

RECEIVED

APR 05 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Hampton County
Honorable Brooks P. Goldsmith, Circuit Court Judge

STEVIE AIKEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001707

APPENDIX

LAURA R. BAER
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

RUSTON NEELY
Assistant Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME II OF II
PAGES 501-620

INDEX

INDEX	i
TRANSCRIPT OF TRIAL (March 7-9, 2011).....	1
<i>DIRECT APPEAL</i>	
FINAL BRIEF OF APPELLANT	454
FINAL BRIEF OF RESPONDENT	468
UNPUBLISHED OPINION OF COURT OF APPEALS	497
PETITION FOR REHEARING.....	499
ORDER DENYING PETITION FOR REHEARING.....	504
PETITION FOR WRIT OF CERTIORARI	505
STATE’S RETURN TO PETITION FOR WRIT OF CERTIORARI.....	519
ORDER DENYING CERTIORARI.....	549
REMITTITUR	550
<i>POST-CONVICTION RELIEF</i>	
APPLICATION FOR POST-CONVICTION RELIEF	551
STATE’S RETURN.....	559
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING (May 18, 2016)	565
ORDER OF DISMISSAL.....	602
INDICTMENTS	611

“On cross examination, any fact may be elicited which tends to show interest, bias, or partiality’ of the witness.” State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (quoting 98 C.J.S. Witnesses §560a (1957); see also, State v. Gracely, 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012); State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002); Rule 608(c), SCRE (“Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”)).

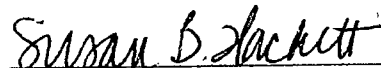
A violation of the Confrontation Clause is subject to a harmless error analysis, as this Court recognized. Van Arsdall, 475 U.S. at 680. The United States Supreme Court delineated several factors for courts to consider in evaluating a Confrontation Clause violation. The factors include (1) the importance of the witness’s testimony in the prosecution’s case, (2) whether the testimony is cumulative to other evidence presented, (3) the presence or absence of evidence corroborating or contradicting the testimony, (4) the extent of cross examination otherwise permitted, and (5) the overall strength of the prosecution’s case. Id. at 684.

In this case, trial counsel was not allowed to cross-examine a key state’s witness, implicated in the same crimes and charged with the same offenses, who clearly made a deal with the state to avoid potential life sentence in exchange for his testimony against Appellant. “They threw out the burglary charge, and I plead guilty to it.” R. 269, ll. 20-21. The error unfairly prejudiced Appellant-- the denial of meaningful cross-examination in this case outweighed the state’s interest in excluding the evidence. Harris offered highly incriminating evidence against Appellant, and testified that Appellant engaged in the most egregious aspects of this crime (throwing the brick, shooting the gun, forcing the victim into the trunk). Appellant was denied his right to fully cross-examine Harris as to the benefits he received by agreeing to testify against him during his trial.

Appellant was denied his right to confront the witnesses against him, and his trial was rendered fundamentally unfair. Thus, the error was not harmless.

Respectfully, Aiken asks this Court to rehear the matter, reverse Appellant's convictions, and remand for a new trial.

Respectfully submitted,



Susan Barber Hackett
Appellate Defender.

This 12th day of December, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVIE LAMONT AIKEN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of December, 2012.

Susan B. Hackett

Susan Barber Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of December, 2012.
Emily Payne (L.S.)

Notary Public for South Carolina
My Commission Expires: November 16, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Stevie Lamont Aiken, Appellant.

JAN 25 2013

Appellate Case No. 2011-187586

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Hoff

J.

Paul W. Brown

J.

John D. Hatter

J.

Columbia, South Carolina

cc:

Mark Reynolds Farthing

Susan Barber Hackett

FILED

Jan 25, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Perry M. Buckner, Circuit Court Judge

Opinion No. 2012-UP-632 (S.C. Ct. App. filed 11/28/2012)

10-GS-25-026-030.

THE STATE,

RESPONDENT,

V.

STEVIE LAMONT AIKEN,

PETITIONER

Appellate Case No. 2013-000399

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

INDEX

INDEX.....1

CERTIFICATE OF COUNSEL.....2

QUESTION PRESENTED.....3

STATEMENT OF THE CASE.....4

ARGUMENT

 Did the Court of Appeals err in holding the trial judge's limitation on
 Petitioner's cross-examination of a key state's witness, and alleged co-
 conspirator to these crimes, about the potential sentences he could receive
 for his participation was harmless beyond a reasonable doubt?5

CONCLUSION12

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on January 25, 2013. App. 8.

QUESTION PRESENTED

Did the Court of Appeals err in holding the trial judge's limitation on Petitioner's cross-examination of a key state's witness, and alleged co-conspirator to these crimes, about the potential sentences he could receive for his participation was harmless beyond a reasonable doubt?

STATEMENT OF THE CASE

Petitioner was indicted by the Hampton County grand jury for assault and battery with intent to kill, possession of a weapon during a violent crime, armed robbery, kidnapping, and burglary, first degree during the March and November, 2010 terms. R. 451-465. He was tried before the Honorable Perry M. Buckner, III and a jury between March 7th - 9th, 2011. He was represented by Stephen Plexico. R. 1. He was convicted and sentenced to thirty-five years for burglary, thirty years for kidnapping, twenty years for armed robbery, twenty years for assault and battery with intent to kill, and five years for possession of a weapon during the commission of a violent crime. R. 430, lines 5-23; R. 445, line 14 – R. 446, line 5; R. 466-470. The sentences were ordered to run concurrently. R. 446, lines 6-7.

Petitioner filed a timely notice of appeal, which was perfected. On November 28, 2012, the Court of Appeals affirmed Petitioner's convictions and sentences in an unpublished decision. State v. Aiken, 2012-UP-632 (Ct. App. filed Nov. 28, 2012); App. 1-2. Petitioner filed a petition for rehearing on December 12, 2012. App. 3-7. The Court of Appeals denied the petition by order dated January 25, 2013. App. 8.

Petitioner now files this timely petition for writ of certiorari.

ARGUMENT

The Court of Appeals erred in holding the trial judge's limitation on Petitioner's cross-examination of a key state's witness, and alleged co-conspirator to these crimes, about the potential sentences he could receive for his participation was harmless beyond a reasonable doubt.

Relevant facts

The victim, Margaret Gooding, lived alone, and in the relatively isolated area of Miley, South Carolina, a small town outside of Walterboro. R. 125, ll. 13-15. Around midnight, on December 6, 2009, her neighbor heard a gunshot. R. 127, l. 17 – R. 128, l. 11. He looked across to the victim's home, and noticed that the lights were on inside her house. R. 129, ll. 1-3. Her neighbor then called her family members, Odis and Martha Ann Gooding, and told them that he heard a gunshot. They said they would call 911. The neighbor looked out the window again and saw that the victim's car was gone. R. 129, ll. 4-21.

The victim's sister-in-law testified that the victim was seventy-nine years old, and in poor health. R. 134, l. 8 – R. 135, l. 1. She also testified that she had spoken to her sister-in-law between 10:00 pm and 11:00 pm that evening. R. 135, ll. 13-20. After he received a phone call from the victim's neighbor, Odis Gooding traveled to the victim's home and saw that her bedroom window was broken out, and he observed bullet holes. R. 141, l. 4 – R. 142, l. 12.

Corporal Bridges, with the Hampton County Sheriff's Office responded to the victim's home that night. He noticed that her car was gone. R. 150, l. 11 – R. 155, l. 8. He also noticed that the door to her house was unlocked, and that there was a blood trail in the house. R. 156, l. 6 – R. 159, l. 20. Once the officer noticed that her car was missing, the officer issued a "Be On the Lookout" ("BOLO") notification to other law enforcement agencies. R. 161, ll. 21-24. Another

officer testified that he identified blood at the victim's home. R. 164, ll. 22 - 25. He also noticed a bullet hole in the stove, located in the kitchen area. R. 169, ll. 10 - 12.

A crime scene investigator from the South Carolina Law Enforcement Division (SLED) located a fired bullet at the crime scene. R. 179, l. 11 – R. 180, l. 25. He also recovered three shell casings outside the bedroom window. R. 187, l. 24 – R. 188, l. 22. He located an additional bullet fragment in the backyard. R. 189, ll. 8-11. The SLED agent also took a firearm into his possession that evening. R. 189, l. 24 – R. 193, l. 9.

Harold Groves owned a business outside of Walterboro. He was working on December 7, 2009, and noticed a white Buick sitting on the side of the road near his business. He noticed the car at around 8:30 that morning. He was on the phone with 911, when he heard a noise coming from the trunk of the car. Law enforcement officers arrived quickly and discovered the victim in the trunk of the car. R. 196, l. 13 – R. 205, l. 7. The victim had penetrating injuries to her abdomen, consistent with being shot. R. 221, ll. 16-17.

Jimmy Roden testified for the prosecution. He knew the victim because she “practically kind of raised” him. R. 228, ll. 16-17. He used to rake leaves for her. Around Thanksgiving, he did some landscaping work for her. R. 229, ll. 11-19. Petitioner was with him when they did the work. R. 231, ll. 2-18. Roden introduced Petitioner to the victim. R. 231, l. 18 – R. 232, l. 7. Roden and Petitioner discussed that the victim had checks in her house. R. 232, l. 13 – R. 233, l. 15.

Nathaniel Harris also testified for the state. He admitted that he participated in these crimes. He testified that Petitioner was with him, but stated that he could not identify him in the courtroom. R. 237, l. 19 – R. 238, l. 22. Harris pleaded guilty to these crimes, and received twenty years in prison. R. 239, ll. 1-9. He testified that it was Petitioner's idea to commit these crimes, and that he had Petitioner's brother, Derrick Aiken, take them to the location in his car. R. 239, l. 23 – R. 240,

l. 15. According to Harris, Petitioner had him cut the telephone line, and then locate a brick to throw through her bedroom window. Harris claimed that he refused to do so, and Petitioner threw the brick himself. R. 241, l. 9 – R. 242, l. 15. Harris also testified that Petitioner possessed the gun and shot the victim. R. 243, ll. 7-17. Harris testified that Petitioner made him go into the house, steal the victim's purse, car keys, and her checkbook. R. 243, l. 18 – R. 244, l. 16. He also testified that Petitioner made the victim climb into the trunk of the car. R. 246, ll. 18-22.

Harris attempted to cash the victim's checks at a local bank the next day. R. 250, ll. 5-9. At the bank, he was arrested by law enforcement officers, and transported to the Colleton County Jail. R. 250, l. 13 – R. 251, l. 24. He gave a confession to law enforcement and implicated Petitioner in these crimes. R. 252, ll. 9-10. On cross-examination, Harris testified that he actually went to the victim's home with Derrick Aiken, Petitioner's brother. R. 259, ll. 2-7.

During his cross-examination of Harris, the following exchange occurred:

Q: All right. Well, look. You're looking at life on burglary; aren't you?

A: (NO RESPONSE).

Q: Aren't you?

A: I've been charged.

Q: Yes or no? Are you looking at life on burglary?

A: That's what it say – that's what it said.

Q: Yes, sir. You're charged with burglary first, correct? You pled guilty to it, correct?

A: (The witness pauses.)

Q: Did you plead guilty in front of Carmen Mullen in this courtroom to burglary first?

A: (The witness pauses.)

Q: Yes or no?

A: No, I didn't plead guilty to burglary first.

Q: Did you plead guilty to assault and battery with intent to kill Mrs. Margaret Gooding, standing here in this courtroom with Judge Carmen Mullen, the lady judge, seated where that judge is today?

A: Yes.

Q: Did you plead guilty to armed robbery?

A: Yes.

Q: And for armed robbery, you could get 10 to 30 years by itself; is that not correct, without—

THE COURT: Just a moment. Yes, sir.

DEP. SOL. THORNTON: Your Honor, it's always—

MR. PLEXICO: Your Honor, could we have a bench conference?

R. 268, l. 3 – R. 269, l. 7.

At the conclusion of trial, the judge stated the following:

THE COURT: Hold on a second, gentlemen. On the record, because I didn't want to stop this trial, I called Mr. Stone, the Solicitor, and Mr. Plexico, to a sidebar before I begin my charge. Mr. Plexico asked for the right, because he rested, to renew his motion for directed verdict at the conclusion of all the evidence, based on the sufficiency of the evidence.

R. 425, ll. 8-14.

At that time, defense counsel also put on the record the sidebar conference that occurred in connection with the cross examination of Harris:

MR. PLEXICO: I believe there was one sidebar we needed to put on the record, when I was questioning Mr. Harris about the—

THE COURT: Yes, sir.

MR. PLEXICO: When I was cross examining Mr. Harris about the amount of time that he could receive on the offenses, and the solicitor objected. At that point in time, we had a sidebar. And I would have objected under Mizelle (sp.) and the confrontation clause to his objection, or justified my questioning. And I just wanted that clearly on the record, Your Honor.

THE COURT: All right. And let me tell you this. I sustained the objection to your soliciting the penalty for the offenses involved in this case. You entered into it by saying "You have a lawyer. You knew how serious this was. And do you know how much the penalty is for burglary or for armed robbery." I let you get away with one question. When you went to the second offense, there was an objection by the solicitor. I sustained the objection. I do not believe the jury should be considering what the maximum penalty is for an offense in their deliberation on the guilt or innocence of the defendant. And for that reason, I sustained the objection, and I want to make sure there is a complete and accurate record of our sidebar.

R. 426, l. 10- 433, l. 10.

The trial court judge erred when he did not allow trial counsel to cross-examine a key state's witness, and co-defendant, about the possible penalties he could receive for his participation in this crime, and when he made a deal with the solicitor's office to testify against Aiken. A defendant has the right to cross-examine a witness concerning bias under the confrontation clause. Davis v. Alaska, 415 U.S. 308 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). "On cross examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (quoting 98 C.J.S. Witnesses §560a (1957); see Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."); State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002). If a defendant establishes he was unfairly prejudiced by the limitation, it is reversible error. Brown supra. This Court found, in Mizzell, supra, that the trial court judge erred when he did not allow trial counsel to cross-examine a witness charged with the same crimes as the defendant in that case as to the maximum punishment she faced if found guilty of the crime initially charged against her.

In State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012), this Court held a trial court improperly limited the scope of defense counsel's cross-examination of a state's witness in circumstances very similar to those presented in Petitioner's case. The witnesses against Gracely faced mandatory minimum sentences significantly longer than the sentences they received in exchange for their cooperation. Id. at 373, 731 S.E.2d at 885. Although the trial judge permitted some questioning regarding the deals made, the judge's limitation "prevented [Gracely] from demonstrating the possible bias rising from these plea deals through an examination reaching the requisite degree of granularity." Id. at 374, 731 S.E.2d at 886. This Court made clear: "The fact that a cooperating witness avoided a mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury." Id. at 375, 731 S.E.2d at 886.

