inform this Affiant that his representation would terminate, after, this proceeding. Trial counsel would not see the relevance of needing to pursue an appeal from these matters.

Affiant would be placed into a position to have to obtain transcripts and other related materials for the purpose of this evidentiary hearing. The transcripts that were provided for the Court in the post-trial motion, were obtained by due diligence of the Affiant, and Defendant, with the assistance of a person trained in matters of law. Trial counsel has not shown, nor demonstrated, any interest in the pursuit of this case.

(4). To the best of Affiant's knowledge, and as [she] has been informed by the Defendant, trial counsel had failed to communicate, at all, with Defendant relating to this case, or any matter relating to the post-trial motion.

Affiant would attest that the Defendant has called her on many occasions, and request [she] contact trial counsel, due to trial counsel's failure to respond to correspondences, or report for scheduled appointments.

(5). From the mannerism and demeanor of trial counsel during these contacts with Affiant, there has formed an opinion, and belief that this attorney has no interest in this Defendant's interests or rights.

(6). Affiant would attest that this testimony, and facts, are true to the best of her knowledge, and she would be available to offer such before the Court, if required to do so.

AFFIANT SAYETH NO FURTHER

November 8, 2006

Respectfully Submitted,

Cheryl McKune
3201 Makeway Drive
Columbia, South Carolina
29201

page (3) of (4)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

VERIFICATION

Personally appeared before me, Cheryl McKune, who being duly sworn, under penalty of perjury, deposes and says that she is the Affiant to this Affidavit, and the facts stated therein are true of her own knowledge, except those matters and things stated on information and belief, and as to those matters and things, she believes them to be true.

November 8, 2006

Respectfully Submitted,

Cheryl McKune

Cheryl McKune
3201 Makeway Drive
Columbia, South Carolina
29010

Sworn and subscribed before me this
8 day of November, 2006.

Kathleen Baker
Notary Public for South Carolina

My commission expires:

My Commission Expires
January 17, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

)

#2004-CE-32-0001

)

)

)

vs.

)

DEFENDANT'S AFFIDAVIT IN
SUPPORT OF MOTION TO
RELIEVE COUNSEL

)

)

Whelthy Larry McKune
#299717,

)

Defendant.

)

Personally appeared before me, Whelthy Larry McKune
#299717, the Defendant, who being duly sworn, under penalty of
perjury, deposes and says:

(1). I am, Whelthy Larry McKune #299717 (hereafter,
"Defendant"), the above named Defendant, and Affiant to this
current Affidavit.

(2). Defendant would attest that, during the course of
representation by trial counsel, that there has been extremely
limited, or no, communication at all.

Defendant has served several formal correspondences upon counsel, but to no avail. And has been informed of several scheduled appointments that were cancelled at the last minute, or no show.

(3). Defendant has been placed into a position to seek out the assistance of a trained paralegal to obtain files, documents, materials, information and transcripts, that he believed were vital to the pursuit of this case.

Defendant would attest that, the transcripts that were supplied for the Courts consideration, on October 17, 2006, in the post-trial motion, i.e. Motion For Reconsideration, were obtained and produced by Defendant.

Defendant is of a belief that trial counsel has not demonstrated an interest in the pursuit of this case, and thereby, should be relieved as counsel of record, at this time. The role that trial counsel has demonstrated to this Defendant has not been one of an advocate, and therefore, Defendant should be granted the relief sought within the attached Motion To Relieve Counsel.

(4). Affiant is aware of the dangers that exist when counsel is relieved, in these types of proceedings. See Farratta v. California, 422 U.S. 806 (1975); see also Dearybury v. State, Opinion No. #26095 (Shearouse Adv. Sh. No. #2, 43-54)(S.C.Sup.Ct. filed January 9, 2006).

It is Defendant's desire to terminate trial counsel, because it is Defendants position that these duties are being neglected, and the role portrayed is that of an adversary, and not of an advocate.

(5). Defendant would submit this Affidavit, as testimony and evidence in support of the attached motion to

relieve, pursuant to Rule 43(e), South Carolina Rules of Civil Procedure, SCRPC.

Furthermore, attached hereto and incorporated herewith is a Verification to support that such testimony is submitted under oath. See Rule 603, South Carolina Rules of Evidence, SCRE.

AFFIANT SAYETH NO FURTHER

November 8, 2006

Respectfully Submitted,

Whelthy L. McKune
Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

VERIFICATION

Personally appeared before me, Whelthy Larry McKune #299717, the above captioned Defendant, who being duly sworn, under penalty of perjury, deposes and says that he has read the Defendants Affidavit In Support Of Motion To Relieve Counsel, and the facts stated therein are true of his own knowledge, except those matters and things stated on information and belief, and as to those matters and things, he believes them to be true.

November 8, 2006

Respectfully Submitted,

Whelthy Larry McKune

Whelthy Larry McKune
#299717 Sumter Prison #2205
Lee Correctional Institution
990 Wisacky Highway,
Bishopville, South Carolina
29010

Sworn and subscribed before me this
9 day of Oct, 2006.

Debra Jones
Notary Public for South Carolina
My commission expires: 11-4-2015

CERTIFICATE OF SERVICE ADDENDUM

PAGE (2), Whelthy Larry McKune #299717
November 8, 2006

CLERK OF COURT, LEXINGTON COUNTY
FOR THE ELEVENTH JUDICIAL CIRCUIT
Honorable Beth A. Carrigg, Clerk
Lexington County Judicial Center
205 East Main Street
Lexington, South Carolina
29072;

Mr. Cameron B. Littlejohn, Jr., Esquire
Attorney at Law
1720 Main Street, Suite 202
Columbia, South Carolina
29201; and

OFFICE OF THE SOLICITOR, LEXINGTON COUNTY
FOR THE ELEVENTH JUDICIAL CIRCUIT
Honorable Donald Meyers, Solicitor
Lexington County Courthouse Annex
105 South Lake Drive
Lexington, South Carolina
29071.

CERTIFICATE OF SERVICE ADDENDUM

PAGE (3), Whelthy Larry McKune #299717
November 8, 2006

November 8, 2006

Respectfully Submitted,

Whelthy L. McKune

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

CHIEF ADMINISTRATIVE JUDGE
FOR THE ELEVENTH JUDICIAL CIRCUIT
Honorable William P. Keesley, Judge
Post Office Box 10
Edgefield, South Carolina
29824-0010

RE: State v. McKune, #04-GS-32-001; and 002.

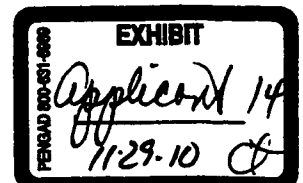
Dear Judge Keesley,

Please permit this correspondence, in lieu of a more formal pleading, to address an outstanding Motion filed within this Court's jurisdiction.

On October 17, 2006, an evidentiary hearing was held in the Lexington County Courthouse, before the Honorable McMahon, Circuit Court Judge, relating to a Motion For Reconsideration that had been pending since February 2004.

On November 8, 2006, Petitioner filed a pro se Motion, within the jurisdiction of this Court, to have trial counsel (i.e., Cameron B. Littlejohn, Jr., Esquire), relieved as counsel of record relating to this case.

Since the filing of this Motion To Relieve Counsel, the Court has yet to act upon this Motion. There has existed



sufficient enough time, and due to the attachment of the Affidavit, the Motion should be granted and the relief sought enforced by order of this Court. Petitioner believes that he is competent enough to prepare and file any notice of Appeal into the Court of Appeals, if he so desires a direct appeal. It is Petitioners position that trial counsel's duty and obligation, no matter how poorly it is believed to have been executed, are over with. Trial counsels services are no longer required.

Petitioner requests that this Chief Administrative Judge review the Motion To Relieve Counsel, grant the Motion, and order that all matters to be served, henceforth, be served personally upon Petitioner.

If this Petitioner may be of any further assistant to this Court, in these matters, please do not hesitate to contact him at the above referenced address. Thank you for this Court's time and attention in these matters.

April 2, 2007

Respectfully Submitted,



rds/WLM

cc: FILE
CLERK
SOLICITOR
JUDGE KEESLEY
LITTLEJOHN

Whelthy Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Whethly Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

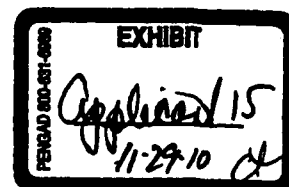
Honorable R. Knox McMahon,
Chief Administrative Judge
For The Eleventh Judicial Circuit
209 East Main Street
Lexington, South Carolina
29072

RE: State v. McKune, #2004-GS-32-001; 002.

Dear Judge McMahon,

Please permit this correspondence to serve as a formal manner, in lieu of a more formal pleading, in which to attempt to resolve an outstanding reconsideration and relieve counsel motion, that are presently pending before this Court.

On February 11, 2004, trial counsel filed a Motion For Reconsideration, relating to the above referenced criminal indictments. The Honorable Marc H. Westbrook, Circuit Court Judge, sentenced me to Life imprisonment (without parole), for the offense of First Degree Burglary. While this reconsideration motion has been pending, Judge Westbrook was killed in a car accident. As this Court is aware, that automatically removes the reconsideration matter out of Judge Westbrook's judicial jurisdiction.



