

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Charleston County

Honorable John C. Hayes, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

DEC 30 2016

S.C. SUPREME COURT

PHILLIP SHULER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001816

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

LANELLE CANTEY DURANT  
Appellate Defender

ALAN WILSON  
Attorney General

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

ALICIA OLIVE  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX ..... i

TRIAL TRANSCRIPT DATED SEPTEMBER 19-21, 2011 .....1

APPLICATION FOR POST-CONVICTION RELIEF FILED DECEMBER 8, 2014.....431

RETURN DATED JUNE 2, 2015 .....444

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 1, 2016.....449

PLANTIFF’S EXHIBIT NO. 1 DATED DECEMBER 7, 2010 .....505

ORDER DATED AUGUST 3, 2016 .....506

INDICTMENTS AND SENTENCE SHEETS.....511

ARREST WARRANT AFFIDAVIT FILED APRIL 1, 2009 .....514

1 performance in the record at trial, but the fact that in  
2 July, before that, she admitted not only was he dressed  
3 inappropriately, but she was not prepared at that time.  
4 Well, there was nothing done in the break. And so we would  
5 argue that however prepared or not she was in July, that  
6 would carry over to September in general. And we think it's  
7 reflected in the record.

8           So with all that being said, we would argue that we  
9 met our burden that she was ineffective and that her  
10 performance affected the outcome in this case. Certainly,  
11 she was able to obtain a jury instruction of a  
12 lesser-included, but he was convicted of the crime of which  
13 he was originally charged and indicted. The outcome would  
14 have been different had she been more effective.

15           For those reasons, we would ask you to grant his PCR  
16 motion, vacate his sentence, return him to the county jail,  
17 and allow him to continue this process again.

18           Thank you, Your Honor.

19           THE COURT: Thank you, Mr. Davis.

20           Mr. Johnson.

21           MR. JOHNSON: First of all, I'm going to renew my  
22 motion to strike pretty much three-quarters of what he just  
23 argued because it's not in the application. Anything about  
24 the bartender is not in the application. The lack of  
25 cross-examination is not in the application. The plea offer

1 is not in the application. And the effect of the DNA  
2 evidence is not in the application. So I would renew that  
3 motion at this time, Your Honor.

4 As to insufficient meetings, she clearly stated that  
5 she had difficulty communicating with Mr. Shuler, but she  
6 tried to call a phone multiple times. Didn't get an answer.  
7 Wrote him letters. He finally shows up to court thinking  
8 he's going to a roll call. She clearly testified she's ready  
9 to go to trial on that date, only wants a day to discuss,  
10 talk about the plea offer, but she was prepared. Judge  
11 Jefferson gives her another few months to the next time, the  
12 next docket.

13 Further, Your Honor, touched on it during his  
14 argument, he has presented no evidence how this would have  
15 changed the outcome of the case, how insufficient meeting  
16 time would change the outcome of the case, and what more she  
17 could have done would have changed the outcome of the case.

18 The solicitor is not obligated whatsoever to get an  
19 offer. I asked her, was there ever an offer for strong-arm  
20 robbery? And she said no. That is not ineffective. That's  
21 just solicitor's prerogative.

22 So, Your Honor, the handling of the officers, I  
23 asked her, and she said she fully cross-examined regarding  
24 the color of the shirts.

25 Bartenders, they are not here to testify; therefore,

1 there's no prejudice under *Bannister vs. State*. And the  
2 effect of the DNA evidence, they didn't bring an expert in to  
3 testify how that's going to change. She even consulted an  
4 expert, said he gave the same result, it wasn't good for our  
5 case. So why would she bring an expert in? She relayed that  
6 information to him prior to him rejecting the plea.

7           Clearly, he rejects the plea on the record, Your  
8 Honor. This is just a case of buyer's remorse. There is no  
9 ineffective assistance in this case. And, therefore, there  
10 is no prejudice. I ask -- the State asks you to deny and  
11 dismiss this application.

12           THE COURT: I'm going to take it under advisement.

13 Thank you both.

14           (Whereupon, proceedings are adjourned.)