This Court held the improper limitation was not harmless. The prosecution presented cumulative testimony against Gracely, but presented no physical evidence connecting Gracely to the crimes charged. Thus, the testimony was of paramount importance to the jury, enhancing the necessity that Gracely be permitted to demonstrate any bias on the part of the witnesses. The prosecution's case relied solely and uniformly on the credibility of the witnesses. The issue concerning the mandatory minimum sentences avoided affected the believability of all of the state's witnesses. Id. at 376, 731 S.E.2d at 887. Therefore, this Court held it was impossible to conclude the trial court's error did not contribute to the verdict beyond a reasonable doubt. Id. at 376-377, 731 S.E.2d at 887.

In this case, trial counsel was not allowed to cross-examine a key state's witness, implicated in the same crimes and charged with the same offenses, who clearly made a deal with the state to avoid potential life sentence in exchange for his testimony against Petitioner. "They threw out the burglary charge, and I plead guilty to it." R. 269, ll. 20-21. As in Mizzell and Gracely, the error

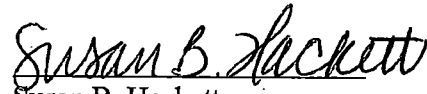
unfairly prejudiced Petitioner-- the denial of meaningful cross-examination in this case outweighed the state's interest in excluding the evidence. Harris offered highly incriminating evidence against Petitioner, and testified that Petitioner engaged in the most egregious aspects of this crime (throwing the brick, shooting the gun, forcing the victim into the trunk). Petitioner was denied his right to fully cross-examine Harris as to the benefits he received by agreeing to testify against him during his trial. Petitioner was denied his right to confront the witnesses against him, and his trial was rendered fundamentally unfair.

Although the Court of Appeals recognized that a defendant's right to cross-examine a witness of potential bias, including possible sentencing, outweighed the need to exclude such evidence based upon the fact that the jury may learn of a defendant's possible sentence, the Court determined the trial court's failure to permit Petitioner to question the state's witness of such was harmless. This was error. The trial court's improper limitation on Petitioner's cross-examination of Harris was not harmless beyond a reasonable doubt. The primary evidence against Petitioner was the testimony of Harris. Therefore, it was incumbent upon to show the jury the potential bias of Harris. It was necessary for Harris to cast as much blame as possible on Petitioner to protect himself and get the best possible deal he could.

CONCLUSION

Petitioner respectfully asks this Court to grant the petition and order full briefing on the issue presented.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER.

This 22nd day of April, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Perry M. Buckner, Circuit Court Judge

Opinion No. 2012-UP-632 (S.C. Ct. App. filed 11/28/2012)
10-GS-25-026-030.

THE STATE,

RESPONDENT,

V.

STEVIE LAMONT AIKEN,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Stevie Lamont Aiken, # 299883, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, and the S.C. Court of Appeals this 22nd day of April, 2013.

Susan B Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of April, 2013.

Emily K... (L.S.)

Notary Public for South Carolina
My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Hampton County
Honorable Perry M. Buckner, Circuit Court Judge
Appellate Case No. 2013-000399

THE STATE,

Respondent,

vs.

STEVIE LAMONT AIKEN,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON CERTIORARI.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	12
<p style="margin-left: 40px;">The Court of Appeals properly affirmed the trial judge’s ruling limiting Aiken from fully cross-examining his accomplice about the potential sentencing ranges for each of the offenses Aiken and his accomplice were indicted for because all relevant testimony regarding the accomplice’s potential for bias was elicited during trial through the accomplice’s testimony that he originally faced a maximum sentence of life imprisonment, he pled guilty in exchange for the dismissal of the first-degree burglary charge, and he was sentenced to a twenty-year term of imprisonment. Furthermore, even if the trial judge somehow erred in limiting Aiken’s ability to cross-examine his accomplice, the Court of Appeals correctly determined any error was harmless in light of the overwhelming evidence of Aiken’s guilt and the fact Aiken was fully able to expose his accomplice’s potential for bias through the cross-examination that was permitted.</p>	
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases:

<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986).	14, 21, 23
<u>Illinois v. Brewer</u> , 245 Ill. App. 3d 890, 615 N.E.2d 787 (Ill. App. Ct. 1993).	15
<u>State v. Aleksey</u> , 343 S.C. 20, 538 S.E.2d 248 (2000).	20
<u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989).	21
<u>State v. Brewington</u> , 297 S.C. 97, 226 S.E.2d 249 (1976).	13, 18
<u>State v. Brown</u> , 303 S.C. 169, 399 S.E.2d 593 (1991).	14, 17
<u>State v. Clark</u> , 315 S.C. 478, 445 S.E.2d 633 (1994).	21
<u>State v. Curry</u> , 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006).	24
<u>State v. Fletcher</u> , 379 S.C. 17, 664 S.E.2d 480 (2008).	20
<u>State v. Gathers</u> , 295 S.C. 476, 369 S.E.2d 140 (1988).	21
<u>State v. Gillian</u> , 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004).	13, 14, 19
<u>State v. Gracely</u> , 399 S.C. 363, 731 S.E.2d 880 (2012).	18, 19
<u>State v. Graham</u> , 314 S.C. 383, 444 S.E.2d 525 (1994).	13, 21
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003).	21
<u>State v. Jenkins</u> , 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996).	14
<u>State v. Mizzell</u> , 349 S.C. 326, 563 S.E.2d 315 (2002).	15, 16, 19, 20
<u>State v. Northcutt</u> , 372 S.C. 207, 641 S.E.2d 873 (2007).	21
<u>State v. Sherard</u> , 303 S.C. 172, 399 S.E.2d 595 (1991).	20
<u>State v. Sims</u> , 348 S.C. 16, 558 S.E.2d 518 (2002).	17, 22
<u>State v. Turner</u> , 373 S.C. 121, 644 S.E.2d 693 (2007).	14
<u>State v. Whitner</u> , 380 S.C. 513, 670 S.E.2d 655 (Ct. App. 2008).	14, 16
<u>State v. Wiley</u> , 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010).	21

Other Authorities:

U.S. Const. amend. VI.13

Rule 608(c), SCRE.13

S.C. Code Ann. § 16-11-311.18

S.C. Code Ann. § 16-11-330.18

STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals properly affirmed the trial judge's ruling limiting Aiken from fully cross-examining his accomplice about the potential sentencing ranges for each of the offenses Aiken and his accomplice were indicted for because all relevant testimony regarding the accomplice's potential for bias was elicited during trial through the accomplice's testimony that he originally faced a maximum sentence of life imprisonment, he pled guilty in exchange for the dismissal of the first-degree burglary charge, and he was sentenced to a twenty-year term of imprisonment. Furthermore, even if the trial judge somehow erred in limiting Aiken's ability to cross-examine his accomplice, the Court of Appeals correctly determined any error was harmless in light of the overwhelming evidence of Aiken's guilt and the fact Aiken was fully able to expose his accomplice's potential for bias through the cross-examination that was permitted.

STATEMENT OF THE CASE

Procedural History

In December of 2009, Petitioner Stevie Lamont Aiken was arrested following an investigation into the discovery of an elderly woman suffering from gunshot wounds in the trunk of her abandoned car. In March of 2010, the Hampton County grand jury indicted Aiken for first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. In November of 2010, the Hampton County grand jury additionally indicted Aiken for armed robbery and assault and battery with intent to kill. On March 7, 2011, a jury trial was commenced in the Hampton County court of general sessions with the Honorable Perry M. Buckner, circuit court judge, presiding. At the conclusion of trial, the jury convicted Aiken as indicted. Following the verdict, the trial judge sentenced Aiken to concurrent terms of imprisonment of thirty-five years for first-degree burglary, thirty years for kidnapping, twenty years for armed robbery, twenty years for assault and battery with intent to kill, and five years for possession of a weapon during the commission of a violent crime. Aiken then timely filed and perfected an appeal.

Subsequently, in an unpublished opinion, the Court of Appeals unanimously affirmed Aiken's conviction. State v. Aiken, 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012). Aiken petitioned the Court of Appeals for rehearing, and the petition was denied. Aiken then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Shortly before Thanksgiving Day in November of 2009, Jimmy Roden went to the home of seventy-nine-year-old Margaret Gooding ("Victim") in Miley, South Carolina, to perform landscaping work. (R. p. 134; pp. 229-231). Petitioner Stevie

Lamont Aiken accompanied Roden to Victim's house to assist with the job. (R. p. 231). Upon arriving, Roden knocked on Victim's door and introduced her to Aiken. (R. pp. 231-232). As Roden was speaking with Victim, he noticed some checks scattered around her home. (R. p. 232). He cautioned Victim to be more careful with the checks and commented to Aiken that Victim needed to be more careful. (R. pp. 232-233). The men then completed the landscaping work, and Victim paid them for their services with a check. (R. p. 235).

Subsequently, on December 6, 2009, Jarvis Barnes, Victim's next-door neighbor, was sleeping in his home when he was awakened by the sound of a gunshot around 11:00 p.m. or midnight.¹ (R. p. 125; pp. 127-128). Barnes initially believed the sound came from a deer hunter until he looked towards Victim's home and noticed all of the lights were on inside of the residence. (R. p. 128). Concerned, Barnes called Odis Gooding ("Odis"), Victim's brother-in-law, and reported what he heard at Victim's house. (R. p. 129; p. 141). Odis relayed the information to his wife, Martha Ann Gooding ("Martha Ann"), and she immediately attempted to call Victim. (R. p. 138). However, she received no response from Victim's home. (R. p. 138). Martha Ann then phoned Barnes and learned Victim's car, which had been in the yard when Barnes first called, was missing.² (R. pp. 128-129; p. 138). After speaking with Barnes, Martha Ann called 911 and asked for law enforcement to check on Victim at her home. (R. p. 138; p. 141).

In the early morning hours of December 7, 2009, Corporal Michael Bridges of the Hampton County Sheriff's Office responded to Victim's residence and immediately noticed her car was missing. (R. p. 150; pp. 154-156). He then called out for Victim and

¹ Notably, on December 6, 2009, the night of the incident, Aiken contacted Roden earlier in the day and inquired about Victim, asking if she had asked Roden to perform another job for her. (R. pp. 233-234).

² Victim owned a white Buick. (R. p. 148).

received no response. (R. pp. 155-156). As he continued investigating, Corporal Bridges discovered Victim's front door was unlocked and Victim's bedroom window was shattered. (R. pp. 159-160). Based on the suspicious circumstances he observed, Corporal Bridges requested back-up before proceeding into Victim's residence, where he discovered a blood trail on the floor as he moved through the house. (R. p. 156; p. 159).

Following Corporal Bridges' request for support, Captain Anthony Russell of the Hampton County Sheriff's Office quickly responded to Victim's residence and immediately observed blood when he entered the home. (R. pp. 163-164). As he investigated the scene, he discovered Victim's phone line had been cut, two bricks had been thrown into Victim's bedroom from outside, and there were bullet holes in Victim's stove and bedroom door. (R. p. 166; pp. 168-169). Based on his observations, he requested assistance with the investigation from S.L.E.D. (R. p. 165).

Shortly thereafter, Karl Henley, a crime scene investigator from S.L.E.D., responded to Victim's residence. (R. pp. 171-172). As he investigated the scene, he discovered several bullet holes inside Victim's home, and he collected shell casings from outside Victim's bedroom window, fired bullets from Victim's stove and bedroom wall, and bullet fragments from Victim's backyard. (R. p. 175; pp. 179-181; pp. 188-189). He then sent the collected evidence to S.L.E.D. for analysis. (R. pp. 185-186).

Later that morning, Harold Groves arrived at his business in Walterboro, South Carolina, around 8:30 a.m.³ (R. p. 196; p. 198). Upon arriving, he noticed a white Buick parked next to an old, abandoned building near his business. (R. p. 198). Curious as to what the vehicle was doing there, Groves' nephew, who also arrived for work that morning, approached the car and observed a cane inside. (R. pp. 199-200). However, no

³ The city of Walterboro is approximately thirty miles away from the town of Miley. (R. p. 261).

one was visible inside of the car, so Groves continued on with his day. (R. p. 200).

Thereafter, at around 3:00 p.m., Groves was preparing to go home and noticed the white Buick was still parked near the abandoned building. (R. p. 200). Believing something was amiss, Groves checked on the car and noticed the keys were inside. (R. pp. 200-201). Groves then called 911 and waited on the police to arrive. (R. p. 201). While he did so, he could hear someone talking but could not locate the source of the sound. (R. p. 201).

Following Groves' 911 call, Detective Ray Taylor of the Colleton County Sheriff's Office quickly responded to the scene and observed the white Buick partially hidden behind an abandoned building. (R. pp. 213-215). As he approached the car, he heard sounds coming from the trunk. (R. p. 216). Detective Taylor retrieved the keys from inside of the car and opened the trunk. (R. p. 216). Inside, he found Victim, who had blood on her clothing and was suffering from two gunshot wounds to her abdomen. (R. pp. 216-217; p. 221). Victim informed the officer she had been in the trunk since the previous night. (R. p. 217). Shortly thereafter, paramedics responded to the scene, and Victim was transported to the hospital by a helicopter. (R. pp. 220-221).

Later that day, Nathaniel Harris unsuccessfully attempted to cash a check stolen from Victim's residence at a bank in Walterboro. (R. p. 247; p. 250). Shortly after he left the bank, Harris was apprehended by law enforcement officers and transported back to Hampton County. (R. pp. 251-252; p. 330). Once there, Harris fully confessed to the crimes involving Victim and implicated Aiken as his accomplice. (R. p. 252; pp. 289-290).

Following Harris' confession, Lieutenant Allan Inabinett went to Aiken's residence in Walterboro and located Aiken nearby on a bicycle. (R. pp. 247-248; pp.

330-331). Aiken's residence was approximately a mile and half away from the area where Victim and her car were located. (R. p. 336). After finding Aiken, Lieutenant Inabinett made contact with him and followed him back to his house. (R. p. 331). Once there, Aiken placed something inside of the front door of his home before Lieutenant Inabinett arrested him and transported him back to Hampton County. (R. p. 331).