On October 17, 2006, this Court entertained the motion for reconsideration in open forum. On November 8, 2006, after the evidentiary hearing, I filed a Motion To Relieve Trial Counsel, with two supporting Affidavits. My supporting Affidavit offered testimony of my ability to file a notice of appeal, if, a direct appeal were sought. It is a well-settled standard that I be able to operate within this Court as a pro se litigant. See Farretta v. California, 422 U.S. 806 (1975); and Dearbury v. State, Opinion No. #26095 (Shearouse Adv. Sh. No. #2, 48-54)(S.C.Sup.Ct. filed January 9, 2006). I am requesting that this Court honor my demand for the relief of trial counsel from this case. See also S.C. Code Ann. §40-5-80 (2005).

Furthermore, a year has passed since this Court convened the evidentiary hearing as to the reconsideration pleading. This also presents a concern that should be addressed. After the evidentiary hearing I was of an impression, by trial counsel, that this matter would be resolved in a timely manner. As I have stated, a years has now passed.

On June 19, 1997, this State's Supreme Court, pursuant to their inherent powers, consistent with Article V, §4, of the South Carolina Constitution, issued an Order stating: "IT IS ORDERED that, upon the filing of a post-trial motion under Rules 50, 52, 59, or 60(a), SCRCp, by a party in a jury or non-jury action, the party shall within ten (10) days provide a copy of the motion to the trial judge. IT IS FURTHER ORDERED that all post-trial motions shall be disposed of promptly by written order of the trial judge. The Chief Judge for Administrative Purposes in each circuit shall ensure compliance with this Administrative Order."

In accordance with our Supreme Court's mandate, dated June 19, 1997, it can be reasonably ascertained that a sufficient amount of time has transpired, and an order addressing the matters of the evidentiary hearing, dated October 17, 2006, should

be forthcoming. It is my belief that trial counsel has failed to pursue this matter diligently, and this has caused a great deal of time to pass since the reconsideration motion was originally filed. We must be mindful that the reconsideration motion was filed on February 11, 2004. With the passing of Judge Westbrook, this in itself, should warrant reversal of the sentence and a new trial granted. This special circumstance should present great concern as to whether a fair and impartial assessment can be made by an alternate judge. This would demonstrate a sufficient enough harm and prejudice for a new trial. I am only requesting that this Court issue a written order so that I will be in a position to assert my rights associated to these types of matters.

I would further request of this Court that, once a written order is filed, it be served upon me, at the above referenced address. As previously stated, a motion to relieve has been before this Court since November 8, 2006. That is well over a year. I would request that this Court grant the termination of counsel in this matter, and serve all further pleadings upon me personally.

If I can be of any further assistance in these matters, please do not hesitate to contact me. Thank you for your time and attention to these matters.

November 25, 2007

Respectfully Submitted,



rds/WLM

Whethly Larry McKune
#299717 Sumter North #2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

cc: FILE
CLERK
MEYERS
LITTLEJOHN
JUDGE MCMAHON

Cameron B. Littlejohn, Jr.

Attorney at Law

1720 Main Street, Suite 202

Columbia, SC 29201

Telephone
(803) 799-1888

Fax
(803) 799-5888

December 18, 2007

Whelthy L. McKune, SCDC# 299717
Sumter North # 2205
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: *State v. Whelthy L. McKune*

Dear Whelthy:

Enclosed please find an order I received yesterday which has been signed by the Honorable Knox McMahon, Circuit Judge for Lexington County.

I regret that Judge McMahon did not see fit to grant you any relief from your sentence. You have the right to appeal this order, and such appeal needs to be filed with Clerk of Court within ten days of December 14, 2007.

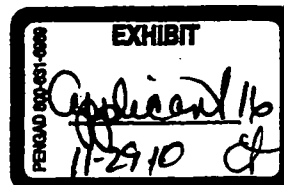
I am sorry to be bringing you this news. With my kindest regards, I am

Very truly yours,

Cameron B. Littlejohn

Cameron B. Littlejohn, Jr.

CBL Jr./qpc:





The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 8, 2008

Cameron B. Littlejohn, Jr., Esquire
1720 Main St., Ste. 202
Columbia, SC 29201

Re: The State v. McKune, Whelthy Larry

Dear Mr. Littlejohn:

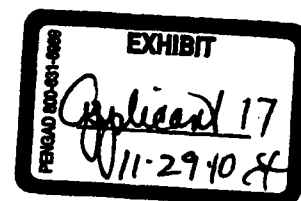
Whelthy Larry McKune has filed a pro se notice of appeal dated December 27, 2007. Because you were his counsel below, you are reminded that you remain his counsel of record in this appeal unless relieved under Rule 235, SCACR, or under Rule 602(e), SCACR, if the Office of Appellate Defense determines it will represent Mr. McKune in this appeal.

Very truly yours,

Kenneth A. Richstad /dkp
CLERK

KAR/nb

cc: Chief Attorney Joseph L. Savitz, III
Whelthy Larry McKune # 299717
Assistant Deputy Attorney General Salley W. Elliott



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Whelthy McKune, #299717,

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2009-CP-32-01865

MEMORANDUM ORDER

Following a hearing, the court makes the following ruling(s) as indicated below.

- (X) 1. The application for post-conviction relief is: ☒ denied
☐ granted
☐ under advisement.

A more detailed order is to follow as directed in No.6 below.

- () 2. The motion to dismiss and/or for summary judgment is hereby:
☐ granted ☐ denied ☐ under advisement.

The ruling on the motion is based upon:

- ☐ the statute of limitations; and/or,
☐ the application is impermissibly successive; and/or,
☐ other reason(s): _____

- () 3. Upon considering the conditional order of dismissal previously filed in this case, the court finds:
☐ There has not been sufficient cause shown to summarily dismiss the application. A hearing on the merits is to be scheduled.
☐ The application for Post Conviction Relief is dismissed because:
☐ the response to the conditional order of dismissal does not demonstrate good cause for allowing the action to continue; or,
☐ no response has been filed to the conditional order of dismissal.

- () 4. The applicant withdrew his application freely, voluntarily, and intelligently on the record.
The case is dismissed: ☐ with prejudice ☐ without prejudice.

(X) 5. Other: PCR counsel presented extensive evidence, including documentary evidence, in an attempt to support the Applicant's positions. But, the Applicant has failed to meet his burden of proof. He has not established that his counsel performed deficiently or that he was prejudiced in any way by deficient performance of counsel. The life sentence imposed was harsh. Plea counsel feels the same. However, the Applicant knew about the potential for life imprisonment on the charge of burglary in the first degree. It was the judge's decision to impose the sentence, and the harshness of the sentence was not due to errors or omissions of counsel, nor was it been established to having been due to any impropriety on behalf of the state

The court does not find the Applicant credible concerning his testimony that the attorney failed to meet with him sufficiently, failed to review discovery properly, failed to investigate adequately, and failed to make appropriate presentations in his appearances before the court.

The court finds that the Applicant's positions about the plea being involuntary are without merit. His testimony about feeling threatened is not credible. Even if he did, he did not communicate that to his attorney. The only thing that the attorney knew about was the Applicant's claim that he felt threatened that night because his co-defendants had guns.

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evidence and evidence about inconsistencies in versions of statements. One factual issue that was discussed in detail in the PCR hearing relates to whether there was a breaking into the house. There was evidence about a door being kicked out from the inside. There was evidence that a co-defendant gave conflicting statements, one of which was that the Applicant kicked in the door. There were questions raised about shoe impressions. None of those issues are proven to have been prejudicial to the Applicant. He maintained all along that he never went in the house. His attorney knew of that position and brought it out to the court.

Challenges to counsel's performance in this regard at the sentencing proceeding do not establish deficient performance or prejudice. The Applicant feels that his attorney did maintain the position at times, including the plea, that Mr. McKune was only the get-away driver; but, the Applicant maintains that this changed, certainly by the reconsideration hearing, so that his own attorney placed him inside the house. The court does not find the evidence to support that interpretation. Counsel advised the court that the Applicant drove the car.

Plea counsel knew about the statements of the co-defendants. He knew through his investigation that McCoy had given different versions. One of those statements claimed that the Applicant broke into the house, but counsel knew that his client had steadfastly maintained that he never went into the house. McCoy and John Henry were let into the home.

The evidence supports the conclusion that the Applicant was an accomplice to the burglary and guilty through the doctrine of accomplice liability. The presentation to the judge demonstrates that counsel was well aware of the Applicant's position that he never entered the house.

Plea counsel testified credibly that he met with the Applicant several different times, discussed the charges, reviewed the Applicant's rights and procedural issues, and learned his side of the story. The Applicant told his attorney that he had hooked up with the co-defendants in Columbia and gave them a ride. He learned on his way to West Columbia that the co-defendants were planning to rob the victim for marijuana. The Applicant challenges his attorney's understanding of whether the client gave a statement. All of the discovery materials were reviewed with the Applicant. The plea attorney agreed that the Applicant probably did not know the full extent of everything that was about to happen the night of the crime, but that the Applicant admitted that he was a participant in the crime of burglary, which is a felony and subject to the felony murder rule. The law is clear that one does not have to know in advance everything that eventually transpires in order to be guilty as an accomplice.