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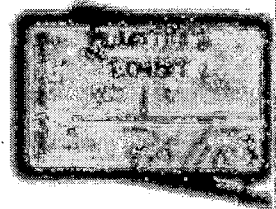
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23

24

25





NINTH CIRCUIT PUBLIC DEFENDER  
BERKELEY & CHARLESTON COUNTY  
O.T. WALLACE COUNTY OFFICE BUILDING  
101 MEETING STREET, 5th FLOOR  
CHARLESTON, SC 29401-2214  
(843) 958-1850

December 7, 2010

Philip Leon Shuler

gray shirt v. tan gray shirt

FILE COPY

?

Re: State of South Carolina v. Philip Leon Shuler

Dear Mr. Shuler:

Enclosed please find a copy of the SLED report that I received from the Solicitor's office regarding your case. Please read this packet and we can discuss it when I meet with you. You can call my office to schedule an appointment to meet with me. Our office is open weekdays between 8:30 a.m. and 5:00 p.m.

Sincerely,

Mary A. Ford  
Assistant Public Defender

Enclosure as stated

tan gray shirt = 0  
(1 severe  
ex, but  
mostly 0)

tan gray shirt - 3 people  
+ 0 cannot be  
excluded

sock - 2 people + 0  
cannot be excluded

- No hair from tan gray shirt  
" " " "



In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
  - a. "Trial Counsel was ineffective for failing to have applicant's armed robbery offense reduced to strong armed robbery where the victim could not determine applicant was the robber and whether applicant was armed"
  - b. "Failing to motion the judge to dismiss the armed robbery offense because the victim could not substantiate 'whether the applicant had a gun'"
2. "Prosecutorial Misconduct/Brady Violation"
  - a. "The State had to submit substantial circumstantial evidence that applicant was the robber and that represented to the victim that he was armed with a deadly weapon, or that the victim reasonably believed applicant had a weapon"

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). 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. at 690. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118.

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." Id. at 117-18 (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). In other words, where

*J. #7*

ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 691; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In his application, Applicant raises issues regarding the sufficiency of the evidence to prove armed robbery in the guise of ineffective assistance of counsel. There is no evidence to indicate the indictments for armed robbery were insufficient, therefore counsel was not ineffective for failing to have the charge dismissed pre-trial. During trial, counsel moved for directed verdict alleging the insufficiency of the State's evidence to establish armed robbery, but the Court denied the motion. Further, trial counsel asked the Court for the lesser included offense of strong armed robbery and received a jury instruction to that effect. The Court finds trial counsel's judgment to be reasonable. As a result, Applicant has failed to demonstrate trial counsel was deficient in her representation.

According to Applicant's testimony at his hearing, it appears one large contention as to his trial counsel is that there was limited communication prior to his trial. He testified they only met twice, and he received a letter from counsel in between those meetings informing him of an offer from the Solicitor of a 10-year plea agreement shortly before trial was to begin. Applicant claims communication during this time frame could have led to continued negotiation.

Trial counsel in turn testified that she attempted to reach Applicant several times by phone and by letter in between their two meetings, but was unable to do so. In addition, she stated the Solicitor was not prepared to make an offer prior to when Applicant was notified, so even if trial counsel was able to speak to him at an earlier time, there would have been no offer

9-14-83

to contemplate or negotiate. Further, it is not trial counsel who had control over the Solicitor's actions and could not force an offer to be made.

The Court finds trial counsel to be credible. Though the Court finds this testimony to be outside the scope of the PCR application, to the extent Applicant's claim may go towards trial counsel's failure to reduce Applicant's charge to the lesser included, there is nothing to support the conclusion that trial counsel did not act with reasonable professional judgment, and there is no prejudice to the Applicant to suggest his trial would result in a different conclusion.

Applicant further testified at the hearing there were two potential alibi witnesses who saw him at a bar in the vicinity of the crime scene during the time the crime took place. He claims these witnesses should have been vetted to determine a defense. However, Applicant did not present these alleged witnesses during the PCR hearing to support his assertion. Furthermore, this claim is outside the scope of the application, as "ineffective assistance of counsel" is not all-encompassing and does not include a failure to investigate claim.