After arriving at the sheriff's department, Aiken was informed of his rights and agreed to speak with the officers. (R. pp. 285-286; pp. 314-315). Initially, Aiken denied any involvement in the crimes. (R. p. 296). However, Aiken eventually confessed to the crimes and made a statement to the officers admitting his guilt. (R. p. 287; pp. 298-299). Detective Leslie Johnson of the Hampton County Sheriff's Office transcribed Aiken's statement as he relayed it to her, and Aiken signed each page of the confession. (R. pp. 297-299). In the statement, Aiken claimed his brother drove him and Harris to Miley, and he and Harris went to Victim's house. (R. p. 301). Aiken claimed he showed Harris where Victim's phone line was and Harris cut the line. (R. p. 301). Aiken stated they then went to Victim's bedroom window and Harris threw two bricks inside. (R. p. 301). Aiken claimed Victim came to the window, fired shots outside, came out of her back door, asked them not to hurt her, and then returned inside and locked the door. (R. p. 301). Aiken stated he heard another shot before Victim came back outside, called for her neighbors, and then attempted to shoot him. (R. p. 301). After Victim's gun would not fire, Aiken claimed he shot at Victim and believed he hit the neighbor's shed. (R. p. 301). Aiken stated Victim went back inside and he heard another shot. (R. p. 302). Aiken claimed Victim then came back outside bleeding, threw her gun down, and asked them not to hurt her any further. (R. p. 302). Aiken stated Harris then got Victim's car and they all drove to Walterboro after Harris took the Victim's keys, wallet, and

checkbook from her home. (R. p. 302). Once in Walterboro, Aiken claimed Harris threw the guns in a dumpster. (R. p. 302). Aiken stated he wanted to take Victim to the hospital and Harris refused. (R. p. 302). Aiken claimed he and Harris then parted ways and he did not see Harris until the next morning when Harris showed him a check he said he was going to cash. (R. pp. 302-303). Aiken stated he spoke to Harris later and learned Harris could not cash the check. (R. p. 303). Aiken claimed Harris was then arrested a few hours later before he met with law enforcement at his house. (R. p. 303).

After Aiken made his statement, officers went to the dumpster where Aiken claimed the guns had been abandoned but could not locate them. (R. pp. 315-316). Detective Johnson questioned Aiken about the fact the guns could not be located where he said they would be, and Aiken admitted he retrieved the guns from the dumpster earlier that morning. (R. pp. 303-305). Aiken then stated he gave one of the guns to his brother and hid the other one in his couch cushions. (R. p. 303). In response, officers went to Aiken's residence and his brother's residence. (R. pp. 317-318; p. 320; p. 331). At Aiken's residence, officers located a revolver that belonged to the Victim hidden underneath the cushions of Aiken's couch right next to the front door. (R. p. 226; pp. 332-333). At Aiken's brother's residence, officers found a nine-millimeter handgun hidden in a plastic bag wrapped with a rag. (R. pp. 320-321; p. 333). Subsequent testing revealed the nine-millimeter handgun was used to fire the bullets recovered from inside Victim's home. (R. pp. 353-355).

Aiken was subsequently indicted for numerous offenses, including first-degree burglary, armed robbery, and kidnapping, and he proceeded to trial. (R. p. 57; pp. 451-465). During trial, in addition to the testimony of Victim's neighbors and family members and the testimony of the officers who investigated Victim's disappearance,

Aiken's accomplice, Harris, testified for the prosecution. (R. p. 238). At the outset of his testimony, Harris admitted he was incarcerated at the time of trial after pleading guilty to crimes related to the kidnapping and robbery of Victim, which he stated he committed with Aiken. (R. p. 238). Harris further stated he received a twenty-year sentence after pleading guilty to the crimes. (R. p. 239).

Regarding the incident, Harris claimed Aiken came up with the idea to rob Victim after Aiken performed yard work for Victim. (R. pp. 239-240). Harris stated Aiken's brother drove them to Victim's house and Aiken had him cut Victim's phone line. (R. pp. 240-241). Harris testified Aiken threw a brick through Victim's window after he refused to do so, and Victim came to the window and fired a shot at them. (R. pp. 242-243). Harris stated Aiken then shot Victim. (R. p. 243). After she was shot, Harris claimed Victim came outside and yelled for her neighbors, Aiken ran to her and ordered her to surrender, and Victim complied. (R. pp. 243-244). Once Victim surrendered, Harris testified Aiken sent him into Victim's home to retrieve her keys, purse, and checkbook, and Aiken forced Victim into the trunk of her car. (R. p. 244; p. 246). Harris claimed they then returned to Waltherboro, abandoned Victim's car next to an old building with Victim still in the trunk, and went to Aiken's home, which was nearby. (R. pp. 247-248). Harris testified he then unsuccessfully attempted to cash a stolen check the next day, was arrested shortly thereafter, and confessed. (R. pp. 250-252).

On cross-examination, Harris admitted he was a dishonest thief but asserted he was not "gonna tell no story." (R. pp. 255-256). Subsequently, Harris acknowledged he was originally facing a potential life sentence for first-degree burglary before he pled guilty. (R. p. 268). Then, the following exchange occurred:

[Defense Counsel]: Did you plead guilty in front of Carmen Mullen in this courtroom to burglary first?

[Harris]: (The witness pauses.)

[Defense Counsel]: Yes or no?

[Harris]: No, I didn't plead guilty to burglary first.

[Defense Counsel]: Did you plead guilty to assault and battery with intent to kill Mrs. Margaret Gooding, standing here in this courtroom with Judge Carmen Mullen, the lady judge, seated where that judge is today?

[Harris]: Yes.

[Defense Counsel]: Did you plead guilty to armed robbery?

[Harris]: Yes.

[Defense Counsel]: And for armed robbery, you could get 10 to 30 years by itself; is that not correct, without –

[Trial Judge]: Just a moment. Yes, sir.

[Solicitor]: You Honor, it's always –

[Defense Counsel]: You Honor, could we have a bench conference?

(R. pp. 268-269). Upon defense counsel's request, a bench conference was conducted outside the jury's presence. (R. p. 269). Following the bench conference, defense counsel resumed with his cross-examination of Harris, and Harris admitted he also pled guilty to grand larceny and possession of a weapon during the commission of a violent crime. (R. p. 269). Harris further testified his deal with the solicitor's office was that the first-degree burglary charge was dismissed and he pled guilty. (R. p. 269).

Subsequently, the trial continued, and the jury began its deliberations. (R. p. 426). Defense counsel then noted his objection to the limitations placed on his cross-examination of Harris, stating:

When I was cross-examining Mr. Harris about the amount of time that he could receive on the offenses, the Solicitor objected. At that point in time, we had a sidebar. And I would have objected under [Mizzell] in the confrontation clause to his objection, or justified my questioning. And I just wanted that clearly on the record, You Honor.

(R. p. 426). In response, the trial judge explained:

I sustained the objection to your soliciting the penalty for the offenses involved in this case. You entered into it by saying "You have a lawyer. You knew how serious this was. And do you know how much the penalty is for burglary or for armed robbery." I let you get away with one question. When you went to the second offense, there was an objection by the Solicitor. I sustained the objection. I do not believe the jury should be considering what the maximum penalty is for an offense in their deliberations on the guilt or innocence of the defendant. And for that reason, I sustained the objection, and I want to make sure there is a complete and accurate record of our sidebar.

(R. pp. 426-427). Thereafter, the jury convicted Aiken as indicted. (R. p. 430). The trial judge then sentenced Aiken to an aggregate term of imprisonment of thirty-five years.

(R. pp. 445-446).

Following the trial, Aiken timely appealed his conviction, and the Court of Appeals unanimously affirmed in an unpublished decision. (App'x. pp. 1-2). In affirming the conviction, the Court of Appeals issued the following opinion:

Aiken appeals his convictions of burglary, kidnapping, armed robbery, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. He contends the trial court erred in denying him his right to confront the State's witness, who was his accomplice during the commission of these crimes, about potential sentences. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002) ("The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence."); id. at 331-32, 563 S.E.2d at 318 ("However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a coconspirator witness of possible bias outweighs the need to exclude the evidence."); id. at 331, 563 S.E.2d at 317 ("The trial [court] retains discretion to impose reasonable limits on the scope of cross-examination."); State v. Gillian, 360 S.C. 433, 451, 602

S.E.2d 62, 71-72 (Ct. App. 2004) ("Before a trial [court] may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate."); Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 ("If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error."); id. at 333, 563 S.E.2d at 318 ("A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error if the error was harmless beyond a reasonable doubt."); State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("Error is harmless when it could not reasonably have affected the result of the trial.").

(App'x p. 2).

ARGUMENT

The Court of Appeals properly affirmed the trial judge's ruling limiting Aiken from fully cross-examining his accomplice about the potential sentencing ranges for each of the offenses Aiken and his accomplice were indicted for because all relevant testimony regarding the accomplice's potential for bias was elicited during trial through the accomplice's testimony that he originally faced a maximum sentence of life imprisonment, he pled guilty in exchange for the dismissal of the first-degree burglary charge, and he was sentenced to a twenty-year term of imprisonment. Furthermore, even if the trial judge somehow erred in limiting Aiken's ability to cross-examine his accomplice, the Court of Appeals correctly determined any error was harmless in light of the overwhelming evidence of Aiken's guilt and the fact Aiken was fully able to expose his accomplice's potential for bias through the cross-examination that was permitted.

Aiken contends the Court of Appeals erred in affirming his conviction. In support of that contention, Aiken maintains his trial was rendered fundamentally unfair because he was allegedly denied the right to fully cross-examine his accomplice in regards to the benefits his accomplice received for agreeing to testify against him. While contending the Court of Appeals allegedly determined the trial judge erred in limiting the cross-examination of his accomplice, Aiken maintains the Court of Appeals erred in finding the error was harmless. Initially, the Court of Appeals did not find the trial judge erred in limiting the cross-examination of Aiken's accomplice and, instead, properly affirmed the trial judge's ruling because, although the trial judge prohibited Aiken from eliciting testimony from his accomplice on all of the potential sentences the accomplice was originally facing for the indicted charges, the trial judge only did so after testimony was elicited from the accomplice during trial establishing the accomplice was originally facing a maximum sentence of life imprisonment, pled guilty for his participation in the crimes, and was serving a twenty-year sentence at the time of Aiken's trial. Thus, because all relevant testimony regarding Aiken's potential bias was elicited during trial and any further testimony on the sentencing ranges for the indicted offenses was

inappropriate, irrelevant, and prejudicial, the trial judge did not abuse his discretion in placing reasonable limitations on the scope of Aiken's cross-examination of his accomplice. Furthermore, even if the trial judge's limitations on cross-examination were somehow unreasonable and prejudicial, the Court of Appeals also correctly found any error was harmless in light of the overwhelming evidence of Aiken's guilt and the fact Aiken was fully able to cross-examine his accomplice in regards to the maximum sentence he was facing and the sentence he received in exchange for pleading guilty. Accordingly, Aiken's petition for a writ of certiorari should be denied.

A. Proper Limitation of the Scope of Cross-Examination

Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. "Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). That right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

When cross-examining a witness in regards to the potential for bias, considerable latitude must be allowed. Gillian, 360 S.C. at 450, 602 S.E.2d at 71. Any fact may be elicited which tends to show interest, bias, or partiality of the witness. State v. Brewington, 297 S.C. 97, 101, 226 S.E.2d 249, 250 (1976). Limitations placed on a defendant's ability to cross-examine a witness constitute a Confrontation Clause violation

when the defendant is prohibited from engaging in “otherwise appropriate cross-examination” designed to show a prototypical form of bias from which jurors could draw inferences relating to the reliability of the witness. Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) (emphasis added). “The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant’s opportunity for effective cross-examination at trial.” Gillian, 360 S.C. at 150, 602 S.E.2d at 71.

However, although a defendant is entitled to an opportunity for meaningful cross-examination, the scope of that cross-examination still rests in the trial judge’s sound discretion. State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008). A defendant’s right to confront the witnesses against him does not deprive the trial judge of his usual discretion in limiting the scope of cross-examination. State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007). Trial judges may impose reasonable limitations on cross-examination designed to show bias “based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness’s safety, or interrogation that is repetitive or only marginally relevant.” State v. Jenkins, 322 S.C. 360, 364, 474 S.E.2d 812, 814 (Ct. App. 1996). A trial judge is permitted to limit a defendant’s attempts to demonstrate bias on the part of a witness where there is a clear showing that the cross-examination is somehow inappropriate. Whitner, 380 S.C. at 519-520, 670 S.E.2d at 659. The limitation of cross-examination constitutes reversible error only if the defendant establishes unfair prejudice resulted from the limitation. State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991).

In the case sub judice, Aiken’s accomplice, Harris, testified on direct examination that he was indicted for numerous offenses based on his participation with Aiken in the

kidnapping, robbery, and burglary of their seventy-nine-year-old victim. Harris further testified he was incarcerated at the time of trial after pleading guilty to his charges in exchange for a twenty-year sentence. Thereafter, the trial judge permitted Aiken to elicit testimony from Harris on cross-examination that Harris was originally facing a maximum sentence of life imprisonment for his first-degree burglary charge before he pled guilty to the other offenses. After eliciting that testimony, Aiken attempted to question Harris on the maximum potential sentence he had faced on the armed robbery charge, and the trial judge prohibited Aiken from doing so. The trial judge's decision to limit Aiken's cross-examination of Harris on the possible sentencing ranges for the other offenses Harris was originally facing, which included many of the same offenses for which Aiken was on trial, constituted a proper exercise of the trial judge's discretion regarding the scope of cross-examination.⁴

Significantly, the jury is typically not entitled to learn the possible sentence a defendant might receive if convicted because the potential sentencing range for an offense is irrelevant to a finding of guilt or innocence. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002). “The purpose of preventing disclosure of the potential sentence facing the defendant is that such evidence is irrelevant to the jury and could possibly prejudice the State's right to a fair trial.” Id. at 331, 563 S.E.2d at 317 (quoting Illinois v. Brewer, 245 Ill. App. 3d 890, 892, 615 N.E.2d 787, 790 (Ill. App. Ct. 1993)). However, when a defendant's right to effectively cross-examine an accomplice about possible bias outweighs the need to exclude evidence on the possible sentence for

⁴ Regarding the differences in the offenses each of the participants in the crimes were charged with, Harris pled guilty to grand larceny while Aiken was not indicted for that offense. (R. p. 57; p. 269; pp. 451-465).

the charged offenses, the Confrontation Clause limits the rule precluding the admission of such evidence. Whitner, 380 S.C. at 520, 670 S.E.2d at 659.