Counsel's assessment was that there was a good chance that the Applicant would be found guilty if he did not plead guilty, and counsel believed that the state was going to seek additional charges. The plea bargain was a straight up plea to burglary and conspiracy. The Applicant interpreted the agreement as being that the state would not take any position on sentencing, and he feels that that is not what happened and that the victims were particularly damning. Upon reviewing the record, the court finds that the state was merely agreeing that there were no recommendations or negotiated sentence, and that nothing was done to violate the Applicant's rights. The victims were free to say what their positions were. Contrary to the Applicant's claim, there had never been an offer for a negotiated sentence of 15 years. Even if there were, he testified that he rejected it.

Counsel knew the evidence against the Applicant. The Applicant feels that the attorney failed to correct various statements made by victims and the state, specifically including assertions that the Applicant supplied the weapons and that there was a claim that the Applicant entered the house. Viewed in totality, the court finds that the attorney acted appropriately in presenting mitigation to the judge. He stated valid strategic reasons as to why he performed in certain ways and did not raise challenges by objections when others were making their presentations to the court. The statements by a victim to the sentencing judge that the Applicant should be put away for the rest of his life was merely a statement of the victim's opinion and the plea attorney acted properly. The

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speaking to the court is not, in the court's view, a proper reading of the totality of the presentation.

Counsel advanced proper strategic and practical reasons why a co-defendant, John Henry, would not have been likely to assist the Applicant. That co-defendant was not being cooperative.

Many of the Applicant's claims are refuted by the plea transcript. The plea judge covered every issue that was required to make a Boykin determination.

After the sentence was handed down, counsel filed a motion seeking to have the court reconsider the sentence. While that motion was pending, the judge was killed in an automobile collision. Letters were introduced into evidence about the delay and concerns being expressed by the Applicant. Counsel testified that he wanted some time to have the situation cool before arguing the motion, which appears to be a valid strategic strategy. No one anticipated that the judge would die in the interim, and no prejudice has been proven from this delay. There has been no demonstration of prejudice regarding the Applicant's complaint that his letters were not answered.

Eventually, The Honorable R. Knox McMahon heard the reconsideration issue. By that time, the Applicant states that he had additional information from a SLED file that he wanted presented. He testified that Judge McMahon asked what information existed about whether the Applicant entered the house. Mr. McKune claims that the attorney never gave him an opportunity to bring this information out and never gave him an opportunity to refute the one claim by McCoy that the Applicant had entered the home. However, the Applicant failed to prove any deficient performance or prejudice.

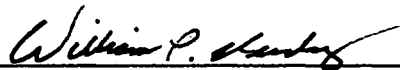
The motion to relieve Mr. Littlejohn as counsel was not filed until after the reconsideration hearing. There is no demonstration that matters raised in letters sent to the court would have been likely to change the outcome of any of these proceedings.

Any issues not addressed in this memorandum order, but which were raised on PCR, are to be addressed in the proposed final order from the Attorney General.

- (X) 6. (X) A proposed order is to be submitted by (X) the Attorney General () Applicant's counsel, with a copy to be sent to opposing counsel within (30) days. BECAUSE OF THE CHANGE IN STAFF AND THE PASSAGE OF TIME SINCE THE HEARING, IF A TRANSCRIPT OF THE PCR HEARING IS NEEDED, THE ATTORNEY GENERAL MAY REQUEST ADDITIONAL TIME TO SUBMIT THE PROPOSED ORDER.
- () Both sides are directed to submit proposed orders to the court and to serve the orders on each other within () days.
- () The court will prepare a more detailed order without assistance from counsel.

IT IS SO ORDERED.

Date: September 15, 2011


William P. Keesley, Judge

Attorney for Applicant: Tricia Blanchette, Esq.
Attorney for State: Asst. A.G. West Lee (now
Asst. A.G. Kaelon May)

FILED
SEP 16 2011
7:15 PM

#3

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-1865

Whelthy McKune, #299717,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 21, 2009. Respondent made its return on May 11, 2010. An evidentiary hearing into the matter was convened on November 29, 2010 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State the offered the testimony of Cameron Littlejohn, Jr., Esquire (Mr. Littlejohn) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the exhibits offered by Applicant at the PCR hearing.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2004 term of the Lexington County Grand Jury for Burglary—1st Degree

(2004-GS-32-0001) and Criminal Conspiracy (2004-GS-32-0002). He was represented by Cameron Littlejohn, Esquire. On February 9, 2004, the Applicant pled guilty as charged. He was sentenced by the Honorable Marc H. Westbrook to life imprisonment for the burglary charge, and a concurrent term of five (5) years for the conspiracy charge.

A timely notice of appeal was filed on the Applicant's behalf. The Applicant subsequently moved to withdraw his appeal, and the South Carolina Court of Appeals granted the Applicant's motion by order dated December 17, 2008.

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

1. Ineffective assistance of counsel;
- a. "Failure of trial counsel to prepare and investigate."
 - b. "Applicant did not have a full understanding of the charges against him."
 - c. "Failure of counsel to present mitigating evidence."
 - d. "Failure of counsel to make contemporaneous objections regarding plea agreement and move to withdraw guilty plea."
 - e. "Failure of counsel to properly prepare and present motion for reconsideration."

2. Involuntary Guilty Plea

On November 16, 2010, the Applicant filed an amendment to his application adding the following specific allegations:

3. Ineffective assistance of counsel for failure to prepare and investigate, specifically, but not limited to the following claims:
- a. Failure to provide and review the complete discovery materials with the Applicant prior to the entry of his plea.
 - b. Failure to review the indictments with the Applicant and discuss the charges set forth therein.

- c. Failure to conduct an independent investigation.
 - d. Failure to ensure that the Applicant was fully advised regarding the original plea offer to 15 years and to ensure that the rejection of such offer was knowingly and understandably made by the Applicant.
4. Ineffective assistance of counsel regarding the entry of the plea and separate sentencing hearing.
- e. Failure to properly advise the Applicant regarding the State's position on sentencing and/or move to withdraw when the State's position differed from what was conveyed by counsel to the Applicant.
 - f. Failure to object and/or move to withdraw when the State provided the plea court with a variance in the facts from the plea to sentencing hearing.
 - g. Failure to refute the State's position that the Applicant entered the home during the robbery at issue.
 - h. Failure to present viable mitigation on the Applicant's behalf.
5. Ineffective assistance of counsel regarding the reconsideration hearing.
- i. Failure to have the motion heard in a timely manner despite repeated requests from the Applicant.
 - j. Failure to present an argument regarding the State's change in position as to sentencing or the variance in the facts from the plea to sentencing hearing.
 - k. Failure to present any viable evidence to refute the State's position that the Applicant entered the home during the robbery.
 - l. Failure to address the knowing and voluntary nature of the Applicant's plea.
 - m. Failure to offer viable mitigation on the Applicant's behalf.

**II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR
EVIDENTIARY HEARING**

Applicant's Testimony

At the PCR, Applicant testified that he was arrested in July of 2003, retained counsel, and that his original counsel was Mr. Hugh Roberts. (Tr. p.8, lines8-13). Applicant testified that he attended a preliminary hearing, but was not sure it was with Mr. Roberts. (Tr. p.8, lines14-18).

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Applicant testified that Mr. Roberts was relieved as Applicant's counsel and then Applicant and his mother hired Mr. Littlejohn. (Tr. p.8, line22 – 9, line5). Applicant testified that he met with counsel prior to his plea and would write down notes during their meetings. (Tr. p.9, lines6-13). Applicant testified that based on the jail log-in sheets, which were entered into evidence by Applicant, that Applicant met with counsel six times and that at the first meeting Applicant gave counsel his side of the story of what happened. (Tr. p.10, line13 – 11, line2). Applicant testified he went to a bond hearing, but it was continued and at the subsequent bond hearing counsel told Applicant he thought it would be a good idea not to go through with the hearing due to the fact that counsel thought Applicant's case would be heard soon. (Tr. p.11, lines11-21). Applicant testified that counsel informed Applicant about a 15-year plea deal but that Applicant did not have an understanding of what was going on at that time and rejected the plea offer. (Tr. p.12, lines1-4). Applicant testified that on September 22, 2003, he met with counsel, that counsel brought the first portion of the discovery materials, and that the solicitor and his investigator were present at the meeting as well. (Tr. p.12, lines8-14). Applicant testified that he told the solicitor and his investigator his side of the story and that they asked if Applicant knew where the guns could be located. (Tr. p.12, lines15-23).

Applicant testified that on January 5, 2004, counsel brought the second portion of the discovery and that at this meeting Applicant and counsel discussed and reviewed the discovery materials, the theory of the state's case, the witness statements, and accepting a plea. (Tr. p.13, lines7-20). Applicant testified that it was clear to him that as far as sentencing, Applicant was going to be facing 15 to life because counsel told Applicant the solicitor was going to charge Applicant with conspiracy and burglary and if Applicant took the plea and that carried 15 to life and the solicitor would let the judge know how truthful Applicant had been throughout the process, and that

the solicitor would tell the judge he did not oppose any recommendations Applicant's counsel proposed. (Tr. p.13, line21 – 14, line5). Applicant testified that on January 7, 2004, he and counsel met and discussed and reviewed more of the discovery, which included pictures of the scene and the forensic evidence that Applicant kicked the door in. (Tr. p.14, lines6-17). Applicant testified that on January 8, 2004, counsel wanted Applicant to think about a guilty plea, that Applicant told counsel Applicant needed to speak with his family about the decision. (Tr. p.14, lines18-23).