I further find that any other claims not addressed specifically herein are insufficient to establish ineffective assistance of counsel.

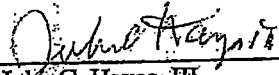
Wherefore, I find Applicant has not carried his burden of proof, and has neither proven trial counsel was ineffective, nor proven any prosecutorial misconduct.

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention

is directed to Rule 243, SCACR, for the procedures following the filing and service of the  
Petition.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge *JCS*

August 3<sup>rd</sup>, 2016  
Charleston, South Carolina

JKS20090401900

DOCKET NO. 2009GS1006160

WITNESSES

ADAM WILLIS

Mt. Pleasant Police Department

AGENCY CASE NUMBER

0903935

ARREST WARRANT NUMBER

1111382

DATE OF ARREST

March 31, 2009

ACTION OF GRAND JURY

TRUE BILL

AUG 04 2009

Foreperson of Grand Jury  
Date:

ACTING FOREPERSON

VERDICT

Guilty of Armed Robbery

Foreperson of Petit Jury

9/2/11  
Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2009

THE STATE

vs.

09-1936(31)

PHILIP LEON SHULER

DOB: 1973-███

W/M

Indictment for

Armed Robbery

FILED

2009 AUG -6 AM 9:56

JULIE J. ARMSTRONG  
CLERK OF COURT

BY \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

INDICTMENT

At a Court of General Sessions, convened on August 3, 2009 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about March 30, 2009, in Charleston County, South Carolina, the Defendant, PHILIP LEON SHULER, while at 323 Coleman Boulevard, Mt. Pleasant, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Lenore Lipsius with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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.

  
JENNIFER KNEECE SHEALY  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston  
STATE VS.

PHILIP LEON SHULER

INDICTMENT/CASE#: 2009GS1006160

A/W#: I111382

Date of Offense: 3/30/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: WHITE Sex: M Age: 38

DOB: 973 SS#:

Address:

City, State, Zip:

DL#: SID#: SC00742764

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

Attorney: Chisolm, Natasha Defendant SC Bar# 7842 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 11 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:  
 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.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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: Attu if available

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Whitney Perkins  
Court Reporter: Anna Maffei  
SCCA/217 (03/2011)

Presiding Judge: D.L. Jefferson  
Judge Code: 2128  
Sentence Date: 9-21-11

ARREST WARRANT

I-111382

STATE OF SOUTH CAROLINA

County/ Municipality of

Town of Mount Pleasant

2009-P03843 THE STATE against

Philip Leon Shuler

Address:

Phone: SSN: Sex M Race: W Height: 5 11 Weight: 265 DL State: SC DL #: DOB: 1/19/73 Agency ORI #: SC0100300 Prosecuting Agency: Mount Pleasant Police Department Prosecuting Officer: Adam Willis Offense: Armed Robbery Offense Code: 16-11-0330 Code/Ordinance Sec: 16-11-0330

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

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Philip Leon Shuler on 3/31/2009 @ 0937hrs

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Mt. Pleasant Municipal Court 100 Ann Edwards Lane P. O. Box 457 Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA

County/ Municipality of

Town of Mount Pleasant

Personally appeared before me the affiant Adam Willis being duly sworn deposes and says that defendant Philip Leon Shuler did within this county and state on 03/30/2009 State of South Carolina (or ordinance of County/ Municipality of Town of Mount Pleasant) in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Town of Mount Pleasant

Affiant's Address 100 Ann Edwards Lane Mount Pleasant, SC 29464

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on 03/30/2009 defendant Philip Leon Shuler did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Town of Mount Pleasant) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

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

Sworn to and subscribed before me

on 03/31/2009

Signature of Issuing Judge (L.S.)