In State v. Mizzell, the Mizzells and their co-defendant were charged with first-degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime. Id., 349 S.C. at 329, 563 S.E.2d at 316. During trial, the co-defendant testified against the Mizzells and was permitted to testify he could receive a “long sentence” for the charged offenses. Id. at 334, 563 S.E.2d at 319. However, the trial judge prohibited the Mizzells from asking the co-defendant, who had not yet pled guilty and had not agreed to a plea bargain, about the specific potential sentences he was facing for the charges. Id. at 330, 563 S.E.2d at 317. Subsequently, the Mizzells were convicted and appealed based on the limitations placed upon their cross-examination of the co-defendant. Id. at 330, 563 S.E.2d at 317.

On appeal, the Supreme Court reversed, finding the trial judge erred in limiting the Mizzells’ ability to cross-examine their co-defendant. Id. at 333, 563 S.E.2d at 318. The Court noted: “Generally, a judge may prevent the introduction of evidence which informs the jury of the possible sentence defendants may receive if convicted because it is either irrelevant or substantially prejudicial.” Id. However, under the circumstances of the Mizzells’ case, the Court found the trial judge erred in limiting the cross-examination of the co-defendant about the potential sentence he was facing because “[t]he lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a **future recommendation of leniency.**” Id. (emphasis added). Since the Mizzells’ co-defendant had not pled guilty or reached a plea agreement, the Court determined testimony regarding his possible sentence for his indicted offenses was critical to the jury’s ability to evaluate his potential for bias. Id.

Critically, unlike the situation in Mizzell, the jury in Aiken's case was not left with any ambiguity about the potential sentence Aiken's accomplice was originally facing. The trial judge specifically permitted Aiken to elicit testimony from Harris indicating Harris was originally facing a maximum possible sentence of life imprisonment before he pled guilty. Thus, as the jury was fully aware of the maximum sentence Harris had faced for the crimes before he pled guilty along with the fact his guilty plea allowed him to avoid a potential life sentence for the crimes, no further testimony was needed in regards to the possible sentences Harris faced on his other charges to establish Harris had a motive to plead guilty and cooperate with the State. Therefore, the limitations placed on Aiken's cross-examination of Harris did not deprive the jury of the relevant information they needed to judge Harris' potential for partiality or bias. Cf. Brown, 303 S.C. 169, 399 S.E.2d 593 ("The fact Bethel was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy is critical evidence of potential bias that appellant should have been permitted to present to the jury."). Accordingly, Aiken's ability to effectively and meaningfully cross-examine Harris was not impaired.

Furthermore, again unlike the situation in Mizzell, Harris pled guilty **before** Aiken's trial **and** received a twenty-year sentence for the crimes prior to testifying in Aiken's case. Therefore, Harris' motive for providing biased testimony was greatly reduced by virtue of the fact his sentence, which had already been imposed and which he was serving at the time of Aiken's trial, was not dependent on any future recommendation from the solicitor for leniency. Cf. State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) ("There was the substantial possibility Peterson would give biased testimony in an effort to have the solicitor highlight to his future trial judge how

he had cooperated in the instant case.”). Harris had already been sentenced for his crimes prior to ever testifying in Aiken’s case and had nothing to personally gain in regards to his sentence through testifying against Aiken during Aiken’s trial. Accordingly, since Harris directly testified as to the sentence he already received for his crimes, any testimony on the sentence he was facing before pleading guilty was irrelevant to his motivation for testifying and did not have “a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity” of his testimony. See Brewington, 297 S.C. at 101, 226 S.E.2d at 250 (“ [A]s a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony[.]’ ” (citations omitted)).

In arguing the Court of Appeals erred in affirming his conviction, Aiken primarily relies upon this Court’s recent decision in State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012), in which this Court instructed: “The fact that a cooperating witness avoided a *mandatory minimum* sentence is critical information that a defendant must be allowed to present to the jury.” (italics in original). However, unlike in Gracely, Harris did **not** avoid any mandatory minimum sentences by pleading guilty prior to Aiken’s trial. Instead, before he testified in Aiken’s case, Harris pled guilty to armed robbery and other charges and was sentenced to a twenty-year term of imprisonment, which was longer than the mandatory minimum sentences he faced for his original charges. See S.C. Code Ann. § 16-11-311 (mandating a sentence of fifteen years to life for first-degree burglary); S.C. Code Ann. § 16-11-330 (mandating a sentence of ten years to thirty years for armed robbery). Thus, as Harris did **not** avoid the mandatory minimum sentences he was facing based on his original charges, testimony regarding the mandatory minimum

sentences he did not avoid by pleading guilty was irrelevant in regards to his potential for bias in Aiken's trial. Cf. Gracely, 399 S.C. at 373, 731 S.E.2d at 885 ("Each of the State's witnesses faced a mandatory minimum sentence significantly longer than the sentence they received in exchange for their cooperation."). To the contrary, the critical testimony related to Harris' potential for bias concerned the fact that Harris avoided the potential life sentence he faced upon conviction for first-degree burglary, and that testimony was unquestionably presented to the jury.⁵ Thus, the limitations that the trial judge placed on Aiken's cross-examination of Harris were reasonable under the circumstances and resulted in no prejudice to Harris. See Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 ("The trial judge retains discretion to impose reasonable limits on the scope of cross-examination.").

Critically, in Aiken's case, the trial judge only limited Aiken's ability to cross-examine Harris after permitting Aiken to elicit all of the testimony necessary to establish any possibility of bias on Harris' part. Thereafter, the trial judge properly exercised his discretion to prevent Aiken from eliciting testimony on the other possible sentences Harris had faced because that information was no longer necessary or relevant towards establishing Harris' potential for providing biased or partial testimony. See Gillian, 360 S.C. at 451, 602 S.E.2d at 71 ("[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination

⁵ Demonstrating that testimony regarding the full sentencing ranges for each offense Harris was charged with was unnecessary towards demonstrating his potential for bias, Aiken contends in his petition for a writ of certiorari that "trial counsel was not allowed to cross-examine a key state's witness, implicated in the same crimes and charged with the same offenses, who clearly made a deal with the state to avoid a potential life sentence in exchange for his testimony against [Aiken]." (Cert. Pet. p. 10) (emphasis added). Critically, testimony regarding the fact that Harris was originally facing a life sentence before pleading guilty and receiving a twenty-year sentence was presented the jury. (R. p. 239; p. 268). Furthermore, no testimony was presented during trial suggesting Harris had a deal with the State requiring him to testify against Aiken, with Harris stating that the extent of his deal with the State was that the first-degree burglary charge would be dismissed if he pled guilty to the other charges. (R. p. 269).

based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.”). In light of the testimony the trial judge permitted Aiken to elicit from Harris, the introduction of additional testimony regarding the potential sentences ranges of the offenses Harris was originally charged with was, at best, marginally relevant and only stood to confuse the issues and expose the jury to potentially prejudicial information completely irrelevant to their decision in Aiken's case. Therefore, the testimony was no longer necessary or appropriate, meaning Aiken suffered no prejudice from its exclusion, and the trial judge did not abuse his discretion in reasonably limiting the scope of Aiken's cross-examination of his co-defendant. See State v. Aleksey, 343 S.C. 20, 33-34, 538 S.E.2d 248, 255 (2000) (“The right to meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination.” (citations omitted)); see also Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 (requiring a defendant to establish he was unfairly prejudiced by a limitation placed upon cross-examination before he is entitled to reversal). Accordingly, the Court of Appeals properly affirmed the trial judge's ruling. Aiken's petition for a writ of certiorari should be denied.

B. Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the

materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

Critically, an error resulting from the placing of improper limitations on a defendant’s ability to cross-examine a witness during trial does not automatically warrant reversal and, instead, is subject to a harmless error analysis. State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) (“Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.”). In determining whether such an error is harmless, the United States Supreme Court has identified the following factors to be considered: (1) the importance of the witness’ testimony to the State’s case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State’s case. Van Arsdall, 475 U.S. at 684. However, the harmless error analysis is not confined to considerations of only those factors. See Graham, 314 S.C. at 386, 444 S.E.2d at 527 (“The list of factors as set out in Van Arsdall is not exhaustive.”).

In the case at bar, even assuming the trial judge erred in limiting Aiken's ability to cross-examine his accomplice, any error was entirely harmless. Initially, irrespective of Harris' testimony, the other evidence presented during trial overwhelmingly established Aiken's guilt for the indicted offenses. Most significantly, testimony was presented establishing Aiken unconditionally confessed to the crimes following his arrest, and his signed confession was presented to the jury. In that signed confession, Aiken openly admitted he was involved in the burglary, armed robbery, and kidnapping of Victim. Additionally, he candidly acknowledged that he, at a minimum, shot at his elderly victim after going to her house in the middle of the night with an accomplice who he claimed cut her phone lines and threw a brick through her window. Standing alone, Aiken's signed confession and admissions overwhelmingly established his guilt for each and every one of the indicted offenses, corroborated his accomplice's testimony, and rendered his accomplice's testimony insignificant and largely cumulative to his own candid admissions.

In addition to Aiken's statement, other significant evidence and testimony was presented conclusively establishing Aiken's guilt. Significantly, the guns involved in the crime were discovered in the exact locations Aiken informed law enforcement they would be, with the gun stolen from Victim being discovered in the cushions of Aiken's couch and the gun that fired the shots into Victim's home being discovered hidden at Aiken's brother's residence. Furthermore, Victim's abandoned car, which contained Victim in the trunk, was discovered in close proximity to Aiken's residence. Coupled with Aiken's confession, that evidence conclusively established Aiken's guilt for the indicted offenses. Cf. Sims, 348 S.C. at 26, 558 S.E.2d at 523-524 (finding any error in the improper limitation of the scope of Sims' cross-examination of a witness to be

harmless in light of the fact that the State's case against Sims was strong independent of the witness' testimony and due to the fact Sims confessed to the crime to law enforcement).

Finally, notwithstanding the overwhelming evidence of Aiken's guilt, Aiken was fully able to expose his accomplice's potential for bias or partiality through the scope of cross-examination that was permitted. Harris testified he was facing a life sentence after he was indicted for the crimes, pled guilty to the offenses prior to Aiken's trial, and was sentenced to a twenty-year term of imprisonment. No further evidence was necessary to establish any potential for bias on Harris' part, and Aiken has failed to offer any meaningful reason as to why or how any additional testimony regarding the potential sentencing ranges for Harris' other indicted offenses would have had any additional impact on his potential for bias or lack of credibility. See Van Arsdall, 475 U.S. at 684 ("The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.")

Even assuming the trial judge somehow erred in limiting the scope of Aiken's cross-examination of Harris, any error was entirely harmless. Harris fully acknowledged he was facing a life sentence before he pled guilty and received a twenty-year sentence prior to testifying in Aiken's trial. Testimony on the other potential sentences Harris was facing before he entered his guilty plea and was sentenced could not have had any impact of the jury's verdict, rendering any error in the trial judge's decision to prohibit Aiken from eliciting such testimony harmless. Notwithstanding the fact that the trial judge's limitations on the scope of cross-examination were reasonable and proper, those limitations would not have warranted reversal even if they were improper. See Whitner,

380 S.C. at 521, 670 S.E.2d at 659-660 (finding any error in the limitation of the scope of cross-examination to be harmless where the limitation could not have reasonably affected the outcome at trial); State v. Curry, 370 S.C. 674, 682, 636 S.E.2d 649, 653 (Ct. App. 2006) (finding any error in the limitation of the scope of cross-examination of Curry's co-defendants about the sentences they faced was harmless because the co-defendants' testimony was cumulative to other testimony and Curry's guilt or innocence did not solely hinge on their testimony). Accordingly, the Court of Appeals properly affirmed Aiken's conviction. Aiken's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY:



Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 23, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Hampton County
Honorable Perry M. Buckner, Circuit Court Judge
Appellate Case No. 2013-000399

THE STATE,

Respondent,

vs.

STEVIE LAMONT AIKEN,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2013.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The Supreme Court of South Carolina

The State, Respondent,

v.

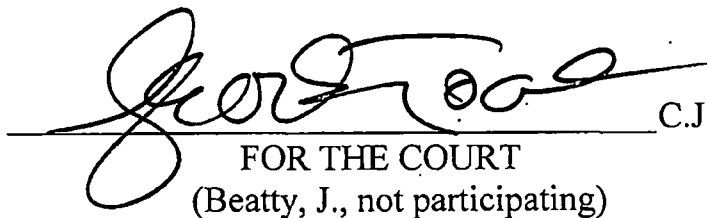
Stevie Lamont Aiken, Petitioner.

Appellate Case No. 2013-000399

Lower Court Case Nos. 2010-GS-2500026; 2010-GS-
2500027; 2010-GS-2500028; 2010-GS-2500029; 2010-
GS-2500030

ORDER

We deny the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Aiken*, Op. No. 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012).


C.J.
FOR THE COURT
(Beatty, J., not participating)

Columbia, South Carolina

May 7, 2014

cc:

The Honorable Jenny Kitchings

Susan Barber Hackett, Esquire

Mark Reynolds Farthing, Esquire

The Honorable Mylinda D. Nettles



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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

May 15, 2014

The Honorable Mylinda D. Nettles
PO Box 7
Hampton SC 29924-0007

REMITTITUR

Re: The State v. Aiken, Stevie Lamont
Lower Court Case No. 2010GS2500028, 2010GS2500030,
2010GS2500029, 2010GS2500026, 2010GS2500027
Appellate Case No. 2011-187586

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jay A. Kitchings".

CLERK

Enclosure

cc: Mark Reynolds Farthing, Esquire
Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire

FILED FORM 5

STATE OF SOUTH CAROLINA)
2014 MAY 30 AM 10:30)
COUNTY OF Hampton)
Steve Lamont Arken # 299085)
Full name and prison number, (if any) of Applicant.)