Wipe #5
Applicant testified that he did not have the indictments, that he was first charged with accessory, then found out about the conspiracy and burglary charges in January of 2004. (Tr. p.15, lines2-5). Applicant testified that he received a letter, dated September 16, 2004, from counsel stating that counsel did not have any of the indictments. (Tr. p.16, lines6-21). Applicant testified that he and counsel reviewed the discovery materials that counsel thought applied to the Applicant's case and the investigation conducted by the state. (Tr. p.17, lines5-8). Applicant testified that counsel never provided him with the SLED file or any of the testing done by SLED. (Tr. p. 17, lines15-17). Applicant testified that the statement of Esqueen Merritt, dated November 13, 2002, did not mention a third person or that the back door had been kicked in. (Tr. p.18, line16 – 19, line21). Applicant testified that the statements of Vickie Merritt, one of which was dated November 13, 2002, indicated two males were in the house, that a co-defendant may have had a motive, and that Merritt's third statement identified Quincy McCoy. (Tr. p.20, line18 – 22, line8). Applicant testified that counsel never went over these statements, but that Applicant was given these statements by counsel and that Applicant went over these statements by himself. (Tr. p.22, lines12-17; p.63, lines8-16).

Applicant testified that the statement of Terry Haltiwanger was included in the discovery materials, that counsel did not review this statement with Applicant prior to the plea, but that

WMC #6
Applicant reviewed the statement by himself. (Tr. p.23, lines16-19; p.63, lines8-16). Applicant testified that counsel reviewed with Applicant the Lexington County crime scene report and that the back door was kicked in with a blood trail, and that the only co-defendant who was bleeding at the time of the crime was Quincy McCoy. (Tr. p.24, line20 – 25, line22). Applicant testified that he did not speak with counsel about the blood trail and that counsel should have investigated the fact that the victims said they let the two robbers in but that the crime report stated the back door had been kicked in. (Tr. p.26, line1 – 27, line10). Applicant testified that counsel reviewed Quincy McCoy's statement, dated November 15, 2003, with Applicant, that Applicant was aware of the multiple statements McCoy gave in this case, and that McCoy changed his story about who the driver was in his statement. (Tr. p.27, line17 – 28, line22). Applicant testified that counsel did not look into the fact that once McCoy changed who the driver was and the investigators figured out it wasn't the guy McCoy initially asserted, they just put Applicant in the place of the driver. (Tr. p.29, lines1-14). Applicant testified that counsel never fully reviewed all the investigative reports with Applicant. (Tr. p.29, line21 – 30, line8). Applicant testified that Officer Weed stated a blood trail led out of the house and over the fence, but that Applicant was never bleeding and Applicant was not at the house. (Tr. p.30, lines9-20). Applicant testified that Officer Mount stated the victims identified two robbers, that the second report by Officer Mount, dated September 15, 2003, indicated the driver was Haltiwanger, and gave Weathersbee's name as being present at the scene. (Tr. p.30, line21 – 31, line24). Applicant testified that Officer McIntosh wrote a report that indicated McCoy's statements stated that Applicant stayed in the car during the incident, and that counsel should have talked to Mr. McCoy and Mr. John Henry about Applicant staying the car the whole time. (Tr. p.32, lines1-14).

Applicant testified that McCoy sent Applicant a letter in which McCoy asked for Applicant's help because Applicant was going to ~~fair~~ ^{FARE} better in the situation with the part that Applicant played in it, and that Applicant gave this letter to counsel. (Tr. p.33, lines12-22). Applicant testified that he did not accept the 15-year plea deal because he did not know what he was being charged with, that he did not know anything. (Tr. p.38, lines11-15). Applicant testified that counsel told Applicant he would plead straight-up with no negotiations facing 15 to life. (Tr. p.38, lines24-25). Applicant testified that the only reason he pled was because of the forensic evidence counsel said the state had against Applicant and the fact that the solicitor said he would tell the judge that he did not oppose any recommendation Applicant's counsel would make. (Tr. p.39, lines3-7). Applicant testified that counsel thought it was a good idea to plead because Applicant was in denial about kicking down the door, but counsel told Applicant that counsel was just informing Applicant of what the state had against Applicant and counsel thought a plea was in Applicant's best interest. (Tr. p.39, line23 – 40, line2). Applicant testified that at the plea hearing the solicitor never indicated that Applicant kicked the door or that there were three robbers, that counsel did not make any comments on Applicant's behalf, and that the solicitor did not tell the judge about Applicant being threatened and forced to drive. (Tr. p.41, line10 – 42, line12). Applicant testified that the time lapse between his plea and sentencing was due to the fact that the state wanted Applicant to testify at John Henry's trial. and that Applicant did testify. (Tr. p.42, lines13-18). Applicant testified that at his sentencing hearing the state indicated Applicant's plea was straight-up and that the state was going to tell the court about Applicant's cooperation. (Tr. p.42, line24 – 43, line2). Applicant testified that the state informed the court that Applicant talked freely with them before the trial and that Applicant was approximately 75% truthful. (Tr. p.43, lines3-6).

Applicant testified that the state indicated that Applicant provided the guns, that Applicant was the driver, that Applicant entered the back door during the robbery, and that these were not the same facts presented at the plea hearing. (Tr. p.43, lines11-16). Applicant testified that at the sentencing hearing the judge asked specifically if Applicant was in the house and the state indicated that McCoy stated Applicant was in the house but that neither of the victims stated Applicant was in the house. (Tr. p.43, line24 – 44, line3). Applicant testified that counsel did not offer any information to refute the state's assertion Applicant was in the house. (Tr. p.44, lines4-6). Applicant testified that the victims asked the court for Applicant to be put away for life and that Applicant was not aware this would be requested and that at this point Applicant told counsel he did not want to plead guilty anymore, and that counsel would put a motion in regarding this. (Tr. p.44, line18 – 45, line13). Applicant testified that he knew a life sentence was a possibility but that Applicant never thought it would happen. (Tr. p.45, lines7-9). Applicant testified that counsel indicated that Applicant denied any involvement with the guns and going in the house, and that Applicant wanted counsel to inform the court that Applicant was threatened to be pistol whipped if he did not drive. (Tr. p.45, line14 – 46, line9). Applicant testified that counsel filed a motion for reconsideration of sentence on February 11, 2004 and that Applicant received a copy of his file from counsel's paralegal on May 12, 2004. (Tr. p.47, line1 – 48, line7). Applicant testified that he wrote a letter to counsel, dated September 22, 2005, about it taking too long for the reconsideration motion to be heard by the court, that Applicant indicated in the letter that he felt counsel and Applicant were not communicating like they should. (Tr. p.49, line10 – 50, line16). Applicant testified that he sent another letter to counsel, dated May 17, 2006, about not receiving a response from counsel and that Applicant was trying to find out about his reconsideration motion. (Tr. p.50, line25 – 51, line14).

WPM
#8

Applicant testified that the reconsideration hearing was held on October 17, 2006, that counsel informed the court Applicant's position was that Applicant stayed in the car, that counsel did not provide the court with any evidence to show that Applicant did not go in the house, and that Applicant could not refute anything that Mr. McCoy said because Applicant merely testified at the trial but that Applicant was not on trial during his testimony. (Tr. p.51, line15 – 53, line3). Applicant testified that counsel should have presented the SLED file and the fact about the victims stating that Applicant should receive a life sentence. (Tr. p.53, line22 – 54, line3). Applicant testified that he never gave any shoe/foot impressions to the investigators. (Tr. p.54, lines7-9). Applicant testified that counsel did not challenge the change in facts from the plea hearing to the sentencing proceeding, and that at the reconsideration hearing counsel placed Applicant inside the house and told the judge this. (Tr. p.54, line18 – 55, line6). Applicant testified that he filed a motion to have counsel relieved on November 8, 2006, that Applicant wrote a letter to Judge Keesley, dated April 2, 2007, about trying to have motion to relieve counsel heard but that the motion was never heard. (Tr. p.55, line17 – 57, line8). Applicant testified that the Order denying motion for reconsideration was issued by Judge McMahon on December 10, 2007. (Tr. p.57, lines9-11). Applicant testified that on December 18, 2007, Applicant sent counsel a letter about filing an appeal and that a letter from the South Carolina Court of Appeals, dated January 8, 2008, advised counsel that he was still Applicant's counsel, and that Applicant filed a pro se notice of appeal and eventually voluntarily dismissed his appeal. (Tr. p.59, line1 – 60, line20). Applicant testified that counsel never promised Applicant that Applicant would not get a life sentence. (Tr. p.64, lines14-16). Applicant testified that if counsel would have brought the evidence entered at the PCR hearing to Applicant's attention that Applicant

C. J. J. #9

would have been better informed and would have been able to make a better decision. (Tr. p.67, lines2-7).

Mr. Littlejohn's Testimony

At the PCR hearing, counsel testified that he has been practicing law since November of 1975 and that 85% of his practice has been criminal law. (Tr. p.68, lines6-9). Counsel testified that he met with Applicant several times, that he and Applicant discussed the charges, the possible punishments, Applicant's constitutional rights, and that counsel listened to the Applicant's side of the story. (Tr. p.68, line13 – 69, line2). Counsel testified that he filed a Rule 5 discovery motion and received the discovery materials which consisted of: Lexington County Sheriff department incident reports, investigative reports, forensics, pathology reports, statements of the victims, statements of the co-defendants, and Applicant's statement. (Tr. p.69, lines15-24). Counsel testified that he reviewed and discussed the discovery materials with the Applicant. (Tr. p.70, lines2-5). Counsel testified that based on Applicant's admission of being a participant in the crime and the testimony of the two co-defendants that Applicant stood a good chance of being convicted under 'hand of one hand of all' of murder, armed robbery, kidnapping, and burglary, and that counsel discussed this with the Applicant. (Tr. p.71, line6-18).

