

**VOLUME II OF II**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Horry County

Honorable D. Craig Brown, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

NOV 23 2016

S.C. SUPREME COURT

ROSHOD M. BAKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000657

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

LAURA R. BAER  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

CAITLIN HASTINGS  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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<sup>1</sup> The trial transcript is missing page number 178. Petitioner’s counsel contacted the Court of Appeals to see if the Record on Appeal from Petitioner’s direct appeal contained the missing page, but it did not.

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

(d) the date of each such disposition:

i. Oct 8, 2014

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

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

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

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

i. N

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

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

iv. A

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

NO

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

(a) which grounds have been presented:

i. N

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

iii. A

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

i. N

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

iii. A

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) See 10 (a) Applicant first time raising ground

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

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

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or 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. Johnny Gardner
- ii. Kathrine H. Hodgins
- iii. Thatter

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

- i. Trial and sentencing
- ii. Appeal
- iii. P.C.R.

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

Belated Appeal and any other relief I am entitled to

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

NO

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

15 CP26 475

Roshed M. Baker 318851

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

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

Roshed M. Baker 318851  
Applicant

SWORN or affirmed to and subscribed before me this  
14th day of January, 2015.

Stephanie Marshall  
Notary Public

My Commission Expires: May 12, 2021



**FILED**  
2015 JAN 21 AM 11: 07  
MELANIE HUGGINS-WARD  
CLERK OF COURT

STATE OF SOUTH CAROLINA )

County of McCormick )  
Roshod M BAKER 218851 )

VERIFICATION  
20 15 CP26 475

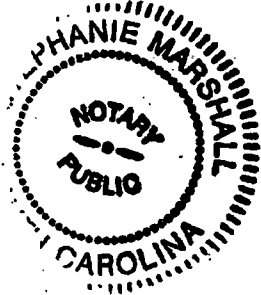
I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the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

Roshod M Baker 318851

SWORN to and subscribed before me this 14<sup>th</sup>  
day of January, 2015.

Stephanie Marshall (L.S.)  
Notary Public

My Commission Expires: May 12, 2021



**FILED**  
2015 JAN 21 AM 11:07  
MELANIE HIGGINS-WARD  
CLERK OF COURT

Hon. Clerk of Ct.  
Melanie Huggins - Ward  
1301 2nd Ave.  
Conway, SC 29526

FILED  
2015 JAN 21 AM 11:07  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Date 1-15-15

Dear Hon Clerk

Please find enclosed for filing  
my PCR form and grounds.

Would you please send the Atty  
Gen. office a filed copy and me  
one back

Thank you

Sincerely  
Ashley M. Baker  
318851

cc: Personal file

VIOLATION OF THE 14<sup>TH</sup> AMEND. per S. C.  
 and U.S. CONST.(S) / INEFFECTIVE  
 ASSISTANCE OF PCR COUNSEL

---

FILED  
 2015 JAN 21 AM 11:07  
 MELANIE J. JENNINGS-WARD  
 CLERK OF COURT

P.C.R Counsel Tristan M. Shatter  
 willfully, knowingly and deliberately  
 abandon me upon my PCR appeal  
 when I told Mr. Shatter to  
 appeal my PCR, for I can bring  
 my issue up in federal court.

Because I knew that I was  
 not going to be able to prove my  
 claims, when Mr. Shatter refused

to subpoena the police reports/files and the state star witness "Ernest Q Smith" two or three written and or tape statements and Ernest Smith's girlfriend statement. Stating that Ernest was with her at the time of the murder.

Nor would Mr. Shatter subpoena Ernest Smith's mental health record or Dr.

Which Mr. Shatter knew I needed to prove my claims "that trial counsel was ineffective for failing to impeach

Ernest Smith's with the other statements and evidence.

Me and Mr. Shatter argued about this/these issues before I went into court. But Mr. Shatter said that he had spoken with the judge and the judge was not going to let me fire him or give me another continuous. Because my case was too old and I had dismissed all prior PCR counsel.

But I still even tried to inform

The court why I needed a continuous, Because I did not have the evidence I needed because all prior counsel's and Mr. Shatter had / has refused to subpoena what I needed thereby, I did not intelligently freely, nor voluntarily waive my PCR claims.