2014-CP-25-189
IN THE COURT OF COMMON PLEAS

v.)
State of South Carolina)

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 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 Kirkland Correctional Institute, Arden
2. Name and location of Court which imposed sentence Hampton County Court House, Hampton SC
3. Name(s) of co-defendant(s) (if any) Derrick Arken, Nathaniel Brooks
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Fire weapon during violent crime - 2010 GS 2500028, Burglary First Degree - 2010 GS 2500030
 - (b) Kidnapping - 2010 GS 2500029, Armed Robbery 2010 GS 2500028
 - (c) Assault and Battery with Intent to Kill - 2010 GS 2500026
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 9, 2011, 35 years term concurrent to 30 years term to 20 years term to 20
 - (b) years term to 5 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
THE IMPOSITION OF SENTENCE
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE STATE OF SOUTH CAROLINA IN THE APPELLATE COURT
- ii. THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPELLATE COURT AFFIRMED CASE
- ii. APPELLATE COURT DENIED PETITION FOR REHEARING
- iii. SUPREME COURT DENIED PETITION FOR A WRIT OF HABEAS CORPUS TO REVIEW THE COURT OF APPEALS
- (c) the date of each such result:
- i. NOV. 29, 2012
- ii. JAN. 25, 2013
- iii. MAY, 7, 2014
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. PETITION FOR REHEARING NOV 29, 2012
- ii. PETITION FOR REHEARING WAS DENIED JAN 25, 2013
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

The rest of state concisely the grounds on which base your allegation that you are being held
in custody unlawfully

553

- 1) Blood's were not confiscated
- 2) No finger prints at 211
- 3) I was ex-indicted state co-defendant agreed to testify
- 4) All motions were thrown out
- 5) No blood from victim on clothing
- 6) Bailiff was reading state notices in the court room
- 7) Lawyer's claim to have job done

- (a) I NEVER CONFESSED TO THE CRIME (GUILTY, PLEA, OR WRITTEN CONFESSON)
- (b) NO VICTIM TESTIMONY OR STATEMENT AND VICTIM PRESENT AT COURT
- (c) GENERAL INVESTIGATIVE OFFICER'S TESTIMONY

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

- (a) I DIDN'T SIGN AN ADMITTANCE OR WAIVER
- (b) VICTIM REFUSED TO SHOW UP TO COURT TO TESTIFY
- (c) OFFICER'S TESTIMONY SUCH AS LEAD'S AND COOPERATIVE TESTIMONY (SYNCHRONIZING)

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

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes
- (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. PETITION FOR WRIT OF HABEAS CORPUS IN THE COURT OF APPEALS
 - ii. PETITION FOR REHEARING
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. SOUTH CAROLINA SUPREME COURT, COLUMBIA SC
 - ii. SOUTH CAROLINA APPEALS COURT, COLUMBIA, SC
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. COUNSEL FOR DEFENDERS CERTIFIES THAT THE SUPREME COURT HAS MADE
 - ii. THREE FORMAL WRITINGS ON CASE AND HAND
 - iii. PETITION FOR REHEARING WAS DENIED

iv. _____

(d) the date of each such disposition:

i. JAN 25, 2013

ii. NOV. 26, 2014

iii. MAY, 7, 2014

iv. _____

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

i. ORDER WAS GIVEN FOR PETITION FOR RECEIVING WAS DENIED, JAN 25 2013

ii. OPINION WAS OFFERED, NOV 29, 2012

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?

NA

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

(a) which grounds have been presented:

i. NA

ii. NA

iii. NA

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

i. NA

ii. NA

iii. NA

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) ON THE ABOVE

→ (b) LOWER NEVER BRING THEM UP IN COURT THEY JUST BECAUSE WHAT THEY THINK WAS

→ (c) GOOD TO BRING UP IN COURT

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (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? _____

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. MR. STEPHEN PIRICO, PUBLIC DEFENDER'S OFFICE, PO BOX 506 KIMPTON SC 29924
 - ii. MRS. STEPHANIE A. FRANKLIN-BEST, APPELLATE DEFENDER, PO BOX 11589 COLUMBIA SC 29211
 - iii. MRS. SUSAN S. WICKERT, APPELLATE DEFENDER, PO BOX 11589 COLUMBIA SC 29211
- (b) the proceedings at which each such attorney represented you:
- i. MR. STEPHEN PIRICO REPRESENTED ME TO JURY AND SENTENCING
 - ii. MRS. STEPHANIE A. FRANKLIN-BEST REPRESENTED ME ON APPEAL'S
 - iii. MRS. SUSAN S. WICKERT REPRESENTED ME ON APPEAL'S

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

I want to get some time in accomplishing all of case if heard

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

No I'm not

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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.

[Signature]

SWORN to and subscribed before me, this 23rd
day of May, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: April 13, 2018

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

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.

[Handwritten Signature]

Applicant

SWORN or affirmed to and subscribed before me this
23rd day of *May*, *2014*

[Handwritten Signature]

Notary Public

My Commission Expires: *April 12, 2023*

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

Stevie Aiken, #299883,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2014-CP-25-0189

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed May 30, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Hampton County. Applicant was indicted at the November 2010 term of the Hampton County Grand Jury for assault and battery with intent to kill (ABWIK) (2010-GS-25-0026); March 2010 term for the possession of a weapon during the commission of a violent crime (2010-GS-25-0027); November 2010 term for armed robbery (2010-GS-25-0028); March 2010 term for kidnapping (2010-GS-25-0029); and burglary (after June 20, 1985), first degree (2010-GS-25-0030). Applicant was represented by Stephen Plexico, Esquire. On March 9, 2011, Applicant proceeded to trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to twenty (20) years' imprisonment for ABWIK, five (5) years' imprisonment for the weapons charge, twenty (20) years' imprisonment for armed robbery, thirty (30) years' imprisonment for kidnapping, and thirty-five (35) years' imprisonment for burglary, first degree, all terms to be served concurrently.

Applicant filed a timely notice of appeal. Stephen Plexico, Esquire, Susan B. Hackett, Esquire, and Elizabeth Anne Franklin-Best, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 28, 2012. State v. Aiken, Op. No. 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012). The South Carolina Court of Appeals denied Applicant's petition for rehearing on January 25, 2013. The Supreme Court of South Carolina denied petition for writ of certiorari on May 7, 2014. The remittitur was returned to the circuit court on May 15, 2014.

Attached herewith and incorporated herein by reference are the records of the Hampton County Clerk of Court regarding the subject conviction(s), the Applicant's application, the transcript from Applicant's trial, Applicant's records from the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel
 - a. Illegible writing
 - b. "no fingerprint"
 - c. "I was re-indicted after co-defendants agreed to testify [sic]"
 - d. "All motions were threw out [sic]"
 - e. "No blood from victim on clothing[sic]"
 - f. "Solicitor was leading state's witness on in court room [sic]"
 - g. "I never confessed to the crime"
 - h. "No victim testimony or statement no victim present at court [sic]"
 - i. "General flaws in officer's testimony"

III.

Applicant's claims are essentially allegations of ineffective assistance of plea counsel. Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured 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 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty

and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By:  for Rutledge Johnson
ATTORNEYS FOR RESPONDENT

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

November 2, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

STEVIE AIKEN, #299883,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA)

Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-25-0189

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esq.
 Axelrod & Associates, P.A.
 4701 Oleander Drive
 Myrtle Beach, SC 29577

DATED this 3rd day of November, 2015.


 Elizabeth McLeffan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2014-CP-25-00189

STEVIE AIKEN

APPELLANT

VERSUS

MAY 18, 2016 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

APPELLEE

B E F O R E:

HON. BROOKS P. GOLDSMITH, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF APPELLANT
STEVIE AIKEN:

HON. TRISTAN M. SHAFFER
AXELROD & ASSOCIATES, P.A.
604 SIXTEENTH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
843-916-9200
tristan@gotaxelrod.com

ON BEHALF OF APPELLEE
STATE OF SOUTH CAROLINA:

HON. J. RUTLEDGE JOHNSON
ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3693
rjohnson@scag.gov

INDEX

Caption.....	1
Appearances.....	2
Index.....	3
By the Court.....	5

STEPHEN PLEXICO

Direct Examination By Mr. Shaffer.....	7
---	---

STEVIE AIKEN

Direct Examination By Mr. Shaffer.....	19
Cross-examination By Mr. Johnson.....	26
Re-direct Examination By Mr. Shaffer.....	29
Re-cross-examination By Mr. Johnson.....	30
Re-re-direct Examination By Mr. Shaffer.....	31
By the Court.....	31

OFF THE RECORD

BACK ON THE RECORD

By the Court.....31

ATTACHMENTS

Certificate of Reporter.....37

Keyword Index

EXHIBITS

No exhibits were admitted.

5-18-16 AIKEN V STATE

BY THE COURT

1 BEGINNING 11:10 A.M.

2 BY THE COURT:

3 MR. JOHNSON: May it please the Court, your Honor.
4 This is Stevie Aiken versus the State of South Carolina.
5 It's Case Number 2014-CP-25-00189. Mr. Aiken was
6 indicted at the November 2010 term of the Hampton County
7 Grand Jury with assault and battery with attempt to
8 kill. He was also indicted at the March 2010 term for
9 possession of a weapon during the commission of a
10 violent crime and kidnaping. November 2010 term he was
11 also indicted for armed robbery -- excuse me. At the
12 March term, he was indicted for burglary first degree,
13 as well. He was represented by Steve Plexico. On March
14 9, 2011, he proceed to trial before the Honorable Perry
15 M. Buckner, pursuant to which, he was found guilty as
16 indicted. Judge Buckner sentenced him to confinement
17 for twenty years for the ABWIK, five years for the
18 possession charge, twenty years for armed robbery,
19 thirty years for kidnaping, and thirty-five years to
20 burglary first degree. All terms to be served
21 concurrently.

22 There was a notice of appeal filed on his behalf,
23 and an appeal was perfected. The Court of Appeals
24 affirmed that conviction on November 28, 2012. The
25 Court of Appeals then denied a petition for re-hearing,

5-18-16 AIKEN V STATE

BY THE COURT

1 and the South Carolina Supreme Court denied petition for
2 writ of cert on May 7, 2014. The remittitur was
3 thereafter returned on May 15, 2014. He filed this
4 immediate action May 30, 2014. The State filed its
5 return on November 3, 2015. And he is represented by
6 Mr. Tristan Shaffer.

7 THE COURT: Mr. Shaffer.

8 MR. SHAFFER: Thank you, your Honor. Your Honor,
9 my client, in his pro se application for PCR, had made
10 various claims of ineffective assistance of counsel. A
11 lot of it seeming to attack, basically, the underlying
12 evidence. Essentially, what his claim is here today is
13 that his attorney was ineffective for failing to call --
14 or failing -- he advised him not to testify and failing
15 to call him during the *Jackson v. Denno* hearing. That's
16 essentially what we're here for today, your Honor. And
17 the applicant will go ahead and call Steve Plexico.

18 THE COURT: Failure to call him in the *Denno*?

19 MR. SHAFFER: Him, in the *Denno* hearing, yes, your
20 Honor. And I'll give you a brief background on the
21 case. It was a home invasion of an elderly lady that
22 the underlying crime. He ended up, after being detained
23 by police, he ended up being questioned for several
24 hours. Part of that was videotaped. During the part
25 that was videotaped, he was saying, no, I had nothing to

5-18-16 AIKEN V STATE

DIRECT - PLEXICO

1 do with it; no, I had nothing to do with it. At some
2 point, the videotape ended, and there was a statement
3 written by police officers that -- that essentially said
4 was a confession. It was written. Supposedly, signed
5 by him. He ended up, you know, -- and so, that was a
6 primary piece of evidence during that case -- during the
7 case.

8 His co-defendant also testified against him, but
9 the co-defendant had credibility issues. They had no
10 physical evidence linking him to the case. Really, the
11 case hinged upon whether or not -- or our case hinged
12 upon whether or not he actually gave that statement. He
13 denies making that statement. He was not called as a
14 witness during trial, and did not testify during the
15 *Jackson v. Denno* hearing, as well.

16 THE COURT: I gotcha.

17 MR. SHAFFER: Thank you. Applicant calls Steve
18 Plexico.

19 MADAM CLERK: Do you solemnly swear or affirm the
20 testimony you give to the Court in this case shall be
21 the truth, so help you God?

22 STEPHEN PLEXICO: Yes.

23 MADAM CLERK: You may be seated.

24 STEPHEN PLEXICO, DIRECT EXAMINATION

25 BY MR. SHAFFER:

1 Q Good morning, Mr. Plexico. You were appointed to
2 represent Mr. Aiken, correct?

3 A Yes. I got him in the office -- originally, he was
4 appointed to Stephanie, but she had Nathaniel Harris.
5 That would be Ms. Stephanie Smart-Giddings. And I
6 received from the office from her shortly after she
7 realized that.

8 Q He was -- during -- prior to trial, I guess, and
9 you visited him multiple times, correct?

10 A While he was being held at the Colleton County
11 Jail, I started in 3000 -- excuse me -- 3-15-2010. We
12 went over the facts that, you know, he could add to it.
13 And then, we continued on up until trial.

14 Q During the time you had with him, he denied having
15 any involvement. Is that correct?

16 A Well, I'll read you what I put down, which was he
17 did not deny. Okay.

18 Defendant says Jimmy Rhoden took
19 defendant to scope out place a couple of
20 days after they cut the yard, which is one
21 or two weeks before Thanksgiving. Jimmy has
22 family in Hampton. They drove by four times
23 scoping out the place. Derek,
24 who is his brother, I believe,
25 Derek dropped Harris and defendant off

1 at the Miley Post Office.
2 This is a little tiny country post office.
3 Jimmy Rhoden was waiting behind the
4 Miley Post Office for them after they had
5 done the deed. All three of them went down
6 there to her house. Defendant stood close
7 to the road after he broke the window. Then,
8 she started shooting.
9 That would be the old lady in the house.
10 Nathaniel Harris shot back. Defendant
11 says he admitted shooting the car. Then, she
12 was hit and yelled out. So, she came out of
13 the house asking to be taken to the hospital.
14 Harris went in and stole checkbook and picked
15 up the pistol off the ground. During the
16 shooting, she went to the window and shot
17 first. Then, she went to the back door,
18 hollered for her neighbors, closed and came
19 to the window. And when the defendant came
20 to the path behind the house, she shot at
21 him. Defendant says he and Nathaniel were
22 armed. He left the front of the house when
23 Jimmy Rhoden said, 'Steve, come over here
24 by me.'
25 Nathaniel shot her. She went out back,

1 *wanting to go to the hospital. Then, they*
2 *drove to Walterboro. Harris gave defendant*
3 *Goodings' gun and defendant got out and said,*
4 *'take her to the hospital.' And Harris said*
5 *he was going to get rid of the car. Jimmy*
6 *Rhoden took off after she came out of*
7 *the house, and defendant believes she*
8 *recognized his voice. Rhoden parked his*
9 *car behind post office in Miley and left it*
10 *a hundred feet from the house of Ms. Gooding.*

11 *Defendant signed a written statement by*
12 *a lady detective, Jamison. 'Miranda' given as*
13 *soon as Hampton County detective sat down*
14 *with him. They didn't question him until then*
15 *at Hampton County Detention Center detective*
16 *office in Varnville.*

17 *And I read these notes to defendant to assure*
18 *accuracy. Then, it says:*

19 *Ends 3-15-10 interview.*

20 *And then, I added some other stuff. I also --*
21 *usually, I draw a line. That helps me keep the day*
22 *segments apart.*

23 *I added to that:*

24 *I also told defendant, and he agreed,*
25 *that we should drag this out as long as*

1 *possible. Defendant also said he had given*
2 *Harris \$40.00 for Goodings' gun. He had*
3 *given Harris \$40.00 for Goodings' gun, and*
4 *he got nothing from incident. He says*
5 *Harris arrested trying to cash --*
6 *I wrote 60,000, but I don't think that's factually*
7 *accurate.*

8 *\$60,000.00 at bank.*

9 And then, it says again:

10 *Ends 3-15 notes.*

11 Q During that time period, do you recall specifically
12 -- and I remember -- do you have any recollection
13 outside those notes?