Counsel testified that he engaged in plea negotiations with the solicitor but the best offer the state was willing to give was a plea to burglary first and conspiracy, and that the state would take no position on sentencing, so that Applicant was facing 15 years to life. (Tr. p.71, line21 – 72, line4). Counsel testified that there was never a 15-year plea deal on the table. (Tr. p.72, lines5-8). Counsel testified that in attempt to mitigate potential sentencing counsel advised Applicant to cooperate with the police, and that Applicant did cooperate. (Tr. p.72, lines11-16). Counsel testified that Applicant

did not indicate any potential defenses that counsel could investigate for Applicant, that Applicant was steadfast in his assertion that he never went into the house, and never kicked in the back door. (Tr. p.72, line17 – 73, line6). Counsel testified that there was no real evidence showing Applicant definitely did not go into the house and that it was just the state's theory that a third person went in the house. (Tr. p.73, lines19-25). Counsel testified that it was Applicant's word against McCoy's statements about the fact that Applicant broke into the back door. (Tr. p.74, lines8-10). Counsel testified that Judge Westbrook had presided over the trial of John Henry shortly before the Applicant was sentenced so Judge Westbrook had listened to all the witnesses and heard all the evidence presented by the sheriff's department. (Tr. p.74, lines14-18).

WJH
#11
Counsel testified that Applicant ultimately decided to plead guilty and that counsel did not force, pressure, or coerce Applicant into pleading guilty. (Tr. p.74, lines19-24). Counsel testified that he advised Applicant of the potential sentencing penalties and told Applicant while counsel did not think Applicant would receive a life sentence, Applicant was facing a life sentence. (Tr. p.75, lines2-4). Counsel testified that ultimately the Applicant never denied that he played some role in the crime, and that at the sentencing and reconsideration hearings counsel presented to the court Applicant's assertion that he never went into the house. (Tr. p.75, lines7-21). Counsel testified that he reviewed the victims' statements with Applicant, that counsel reviewed the interview of Mr. Haltiwinger with Applicant, and that counsel gave Applicant all of the discovery which counsel and Applicant reviewed together. (Tr. p.76, lines1-18). Counsel testified that he did not speak with the co-defendants because they had the statements from those co-defendants in the discovery materials. (Tr. p.76, lines19-25). Counsel testified that he recalled a letter from one the co-defendants supposedly asking Applicant to help him and somehow indicating Applicant did not have a role in the crime

beyond driving the car, but that it was after the fact and it would have been McCoy's version, and counsel did not see how McCoy was going to be able to help Applicant based on McCoy's prior inconsistent statements. (Tr. p.77, lines4-17).

Counsel testified that he did not recall the Applicant asking to withdraw ^{his} his guilty plea. (Tr. p.78, lines3-4). Counsel testified that regarding the passage of time between the sentencing proceeding and the motion for reconsideration hearing, counsel wanted to let some time pass in hopes passions would cool and the situation would quiet down, however in letting some time pass unfortunately Judge Westbrook passed away, and the solicitor who handled the case moved to the Attorney General's Office, and that nobody remained in the solicitor's office who had handled the case. (Tr. p.78, line18 – 79, line2). Counsel testified that the delays in getting the motion for reconsideration heard were due to first, finding a judge to hear it that did not have anything to do with the case and second, getting the solicitor away from his Attorney General duties to handle this case back in Lexington. (Tr. p.79, lines3-7). Counsel testified that regarding the alleged change in facts between the plea and sentencing hearings that at the plea the state's version was pretty much right on with Applicant's version and that the solicitor took a harder position as to what Applicant's involvement was after the trial but the state gave their version and Applicant gave his version. (Tr. p.80, lines9-17). Counsel testified that he was surprised at the sentence given to Applicant and that counsel never promised Applicant that he would not receive a life sentence. (Tr. p.81, lines11-13). Counsel testified that he thought he did the best he could to represent Applicant's case in the light most favorable to the Applicant, and that had Applicant proceeded to trial counsel felt pretty certain Applicant would have been convicted. (Tr. p.81, lines19-24).

Counsel testified that he received copies of the indictments on the day of the plea and showed them to Applicant so that Applicant could answer the question if it was asked, have you seen the indictments because the solicitor was going back and forth on the charges. (Tr. p.82, lines16-21). Counsel testified that based on his recollection the Applicant gave a statement, but that counsel did not recall whether it was oral statement or a written statement. (Tr. p.84, lines2-4). Counsel testified that he did not bring the fact that the victims' statements only indicated there were two robbers in the home to the court's attention because Judge Westbrook previously heard all the witnesses' testimony at trial prior to Applicant's sentencing. (Tr. p.84, lines13-18). Counsel testified that the opportunity Applicant would have had to refute anything that was brought up at trial was at the sentencing proceeding. (Tr. p.85, lines3-6). Counsel testified that he did not use a private investigator or conduct an independent investigation. (Tr. p.85, lines19-21). Counsel testified that he informed the Applicant that the state would take no position on sentencing and the plea would be from 15 years to life. (Tr. p.86, lines6-10). Counsel testified that he agreed with the statement by the state at the plea hearing that Applicant acted solely as the getaway driver. (Tr. p.86, lines11-16).

Counsel testified that he did not object when the state gave a different variation of the facts at the sentencing proceeding because typically counsel does not object during a plea or sentencing hearing, and that counsel refutes or responds to what the state presented and vice versa. (Tr. p.86, lines17-24). Counsel testified that he did attempt to refute the state's theory that Applicant had gone in the back door, that the state had pictures of the door where it had been kicked in, breaking the lock, and that counsel believed there was a footprint on the door. (Tr. p.87, line1 – 88, line12). Counsel testified that he did not recall any statement about Applicant being threatened with being pistol whipped on the head or anything that rose to the level of threats that would counteract the

actions Applicant had taken. (Tr. p.88, line24 – 89, line2). Counsel testified that he did not recall communicating with Applicant during ^{the} ~~the~~ lapse in time between sentencing and the reconsideration hearing, but that counsel did talk with Applicant's mother a couple of times. (Tr. p.90, lines3-10).

Counsel testified that regarding the letter sent to Applicant from his office indicating counsel was making calls on the Applicant's behalf; those calls were to the solicitor about a reduction in Applicant's sentence. (Tr. p.90, lines20-25). Counsel testified that he became aware of Applicant's motion to relieve counsel at some point after the reconsideration hearing. (Tr. p.91, lines9-25). Counsel testified that had Applicant chose ~~to~~ ^{to} proceed to trial, counsel would have pursued footprint impressions and things of that nature, and that the solicitor said he would pursue murder charges, armed robbery, and kidnapping in addition to burglary first. (Tr. p.93, line12 – 94, line1). Counsel testified that he and Applicant met several times the week of January 5th and informed Applicant he would be going to trial with John Henry if Applicant did not take the plea, but that counsel would have had adequate time to start an independent investigation at that point if Applicant did not take the plea. (Tr.p.94, lines8-17).

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcript from Applicant's guilty plea, and legal arguments of counsel. Pursuant to S.C. Code Ann §17-27-80 (2003), this Court makes the following findings of

facts and conclusions of law based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

a. Failure to prepare and investigate

Applicant alleges that counsel was ineffective for failing to provide and review the complete discovery materials with Applicant prior to the entry of his plea; for failing to review the indictments with Applicant and discuss the charges set forth therein; for failing to conduct an independent investigation; and for failing to ensure that Applicant was fully advised regarding the original plea offer to 15 years and to ensure that the rejection of such offer was knowingly and understandably made by Applicant. This Court finds that Applicant has failed to meet his burden of proof regarding these allegations. As to the allegation counsel was ineffective for failing to provide and review the complete discovery materials with Applicant prior to the entry of his plea, the Applicant testified that he met with counsel several times and that specifically on two occasions counsel reviewed the discovery materials with the Applicant. Applicant admitted that he reviewed the victims' statements. Applicant further admitted that he was provided with a copy of his file by counsel's office on May 12, 2004. Counsel confirmed that he and Applicant reviewed the discovery materials, which consisted of: Lexington County Sheriff department incident reports, investigative reports, forensics, pathology reports, statements of the victims, statements of the co-defendants, and Applicant's statement. This Court does not find the Applicant credible concerning his testimony that counsel failed to meet with him sufficiently, failed to review discovery properly and failed to investigate adequately. This Court finds all of the discovery materials were reviewed with the Applicant. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully

prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. The Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

WAC #17
As to the allegation that counsel was ineffective for failing to review the indictments with Applicant and discuss the charges set forth therein, this Court finds this allegation is without merit. Counsel testified credibly that he met with Applicant several different times, discussed the charges, reviewed the Applicant's rights and procedural issues, and learned Applicant's side of the story. It is clear the Applicant was fully apprised of the charges against him based on his testimony that Applicant was first charged with accessory and that counsel informed Applicant of the burglary first and conspiracy charges. Moreover, counsel testified that he received copies of the indictments on the day of the plea because the solicitor was going back and forth on the charges, but that counsel was able to review the indictments with Applicant prior to Applicant entering his guilty plea. This Court finds Applicant has failed to show that counsel's performance was deficient or that Applicant was

prejudiced in any way by alleged deficient performance of counsel; therefore this allegation is denied and dismissed.