Nor my RIGHT to appeal the denial of my PCR SEE: Austin v State 409 SE2d 395 Here, I strongly argue

496

that the State Law expressly authorizes  
 my RIGHT to seek appellate review  
 of the denial of my PCR SEE:  
17-27-100; And, especially when  
 I told PCR counsel to appeal  
 SEE: Roe v Flores-Ortega 120 S.Ct. 1029

Due to the above facts and laws the  
 successive nor the one year statute of  
 limitations does not apply to Austin  
 appeals. Because they are Related  
 appeals, which are intended to

correct unjust procedural defects as  
 in my case SEE Also: Wilson v State  
 559 SE2d 581; Odom v State 523  
 SE2d 753.

### CONCLUSION

Based on the foregoing arguments, I contend  
 that I am entitled to a BELATED  
 appeal because I did not intelligently,  
 freely nor voluntarily waive my RIGHT to  
 appeal the denial of my PCR

Date 1-15-15

Respectfully submitted  
 / Roshod M BAKER 318851

676

Date 1-15-15

FILED  
2015 JAN 21 AM 11:06  
MELBA JUDGE'S-WARD  
CLERK OF COURT

Dear Hon. Clerk

P.S.

If there is a notice of appeal  
in your files regarding my case #  
2010-CP-26-7814 please advise.

Thank you

cc: personal file

Sincerely

Robert M Baker

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY )	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Roshod M. Baker, 318851, )	2015-CP-26-475
)	
Applicant, )	
)	
v. )	<b>RETURN</b>
)	
State of South Carolina, )	
)	
Respondent. )	
)	

In response to the post-conviction relief (PCR) application that Roshod M. Baker (Applicant) filed January 21, 2015, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. He was indicted during the May 2002 term of the Horry County Grand Jury for murder (2002-GS-26-2040). Johnny Gardner, Esquire, represented Applicant. Applicant proceeded to trial, and a jury found him guilty as indicted. On November 15, 2006, the Honorable Steven H. John sentenced Applicant to a term of imprisonment of thirty years.

Applicant appealed, and following an *Anders*<sup>1</sup> brief, the South Carolina Court of Appeals dismissed his appeal. *State v. Baker*, Op. No. 2009-UP-426 (S.C. Ct. App. filed Sept. 8, 2009). The remittitur was issued on September 24, 2009.

**First PCR Application: 2010-CP-26-7814**

Applicant filed his first PCR application on August 24, 2010, alleging the following grounds for relief:

---

<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

1. Failure to investigate;
2. Failure to cross-examine a testifying co-defendant on pending charges;
3. Failure to move for a severance;
4. Failure to move for a mistrial; and
5. Failure to impeach a co-defendant with an inconsistent statement.

Respondent filed its return on October 25, 2010. An evidentiary hearing was held on August 28, 2014, at the Georgetown County Courthouse. Tristan Shaffer, Esquire, represented Applicant. The Honorable Kristi L. Harrington denied and dismissed the application with prejudice on November 19, 2014.

## II.

Applicant filed his *second* and current PCR application on January 21, 2015, alleging the following grounds for relief:

1. "Violation of 14<sup>th</sup> Amendment per S.C. and U.S. Constitutions."
2. Ineffective assistance of PCR counsel.
  - i. "PCR Counsel Tristan M. Shaffer willfully, knowingly, and deliberately abandon me upon my PCR appeal when I told Mr. Shaffer to appeal my PCR, for I can bring my issue up in federal court."

Any claims not specifically enumerated in Applicant's application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made in advance of an evidentiary hearing and should be filed in compliance with Rule 15, SCRPC.

For the purpose of this return, Respondent incorporates the Horry County Clerk of Court records regarding the subject conviction, South Carolina Department of Corrections records, and Applicant's previous and current PCR applications.

## III.

Applicant alleges ineffective assistance of counsel in that he was denied the right to an

appeal from the denial of his first PCR application. Respondent submits Applicant's allegation is without merit. "The right to seek appellate review of the denial of PCR is expressly authorized by state law." *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991); S.C. Code Ann. § 17-27-100 (2014). A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). However, an applicant may waive the right to appeal by making a "knowing and intelligent decision not to pursue the appeal." *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine whether he was prejudiced by his failure to obtain review of a meritorious issue. *Odom*, 337 S.C. at 263, 523 S.E.2d at 756.