14 A It's been a while back. I mean, it was -- he was
15 kind of -- he was a hard guy to work with. It was a
16 little contentious. I even went in one time and gave
17 him the opportunity in front of whatever judge we had to
18 fire me and get another lawyer. But I mean, you know,
19 with what I had, I don't think I did a bad job for my
20 client. Of course, I didn't win. That's always
21 hindsight, but you know.

22 Q Specifically related to your notes from that day,
23 that initial meeting, was that the initial meeting?

24 A That was on 3-15-2010, and it looks like the first
25 meeting. I may have tried to see him in Hampton, which

1 doesn't count. I put on the files generally on the top
2 front or the top middle what jail they're in, because
3 they never tell me where my clients are.

4 Q Okay.

5 A That can't tell that from reading the jail list.

6 Q So, the 3-15, do you have any specific recollection
7 of that conversation outside what's contained in your
8 notes.

9 A Not really, no. Not really. I mean, it's been
10 quite a while. It's been five or six years. I had
11 multiple meetings with him over time. I'm sorry, sir.
12 They kind of all run together.

13 Q I understand. What was your trial strategy
14 approaching trial in this case?

15 A Well, it was a pretty heinous case. I just wanted
16 to try to show everybody was lying; they'd abused my
17 client's rights; they'd lost part of the video. I mean,
18 we had a twenty-year offer. I told him to take that.
19 He said in no uncertain terms he didn't want to take the
20 twenty years. I think he came out with some off that
21 consecutively, and I think he got 55 years, is what I
22 believe he got, according to my notes. Well, I mean, I
23 thought --

24 Q Did he testify related to whether or not there was
25 any coercion by the police officers?

5-18-16 AIKEN V STATE

DIRECT - PLEXICO

1 A No. He told me he gave him *Miranda*; he understood
2 it; and he wrote it out anyway. He figured -- if I
3 remember correctly, and I can't -- not one hundred
4 percent, but I think he figured he was pretty much
5 cooked, because they had already had the other boy.

6 Q Now, during the trial, you had asked questions
7 concerning -- asked questions of the officer, and this
8 may have been during the *Jackson v. Denno* hearing,
9 related to whether they ever asked him if he was going
10 to -- or ever told him that they were going to charge
11 him with murder.

12 A I don't recall that. You'd have to point it to me.

13 Q Okay. Do you have a copy of the transcript in
14 front of you?

15 A Yes, I do, in front of me, sir.

16 Q My question, to follow up with that, -- well, first
17 of all, would you have any reason to be me -- or
18 disagree with me if I told you you had asked that
19 question?

20 A I can't remember, sir. I wouldn't have any reason
21 to disagree with you, if you represented that.

22 Q It's in the *Jackson v. Denno* hearing. This one's
23 been highlighted for some reason. Do you know where you
24 would have gotten that information from? assuming that
25 is correct.

1 A That they would not have -- were not going to
2 charge him with murder?

3 Q Or that they would charge him with murder.

4 A I would assume, her being an old lady, I mean, and
5 being shot and left in a car for a day and a half or
6 something, her dying wouldn't be real unusual, you know.
7 I mean, I'm not being smart. I'm just -- I'm just kind
8 of telling you.

9 Q Why was he not charged with murder?

10 A Well, she didn't actually die. Fortunately, see,
11 when they put her in the truck, she had an intestinal
12 wound, if I remember correctly. She was a large lady,
13 and they had doubled her over in the trunk. That
14 actually closed off the bleeding from the wound and
15 preserved her, and the lack of oxygen probably helped
16 her, too, because she wasn't like hyperventilating and
17 making the blood moved. And that's the only reason the
18 lady lasted that long and they could find her. It was
19 an extremely fortunate, but, you know, bizarre, set of
20 circumstances.

21 Q And I apologize. I found what I was looking for.
22 It was actually the second witness that testified during
23 the *Jackson v. Denno*. Page 44, Line 8 through 10.

24 A Yes. It says:

25 *And when he was brought over to a*

1 *county that he doesn't live in.*

2 *And which one of those five officers*
3 *is the one who said he could be charged*
4 *with murder.*

5 The answer was:

6 *I don't know. I wasn't aware that*
7 *happened.*

8 I don't know if I got that from my client or what.
9 I couldn't tell you at this point in time.

10 Q Why were you asking that question?

11 A Well, to see -- I was trying to see if I could get
12 -- do an argument for that they had overborne his will.
13 And -- and abused him. I was trying to portray him as
14 not a real not bright guy; that they were stepping on
15 his rights.

16 Q Okay.

17 A And that you can argue it to a jury, too, so. You
18 know, I'm pretty desperate at this point. Look at the
19 facts I got, you know.

20 Q And it is fair to say it would be improper for them
21 to charge him with murder unless she actually died,
22 right?

23 A Of course.

24 Q So, you were trying to show, basically, coercion in
25 saying we're going to charge him with murder.

5-18-16 AIKEN V STATE

DIRECT - PLEXICO

1 A Yes.

2 Q Okay. Then you testified that you didn't know
3 where that came from.

4 A I don't remember where I got that from.

5 Q Do you recall any tests of -- or conversations you
6 and Mr. Aiken had about whether or not he should
7 testify?

8 A Well, based on those facts, I wouldn't imagine him
9 testifying to that, of what I just read you, sir.
10 That'd be crazy. I mean, no. It's not going to happen.

11 Q Do you recall --

12 A I mean, unless he's trying to convict himself, you
13 know.

14 Q Do you recall any conversations about why or
15 whether or not he decided to plead guilty?

16 A Well, I don't want to really put it on the record,
17 but he told me in no uncertain terms they could take
18 that and put it in some place the sun doesn't shine.
19 And that's not what he told me. Okay? As a matter of
20 fact, I got the plea offer extended; could not get him
21 to accept it; he just would not hear of it. Twenty
22 years for those facts, not bad. But you can't convince
23 a client to go off for twenty years. Just doesn't
24 generally happen. Just doesn't.

25 I mean, I wish he had taken the plea offer. It

5-18-16 AIKEN V STATE

DIRECT - PLEXICO

1 would have been a -- a -- based on these facts is one of
2 the worst that I've had in my career. I mean, you're
3 talking laying siege to an elderly person's house out in
4 the country, you know, and taking shots at her. I mean,
5 that's like a bunch of Vikings rampaging through the
6 land. I mean, you know, they're not going to tolerate
7 that. I mean, it's just -- he should have taken the
8 twenty. I mean, it would have been generous. I hate to
9 use the word, because nobody would see it that way on
10 the defense side, but I mean, I've been around long
11 enough to -- yeah, that's generous. I tried.

12 Q I'm going to direct you toward Page 438 of the
13 transcript. You had actually requested -- the Court
14 polled the jury, correct?

15 A Yes, sir.

16 Q Okay. If you could, look at I guess it would be
17 Line 16 or -- yeah, Line 16 through 17.

18 A Yes, sir.

19 Q Or 16 through 20. What's going on there?

20 A I remember that crystal clear. All right. You
21 know, I have been around a while. I do know how to pull
22 a jury. That's something else I've got going for me.
23 People are used to seeing me at the courthouse. All
24 right. This one lady had absolutely no respect for the
25 Hampton Sheriff's Department. And what she said was,

1 based on the information and based on what the SLED
2 agent said, other words, I would not convict this man of
3 anything a Hampton County Sheriff's Department
4 investigator said, because they're a bunch of crooks,
5 which is what the large portion of that community, this
6 is due to their bad interaction with their sheriff's
7 department. You have a significant minority that feel
8 that way. Significant minority. And that's what she
9 was voicing.

10 Q What was the SLED evidence that was brought in?

11 A I believe they brought the gun in -- the guns in.
12 I don't remember everything now. I read this a while
13 back, then, it got continued, and I've, you know, done
14 all kinds of things since then.

15 They were present for the -- the interview. I
16 remember Greg Antley was present for the interview, if I
17 remember correctly.

18 Q Okay. And do you recall ever talking Mr. Aiken
19 that you advised him not to testify?

20 A I don't recall that, but I can't imagine ever
21 talking him to testify based on what he had told me. I
22 mean, I -- I mean, you can't testify to that, then I'd
23 be promoting perjury. Well, you can't do that either,
24 of course. So, I certainly would not have told him to
25 testify and say anything like that. I mean, goodness.

5-18-16 AIKEN V STATE

DIRECT - AIKEN

1 I mean, --

2 Q Okay.

3 A Be kind of stupid.

4 MR. SHAFFER: No further questions.

5 MR. JOHNSON: Nothing from the State, your Honor.

6 THE COURT: All right. Thank you, Mr. Plexico.

7 You may step down.

8 MR. SHAFFER: Call Stevie Aiken.

9 MR. JOHNSON: I would just ask that Mr. Plexico
10 stay in the courtroom in case I need him for rebuttal.

11 THE COURT: We'll make him stay.

12 MADAM CLERK: Place your left hand on the *Bible* and
13 raise your right.

14 MR. STEVIE AIKEN: I can't reach.

15 MADAM CLERK: That's fine. Do you solemnly swear
16 or affirm the testimony you give to the Court in this
17 case shall be the truth, so help you God?

18 MR. STEVIE AIKEN: Yes, ma'am.

19 MADAM CLERK: You may be seated.

20 STEVIE AIKEN, DIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q Mr. Aiken, in 3-15-2010, which was when you met
23 with your attorney, that I think Mr. Plexico testified
24 about, what do you recall talking him?

25 A See, you was asking the questions -- he was asking

1 me questions, and I tell him that they had -- they said
2 they had the video. I say, man, I -- the whole time I
3 been on the video I ain't confessed nothing. And I say,
4 all of a sudden, they come up with a statement. I say,
5 I don't even know nothing about the statement. I was
6 talking him, I said, I been in there for three hours
7 talking them I ain't did nothing, and I had a witness I
8 been on the phone with I was talking them that he act
9 like he ain't want to hear nothing I had to say.

10 Q Do you recall -- well, first of all, where are you
11 from?

12 A Walterboro, South Carolina.

13 Q And prior to this, had you ever been charged with
14 crimes? Any convictions?

15 A Yeah.

16 Q What -- what is --

17 A Forgery. I can't remember that, but I know some of
18 them forgery, probation violation and stuff like that.

19 Q There is a -- some juvenile convictions we put on
20 the record, right?

21 A That's way in the past.

22 Q All right. Now, when you were arrested and they
23 started questioning you, what did you tell the officers
24 about what happened?

25 A They came -- they came -- they called my phone.

5-18-16 AIKEN V STATE

DIRECT - AIKEN

1 They asked me they need to talk to me. So, I tell them
2 come to my house. And so, I went with them. I went
3 with them to Colleton County where the annex. And
4 shoot, they put handcuffs on me. I asked them why they
5 putting handcuffs on me. They talk about we got to take
6 you to Hampton County. I said, Hampton County for what?
7 He put me in the car, take me down there. So, when I
8 got down at Hampton County, I sat in -- in the room for
9 about a hour.

10 Then, they started -- they came in there, SLED
11 agent, two detectives. They asked me questions. And
12 another detective came in. They turned the video camera
13 on. I tell them only thing I know about the woman we
14 wanted to cut the yard. That's about it. I ain't never
15 been back there. So, they would ask me all kind of
16 questions. I say, I don't know what you all talking
17 about; only thing I did is cut the woman yard; that's
18 it. They tell me, oh, you did it; you did it. I say,
19 man, I don't know what you're talking about. So, the
20 head detectives, we're going to charge you with murder.
21 So, they took my phone and everything. I asked, you all
22 ain't going to charge me with nothing, you all going to
23 let me go. They said, no, we charging you with murder.

24 MR. JOHNSON: Objection to hearsay, your Honor.
25 Move to strike that testimony.

1 MR. SHAFFER: Your Honor, I guess the reason I'm
2 introducing it is not necessarily for the truth of the
3 matter asserted, but they were going to charge him with
4 murder. What they're trying to present to is why he
5 would have made the statements that he made during the
6 -- during -- or why he would have ended up giving a
7 statement. And eventually, I'll use it to say what he
8 would have possibly testified to had he been called at
9 the *Jackson v. Denno*.

10 THE COURT: All right. I'll overrule the objection
11 and allow it. Go ahead.

12 MR. SHAFFER: Thank you, your Honor.

13 BY MR. SHAFFER:

14 Q After -- did you ever -- did you ever give a
15 written statement?

16 A No, sir.

17 Q Did you ever sign a written statement --

18 A No, sir.

19 Q -- that was prepared for you?

20 COURT REPORTER: I'm sorry. Let him finish his
21 question. *Did you ever sign a written statement?*

22 Q That was prepared for you?

23 A No, sir.

24 Q During the trial, the police introduced a written
25 statement that they claim was signed by you. Is that

5-18-16 AIKEN V STATE

DIRECT - AIKEN

1 fair?

2 A Yes, sir.

3 Q Did you sign that statement?

4 A No, sir.

5 Q Did you tell your attorney that you hadn't sign
6 that statement?

7 A I told him when he first come that I didn't sign
8 the statement.

9 Q Okay. What was your attorney -- what was your
10 understanding of his strategy going into the trial?

11 A He ain't tell me nothing. All he tell me I had to
12 plead guilty.

13 Q Okay. Now, in March 15, 2010, that conversation
14 that you had with your attorney that we had talked about
15 earlier, did you -- did you tell him that you had
16 intended on robbing them?

17 A I ain't told -- I ain't said nothing. He come and
18 he was showing me videos, and the woman on the video
19 says she don't know who I'm am, don't -- she ain't never
20 seen me before.