As to the allegation that counsel was ineffective for failing to conduct an independent investigation, this Court finds this allegation is without merit. The Applicant presented extensive evidence, including documentary evidence, in an attempt to support his positions. But, Applicant has failed to meet his burden of proof. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Counsel received and reviewed all of the discovery materials, counsel knew about the statements of the co-defendants, counsel knew through his investigation that McCoy had given different versions of his story. One of those statements claimed that Applicant broke into the house, but counsel knew that his client steadfastly maintained that he never went into the house. Counsel discussed Applicant's version of the story with Applicant. Counsel agreed that Applicant probably did not know the full extent of everything that was about to happen the night of the crime, but that Applicant admitted that he was a participant in the crime of burglary, which is a felony and subject to the felony murder rule. This Court notes the law is clear that one does not have to know in advance everything that eventually transpires in order to be guilty as an accomplice. Counsel testified that Applicant did not indicate any potential defenses that counsel could investigate for Applicant. To establish counsel failed to adequately prepare for trial, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds that Applicant did not present any evidence or testimony of what counsel failed to discover or other defenses that could have been pursued had

counsel more fully prepared. This Court finds that counsel conducted a sufficient investigation pursuant to Strickland v. Washington. This Court finds Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

As to the allegation that counsel was ineffective for failing to ensure that Applicant was fully advised regarding the original plea offer to 15 years and to ensure that the rejection of such offer was knowingly and understandably made by Applicant, this Court finds this allegation is without merit. Counsel's assessment was that there was a good chance that Applicant would be found guilty if he did not plead guilty, and counsel believed the state was going to seek additional charges. The plea bargain was a straight-up plea to burglary first and conspiracy. The Applicant interpreted the agreement as being that the state would not take any position on sentencing, and Applicant feels that that is not what happened and that the victims were particularly damaging. Counsel testified that the best offer the state was willing to give was a plea to burglary first and conspiracy, and that the state would take no position on sentencing. Counsel testified that there was never a 15-year plea deal on the table. Upon reviewing the record, this Court finds that the state was merely agreeing that there were no recommendations or negotiated sentence, and that nothing was done to violate the Applicant's rights. The victims were free to say what their positions were. This Court finds that contrary to Applicant's claim, there had never been an offer for a negotiated sentence of 15 years. Even if there were, Applicant testified that he rejected it. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore this allegation is denied and dismissed.

b. Ineffective assistance of counsel regarding the entry of the plea and separate

sentencing hearing

Applicant alleges that counsel was ineffective for failing to properly advise Applicant regarding the State's position on sentencing and/or move to withdraw when the State's position differed from what was conveyed by counsel to Applicant; for failing to object and/or move to withdraw when the State provided the plea court with a variance in the facts from the plea to sentencing hearing; for failing to refute the State's position that Applicant entered the home during the robbery at issue; and for failing to present viable mitigation on the Applicant's behalf. This Court finds these allegations are without merit.

Wm #20
As to the allegation that counsel was ineffective for failing to properly advise Applicant regarding the State's position on sentencing and/or move to withdraw when the State's position differed from what was conveyed by counsel to Applicant, this Court finds that Applicant has failed to meet his burden of proof. The life sentence imposed by the judge was harsh and counsel feels the same. However, Applicant knew about the potential for life imprisonment on the charge of burglary in the first degree. It was the judge's decision to impose the sentence, and the harshness of the sentence was not due to errors or admissions of counsel, nor had it been established to having been due to any impropriety on behalf of the state. Counsel testified that the best offer the state was willing to give was a plea to burglary first and conspiracy, and that the state would take no position on sentencing and that he discussed this with Applicant. The Applicant interpreted the agreement as being that the state would not take any position on sentencing. This Court finds that the state's position did not differ from what was conveyed by counsel to the Applicant, as stated previously the state was merely agreeing that there were no recommendations or negotiated sentence. This Court finds that counsel properly advised Applicant regarding the state's position on sentencing and that

counsel cannot be held ineffective for failing to move to withdraw Applicant's guilty plea when the state's position did not differ from what was conveyed by counsel to the Applicant. Applicant has failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

WPM
#21

As to the allegation that counsel was ineffective for failing to object and/or move to withdraw when the state provided the plea court with a variance in the facts from the plea to sentencing, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony about feeling threatened is not credible. Even if Applicant did feel threatened to drive by his co-defendants, Applicant did not communicate that to counsel. The only thing that counsel knew about was the Applicant's claim that he felt threatened that night because his co-defendants had guns. This Court notes that one factual issue that was discussed in detail at the PCR hearing relates to whether there was a breaking into the house. There was evidence about a door being kicked out from the inside. There was evidence that a co-defendant gave conflicting statements, one of which was that the Applicant kicked in the door. There were questions raised about shoe impressions. However, this Court finds that none of those issues are proven to have been prejudicial to the Applicant. Applicant maintained all along that he never went in the house and counsel knew of that position and brought it out to the court. This Court finds that challenges to counsel's performance in this regard at the sentencing proceeding do not establish deficient performance or prejudice. The Applicant feels that counsel did maintain the position at times, including the plea, that Applicant was only the get-away driver; but Applicant maintains this changed, certainly by the reconsideration hearing, so that counsel placed Applicant inside the house. This Court does not find the evidence to support that interpretation. Counsel advised the court that Applicant drove the car. This Court finds the evidence

supports the conclusion that Applicant was an accomplice to the burglary and guilty through the doctrine of accomplice liability. The presentation to the judge demonstrates that counsel was well aware of the Applicant's position that Applicant never entered the house. This Court finds that counsel's performance was not deficient and that Applicant cannot prove resulting prejudice; therefore this allegation is denied and dismissed.

WPK
#22

As to the allegations that counsel was ineffective for failing to refute the State's position that Applicant entered the home during the robbery at issue and for failing to present viable mitigation on the Applicant's behalf, this Court finds that these allegations are without merit. Counsel knew the evidence against the Applicant. Applicant feels that counsel failed to correct various statements made by victims and the state, specifically including assertions that Applicant supplied the weapons and that there was a claim that Applicant entered the house. Viewed in totality, this Court finds that counsel acted appropriately in presenting mitigation to the judge. Counsel testified that he did not object when the state gave a different variation of the facts at the sentencing proceeding because typically counsel does not object during a plea or sentencing hearing, and that counsel refutes or responds to what the state presented and vice versa. Counsel also testified that there was no real evidence showing Applicant did not go into the house and that it was Applicant's word against McCoy's statement. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that counsel articulated valid strategic reasons as to why he performed in certain ways and did not raise challenges by objections when the state and the victims were making their presentations to the court, and that

Applicant has not shown that counsel was deficient in that choice of tactics. The statements by a victim to the sentencing judge that Applicant should be put away for the rest of his life was merely a statement of the victim's opinion and the plea attorney acted properly. This Court further finds that the Applicant has failed to show that he suffered any prejudice from counsel's alleged deficient performance. This Court finds that Applicant has failed to meet his burden of proof; therefore these allegations are denied and dismissed.

c. Ineffective assistance of counsel regarding the reconsideration hearing

WPA #23
Applicant asserts that counsel was ineffective for failing to have the motion heard in a timely manner despite repeated requests from the Applicant; for failing to present an argument regarding the state's change in position as to sentencing or the variance in the facts from the plea to sentencing hearing; for failing to present any viable evidence to refute the state's position that Applicant entered the home during the robbery; for failing to address the knowing and voluntary nature of the Applicant's plea; and for failing to offer viable mitigation on the Applicant's behalf. First, this Court has already determined that there was no change in the state's position as to sentencing and that counsel was not ineffective for failing to present an argument regarding the alleged variation in the facts from the plea to sentencing hearing, therefore counsel certainly was not ineffective for these same allegations at the reconsideration hearing. After the sentence was handed down, counsel filed a motion seeking to have the court reconsider Applicant's sentence. While that motion was pending, the judge was killed in an automobile accident. Applicant introduced letters into evidence about the delay and concerns being expressed by Applicant. Counsel testified that he wanted some time to have the situation cool before arguing the motion. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance.

Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) *and* McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that counsel articulated valid strategic reasons for allowing some time to pass before arguing the motion, and that Applicant has failed to show that counsel was deficient in that choice of tactics. No one anticipated that the judge would die in the interim, and no prejudice can be proven by the Applicant from this delay. This Court finds that there has been no demonstration of prejudice regarding the Applicant's complaint that his letters were not answered.

On October 17, 2006, the Honorable R. Knox McMahon heard the reconsideration motion. By that time, Applicant testified that he had additional information from a SLED file that he wanted presented. Applicant testified that Judge McMahon asked what information existed about whether the Applicant entered the house. Applicant claims that counsel never gave him an opportunity to bring this information out and never gave him an opportunity to refute the one claim by McCoy that Applicant entered the home. This Court finds that counsel informed the court at the reconsideration hearing that Applicant had always maintained that Applicant never went into the house.