Judge Code: 009

Judge's Address 100 Ann Edwards Lane Mt Pleasant, SC 29464

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 818

BAIL set by

Judge Holmes  
on MAR 31 2009  
Type and Amount: \_\_\_\_\_  
Name of Surety: 15,000

PRELIMINARY HEARING held by

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Defendant Attorney: \_\_\_\_\_  
Decision: \_\_\_\_\_

Judge \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(Indicate by trial, bench trial, plea, nol. pros., etc.)  
Disposition: \_\_\_\_\_  
Sentence: \_\_\_\_\_

FILED  
2009 MAR - 11 PM 1:41  
JULIE J. ARMSTRONG  
CLERK OF COURT

JURORS

CHECKLIST

INJ. CRT. CASE # 2920 CT  
CV CASE # 1986  
SPORT GROUP 01 59  
SI CODE 2900

WITNESSES

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
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CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

OCA # 09-03935  
AFFIDAVIT

Personally appeared before me, a Municipal Judge, one Detective M. A. Willis who, first being duly  
(affiant)  
sworn, deposes and says that PHILIP LEON SHULER did, within the Town of Mount Pleasant,  
(defendant)

County of Charleston, State of South Carolina, on or about MARCH 30, 2009 violate the criminal laws of the State of South Carolina, namely, ARMED ROBBERY at the following location, 323 COLEMAN BOULEVARD (THE SCOTCHMAN), MT. PLEASANT, SC in Violation of Section, 16-11-330 of the South Carolina Code of Laws of 1976, as amended. The Affiant states that there is probable cause to believe that the Defendant named above did commit the crime(s) set forth and that such probable cause is based on the following facts:

That on March 30, 2009 at approximately 2115 hours, victim, Lenore Lipsius, reported to the Mount Pleasant Police Department that she had been robbed while working as a clerk at the Scotchman located at 323 Coleman Boulevard. The initial description provided was a stocky black male with a sock over his hand that was in the shape of a gun. An investigation was undertaken and officers canvassed the area for possible suspects.

Between the initial response of officers at 2118 hours and 2152 hours, PFC Campbell got out with Defendant, Philip Leon Shuler (white male) near the incident location and provided him with a business card asking him to be on the look out for a black male wearing a brown in color shirt. Shortly after the contact, officers located a brown in color shirt inside out in the rear corner of the parking lot of the Scotchman as well as a five dollar bill. At approximately 2210, PFC Keenan also saw the Defendant in the area of 408 Hibben Street near the Hibben United Methodist Church.

At approximately 1230 hours, Detective Willis and PFC Plyler viewed the video surveillance from the incident and noted that the subject was a heavier set white male, not a black male. He had white socks on both hands, and his right sock hand had the shape of a handgun. Furthermore, he had on a white t-Shirt covering his head and face with holes cut out for his eyes. At approximately 0120 hours, PFC Plyler got out with the Defendant at the Kangaroo located at 1402 Ben Sawyer Boulevard because he had matching appearances to the subject in the video surveillance of the Robbery. PFC Plyler ran the Defendant's information through NCIC, and it was determined that the Defendant had an outstanding warrant from Georgetown. PFC Plyler placed the Defendant under arrest and transported him to the Mount Pleasant Police Department where Detective Willis met with the Defendant in a Post-Miranda Interview. During the interview, Detective Willis noted that the Defendant was not wearing socks and wore clothing matching the suspect's. He further noted that the Defendant had on a blue t-shirt inside out. Once the t-Shirt was turned right side out, it was learned that the t-shirt matched the design of the brown t-shirt discarded at the scene. Furthermore, Officers continued to canvass the area and located the white socks along with a stick inside one of them that could have been used to artifice a gun. Officers also located the white t-Shirt with holes cut out for eyes that was worn by the suspect during the Robbery. There is probable cause to believe the Defendant committed the Armed Robbery at the Scotchman located at 323 Coleman Boulevard

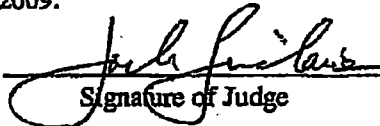
All of the above is believed to be true based on the investigation of Detective M. A. Willis, and the Mount Pleasant Police Department. All of the above is against the law, peace, and dignity of the State of South Carolina.



AFFIANT

Sworn to and Subscribed before me  
This 31<sup>st</sup> day of March  
2009.

100 Ann Edwards Ln.  
Mt. Pleasant, SC 29464  
884-4176



Signature of Judge