21 Q Okay. Did you tell him anything about the
22 statement on that day? Do you know?

23 A I ain't tell him -- every time he came, it seem
24 like he had a attitude, and he ain't want to be there,
25 so.

1 COURT REPORTER: *And like he added to?*

2 A He had a attitude, and he ain't want to be there.
3 So, I tell him I want to fire him. So, he took me back
4 to the county when I -- to the courthouse in Hampton so
5 I could fire him. And when I got there, they had me in
6 the back room. They took me back there so a private
7 investigator from -- from the office or something just
8 telling to -- man, you ain't going to win the case; you
9 might as well go ahead and plead guilty.

10 Q You ended up not deciding to go forward with the
11 motion to withdraw him as counsel, right?

12 A Yes, sir.

13 Q Okay. And when your case was getting ready to be
14 called for trial, did you all ever discuss the
15 possibility of you testifying?

16 A He ain't never asked me. I was asking him about
17 witnesses, you know. And when the judge ask me, I said
18 no, because he's telling me if I get on the stand, they
19 ain't going to do nothing but hang me anyway, so, you
20 know, just to get on the stand. So, I figured ain't no
21 use to get on the stand.

22 Q Okay. Who told you they were going to hang you?

23 A Plexico tell me when he was coming to the County.
24 Every time he come to the County, he say they ain't no
25 use but go ahead and get what they give you, because you

5-18-16 AIKEN V STATE

DIRECT - AIKEN

1 ain't -- you don't stand a chance. The investigator was
2 telling me, when he bring me to the County Courthouse,
3 he was telling me I didn't stand a chance; might as well
4 go ahead and take what he -- cause they going to hang
5 you. Ain't no use to get on the stand when they telling
6 me that.

7 Q Did you ever tell your attorney about feeling
8 pressure to testify -- or pressure to give a statement
9 to police?

10 A No, um, all I would tell them when I was in there
11 they was asking me the questions, I say, I ain't signing
12 no papers; I ain't telling nothing; I say, I didn't know
13 what you talking about; I say, only time I been there
14 cut the woman's yard and that's it. And they say we
15 going to charge you with murder. We going to charge you
16 with murder.

17 Q Okay. So, you did tell him that.

18 A Yeah.

19 Q Okay. Why didn't you testify at your trial?

20 A They say it wasn't no use to testify. If I'd have
21 got on there, they were going to hang me regardless.

22 Q And you're saying *they*, I want to know who they
23 are.

24 A Plexico, my attorney, and the investigator. I
25 don't know who the investigator was.

5-18-16 AIKEN V STATE

AIKEN - CROSS

1 Q Okay.

2 A It was all kind of people coming in that room
3 saying ain't no use.

4 Q What would you have testified to had you been given
5 a chance to testify?

6 A That I ain't been there. I had a witness saying
7 where I had been at and where I was on the phone that
8 night.

9 Q And you said that you were not -- that's what you
10 would have testified to; that you were not there?

11 A Yeah. Yes, sir.

12 Q Had you testified to the pretrial hearing, the
13 *Jackson v. Denno* hearing, when the jury was out of the
14 room, okay? what would you have told the jury -- I mean,
15 what would you have told the judge about what the police
16 told you during that time?

17 A I would have told them everything I said, and I
18 would tell them check my handwriting; that's not my
19 handwriting. Everybody know my handwriting.

20 MR. SHAFFER: No further questions.

21 THE COURT: You may examine.

22 MR. JOHNSON: Thank you, your Honor.

23 STEVIE AIKEN, CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q Mr. Aiken, are you aware that, at your trial, it's

5-18-16 AIKEN V STATE

AIKEN - CROSS

1 admitted that you did not write that statement; that,
2 actually, a police officer wrote that statement for you?

3 A Yes, sir.

4 Q Okay. That's Leslie Jamison, right?

5 A I guess that was.

6 Q And she also testified that you signed that after
7 being given the chance to make any corrections, correct?

8 A I ain't sign a statement.

9 Q That's what you testified to, correct?

10 A That's what it said.

11 Q You also say that, had you been able to testify at
12 trial and use an alibi witness, correct?

13 A Yes, sir.

14 Q Do you have that alibi witness here in court?

15 A I ain't had it in court, but I had it when my trial
16 was going on. And when my trial was going on, they said
17 they didn't need it again.

18 Q My question is, are they here today?

19 A No.

20 Q And you also testified that the detective said they
21 could charge you with murder?

22 A Yes, sir.

23 Q Okay. And are you aware that the victim was in the
24 hospital in critical care during that time that they
25 said that?

1 A No, sir.

2 Q Okay. Had she died, you would have been charged
3 with murder.

4 A You can charge me something I ain't did.

5 Q So, you're saying you weren't there at all.

6 A I wasn't there.

7 Q Okay. Are you also aware that your co-defendant
8 testified that you were there and you were the one who
9 told them to cut the cord and you were the one who had
10 the gun and you were the one who was the mastermind
11 behind this?

12 A That's what he said.

13 Q Okay. And he also said that you told him that you
14 needed to go to your brother's house because you needed
15 to hide the .9 millimeter gun, correct? Isn't that what
16 he testified to?

17 A I don't know what he testified --

18 Q That's what he testified to, correct?

19 A That's what it said in the transcript.

20 Q And lo and behold, there's a .9 millimeter under
21 the couch at Derek's house, correct?

22 A He also say he sold me guns, too.

23 Q So, not only do you have your statement that comes
24 into evidence that you confessed to all this, but your
25 co-defendant also says you're the man who did it, too.

5-18-16 AIKEN V STATE

RE-DIRECT - AIKEN

- 1 A How it could be my statement when the same
2 statements like his and they say I wrote.
- 3 Q Pretty identical statements, aren't they?
- 4 A Unless you going off his statement, and then, write
5 another statement. So, you say it like that.
- 6 Q But the jury heard all that information, correct?
- 7 A Yeah.
- 8 Q And they still convicted you, right?
- 9 A They said only on the SLED agent's statement.
- 10 Q That's that one juror.
- 11 A They said only on the SLED agent's statement.
- 12 Q Okay. I understand that. They still convicted
13 you, didn't they?
- 14 A Only on the SLED agent's statement.
- 15 Q Yes or no? Did they convict you?
- 16 A Yes.
- 17 MR. JOHNSON: No further questions, your Honor.
- 18 THE COURT: Re-direct?
- 19 STEVIE AIKEN, RE-DIRECT EXAMINATION
- 20 BY MR. JOHNSON:
- 21 Q The officer testified that you had signed that,
22 correct?
- 23 A Yes, sir.
- 24 Q If you had been given a chance to testify, would
25 you have said you didn't sign that?

1 A I was saying that the whole time I didn't sign no
2 statement.

3 MR. SHAFFER: Okay. No further questions.

4 MR. JOHNSON: Just one briefly, one re-cross.

5 STEVIE AIKEN, RE-CROSS-EXAMINATION

6 BY MR. JOHNSON:

7 Q Mr. Aiken, you actually were given a chance to
8 testify, and you chose not to, correct?

9 A Yeah, cause they say it wasn't no use -- no choice
10 doing testify; that they -- they were going to hang me
11 regardless.

12 Q But the judge advised you that you had the right to
13 testify or not testify, correct?

14 A And I also say that then I was not guilty. I
15 apologize, but I was not guilty; you all convicting an
16 innocent man.

17 Q That's irrelevant, sir. Did the judge not explain
18 to you that you had the right to remain silent or
19 testify, and you chose not to testify?

20 A All of them say if I didn't testify, I was going to
21 get hanged regardless if I did testify.

22 Q It's a yes or no question.

23 A Yeah.

24 Q Did the judge ask you that?

25 A He did.

5-18-16 AIKEN V STATE

RE-RE-DIRECT - AIKEN

1 Q And you chose not to testify?

2 A He did [sic].

3 MR. JOHNSON: No further questions.

4 MR. SHAFFER: Your Honor, one question.

5 STEVIE AIKEN, RE-RE-DIRECT EXAMINATION

6 BY MR. SHAFFER:

7 Q Why did you tell the judge that you weren't going
8 to testify?

9 A Cause Plexico and them was talking me the whole
10 time, when he was coming to see me, when investigators
11 was coming to see me in the room, they say ain't no use
12 to testify cause they going to hang you regardless.

13 MR. SHAFFER: Thank you.

14 BY THE COURT:

15 THE COURT: Thank you, Mr. Aiken. You can step
16 down.

17 MR. SHAFFER: The applicant rests, your Honor.

18 THE COURT: The applicant rests.

19 MR. JOHNSON: Just briefly, your Honor, if you'll
20 give me Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. JOHNSON: Your Honor, the State will rest, but
23 we'd like to point out Page 368 and 369 where applicant
24 is questioned about his right to testify, and the Court
25 asks, *is that your decision*. Mr. Aiken says, *yes, sir*.

1 Did you enter the decision without being forced to do
2 so; where he said yes, sir. Nowhere does he ever
3 explain that he did not testify because Mr. Plexico ever
4 said that jury would hang him.

5 THE COURT: Argument.

6 MR. SHAFFER: Your Honor, Mr. Plexico testified
7 that the -- he had bad facts. I think that the evidence
8 that got presented to the jury were bad facts in part
9 because of the fact that there was this statement in
10 there. Now, obviously, the Court can make a credibility
11 determination in this case, but if -- if you have a
12 statement, basically, a confession in the crime, it's
13 hard to overcome that.

14 And I think that it's very hard to overcome that.
15 I don't think it would be a reasonable trial strategy
16 not to call your client if your client was wanting to
17 testify that he never signed that statement or that he
18 never made that statement. Especially given the fact
19 that you have, I guess, suspicious -- and I do give Mr.
20 Plexico credit for arguing that the statement was
21 suspicious. Throughout his closing argument, he argues
22 about the fact that there was part of it videotaped and
23 part of it not. I think that, especially given that
24 fact, the part that -- the fact that only half of the
25 statement was videotaped that got showed to the jury, I

5-18-16 AIKEN V STATE

BY THE COURT

1 think a reasonable juror could have concluded, had my
2 client got up and testified, that perhaps it was -- that
3 it could have gone the other way. Or perhaps that would
4 have raised a reasonable doubt. I think that a
5 reasonable juror could have concluded that, because,
6 essentially, what we have is credibility determination
7 at that point.

8 Related to the *Jackson v. Denno* hearing, I would
9 just say that, obviously, Mr. Plexico was trying to
10 introduce the fact that he allegedly got threatened with
11 murder. I think that my client's testimony would have
12 been -- would have been helpful in showing that during
13 the *Jackson v. Denno* hearing. The State cannot threaten
14 a charge that does not have the ability to threaten, the
15 right to threaten, or probable cause to threaten in
16 order to coerce a statement. I think there's case law
17 out there on that.

18 So, I would ask that the Court grant PCR on both
19 issues.

20 THE COURT: Thank you, Mr. Shaffer.

21 MR. JOHNSON: May it please the Court, your Honor?
22 First, I'll dismiss with the alibi claim that he was
23 then there, your Honor. Under *Bannister versus State*,
24 which is 333 South Carolina 298, he must produce the
25 testimony of a favorable witness here at the PCR council

5-18-16 AIKEN V STATE

BY THE COURT

1 -- I mean, at the PCR hearing to establish any type of
2 prejudice from counsel's failure to call any alleged
3 alibi witness, your Honor. He simply failed to do so,
4 and therefore, that issue should be denied.

5 As far as the charge of threaten, if this threat
6 was ever made, which we do not have any proof of that in
7 that there is no testimony from police officers, law
8 enforcement officers saying that they ever threatened
9 him with murder. The victim was in the hospital at this
10 time. She was certainly, had she not been doubled over,
11 as Mr. Plexico said, in the trunk, she may have bled
12 out, and he would be facing a murder charge.

13 He says that he was threatened to make this
14 statement. However, if you remember Mr. Plexico's
15 testimony, his notes from that March 2010 meeting are
16 pretty -- pretty accurate as far as, you know, as close
17 to Mr. Aiken's statement, which was presented at trial,
18 as were reflected in the notes, which are very closely
19 related to the co-defendant's statement. If you'll read
20 through the transcript, your Honor, you're going to see
21 that those are all very, very close. There's just no
22 way, had Mr. Aiken not participated in that crime, that
23 he would have had that amount of detail.

24 And then, once I asked him about the .9 millimeter,
25 which he shot through the -- which was used to shoot the

5-18-16 AIKEN V STATE

BY THE COURT

1 victim, he tells the co-defendant that he needs to go
2 hide the gun, so he takes it to his brother's house and
3 hides it in the couch. Lo and behold, guess what the
4 police find? .9 millimeter in the couch.

5 And then, SLED ballistics come in and say this was
6 the gun that shot into the victim's house.

7 Your Honor, there is overwhelming evidence that Mr.
8 Aiken committed this crime, this heinous, heinous crime.
9 he was the one that knew that the lady had checks laying
10 about, or a checkbook; knew that she was vulnerable,
11 because he had cut her grass. And Mr. Aiken now says
12 counsel has done this and done that. Your Honor,
13 there's overwhelming evidence of Mr. Aiken's guilt, and
14 we ask you to deny and dismiss this application with
15 prejudice.

16 THE COURT: Anything else, Mr. Shaffer?

17 MR. SHAFFER: Nothing, your Honor.

18 THE COURT: All right. I've reviewed the evidence
19 submitted in the case. I agree with the position of the
20 Attorney General in this case. I find the applicant has
21 failed to meet his burden of proof. I'm going to ask
22 Mr. Johnson if he would prepare an order denying the
23 application.

24 MR. JOHNSON: Yes, sir. Thank you very much.

25 THE COURT: Thank you, sir.

5-18-16 AIKEN V STATE

BY THE COURT

1 END PROCEEDING 11:51 A.M.

2 BACK ON THE RECORD 11:52 A.M.

3 MR. SHAFFER: Your Honor, could we go back on the
4 record just briefly? It might help Mr. Johnson out
5 later on.

6 THE COURT: All right.

7 MR. SHAFFER: Your Honor, he had mentioned the
8 argument related to the alibi witness. We didn't
9 actually present that as an issue on the PCR. I had
10 spoken to the client about it in -- I mean, in the back,
11 and we'd talked about it a little bit, and we decided to
12 go basically with the strongest issues. I mean, I felt
13 that that was probably better, given the fact that she
14 was there. And I just wanted to make sure that wasn't
15 in the order.