As to Applicant's claim that counsel was ineffective for failing to address the knowing and voluntary nature of the Applicant's plea, this Court finds this allegation is without merit. Counsel testified credibly that he met with the Applicant several different times, discussed the charges, reviewed the Applicant's rights and procedural issues, and learned Applicant's side of the story. Counsel reviewed all of the discovery with the Applicant. This Court finds and the record reflects that the plea judge covered every issue that was required to make a Boykin determination. Counsel testified that he did not recall Applicant asking to withdrawal his guilty plea. Applicant did not present any evidence or testimony that would have given counsel reason to address the knowing and

voluntary nature of the Applicant's guilty plea at the reconsideration hearing. This Court finds that Applicant has failed show counsel's performance was deficient and any resulting prejudice; therefore, these allegations are denied and dismissed.

2. Involuntary Guilty Plea

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#25

This Court finds that Applicant's allegation that his guilty plea was involuntary is without merit. Applicant's testimony about feeling threatened is not credible. Even if Applicant did, he did not communicate that to his counsel. Counsel testified credibly that he and the Applicant met several times, discussed the charges against the Applicant, reviewed the Applicant's rights, discussed the Applicant's version of events, and reviewed all of the discovery with Applicant. Counsel further testified that he and Applicant discussed the potential sentences Applicant was facing. This Court finds and the record reflects that at the plea hearing the Applicant told the judge that Applicant was not coerced or forced into pleading. This Court finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 4th day of Nov., 2011.

26

William P. Keesley
William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

LEXINGTON, South Carolina

FILED
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT
SC
NOV 10 2011

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Whelthy L. McKune, 299717,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

COPY

CASE NO.
2009-CP-32-1865

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 12725 Columbia, SC 29211 phone: 803-988-0008 fax: 803-988-8070 e-mail: blanchettelaw@gmail.com other:	Defendant's Attorney: Kaelon May, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Reconsider Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant November 14, 2011 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	DOCKET NO.: 2009-CP-32-1865
Whelthy McKune, #299717,	)	
Applicant,	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR REHEARING PURSUANT TO RULE
State of South Carolina,	)	59(a), SCRPC, AND/OR MOTION TO
Respondent.	)	ALTER OR AMEND PURSUANT TO
	)	RULE 59(e), SCRPC

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney, will move before the Honorable William P. Keesley to direct an entry of a new judgment and/or alter or amend the judgment signed on November 4, 2011, which was filed on November 7, 2011. A copy of the filed Order was received by the undersigned attorney from the Lexington County Clerk of Court's office on November 9, 2011.

COMES NOW the Applicant, through his undersigned attorney, and requests that this Court direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order, pursuant to Rule 59(e), SCRPC.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on April 21, 2009. The State submitted a Return on or about May 11, 2010. An evidentiary hearing was conducted on November 29, 2010 at the Lexington County Courthouse in front of the Honorable William P. Keesley. The Applicant was present and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by A. West Lee, Assistant Attorney General. During the evidentiary hearing, the Applicant testified on his own behalf. The State called Cameron Littlejohn, Jr., Esquire. This Court also had before it a copy of the Application, the Respondent's Return, the

Applicant's Amendment, the records of the Lexington County Clerk of Court concerning the subject conviction, and the Applicant's records from the South Carolina Department of Corrections, and seventeen Exhibits introduced by the Applicant. .

At the conclusion of the evidentiary hearing, this Court took the matter under advisement. On September 16, 2011, the Honorable William P. Keesley filed a Memorandum Order, which instructed the State to submit an Order of Dismissal.

The Applicant respectfully submits the following grounds in support of the instant Motion:

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, the Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered on each issue and that the testimony of each witness is properly addressed. Furthermore, the Applicant would respectfully request that this Court carefully review the records, exhibits, and the transcript from the evidentiary hearing and reconsider the findings of facts and conclusion of law set forth in the standing Order of Dismissal. Specifically, Applicant requests that this Court fully address and/or reconsider the following:

1. On page 16 of the Order of Dismissal, the allegation of ineffective assistance of counsel for "failure to provide and review the complete discovery materials with Applicant" is addressed. It appears that this Court's ruling on this issue focuses on lack of preparation and/or brevity of time spent in consultation,

and it fails to address Applicant's specific testimony regarding counsel's failure to review statements and reports contained in the discovery materials. See PCR Transcript pp. 17-33, Exhibits #3-7.

2. On page 18 of the Order of Dismissal, the allegation of ineffective assistance of counsel for "failing to conduct an independent investigation" is addressed. In addressing this issue, the Order fails to address Applicant's testimony regarding threats from his co-defendants, the statement of his co-defendants and the letter provided to defense counsel written by co-defendant McCoy. See PCR Transcript pp. 32-33, 45, 88. Furthermore, the Order fails to address counsel's admission that he conducted **no independent investigation**. PCR Transcript p. 85. As was argued by PCR counsel, Lounds v. State, 380 S.C. 454, 459, 670 S.E.2d 646, 649 (2008), makes it abundantly clear that at a defense attorney has a duty to conduct a reasonable investigation, which at a minimum includes the duty to interview potential witnesses and make an independent investigation of the facts and circumstances of the case.
3. On page 19 of the Order of Dismissal, the Order appears to confuse the Applicant's testimony about two plea offers and only addresses the second plea offer, which was ultimately accepted by the Applicant. Therefore, the Applicant would request that his testimony regarding the first plea be addressed and ruled upon. PCR Transcript pp. 13-14.
4. On page 20 of the Order of Dismissal, the Order states: "The Applicant interpreted the agreement as being that the State would not take any position on sentencing." The Applicant request that this Court review the evidentiary

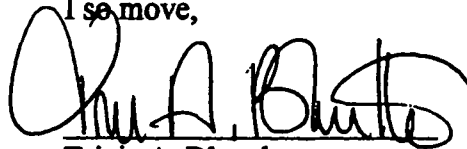
hearing transcript, which correctly reflects the Applicant's understanding that the State would put on the record that they did not oppose the minimum sentence. PCR Transcript p. 39, lines 8-14.

5. On page 21 of the Order of Dismissal, the allegation of ineffective assistance of counsel "for failing to object and/or move to withdraw when the state provided the plea court with a variance in the facts from plea to sentencing" is listed, but the Order fails to actually address the variance in the facts from plea to sentencing and focuses on Applicant's contention that he was threatened by his co-defendants. See PCR Transcript pp. 43-44. Furthermore, the Order fails to address counsel's explanation that he did not object to the variance since the sentencing Judge presided over the co-defendant's trial and heard the facts at his trial. See PCR Transcript pp. 74, 84. The Order also fails to address the prejudiced suffered by the Applicant when counsel failed to preserve the issue for appeal or incorporate the facts, supposedly relied upon from co-defendant's trial, in the record at the Applicant's sentencing.
6. On page 25 of the Order of Dismissal, the allegation of "Involuntary Guilty Plea" is addressed. The Order fails to address Applicant's testimony regarding his desire to withdraw his guilty plea upon hearing the victim's recommendation, his understanding that the State would put on the record no opposition to the minimum sentence, or the variance in the facts from plea to sentencing. See PCR Transcript pp. 39, 44-45.

For the above stated reasons, the Applicant would respectfully request that this Court reconsider the Order of Dismissal, review the evidentiary hearing transcript, and

hold a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal. The Applicant would also move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCF.

I so move,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

November 4, 2011
Columbia, SC

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Whelthy McKune, 299717,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-1865

CERTIFICATE OF SERVICE

COPY

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail this 15th day of November 2011 a copy of a Motion for Rehearing Pursuant to Rule 59(a), SCRCP, and/or Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, to Kaelon E. May of the Attorney General's Office, at:

Office of the Attorney General
ATT: Kaelon E. May, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Applicant

November 15, 2011

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Whelthy McKune, #299717

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-32-1865

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Esquire, Bar No. 5487

Address:

P.O. Box 12725 Columbia SC 29211

phone:

fax:

e-mail:

other:

Defendant's Attorney:

Kaleon E. May, Bar No. 80469

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3747 fax: (803) 734-4113

e-mail:

other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 23, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	2009-CP-32-1865
	)	
Whelthy McKune, #299717,	)	
Applicant,	)	Return to Applicant's Motions for
	)	Rehearing and to Alter or Amend
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's Motions pursuant to Rule 59(a), SCRPC, and Rule 59(e), SCRPC, in which he asks the Court to direct entry of new judgment and/or amend the findings of fact and conclusions of law in the Court's Order dismissing Applicant's Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal of the Honorable William P. Keesley, dated November 4, 2011 and filed November 7, 2011, contains the required findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a). SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court did not err and its Order of Dismissal fully and specifically addresses the Applicant's claims. The Applicant asserts that the Order of Dismissal fails to fully or correctly address the following:

1. The Applicant's specific testimony regarding counsel's failure to review statements and reports contained in the discovery materials.
2. The Applicant's testimony regarding threats from his co-defendants, the statement of his co-defendants and the letter provided to defense counsel by co-defendant McCoy.
3. Counsel's admission that he conducted no independent investigation.
4. The Applicant's testimony regarding the first plea offer.
5. The Applicant's understanding of the state's position on sentencing.

6. The variance in the facts from in the facts from plea to sentencing.
7. Counsel's explanation that he did not object to the variance since the sentencing Judge presided over the co-defendant's trial and heard the facts at his trial.
8. The prejudiced suffered by Applicant when counsel failed to preserve the variance in facts issue or incorporate the facts, supposedly relied upon from co-defendant's trial, in the record at Applicant's sentencing.
9. The Applicant's testimony regarding his desire to withdraw his guilty plea upon hearing the victim's recommendation; his understanding that the State would put on the record no opposition to the minimum sentence; and the variance in facts from plea to sentencing.

As to Applicant's first allegation, Respondent would refer to pages five, sixteen and seventeen of the Order of Dismissal (Order). First, this Court did not find the Applicant's testimony credible that counsel failed to review the discovery properly. This Court specifically addressed whether counsel failed to review the statements and reports contained in the discovery materials, finding that all discovery materials were reviewed with the Applicant. The Order provides the Applicant's testimony on this issue: that counsel never provided Applicant with the SLED file or any SLED testing; that counsel never reviewed the statements of Esqueen Merritt, Vickie Merritt; and that counsel never went over these statements but that Applicant reviewed the statements himself. (Order p.5). This Court found that counsel reviewed the discovery materials with Applicant. (Order p.16). Respondent submits Applicant framed this allegation as one of "failure to prepare and investigate," in his November 16, 2010 amendment, and it was proper for this Court to address these allegations as ones of "failure to prepare and investigate." The Applicant's specific testimony regarding counsel's failure to review statements and reports contained in the discovery materials is addressed in this Court's Order of Dismissal.

As to Applicant's second allegation, Respondent would refer to pages six, seven, eight, eighteen, and nineteen of the Order. The Order provides the Applicant's testimony on this issue: that Applicant wanted counsel to inform the court that Applicant was threatened with being

pistol whipped if he did not drive. Additionally, Applicant's testimony regarding statements of his co-defendants and the letter from co-defendant McCoy is summarized in the Order for over two pages. (Order p.6-7). Applicant raised these issues in his claim for ineffective assistance of counsel for failure to conduct an independent investigation. Upon review of the "extensive evidence" that Applicant provided, this Court correctly found that Applicant failed to meet his burden of proof. (Order p.18). The Applicant's specific testimony regarding threats from his co-defendants, the statement of his co-defendant, and the letter provided to defense counsel by co-defendant McCoy is addressed in this Court's Order of Dismissal.

As to Applicant's third allegation, Respondent would refer to page eighty-five of the PCR transcript wherein counsel was asked whether he used a private investigator or conducted an independent investigation? Counsel replied, "I did not." Respondent submits that this was not an admission that counsel did not conduct an independent investigation as Applicant argues. Failing to use a private investigator does not result in a failure to conduct an independent investigation or ineffective assistance. This Court found that counsel conducted a sufficient investigation pursuant to Strickland v. Washington, based on counsel's receipt and review of all discovery materials, Applicant's version of the facts, statements from Applicant's co-defendants, and counsel's investigation of McCoy's multiple statements. (Order p.18). This Court found that Applicant did not present any evidence or testimony of what counsel allegedly failed to discover. (Order p.18-19). While Applicant views counsel's reply at the PCR hearing as an admission that he did not conduct an independent investigation, this Court clearly did not and Respondent submits there is sufficient evidence of probative value to support this finding.

As to Applicant's fourth allegation, the Order clearly addresses Applicant's testimony about the two plea offers. Applicant claimed that there was an original 15-year plea deal which

Applicant rejected. This Court found that “contrary to Applicant’s claim, there had never been an offer for a negotiated sentence of 15 years.” (Order p.19). This Court further found that “even if there were [an offer for a negotiated sentence of 15 years], Applicant testified that he rejected it.” (Order p.19). Applicant’s testimony regarding the first plea was addressed and ruled upon.

As to Applicant’s fifth allegation, Respondent submits that Applicant’s testimony that “the only reason he pled was because of [] the fact that the solicitor said he would tell the judge that he did not oppose any recommendation Applicant’s counsel would make,” is reflected in the Order. (Order p.7). The Order correctly reflects the Applicant’s understanding of the state’s position on sentencing. This Court reviewed the record and found that the state was merely agreeing that there were no recommendations or negotiated sentence, and that nothing was done to violate the Applicant’s rights. (Order p.19).

As to Applicant’s sixth allegation, Respondent submits the Order addresses the variance in facts from plea to sentencing in great length. The Order specifically refers to “one factual issue that was discussed in detail at the PCR hearing relates to whether there was a breaking into the house.” (Order p.21). The Order also addresses that there were questions raised about shoe impressions. (Order p.21). Furthermore, the Order sets forth Applicant’s feelings that counsel did maintain the position at times, including at the plea, that Applicant was only the get-away driver; but that Applicant maintained this changed, certainly by the reconsideration hearing, so that counsel placed Applicant inside the house. (Order p.21). The variance in facts from plea to sentencing is adequately reflected in this Court’s Order.

As to Applicant’s seventh allegation, Respondent submits that the Order fails to address counsel’s alleged explanation that he did not object to the variance since the sentencing Judge presided over the co-defendant’s trial and heard the facts at his trial because counsel never

testified to that being his reason for not objecting. The Order reflects counsel's testimony that "Judge Westbrook had presided over the trial of John Henry shortly before the Applicant was sentenced so Judge Westbrook had listened to all the witnesses and heard all the evidence presented by the sheriff's department." (Order p.11). Counsel's testimony had nothing to do with his reasons for why he did not object to the variance. (See PCR Tr. p.72-74). As such, the Order does not refer to this testimony as counsel's reason for not objecting because this was not counsel's reason for not objecting. Counsel provided this Court with his reasons for not objecting, including that counsel does not object during a plea or sentencing, and that counsel instead refutes or responds to what the state presented. (Order p.22). This Court correctly found that counsel articulated valid strategic reasons for not raising an objection to the variance. Accordingly, this Court did not err when it denied the allegation.

As to Applicant's eighth allegation, Respondent submits that the Order fails to address the prejudice suffered by Applicant when counsel failed to preserve the variance in facts issue for appeal or incorporate the facts, supposedly relied upon from co-defendant's trial in the record at Applicant's sentencing because such a claim was never asserted by Applicant in his Application and multiple amendments, nor at the PCR hearing. It is abundantly clear that a party cannot raise an issue for the first time in a post-trial motion. See South Carolina Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion."); State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999) (holding "it is improper to argue new matter in a motion for reconsideration"). Accordingly, Applicant cannot raise this issue for the first time in his post-trial motion.

Applicant further alleges that the Order fails to address Applicant's testimony regarding

his desire to withdraw his guilty plea upon hearing the victim's recommendation, his understanding that the state would put on the record no opposition to the minimum sentence, or the variance in facts from plea to sentencing. Specifically, Applicant asserts that this testimony was not addressed in his allegation of "Involuntary Guilty Plea." Respondent submits that the testimony complained of by Applicant was in reference to his ineffective assistance of counsel claims concerning the entry of the plea and separate sentencing hearing, and reconsideration hearing. Applicant's original Application, amendments, and the PCR transcript reflect the same. These issues were not raised under Applicant's Involuntary Guilty Plea allegation and therefore, not addressed in relation to said allegation. Accordingly, this Court did not err when it denied the allegation.

II.

The State therefore requests that the relief requested by the Applicant be denied, specifically reconsideration of the Order of Dismissal and holding a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal, and that his Motion to direct entry of a new judgment be denied, pursuant to Rule 59(a)(2), SCRCP.

WHEREFORE, having made its Return to the motions, the State requests that the relief requested in the Motions as stated above be denied and that said Motions be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
January 23, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-1865
	)	
WHELTHY MCKUNE, #299717	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Tricia A. Blanchette, Esquire
P.O. Box 12725
Columbia, SC 29211

DATED this 23rd day of January, 2012.

Lena Pelishenko
Lena Pelishenko, Legal Assistant
For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
WHELTHY McKUNE, 299717,)
Applicant,)
-vs-)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

ORDER ON RECONSIDERATION

Case Number 2009-CP-32-01865

FILED

WMC
#1

The Applicant seeks to have the court grant a rehearing, reconsider, and alter or amend the order in which it denied the Applicant's Petition for Post-Conviction Relief (PCR). Pursuant to Rule 59(f), SCRCP, the court notified both sides that the court would decide the motion on written submissions. The court declines to grant a rehearing. The motion is denied.

The court issued a lengthy memorandum order and a lengthy final order. The overriding issue raised by the Applicant in this Rule 59 motion is the claim that the order did not specifically rule on each issue raised. There also seems to be a claim that the court should have addressed every piece of testimony in the order. Having reconsidered the matter, it is the opinion of the court that it has complied with the requirements of Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), cited by the Applicant, and has made specific findings of fact and conclusions of law relating to the issues raised.

The motion raises specific assertions of failure to properly rule. The Return uses 9 numbered items in response to the claims raised in the motion. Respectfully, the court feels that the prior order was clear in ruling that the court did not find the Applicant to be

credible, and it does not appear to be necessary to prepare a voluminous recitation and response to everything that he stated. The court did not find that he had met his burden of proof, either as to any claim of ineffective assistance of counsel or prejudice resulting therefrom. As to many of the Applicant's claims, there was no evidence presented as to what would have been discovered but for the alleged deficiencies of counsel.

The court finds that the Return of the Assistant Attorney General adequately addresses the issues raised in the pending motion. The language of the Return is hereby adopted as part and parcel of this order.

THEREFORE, IT IS ORDERED that the Motion for Rehearing and to Alter or Amend is denied.

AND IT IS SO ORDERED.

#2


William P. Keesley
Judge

Lexington, South Carolina

June 13, 2012

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