Respondent submits Applicant knowingly and intelligently waived his right to appellate review of his PCR hearing. However, this allegation raises questions of fact the record does not conclusively refute. Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

#### V.

WHEREFORE, Respondent requests that a hearing be held and that counsel be appointed

to represent Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN RATIGAN  
Senior Assistant Deputy Attorney General

Joshua L. Thomas  
Assistant Attorney General  
S.C. Bar No. 100777

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

Columbia, South Carolina

May 29, 2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Horry )  
 )  
 )  
 ROSHOD M. BAKER, #318851 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS


2015-CP-26-475

AFFIDAVIT OF SERVICE BY MAIL

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

**Steven W. Fowler, Esquire**  
**1019 Highway 17 South #222**  
**North Myrtle Beach, SC 29582**

DATED this 29<sup>TH</sup> day of May, 2015.

  
 Norma Bigbee, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD  
 2 COUNTY OF HORRY ) CASE NO: 2015-CP-26-0475  
 3 PCR HEARING

---

4  
 5 B E F O R E: The Honorable D. Craig Brown  
 February 11, 2016

---

6  
 7 RASHAD BAKER

8 Petitioner,

9 vs.

 ORIGINAL

10 STATE OF SOUTH CAROLINA,

11 Respondent.

---

12  
 13 APPEARANCES:

14 James Falk, Esq.  
 15 For the Petitioner.

16  
 17 Jessica Kinard, Esq.  
 18 For the Respondent.

19  
 20  
 21 Court Reporter:  
 Natalie Dahl, RPR

22  
 23  
 24  
 25

## CALL OF THE CASE

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

1  
2 MS. KINARD: This is in the matter of Rashad  
3 Baker versus State of South Carolina, 2015-CP-26-475.  
4 We're before the Court on a second petition for  
5 post-conviction relief filed January 21, 2015. This  
6 is what we referred to as an Austin petition in which  
7 Mr. Baker alleges that his first PCR attorney, who was  
8 Tristan Shaffer, was ineffective because he failed to  
9 file an appeal.

10 The State is present and ready to proceed. The  
11 Applicant is ready to proceed with his attorney, James  
12 Falk; however, the State is willing to consent to the  
13 filing of a second PCR application. Mr. Tristan --  
14 Mr. Shaffer also indicated that he would be willing to  
15 stipulate for the record that he was ineffective of  
16 his failing to file an appeal.

17 THE COURT: All right.

18 MS. KINARD: I'll call Mr. Shaffer briefly, if  
19 that is okay, or whatever the Court desires.

20 THE COURT: Do you just want me to sign an order?

21 MS. KINARD: That is fine. I just don't have one  
22 drafted now. We just came to the agreement.

23 THE COURT: Mr. Shaffer is here and stipulates to  
24 it, so there is no need for him to testify. I'll sign  
25 an order allowing him to appeal. If you will get me

## CALL OF THE CASE

1 an order, please.

2 MS. KINARD: Thank you, Your Honor.

3 Whereupon, the proceedings concluded.)

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1 CERTIFICATE OF REPORTER  
2

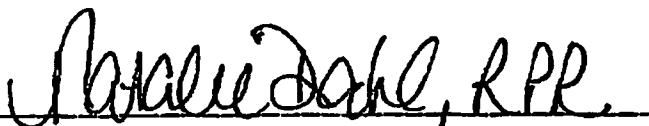
3 State of South Carolina)

4 County of Horry )  
5

6 I, Natalie Dahl, Official Court Reporter for the  
7 State of South Carolina, do hereby certify that the  
8 foregoing is a true, accurate and complete Transcript  
9 of Record of the proceedings had and evidence  
10 introduced in the matter of the captioned case,  
11 relative to appeal, in the Court of Common Pleas for  
12 Horry County, South Carolina, on the 11th day of  
13 February, 2016.

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

16  
17 June 9, 2016  
18

19  
20 

21 Natalie Dahl, RPR

22 Court Reporter  
23  
24  
25

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 ROSHOD M. BAKER, #318851 )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

---


IN THE COURT OF COMMON PLEAS  
 2015-CP-26-0475

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order Granting An Appeal Pursuant To Austin V. State, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James K. Falk, Esquire**  
**38 Broad St., Suite 350**  
**Charleston, SC 29401**

DATED this 24<sup>th</sup> day of March, 2016.

  
 \_\_\_\_\_  
 Norma Bigbee, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
  
Roshod M. Baker, #318851, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-0475

**ORDER GRANTING AN APPEAL  
PURSUANT TO AUSTIN V. STATE**

HORRY COUNTY  
2016 MAR 14 PM 2:23  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 21, 2015. The Respondent made its return on or about May 29, 2015. The Court convened a hearing in Horry County on February 11, 2016, at which time Applicant was present and represented by James K. Falk, Esquire. Respondent was represented by Jessica E. Kinard of the South Carolina Attorney General's Office. The sole issue before the Court was whether Applicant was entitled to a review of his prior PCR claim pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State consented to granting this relief without presentation of any testimony.