16 THE COURT: Okay.

17 MR. SHAFFER: Because we didn't really present her.

18 THE COURT: All right.

19 MR. JOHNSON: Thank you.

20 THE COURT: Thank you.

 END PROCEEDING 11:53 A.M.

5-18-16 AIKEN V STATE PCR

CERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

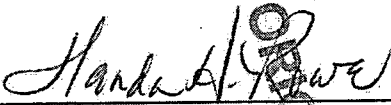
MAY 18, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
 STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing May 18, 2016, Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Stevie Aiken versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2014-CP-25-00189; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE AND IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT REQUESTED BY SCCID. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING/EMAILING IS PROHIBITED.

Witness my signature October 28, 2016.


 Wanda H. Rowe, CWR-M
 Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

Stevie Aiken, #299883,)

2014-CP-25-0189)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

SY
MELINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2016 JUL 12 AM 11:25

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 30, 2014. The Respondent made its Return on November 2, 2015. An evidentiary hearing into the matter was convened on May 18, 2016, at the Beaufort County Courthouse in Beaufort, SC. Tristan Shaffer, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Steve Plexico, Esquire, also testified. This Court had before it a copy of the records of the Hampton County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Hampton County. Applicant was indicted at the November 2010 term of the Hampton County Grand Jury for assault and battery with intent to



kill (ABWIK) (2010-GS-25-0026); March 2010 term for the possession of a weapon during the commission of a violent crime (2010-GS-25-0027); November 2010 term for armed robbery (2010-GS-25-0028); March 2010 term for kidnapping (2010-GS-25-0029); and burglary (after June 20, 1985), first degree (2010-GS-25-0030). Applicant was represented by Stephen Plexico, Esquire. On March 9, 2011, Applicant proceeded to trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to twenty (20) years' imprisonment for ABWIK, five (5) years' imprisonment for the weapons charge, twenty (20) years' imprisonment for armed robbery, thirty (30) years' imprisonment for kidnapping, and thirty-five (35) years' imprisonment for burglary, first degree, all terms to be served concurrently.

Applicant filed a timely notice of appeal. Stephen Plexico, Esquire, Susan B. Hackett, Esquire, and Elizabeth Anne Franklin-Best, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 28, 2012. *State v. Aiken*, Op. No. 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012). The South Carolina Court of Appeals denied Applicant's petition for rehearing on January 25, 2013. The Supreme Court of South Carolina denied petition for writ of certiorari on May 7, 2014. The remittitur was returned to the circuit court on May 15, 2014.

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

1. Ineffective Assistance Counsel
2. Illegible writing
3. "no fingerprint"
4. "I was re-indicted after co-defendants agreed to testify [sic]"
5. "All motions were threw out [sic]"

6. "No blood from victim on clothing[sic]"
7. "Solicitor was leading state's witness on in court room [sic]"
8. "I never confessed to the crime"
9. "No victim testimony or statement no victim present at court [sic]"
10. "General flaws in officer's testimony"

SUMMARY OF TESTIMONY

Counsel testified that he was appointed to Applicant's case and met with him on March 15, 2010, whereupon he discussed the facts of the case with Applicant. Counsel stated Applicant did not deny committing the crime and that Applicant admitted there was a witness who took him to scope out the scene of the crime. There also was a codefendant who dropped Applicant and his codefendant off at a post office and then both codefendants entered the victim's house. The victim started shooting, whereupon the codefendant shot back. This codefendant went into victim's house and stole her checkbook and a pistol. Applicant admitted he was armed and that the codefendant made him retrieve victim's car. Counsel also stated that Applicant signed a written statement. Counsel articulated that he read his notes back at the end of the meeting to Applicant to ensure their accuracy. Applicant gave the codefendant \$40 for the gun. Applicant was apprehended after his codefendant was caught trying to cash a check.

Counsel then testified that he had multiple meetings with Applicant to discuss his case. Counsel articulated that his trial strategy consist of challenging the loss videotape where Applicant allegedly confessed to the crime. Counsel expressed there was a 20-year offer which Applicant, in no uncertain terms, rejected. Counsel then testified that there was no coercion from law enforcement to entice Applicant to sign his written statement. Counsel stated he did not recall Applicant being

charged with murder because there was no death this case. However, during the trial, Counsel testified he asked a question about a murder charge because he was attempting to portray Applicant as not the brightest person and that the cops were coercive in their interrogation.

Counsel testified that he discussed Applicant's testifying with Applicant, and Applicant decided not to testify based on the facts. Counsel then stated Applicant did not want to accept the plea offer because Applicant told Counsel to tell the State to stick the offer "with the sun does not shine." Counsel articulated, in his professional opinion, that Applicant should have accepted the 20-year offer.

Applicant testified he met with Counsel on March 15, 2010 and that Counsel asked him many questions. Applicant claimed on the video that he did not confess to committing the crime and that he did not know anything about a statement. Applicant admitted he had a prior forgery conviction. Applicant testified that law enforcement called his cell phone to talk with him and that he proceeded to the police station where law enforcement handcuffed him and transported him back to Hampton County. During this interview, there was a sled agent present as well as law enforcement. Applicant stated he only knows victim because he cut her grass. Applicant once again claimed he did not give a written statement or sign a written statement and discuss this with Counsel. Applicant claimed Counsel did not explain anything about a trial strategy, but that he should simply plead guilty. Applicant claimed he did not tell Counsel that he intended to rob the victim, nor did he say anything about the statement.

Applicant then testified that Counsel had a bad attitude and that he tried to fire Counsel, but did not end up doing so. Applicant said that when his case was called for trial, the presiding judge



asked him if he was prepared to which he replied no. Applicant claimed Counsel said the jury would hang him and that Counsel's private investigator said Applicant did not stand a chance. Applicant further claimed that a detective said Applicant could be charged with murder. Applicant once again articulated that Counsel and the private investigator said the jury would convict him. Applicant then stated that if he were able to testify, he said he was not present at the scene and that he had an alibi witness. Applicant lastly stated that if he had testified during the Jackson v. Denno hearing, he would have said he did not write the statement.

On cross-examination, Applicant once again denied writing the statement. However, Applicant admitted that his codefendant testified to almost exactly what the alleged statement said. Applicant also admitted that his statement was presented to the jury and that the jury convicted him of these charges. He also admitted he knew the victim was in the hospital, therefore he cannot be charged with murder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002)

(citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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, 300 S.C. at 117, 385 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.

This Court also has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's and his father's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is very credible.

This Court finds Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated this case and assisted Applicant in his defense.



Counsel explained and relayed the 20-year offer to Applicant, and it was Applicant's decision to reject this offer. It now seems Applicant has a case of buyer's remorse. Counsel, quite properly, based his investigation on information relayed to him by Applicant and on the facts the case. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984). Further, Counsel based his trial strategy on the information supplied by Applicant and on his statement to law enforcement. Counsel challenged this statement and the trial judge ruled it was admissible. Since Counsel performed above and beyond during the Jackson v. Denno hearing, he cannot be said to be ineffective.

Further, a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. State v. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985), citing Strickland v. Washington, 104 S.Ct. 2052, 890 L.E.2d 674(1984). Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance. Id. Counsel testified that based on the facts of the case, it was not advantageous for Applicant to testify at trial. Further, the trial court fully explained Applicant's right to testify or remain silent during the trial. (See Tr. pp. 369). This Court finds this is valid trial strategy based on the facts of the case and

information supplied by Applicant. Therefore, this Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, 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. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

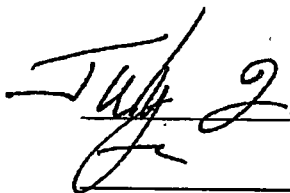
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

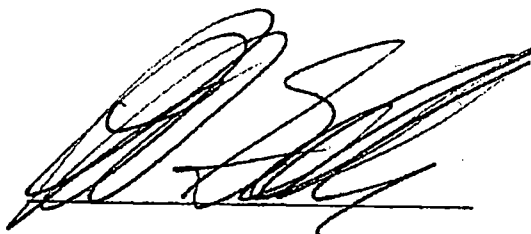
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.



AND IT IS SO ORDERED!

 2016
_____, South Carolina



Brooks P. Goldsmith
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

2014-CP-25-0189

DOCKET NO. 2010-GS-25-00026

WITNESSES

C. Solomon, HC SO

Singletary

The State of South Carolina
County of Hampton

COURT OF GENERAL SESSIONS

November Term 2010

ARREST WARRANT NUMBER

N100409

Date of Arrest: December 8, 2009

THE STATE

vs.

Stevie Lamont Aiker

ACTION OF GRAND JURY

~~TRIAL~~ FILE:

Sharon S. Moody

Foreperson of Grand Jury

Date: NOV 9 2010

Indictment for

Assault / Assault and battery with Intent to Kill
(ABWIK)

VERDICT

Guilty

SC Code: 16-03-0620

CDR Code:0014

Foreperson of Petit Jury

Date: 3/9/11

INDICT

A TRUE COPY
Alvin B. News
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 10-23-14

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

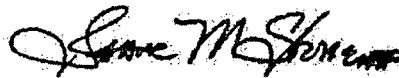
INDICTMENT
2010-GS-25-00026

At a Court of General Sessions, convened on November 9, 2010, the Grand Jurors of Hampton County present upon their oath:

Assault / Assault and battery with Intent to Kill (ABWIK)

That in Hampton County, South Carolina, on or about December 7, 2009, the Defendant, Stevie Aiken, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Margaret Gooding, to wit: the Defendant did shoot the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 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.



Isaac M. Stone, III, Solicitor
14th Judicial Circuit

A TRUE COPY
M. Stone, III
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 11/23/10

WITNESSES

C. Solomon, HCSO

DOCKET NO. 2010-GS-25-00027

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

March Term 2010

REST WARRANT NUMBER

N100410

Date of Arrest: December 8, 2009

THE STATE

vs.

Stevie Lamont Aiken

ACTION OF GRAND JURY

TRUE BILL

Sharon S. Moody
Foreperson of Grand Jury

Date: MAR 25 2010

VERDICT *Guilty*

Indictment for

Weapons / Poss. weapon during violent crime,
if not also sentenced to life without parole or death

SC Code: 16-23-0490

CDR Code:0549

Jeff
Foreperson of Petit Jury

Date: 3/9/11

INDICT

A TRUE COPY
Michael D. Deedes
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 4-23-11

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

INDICTMENT
2010-GS-25-00027

At a Court of General Sessions, convened on March 25, 2010, the Grand Jurors of Hampton County present upon their oath:

**Weapons / Poss. weapon during violent crime, if not also sentenced to life
without parole or death**

That in Hampton County, South Carolina, on or about December 7, 2009, the Defendant, Stevie Lamont Aiken, did possess a gun or visibly display what appeared to be a gun during the commission, or attempted commission, of a Burglary in the 1st degree, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



Isaac M. Stone, III, Solicitor
14th Judicial Circuit

ATRUE COPY
Melinda D. Waddles
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 6-23-11

DOCKET NO. 2010-GS-25-00028

WITNESSES

C. Solomon, HCSO

Singleton ✓

The State of South Carolina
County of Hampton

COURT OF GENERAL SESSIONS

November, Term 2010

REST WARRANT NUMBER

N100411

Date of Arrest: December 8, 2009

THE STATE

VS.

ACTION OF GRAND JURY

Stevie Lamont Aiken

Sharon S. Moody
Foreperson of Grand Jury
Date: NOV 9 2010

VERDICT

Guilty

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon

SC Code: 16-11-0330(A)
CDR Code:0139

[Signature]
Foreperson of Petit Jury

Date: 3/9/11

INDICT

- A TRUE COPY -
Alinda D. Neale
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE *6-23-14*

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

2010-GS-25-00028

At a Court of General Sessions, convened on November 9, 2010, the Grand Jurors of Hampton County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly

That in Hampton County, South Carolina, on or about December 7, 2009, the Defendant, Stevie Lamont Aiken, by use of force, threats, or intimidation and while alleging, either by action or words, he 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 or monies from the person or immediate presence of Margaret Gooding with the intent to permanently deprive her of possession thereof; in violation of Section 16-11-330(A) of 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.

Isaac M. Stone, III

Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

A TRUE COPY
M. Stone
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 11-23-10

WITNESSES

C. Solomon, HCSO

ARREST WARRANT NUMBER

N100412

Date of Arrest: December 8, 2009

ACTION OF GRAND JURY

TRUE BILL

Shaun D. Moody
Foreperson of Grand Jury

MAR 2 2010

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 3/19/10

INDICT

DOCKET NO. 2010-GS-25-00029

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

March Term 2010

THE STATE

vs.

Stevie Lamont Aiken

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910

CDR Code:0095

[Handwritten Signature]
SHERK OF COURT FOR
HAMPTON COUNTY, S.C.
- A TRUE COPY -

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

INDICTMENT
2010-GS-25-00029

At a Court of General Sessions, convened on March 25, 2010, the Grand Jurors of Hampton County present upon their oath:

Kidnapping / Kidnapping

That in Hampton County, South Carolina, on or about December 7, 2009, the Defendant, Stevie Lamont Aiken, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Margaret Gooding, without authority of law; all in violation of Section 16-3-910 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.

Isaac M. Stone, III

Isaac M. Stone, III, Solicitor
14th Judicial Circuit

A TRUE COPY
Isaac M. Stone, III
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 6-23-14

DOCKET NO. 2010-GS-25-00030

CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 3-23-10
- A TRUE COPY -

The State of South Carolina
County of Hampton

COURT OF GENERAL SESSIONS

March Term 2010

THE STATE

vs.

Stevie Lamont Aiken

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311
CDR Code: 0079

WITNESSES

C. Solomon, HCSO

REST WARRANT NUMBER

N100413

Date of Arrest: December 8, 2009

ACTION OF GRAND JURY

TRUE B

Foreperson of Grand Jury

MAR 25 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date:

3/9/10

INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT
2010-GS-25-00030

At a Court of General Sessions, convened on March 25, 2010, the Grand Jurors of Hampton County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First degree

That in Hampton County, South Carolina, on or about December 7, 2009, the Defendant, Stevie Lamont Aiken, did enter the dwelling of Margaret Gooding, located at [REDACTED], without consent and with the intent to commit a crime therein. That, in addition, the entry was during nighttime hours and Defendant was armed with a deadly weapon. All in violation of S. C. Code of Laws §16-11-311.

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

Isaac M. Stone, III

Isaac M. Stone, III, Solicitor
14th Judicial Circuit

A TRUE COPY
Margaret Gooding
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 3-23-10