The Court had before it the Horry County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the prior PCR records.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. He was indicted during the May 2002 term of the Horry County Grand Jury for murder (2002-GS-26-2040). Johnny Gardner, Esquire, represented Applicant. Applicant proceeded to trial, and a jury found him guilty as indicted. On November 15, 2006, the Honorable Steven H. John sentenced Applicant to a term of imprisonment

copy

of thirty years.

Applicant appealed, and following an Anders<sup>1</sup> brief, the South Carolina Court of Appeals dismissed his appeal. State v. Baker, Op. No. 2009-UP-426 (S.C. Ct. App. filed Sept. 8, 2009). The remittitur was issued on September 24, 2009.

#### **First PCR Application: 2010-CP-26-7814**

Applicant filed his first PCR application on August 24, 2010, alleging the following grounds for relief:

1. Failure to investigate;
2. Failure to cross-examine a testifying co-defendant on pending charges;
3. Failure to move for a severance;
4. Failure to move for a mistrial; and
5. Failure to impeach a co-defendant with an inconsistent statement.

Respondent filed its return on October 25, 2010. An evidentiary hearing was held on August 28, 2014, at the Georgetown County Courthouse. Tristan Shaffer, Esquire, represented Applicant. The Honorable Kristi L. Harrington denied and dismissed the application with prejudice on November 19, 2014.

#### **Current Application**

Applicant filed his second and current PCR application on January 21, 2015, alleging the following grounds for relief:

1. "Violation of 14<sup>th</sup> Amendment per S.C. and U.S. Constitutions."
2. Ineffective assistance of PCR counsel.
  - i. "PCR Counsel Tristan M. Shaffer willfully, knowingly, and deliberately abandon[ed] me upon my PCR appeal when I told Mr. Shaffer to appeal my PCR, for I can bring my issue up in federal court."

---

<sup>1</sup> Anders v. California, 386 U.S. 738 (1967).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts, and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal of the Applicant's first post-conviction relief application (2012-CP-43-1286) pursuant to Austin v. State. The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Prior PCR Counsel, Tristan Shaffer, indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2010-CP-26-7814) pursuant to Austin v. State is warranted.

**IT IS THEREFORE ORDERED:**

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2010-CP-26-7814 pursuant to Austin v. State.

AND IT IS SO ORDERED this 7 day of March, 2016.

Florence, South Carolina.

  
THE HONORABLE D. CRAIG BROWN  
PRESIDING JUDGE

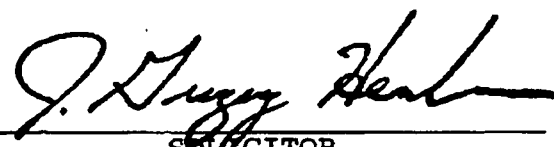
At a Court of General Sessions, convened on May 28, 2002, the Grand Jurors of Horry County present upon their oath:

MURDER

(CDR: 0116 16-03-0010,0020)

That ROSHOD MONTRELL BAKER, while in concert with Dormaine Baker, Derrick L. Bowens, Ernest Q. Smith, and Telly Manning, did in Horry County, on or about the 21st day of December, 2000, wilfully, feloniously, and intentionally kill the victim, Troy Riggins, with malice aforethought, either express or implied, by means of shooting the victim about the body, and the victim died in Horry County on or about the 21st day of December, 2000, as a proximate result thereof, in violation of Section 16-3-10, S. C. Code of Laws, 1976, as amended.

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

  
SOLICITOR

WITNESSES

JAMIE DEBARI/HCPD

ARREST WARRANT NO. \_\_\_\_\_  
H021428  
CDR: 0116 16-03-0010, 0020

DOA: 11/19/01

ACTION OF GRAND JURY

TRUE BILL

*[Signature]* MAY 28 2002  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

C THE STATE OF SOUTH CAROLINA  
COUNTY OF Horry

66295-002 SRH

COURT OF GENERAL SESSIONS

MAY TERM 2002

THE STATE

vs.

ROSHOD MONTRELL BAKER B/M

BENSON CHAPEL ROAD

ROWLAND, NC 28383

DOB: \_\_\_\_\_

SSN: \_\_\_\_\_

ATTY: JOHNNY GARDNER

INDICTMENT FOR:

MURDER

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR