

VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County

Honorable Roger L. Couch, Circuit Court Judge

RECEIVED
APR 10 2017
S.C. SUPREME COURT

LUCIUS SIMUEL,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2016-001607

APPENDIX

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1 There was a notice of appeal filed on his behalf.
2 Appeal was perfected. Sentences and convictions were
3 affirmed by the Court of Appeals. He then sent an
4 appeal up to the South Carolina Supreme Court which
5 also affirmed his conviction. And that remitter was
6 issued on August 10, 2012. And he filed this instant
7 action on February 4, 2013. The State filed its return
8 February 6, 2015. And I believe that counsel sent an
9 amendment in, filed with the clerk, filed on
10 March 17th, 2015. He is represented here today by
11 Mr. Scott Lee.

12 THE COURT: All right. Yes, sir, I'll be happy to
13 hear from you.

14 MR. LEE: Thank you, Your Honor, may it please the
15 Court. Glad to see you in Beaufort.

16 THE COURT: Glad to be here.

17 MR. LEE: Your Honor, I have, to make sure we are
18 working off of the same sheet, I have a second amended
19 application. Do you have a copy of that? I was trying
20 to go by that.

21 THE COURT: I'm looking at one that says, Amended
22 application; is that the first amendment?

23 MR. LEE: Yes, then I have a second amended that I
24 will be happy to pass up.

25 THE COURT: I probably do not have that. If you

1 will pass it up. Thank you.

2 MR. LEE: Judge, we stand before you, we stated
3 the grounds on which we intend to go forward. I can go
4 briefly over those. I will tell you that, in an effort
5 to save time as well as a candor, quite frankly, we are
6 going to withdraw the portion involving the implied
7 malice charge under Belcher. When this case was tried
8 Belcher was only a month old. There was a lot of
9 discussion. I was actually impressed that the lawyers
10 and judge were on it. But his co-defendant raised that
11 issue and it went up to the court. I believe that it
12 is the same issue that we have, so we will actually
13 withdraw or abandon our ground.

14 THE COURT: That is resolved at this time?

15 MR. LEE: Yes, sir. So, that would be number F,
16 or the letter F and G.

17 THE COURT: All right.

18 MR. LEE: On that. So, all judges do it
19 differently. I can tell you what the grounds are and
20 then --

21 THE COURT: I would like for you to do so, yes,
22 sir.

23 MR. LEE: Judge, the first issue that we are
24 raising is trial counsel, Mr. Deysach, who has been a
25 trial lawyer here, known him for a long time. And he

1 as trial counsel failed to move for severance. It was
2 a joint trial. There were antagonistic defenses,
3 inconsistent defenses. And we plan to ask Mr. Deysach
4 about that.

5 We have alleged that the trial counsel failed to
6 fully investigate the case. I intend to have
7 Mr. Simuel when he testifies to tell us what he
8 believes was not fully investigated in the case under
9 Arms versus Cato (phonetic) which requires a full
10 investigation of a case.

11 THE COURT: Yes, sir.

12 MR. LEE: Judge, there's also an issue regarding
13 and I think that Mr. Simuel and Mr. Deysach can testify
14 to this, there were some plea offers made. There was a
15 question that, unfortunately for Mr. Simuel was
16 resolved against him as to whether or not a Georgia
17 false imprisonment conviction would count as a strike
18 in SC. And that is what the appeal is about. And our
19 position is that issue could have and should have been
20 resolved prior to trial and prior to Mr. Simuel being
21 advised of his plea offer. And he didn't know that it
22 was essentially certain that he would do life without
23 parole if convicted and he didn't make a meaningful
24 decision as far as the plea offer that was turned down.

25 THE COURT: All right.

1 MR. LEE: Judge, there's also a little bit of --
2 it is an interesting case. And D and E kind of go
3 together. And this is a case where -- and again, I
4 don't want to get too much into the facts, but
5 Mr. Simuel and his co-defendant were charged with
6 burglary for going into someone's house. Two people
7 got shot, one inside the house, one outside the house.

8 And the indictment as to Mr. Simuel alleges that
9 he shot someone outside of the house named Deverol
10 Cannick. And the indictment against his co-defendant
11 stated he shot Deon Cannick inside the house. The jury
12 came back with an interesting -- that is what the
13 indictments say. The State's theory was the hand of
14 one is the hand of all.

15 The jury came back with an interesting case that I
16 have -- question that I have ever seen in 22 years of
17 doing this. They wrote back to the Judge saying, Does
18 the hand of one hand of all apply to all of the charges
19 against the defendants? Because there was burglary as
20 to each one. There was an ABWIK as to each one. And
21 there were two gun charges. So it was an interesting
22 question. Does hand of one apply to all charges
23 against the defendants? And the response from the
24 Court was that it only applies to the burglary and the
25 assault and battery charges against them, not the gun

1 charges. And we believe for a variety of reasons that
2 that was improper and it wasn't properly objected to.
3 Which we can develop, I think, through the testimony of
4 Mr. Deysach.

5 And we are skipping the implied malice.
6 Mr. Simuel, I believe, has one witness that he believes
7 that wasn't called that he believes would have been
8 exculpatory. I plan to call him and ask him about that
9 on the stand. And then the last issue is, is the
10 charge on burglary first -- the indictment alleged that
11 he was armed with a deadly weapon. The charge goes
12 through all of the different possible elements to make
13 something a burglary first. And we believe that the
14 charge was improper and could have led to some jury
15 confusion or jury reaching results that was not -- not
16 justified, number one, and number two, more
17 importantly, not contained in the indictment from which
18 they tried an earlier case against Mr. Simuel.

19 So, that is a kind of round-about summary of where
20 we intend to go with this.

21 THE COURT: All right. You may call your witness.

22 MR. LEE: I would call Lucius Simuel to the stand,
23 Your Honor.

24 THE COURT: Come forward, sir, to my right and be
25 sworn.

1 Thereupon,

2 LUCIUS SIMUEL

3 was called as a witness, having been first duly sworn,
4 was examined and testified as follows:

5 THE CLERK: Please state and spell your last name
6 for the Court.

7 THE WITNESS: Lucius Simuel, S-I-M-U-E-L.

8 THE COURT: Thank you. And you may have a seat
9 right here.

10 Your witness, Counselor.

11 MR. LEE: Thank you, Your Honor. May it please
12 the Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. LEE:

16 Q Good morning, Mr. Simuel.

17 A Good morning.

18 Q We will skip the formalities. You -- is it true
19 that you filed the initial PCR in this case pro se, or by
20 yourself?

21 A Yes, sir.

22 Q Okay. And then, subsequent to that, were you
23 appointed a lawyer by the clerk's office?

24 A Yes, sir.

25 Q Okay. That was a lawyer who doesn't do PCRs?

1 A Correct.

2 Q Did you ever talk to that lawyer?

3 A No, I never spoke with him.

4 Q Okay. And then that lawyer essentially got me to
5 step in for him, correct?

6 A Yes.

7 Q Okay. So, and we have talked before and talked
8 about this case; correct?

9 A Yes, sir.

10 Q Isn't it true that you and I when we met talked
11 about doing an amendment to your initial PCR application?

12 A Yes, sir.

13 Q Okay. And in fact, that was done twice; was it
14 not?

15 A Yes, sir.

16 Q We have done two amendments?

17 A Yes, sir.

18 Q Okay. The most recent being the second amended
19 application for post-conviction relief, right?

20 A Yes.

21 Q That was filed on March 17th, 2015?

22 A Correct.

23 Q And you are familiar with that?

24 A Yes.

25 Q Okay. And you heard me kind of tell the Judge the

1 grounds that we are going forward on, correct?

2 A Yes.

3 Q And we talked about the trial counsel, your trial
4 counsel was Mr. Deysach; correct?

5 A Correct.

6 MR. LEE: And, Judge, I should answer also, we did
7 raise that appellate counselor failed to raise a couple
8 of issues as well.

9 THE COURT: Okay.

10 MR. JOHNSON: Your Honor, just to that point, I
11 spoke to Mr. Scott this morning, they listed in the
12 wrong -- appellate counselor, the appellate counselor,
13 they listed -- only argued the Supreme Court. So, if
14 we need to get appellate counselor's testimony, if
15 that's necessary, I would ask the Court for 30 days to
16 get that testimony.

17 THE COURT: Any objection?

18 MR. LEE: No objection. I went off of the
19 unpublished opinion that had Mr. Phillips, but
20 apparently he was just the voice in court.

21 THE COURT: Do you propose to get that testimony
22 by deposition?

23 MR. JOHNSON: Deposition or affidavit. It depends
24 on -- we will talk about that.

25 THE COURT: Okay. Thank you very much.

1 BY MR. LEE:

2 Q All right. Mr. Simuel, one of the things that we
3 talked about was you say that Mr. Deysach (ck) GL didn't
4 fully investigate your case; is that correct?

5 A Yes, sir.

6 Q Can you tell the Court what you mean by that?

7 A At the beginning of my case -- my case is dealing
8 with a drug deal gone bad. It wasn't a burglary. But I'm
9 charged with a burglary. So, I was just wanting him to look
10 more further into the case to show that it was actually a
11 drug deal that we -- when we went to sell these guys the
12 drugs, do you know what I'm saying, that we didn't intend
13 for anybody to get shot or we didn't go there to break in
14 nobody house or hurt anybody or shoot nobody. We went there
15 for the purpose of selling drugs. When we got there, the
16 brothers, they, they had guns and drugs so --

17 Q I understand what you are saying as far as -- but,
18 you know, we are here for a PCR. But are there any specific
19 things that Mr. Deysach failed to investigate and you said,
20 Hey, can you go check these out?

21 A Yes, sir.

22 Q Can you tell us what those are?

23 A When I spoke to Mr. Deysach and we were preparing
24 our trial he read me some incident reports which were --
25 which I have here. For instance, he read me some incident

1 reports that was saying that I made certain statements
2 during the course of the interviewing with the officers.

3 And I told Mr. Deysach I was -- I told him
4 that I was recorded on everything that I said, so -- and I'm
5 telling you that I didn't make these statements, so I didn't
6 say -- well, some of the statements, certain comments that
7 were in the statements that I made. But a lot of the things
8 that were included inside the statements were not made by
9 me. So I wanted him to actually get the tape recorder or
10 get the evidence of the tape recorder and the notes or
11 whatever they had concerning testimony -- well, the
12 interviews concerning me as well as the other witnesses
13 which --

14 Q I am sorry, so you thought that some statements
15 that you allegedly made, as testified to by the police
16 officers --

17 A Correct.

18 Q -- were incorrect?

19 A Correct.

20 Q And you thought the way to prove that was to get
21 the original recordings?

22 A Correct.

23 Q Or to get some type of notes that the officers
24 took when they interviewed?

25 A Correct.

1 Q Okay. Now, didn't it turn out that the recordings
2 didn't exist according to the police?

3 A Well, the police said, Well, we tried to -- we
4 tried to record the statement but the tape recorder didn't
5 work. That was on the first interview.

6 Q Okay. And then on the second one they forgot to
7 push the button or something, is that right?

8 A Yes, well, the second, it was in a police squad
9 car transporting me here to Beaufort County Detention Center
10 and the investigator said that I made certain comments or
11 whatever. But he didn't have no -- he said that he didn't
12 record that interview, he just wrote notes five days later
13 as to what I said which --

14 Q Okay. And you asked Mr. Deysach to try to get
15 those things?

16 A Yeah.

17 Q All right. Let's move on to -- were you ever
18 offered a plea offer in this case?

19 A Well, Mr. Deysach told me that, he said, Well, if
20 you agree to testify on your co-defendant I could possibly
21 get you 20 years, but you know, a plea was never negotiated.

22 Q Negotiated. But it was it offered?

23 A Well he told me that he possibly, possibly could.

24 Q Now, as far as what you were looking at
25 potentially, what were your discussions with your lawyer as

1 to what you were looking at were you convicted of burglary
2 first or assault and battery intent to kill?

3 A Well, Mr. Deysach told me, he was telling me that
4 there's no way that they can say that you shot anybody or
5 whatever because he said that the evidence shows that your
6 co-defendant was the person that did the shooting. And he
7 was saying that. He said that --

8 Q Sorry to interrupt you. Let's stop for just a
9 second. As far as the life without parole issue, did
10 Mr. Deysach advise you that he had received a letter, a
11 notice from the Solicitor's office saying that they
12 considered this to be a life without parole case if
13 convicted?

14 MR. JOHNSON: Your Honor, I am going to have to
15 object. I believe this was the appeal issue. This was
16 the exact issue that was brought up to the Supreme
17 Court. They decided that this conviction did come in
18 under life without parole purposes and under the Ashley
19 versus State and Simon versus State it's not proper for
20 PCR.

21 MR. LEE: Judge, I understand his argument. But
22 what I'm trying to get to is whether or not he was
23 fully informed of the exposure that he faced before
24 making a meaningful decision about a plea offer that
25 was out there.

1 THE COURT: In that I'll let you go forward.

2 MR. LEE: I'm not trying to re-litigate.

3 A No, sir. But I received a letter saying that the
4 State was seeking life without parole, but I didn't fully
5 understand it.

6 Q Did Mr. Deysach advise you as to whether or not he
7 thought that the life without parole statute did apply based
8 on your prior convictions?

9 A No.

10 Q He didn't give you an opinion on that?

11 A No.

12 Q He thought that it didn't apply?

13 A We never discussed it.

14 Q Okay. Did he never tell you that, Mr. Simuel,
15 that if you were convicted the Judge has no choice but to
16 give you life without parole?

17 A No.

18 Q Okay. So you didn't have that information when
19 you discussed that with him?

20 A No, I just had the letter from the State.

21 Q Did you and Mr. Deysach ever discuss the
22 possibility of asking for a separate trial from you away
23 from -- different from Mr. Price?

24 A Well, my sister told me to ask Mr. Deysach could
25 he have the case severed from that of my co-defendant, and I

1 asked him but he never -- he never did it.

2 Q Okay. Did you ever discuss with Mr. Deysach the
3 benefits, the pros and cons of a joint trial versus a
4 severed trial?

5 A Well, I knew that the purpose of them, the State,
6 seeking a joint trial was because I didn't -- because they
7 couldn't get a conviction from me because I didn't -- I
8 wasn't -- that is why they pushed for a joint trial is
9 because I wasn't implicated as the shooter and as the
10 evidence proved that me and my co-defendant wasn't in
11 agreement on going there and shooting nobody. So, that was
12 the purpose why the State seeked to have me tried with that,
13 with my co-defendant. So, we never, we never -- I asked him
14 but he never really like pushed it.

15 Q Okay. We also talked on the second amended PCR
16 application, you say that trial counsel, Mr. Deysach, failed
17 to call exculpatory witnesses who would have testified,
18 prepared to testify, and would have helped you. Can you
19 tell the Court what witness or witnesses you were talking
20 about?

21 A Witnesses, my ex-wife, Charlene Williams, and also
22 Jesse Reese.

23 MR. JOHNSON: Will you spell those, sir?

24 THE WITNESS: Sir?

25 MR. JOHNSON: Can you spell that for me?

1 THE WITNESS: Charlene, C-H-A-R-L-E-N-E.

2 Williams. W-I-L-L-I-A-M-S.

3 MR. JOHNSON: Thank you very much.

4 BY MR. LEE:

5 Q The other was Jesse Reese?

6 A Yes, Jesse, J-E-S-S-E. And R-E-E-S-E, Reese.

7 BY MR. LEE:

8 Q Thank you, sir. And what was your
9 understanding -- why do you think that their testimony would
10 have been important?

11 A Well, Jesse Reese was at the scene where the
12 incident took place. And he witnessed me and my
13 co-defendant come to the apartment.

14 MR. JOHNSON: Objection, Your Honor, that would be
15 hearsay, to say what he would say.

16 THE COURT: I don't know the basis upon which he
17 says that he witnessed it. He may have seen him,
18 watched him do that. I'll ask you to lay a better
19 foundation for this line of testimony.

20 MR. LEE: Okay.

21 Q Were you and your lawyer aware that Mr. Reese may
22 have been an eye witness as to what happened?

23 A Yes.

24 Q Do you believe that his testimony would have been
25 helpful to your defense?

1 A Yes, sir.

2 Q Okay. And was Mr. Reese subpoenaed by your
3 lawyer, do you know?

4 A No, sir.

5 Q Was he available as far as you know?

6 A Yes, he was available.

7 Q Okay. And did your lawyer ever tell you why he
8 chose not to call Mr. Reese as a witness?

9 A No, sir.

10 Q Okay. Same thing with Ms. Williams, was she
11 available?

12 A Yes.

13 Q Do you believe that her testimony would have been
14 helpful?

15 A Yes.

16 Q Even though she was not an eye witness, was she?

17 A Yes, sir.

18 Q She was?

19 A No, she was not an eye witness, but some of the
20 statements say that the officers spoke with her and she told
21 them --

22 MR. JOHNSON: Object to hearsay.

23 THE COURT: Sustained.

24 Q You can't say what she said. But your testimony
25 is that she would have spoke to statements that she

1 allegedly made to the police?

2 A Right.

3 Q Okay. All right. Again, we have spoken -- well,
4 how about -- let's talk about your -- this case, your case
5 was appealed, wasn't it, direct appeal?

6 A Right.

7 Q And it was appealed based on the unpublished
8 opinion, based on the life without parole issue based on an
9 out of state Georgia conviction?

10 A Correct.

11 Q Was that the only issue that was -- that was
12 raised that you know of on the appeal?

13 A Yes.

14 Q Did you ever talk to a woman named Elizabeth
15 Franklin and ask about the Office of Appellate Defense about
16 your appeal?

17 A No, that is the person that represented me, but I
18 never spoke with her. We just corresponded through mail.

19 Q Did you have correspondence with her as to
20 possible issues to raise?

21 A No, she just wrote me a letter and told me what
22 issues she was putting in. And I wrote her back and I just
23 told her, thank you or whatever.

24 Q Okay.

25 A And if I needed to raise any other issues or -- I

1 would get in contact with her. But when I tried to, she had
2 already went in another practice or something.

3 Q Okay. Your discussion -- and I think I got Dayne
4 Phillips is the one who argued the case?

5 A Yes.

6 Q Did you ever talk to Mr. Phillips?

7 A No. He came in the prison and the officers had me
8 go to the middle of the dorm, talk in front of everybody on
9 the phone, telling me that he argued the case and that was
10 it.

11 Q Did you -- did you ever talk to either one of
12 those lawyers, correspondence or otherwise, about the hand
13 of one is the hand of all charge that was given during the
14 trial?

15 A No.

16 Q They never brought that up or said they were going
17 to raise it?

18 A No.

19 Q I think that about covers it, but today is your
20 day, so is there anything else that relates to the
21 post-conviction relief that you say that your lawyer was
22 ineffective? Is there anything else that needs to be added
23 as far as what we talked about today, as far as grounds
24 alleging ineffective assistance of counsel?

25 A I just feel that he didn't put the State's case to

1 a meaningful adversarial contestment. And my sixth
2 amendment guarantees me that. There was a lot of things
3 that he could have investigated and brought out that would
4 have been beneficial to me at the trial. Like the notes,
5 the phone records. He could have even --

6 Q Stop there. Do you want to explain what you mean
7 by the notes?

8 A The notes from the investigators, they -- they
9 said that -- well, we -- well, we -- well, Mr. Deysach asked
10 them under Rule 5. And under Rule 5 to present everything
11 that they had --

12 Q Right.

13 A -- concerning notes or whatever. Well, on the
14 stand when -- at the Jackson versus Denno hearing Mr. Holmes
15 was on the stand and when they asked him about his notes and
16 where was his notes concerning the interview, he said that
17 he threw them away.

18 Q Okay. Now, Mr. Holmes is an investigator with the
19 Beaufort County Sheriff's Office, right, DeJuan Holmes?

20 A Dewan Holmes.

21 Q His testimony was that he took notes just to
22 prepare a report, but once he prepared the report he got rid
23 of the original notes?

24 A Right.

25 Q You talked about the notes that he didn't get.

1 You said something about telephone records. What are you
2 talking about there?

3 A Telephone, during, when the Cannicks did an
4 interview with the investigators, they told the
5 investigators that --

6 MR. JOHNSON: Object to hearsay.

7 THE COURT: I'll ask you not to quote what they
8 said. State what you are aware of.

9 BY MR. LEE:

10 Q And the Cannicks are Deverol and Deon, the victims
11 that were shot; right?

12 A Yes.

13 Q You can't say what they said. But you believe
14 that there are phone records that would refute what -- some
15 statements they made?

16 A The phone records show that we had contact and we
17 did talk to each other before we actually went there selling
18 the drugs.

19 Q Okay. And you believe that that would have been
20 helpful to the defense that you raised. If you could
21 support that prior telephone conversation with the victims,
22 it would have supported your theory of the case?

23 A Right.

24 Q All right. Anything that you feel that
25 Mr. Deysach didn't do or didn't do enough?

1 A Can I refer to my notes?

2 Q Sure.

3 A Another issue where Martin Guzman made statements
4 or whatever and the statements -- the statements made
5 reference to -- can I say what the statements made reference
6 to?

7 Q Martin Guzman was a witness?

8 A A witness.

9 Q And he testified, correct?

10 A He testified.

11 Q Did Mr. Deysach not do something with respect to
12 Martin Guzman that you believe jeopardized your case?

13 A Yes.

14 Q Would you tell us what that is without saying it?

15 A He didn't point out to the jury that Martin made
16 statements that were -- he later changed on the stand and
17 that he was saying that he was at the victim's home and he
18 wasn't. He wasn't in the home or he never played video
19 games with them, he -- but somebody got in contact with him
20 and made him change his story. Like he got like three
21 different statements saying --

22 Q Mr. Deysach talked about the different statements
23 and cross-examined him, did he not?

24 A Yes, he did.

25 Q All right. Anything else that you think that he

1 didn't do? I mean, not to second guess him, but something
2 that you think that should have been done but you think was
3 not?

4 A No, not on that. I have got some more stuff
5 though.

6 Q Okay. Can you tell us what that is? I think that
7 we have covered about everything.

8 A Mr. Deysach, he failed to challenge the State's
9 evidence that they were -- the victims, the investigators
10 used, like how the victim said that they were shot. The
11 victim -- one of the victims stated that he was shot when he
12 was standing on the stairs with his hands raised but the
13 trajectory of the bullet showed that the bullet went at a
14 downward angle.

15 Q But all of that stuff was raised and argued,
16 wasn't it?

17 A No, it wasn't raised like it should have been.

18 Q I think that Mr. Price's lawyer argued that more
19 than Mr. Deysach, is that right?

20 A Yeah.

21 Q As far as the angle trajectory?

22 A I don't --

23 MR. JOHNSON: Your Honor, at this point I have to
24 object. I don't believe that is in the application, I
25 just re-read it. Even in the amendments. So I ask you

1 to strike all of that prior testimony.

2 THE COURT: I don't know about all of that prior
3 testimony.

4 MR. JOHNSON: AS far as the last little bit.

5 THE COURT: If it's not in the application, I'll
6 strike it.

7 MR. LEE: Okay.

8 THE WITNESS: Okay, that is it then.

9 MR. LEE: All right. Okay. I think that the
10 Attorney General will have a few questions for you.

11 THE COURT: You may cross-examine.

12 MR. JOHNSON: Thank you, Your Honor. May it
13 please the Court.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Simuel, are you aware that your trial counsel
18 requested and received a Denno hearing concerning your
19 statements to law enforcement?

20 A Yes, sir.

21 Q He cross-examined all of those witnesses?

22 A Not properly.

23 Q But he cross-examined them, did he not?

24 A Not properly.

25 THE COURT: I'll ask you to be responsive to the

1 question and then you may explain your response.

2 A Yes, he did.

3 Q You stated, "not properly;" you are not an
4 attorney, are you?

5 A No, sir.

6 Q You are not the ultimate fact finder in this case?

7 A No, sir.

8 Q Okay. And all three of those statements came into
9 evidence, correct?

10 A Right.

11 Q And one of them states that you were involved in
12 this case, that you went to sell drugs, and that you were
13 involved with the co-defendant in this case, right?

14 A Right.

15 Q The other statement says that you lied, you made
16 some stuff up to the police, correct?

17 A That is what I was disputing. That is what I was
18 telling you that I didn't say.

19 Q That is what came in as evidence is what I'm
20 asking?

21 A Yes, that is what came in as evidence.

22 Q The two victims identified you as being in their
23 apartment; is that correct?

24 A Yes.

25 Q And that both of them were shot?

1 A Right.

2 Q One is actually paralyzed, correct?

3 A Correct.

4 Q And that there were other witnesses there that
5 identified you as being there?

6 A Right. But I didn't shoot anybody.

7 Q And that there was a Neil v Biggers hearing
8 conducted?

9 A Neil versus Biggers, yes.

10 Q And that the trial judge allowed that
11 identification to come into evidence, correct?

12 A Correct.

13 Q And your trial counsel got to cross-examine every
14 witness that the State put up, right?

15 A Yes.

16 Q And he argued in closing that you were innocent in
17 this case, correct?

18 A Correct.

19 MR. JOHNSON: That is all that I have for this
20 witness, Your Honor.

21 THE COURT: Redirect?

22 MR. LEE: No redirect, Your Honor.

23 THE COURT: You may step down, sir. Thank you
24 very much.

25 MR. LEE: Okay.

1 We would call Mr. Deysach, Ian Deysach.

2 THE COURT: You may call your next witness.

3 WITNESS: Ready for me, Your Honor?

4 THE COURT: As soon as he's gotten back to counsel
5 table. All right. You may step up.

6 Thereupon,

7 IAN DEYSACH

8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:

10 THE CLERK: Could you state your name, spelling
11 your last name for the Court.

12 THE WITNESS: Ian Deysach. Last name spelled
13 D-E-Y-S-A-C-H.

14 THE COURT: Counsel, your witness.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Thank you. May it please the Court.

19 Mr. Deysach, I know that it is a little
20 awkward, we are friends and colleagues and in the same
21 town, but we will make this as easy as we can. When did
22 you represent -- when you represented Mr. Simuel, you were
23 a public defender; is that right?

24 A Correct.

25 Q You have since moved into private practice?

1 A Right.

2 Q And Mr. Simuel had a co-defendant, Demetrius
3 Price; is that right?

4 A He did.

5 Q Mr. Chris Geier of the Beaufort County Bar was
6 appointed as a conflict attorney for Mr. Price?

7 A That's right.

8 Q Now, as to the ultimate trial that happened in
9 this case, did you and Mr. Geier discuss the question of
10 whether either should move to have the cases severed as to
11 defendants?

12 A Yes, we did discuss it.

13 Q You and Geier discussed that?

14 A We did.

15 Q Okay. And was there -- but ultimately a severance
16 motion as to the defendants having separate trials was never
17 made, was it?

18 A Not -- nope, it was not.

19 Q Okay. And do you agree that Mr. Simuel and
20 Mr. Price had inconsistent or almost antagonistic defenses
21 as to the charges in this case?

22 A Yes, I agree to that.

23 Q Okay. Because Mr. Simuel, as he testified some
24 before, Mr. Simuel's and your defense was, he's not guilty,
25 he didn't have a gun, he didn't shoot anybody, he didn't

1 burglarize anybody, right?

2 A Correct.

3 Q It was almost like a mere presence, my
4 co-defendant freaked out defense; was it not?

5 A Yes.

6 Q And Lucius had no idea that Price was going to go
7 crazy when they went over there and started shooting
8 everybody; do you agree with that?

9 A Yes, I agree with that. It is not the freshest
10 thing in my mind, but I agree with that.

11 Q Okay. We have the transcripts if we need, but
12 that sounds close enough. And then actually -- and I think
13 during part of your argument you argued during jury closing,
14 don't hold Lucius responsible for something that someone
15 else did; that is where that one was kind of going, right?

16 A Absolutely.

17 Q Because there was testimony that Deverol Cannick
18 who was the one that the indictment claims that Mr. Simuel
19 shot didn't see who shot him, correct?

20 A Correct.

21 Q So there really wasn't anybody who testified or
22 saw Lucius, Simuel shoot anybody, correct?

23 A I think that's correct. I would refer to the,
24 transcript of course.

25 Q And in Demetrius Price's defense, and I can

1 provide transcripts if necessary, essentially was, It is all
2 a bunch of lies, it is the devil is in the details type of
3 defense; do you agree with that?

4 A I agree with that.

5 Q All right. And one of the big things that
6 Mr. Price's lawyer made a big deal about was, the State
7 can't prove why these guys would do this, why would this
8 happen, why would they go in broad daylight, why would they
9 do that sort of thing, right; do you agree with that?

10 A I would agree with that, yes.

11 Q And then the State's theory of the case is, hand
12 of one hand of all. It doesn't really matter who shot who,
13 they were there together; hand of one is hand of all,
14 correct?

15 A Correct.

16 Q Now, did you and Mr. Geier discuss the fact that
17 y'all would be kind of pulling different ways on the reigns
18 during the trial?

19 A I think that maybe I didn't quite perceive the --
20 to what extent the defense would be antagonistic at the
21 time.

22 Q Okay.

23 A Because they are both there and they are both, you
24 know, they are both -- in some ways the defenses were
25 diverged but I don't think that I fully appreciated maybe

1 the antagonistic nature of them.

2 Q Okay.

3 MR. LEE: And may I approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 MR. LEE: Here's one, Your Honor, if you would
7 like one.

8 Q Mr. Deysach, you got to the point on Page 857
9 during Price's closing argument, his counsel even kind of
10 took a shot at you, did he not, when he -- he says, This is
11 Mr. Price's lawyer in closing -- saying, And my guess is
12 that Mr. Deysach is going to say some of the same things I
13 said and probably cover some of things that I just forgot
14 and then he is probably also going to say, Well, if you
15 don't really believe what I am telling you, then it was all
16 the other guy. I take that argument for what it's worth.
17 So that was essentially Price's lawyer, the co-defendant,
18 taking a shot at yours saying, Well, if you don't believe
19 what I say then I will try something else. Do you agree
20 with that?

21 A Yes, it is a little, Take the argument for what
22 it's worth. It is kind of a shot, yes.

23 Q Okay. So, the point being that it was difficult
24 to kind of come up with a unified front and there were
25 things going different ways, and you were kind of going one

1 way and he was going the other way; right?

2 A True.

3 Q And again, the State's theory was, hand of one
4 hand of all, it didn't matter who did what, they were both
5 there, they both planned to do it; right?

6 A Right.

7 Q So, strategy-wise, was there any strategy for not
8 moving for a severance of the trials?

9 A As I recall if -- I mean, if we didn't move and
10 it's not in the transcript, it didn't happen. My thinking
11 at the time had to do with statements, portions of my
12 statements that -- portions of Mr. Simuel's statement that
13 wouldn't have been admissible due to Bruton that I also
14 didn't want before the jury. And I can't remember exactly
15 what those were. And I think when we did a redaction that I
16 wasn't able to keep out as much as I hoped that I would
17 have. And maybe, you know, hindsight maybe it should have
18 been foresight that I should have tried for the severance.

19 I think, also in the calculation was looking
20 for a case where, where it was error for a judge not to have
21 severed a trial. I couldn't find one of those in South
22 Carolina, at the time at least. So I didn't think that the
23 chances were very high in being severed in the first place.
24 And that the benefit would be that some of what Mr. Simuel
25 had said wouldn't come before the jury, due to like a Bruton

1 issue.

2 Q Okay. Well, let's talk about Bruton.

3 A Uh-huh. (Indicating affirmatively.)

4 Q There were no statements made by Mr. Price that
5 implicated Mr. Simuel; would you agree with that?

6 A I don't know if he made any statements at all.

7 Q Well, Price actually said he wasn't in Bluffton,
8 that somebody must have taken his car and he didn't know
9 nothing about nothing was Price's, right?

10 A Right.

11 Q And Simuel's statement obviously may have some
12 Bruton issues in them, but isn't it true if it was a Bruton
13 issue it would only be suppressed as to what it says about
14 Mr. Price? They could still use his statement against him
15 and couldn't use it against a non-testifying co-defendant,
16 right?

17 A Right. We had a lot of redaction that had to take
18 place of Mr. Simuel's statement. So I guess at the time I
19 perceived that having some of those things redacted, or what
20 I had hoped would be redacted, would benefit Mr. Simuel in
21 his case.

22 Q Okay. But in fact, on Bruton issues, the only
23 thing that is really redacted is the identity of --

24 A The other guy.

25 Q Yeah, okay. So, instead of saying, Me and Price

1 went to Bluffton, saying me and someone else?

2 A Yes, whether it should say just me or whether it
3 should say me and another unnamed person or, you know,
4 exactly how it's supposed to work out. I don't think that I
5 have to hopefully explain, you know.

6 Q All right. Would you agree though, when you have
7 a hand of one is a hand of all case, that it's easier to try
8 that when you have a so-called empty chair than having a
9 co-defendant sitting beside you that you are trying to blame
10 everything on?

11 A Yes.

12 Q The reason is essentially if the chair doesn't
13 have a lawyer there that is going to try to mitigate or
14 dispel what is said about the client, correct?

15 A That is one reason. I mean, there's other
16 reasons.

17 Q Right. Better chance of mistrial in a joint
18 trial, that sort of thing, right?

19 A Well, I'm saying reasons to have it severed. Good
20 reasons to have it severed.

21 Q Okay.

22 A Just by virtue of sitting there next to somebody,
23 for some reason it just, it seems like juries don't divide
24 the, I guess, culpability between two people, they just look
25 at two people in the same light.

1 Q Right. Right. And would you, would you agree
2 that testimony-wise, witness-wise, that the case was
3 stronger against Price than it was against Simuel as far as
4 who did the shooting and what happened?

5 A About who pulled the trigger?

6 Q Yes.

7 A Yes.

8 Q Because there were a few eye witnesses who pointed
9 right at Price and say, He is the one who shot Deon on the
10 stairs, right?

11 A I am not an expert on all of the facts. I know
12 that you are telling me something accurate, so I agree.

13 Q Okay. There wasn't anybody who said that they saw
14 Simuel shoot anybody, correct?

15 A No.

16 Q Nobody said that, okay. So getting back to the
17 severance. It was because you thought there might be Bruton
18 issues, which later turned out to kind of be --

19 A If I had to do it again I would ask for severance.

20 Q Okay. And in the same regard, the indictment
21 against Mr. Simuel specifically said that on such and such
22 date that he did shoot Deverol Cannick, right; is that
23 correct?

24 A (No audible response.)

25 Q And I will get that and provide it for you.

1 A Do you have a copy of the indictment?

2 MR. JOHNSON: Yes.

3 THE WITNESS: I have a copy that I'm looking at in
4 my trial notebook. Indictment for assault and battery
5 intent to kill.

6 MR. JOHNSON: Yes. May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 THE WITNESS: The question is whether or not it
10 alleged --

11 Q The ABWIK indictment against Simuel alleges that
12 he shot Deverol Cannick, correct?

13 A Correct.

14 Q Okay. And it doesn't say that he, you know, while
15 working with a co-defendant -- it doesn't say anything about
16 suggesting that somebody else shot Mr. Deverol Cannick,
17 correct?

18 A Correct.

19 Q And the indictment as to Mr. Price on the ABWIK
20 says that the defendant did shoot the victim, talking about
21 Deon Cannick, and that is what Mr. Price's indictment says,
22 correct?

23 A Correct.

24 Q Now, at the end -- let's talk about hand of one is
25 the hand of all. At the end of the State's case, you made a

1 directed verdict motion, correct?

2 A Correct.

3 Q Essentially you said that there was no evidence
4 that Mr. Simuel had fired a gun or fired a shot; does that
5 sound right?

6 A That sounds right.

7 Q Okay. And the Judge stepped in and said, Hey,
8 hand of one is the hand of all, your motion is denied
9 because the jury is entitled, if they believe the evidence
10 they have heard so far, can find both defendants guilty of
11 the crime regardless of who did the shooting, does that
12 sound --

13 A Correct.

14 Q So your directed verdict motion was dismissed or
15 was denied at that time and the Judge specifically said they
16 could find hand of one is the hand of all, correct?

17 A Correct.

18 Q Okay. And after -- prior to the closing
19 arguments, toward the end of the trial, do you remember
20 having a charge conference with the Judge?

21 A I know that we did, but I -- yes.

22 Q Okay. And again, the question of hand of one is
23 the hand of all. And he essentially gave y'all what he was
24 proposing to charge; does that ring a bell to you? That is
25 on Page 824 and 825.

1 MR. LEE: Judge, I mean, I'm happy to admit all of
2 this stuff, but if we can do it with just him
3 remembering.

4 MR. JOHNSON: It is all in his packet. It is in
5 the record.

6 THE COURT: I have the transcript of the trial.

7 MR. LEE: Yes, sir. But there was a charge
8 conference that he gave you that indicates that is what
9 he was going to charge, correct?

10 A Correct.

11 Q Okay. At that point you didn't object to a hand
12 of one is the hand of all charge, particularly with respect
13 to the ABWIK charge; did you?

14 A No.

15 Q And again, the ABWIK indictment says that Lucius
16 Simuel shot Deverol Cannick, correct?

17 A Correct.

18 Q And Lucius Simuel is not charged -- was not
19 charged with shooting Deon Cannick, correct?

20 A Correct.

21 Q Only Demetrius Price was charged with shooting
22 Deon?

23 A Correct.

24 Q All right. And ultimately hand of one is the hand
25 of all was charged to the jury, was it not?

1 A Correct.

2 Q And after the jury deliberated for a while they
3 came back with a question regarding the hand of one is the
4 hand of all, did they not?

5 A Correct, yes.

6 Q Okay. That is on Page 934 of the transcript. And
7 I am gong to read what the transcript says and just tell me
8 if you remember this. It says, The Court. The next
9 question -- and this is from the jury -- the hand of one is
10 the hand of all, please clarify what this means. Does it
11 apply to all four counts against the defendant, question
12 mark? That was a letter -- that was a note that came out
13 from the jury, right?

14 A Correct.

15 Q And then there was a discussion amongst the
16 Solicitor and defense counselor as to how the Judge should
17 answer that, right?

18 A Yes.

19 Q Okay. And the Judge's thought was that, and
20 Mr. Robinson agreed, Mr. Robinson who was the prosecutor,
21 that the hand of one is the hand of all applies only for
22 burglary first and ABWIK charges on each defendant?

23 A Correct.

24 Q That is what the Court suggested and then asked if
25 you had any objection, right?

1 A Right.

2 Q Because there were four charges on each defendant
3 originally?

4 A Correct.

5 Q Burglary first, ABWIK, and then he charged ABHAN
6 as a lesser included; but then two gun charges as to each
7 one, correct?

8 A Correct.

9 Q So, the jury wanted to know, Does hand of one
10 apply to all four charges against each defendant. And the
11 ultimate answer that went back to the jury was, It applies
12 to burglary first, ABWIK, and ABHAN; correct?

13 A Correct.

14 Q All right. And you didn't make any objection to
15 him telling the jury that it applies to ABWIK and the lesser
16 included ABHAN, correct?

17 A Correct.

18 Q Okay.

19 MR. JOHNSON: Your Honor, I do have to object to
20 the form of the question. These are all leading
21 questions. I should have done this a long time ago.

22 MR. LEE: They are. I'm trying to speed it up.

23 THE COURT: All right. Leading questions per se
24 are not automatically excluded. And I don't find that
25 counselor is getting any particular advantage by asking

1 them. The jury is not present. I'll allow you to
2 proceed.

3 MR. LEE: Thank you.

4 BY MR. LEE:

5 Q Mr. Deysach, do you know -- do you know who the
6 jury believed shot Deon Cannick, and Deverol Cannick?

7 A No.

8 Q Okay. And the reason that you don't know is
9 because they were turned -- they were charged on hand of one
10 is the hand of all and there's different ways that they
11 could have gotten to where they got; correct?

12 A That's right.

13 Q Is it possible that the jury could have believed
14 that Demetrius Price shot both guys and that hand of one is
15 the hand of all got Simuel hooked in?

16 A Yes.

17 MR. JOHNSON: Objection, Your Honor, that is
18 speculation, as to whatever the jury believed.

19 THE COURT: That would be speculative. I'll
20 sustain the objection.

21 BY MR. LEE:

22 Q Okay. There's no way to know what the jury
23 thought was done, correct?

24 A That's correct. You don't ever know -- you really
25 don't know what a jury is thinking beyond what is on those

1 verdict forms.

2 Q All right. Now, getting to that, did you ever ask
3 for a specific verdict form from the Judge to -- so you
4 could see which way they were thinking and what they
5 thought?

6 A No.

7 Q Okay. Because, again, the indictment says, Lucius
8 Simuel shot Deverol; correct?

9 A Correct.

10 Q Okay. But under the hand of one is the hand of
11 all Price shooting Deverol, under the hand of one, gets
12 Lucius Simuel convicted; right?

13 A It does.

14 Q And you never asked for a specific verdict form
15 saying that, We find that Lucius Simuel shot and injured or
16 committed ABWIK against Deverol Cannick?

17 A No, I do not.

18 Q And the reason that -- one of the reasons that a
19 conviction for that underlying ABWIK is important is that in
20 order to get the burglary first conviction you have to --
21 the jury has to find that someone entered a dwelling with
22 the intent to commit a crime therein, correct?

23 A Correct.

24 Q The ABWIK being, arguably, the underlying crime
25 that was committed therein; right?

1 A Correct. Correct.

2 Q Do you know why they didn't charge Mr. Simuel with
3 the shooting of Deon and Mr. Price with the shooting of
4 Deverol?

5 A Do I know why they elected to indict it that way,
6 each victim, assigning a victim to each defendant?

7 Q Yes.

8 A I have no idea.

9 Q Okay. What was the evidence that Mr. Simuel
10 himself shot Deverol Cannick, do you remember?

11 A I am a little -- I don't want to act like I
12 remember this case like it was yesterday.

13 Q I understand.

14 A But I felt like there may even was a -- that some
15 of the ballistics may have led to an inference, but I don't
16 want to -- I mean, I'm saying that because I have a memory
17 of it but I don't want to go too far into those details
18 because I don't feel like I'm an expert on his case right
19 now to really talk about it intelligently.

20 Q No one testified that they saw Lucius Simuel
21 shoot?

22 A No.

23 Q Was there, in fact, testimony about each one of
24 the defendants having a gun, one a .38 and 357. One, I
25 think a .45. And then the ballistics outside didn't match

1 the ballistics inside?

2 A That is what I think that I'm remembering.

3 Q All right. At any point, did you move to or argue
4 at the directed verdict stage at the end of the State's case
5 or at the end of your case that the hand of one is the hand
6 of all is not appropriate for an ABWIK charge?

7 A Did I argue that?

8 Q Yes.

9 A No.

10 Q Okay. Mr. Simuel talked about things not fully
11 investigated, some recordings about what was not done and
12 some officers' notes; do you have any recollections of that?

13 A I have some recollection that, and I believe
14 that -- what I'm recalling is that multiple -- there is an
15 interview at least with Lucius, Mr. Simuel, and then there
16 is a follow-up interview. And that I know that at least one
17 of those was not recorded. When you would have thought it
18 should have been, right. Like, maybe even something
19 occurred in the detention center. And Mr. Simuel, I
20 believe, for one of those had indicated to me that he
21 remembered a recording device sitting there in front of him
22 and him being under the impression that it was recording.
23 And the other one, maybe not.

24 Q Uh-huh. (Indicating affirmatively.)

25 A And you know, depending on -- one of the

1 interviews was worse than the other. He didn't adopt
2 everything that they said that he said. I'm sure that there
3 were fairly key points that those were on, you know, that we
4 had to just take the word for it. Of these officers of what
5 Mr. Simuel said, without any tape, and with him not adopting
6 what it is that he said. And when you are sitting there
7 with a tape recorder that is there, that he thinks is there
8 and then no recording, I think that in our minds we were
9 concerned that something was destroyed. We did not have a
10 basis for accusing -- we asked what happened to the notes
11 and they said that the tape recorder or digital recorder
12 wasn't operational. So, those were, you know, I guess,
13 problems.

14 Q But you did everything that you could to track
15 down any recordings, you asked for it and made the
16 appropriate request for it?

17 A I did. They had excuses I guess.

18 Q Yeah, all right. And you, I guess, subtly or
19 directly I guess argued at least that it may be a little
20 suspicious that they don't have what they should have in
21 general?

22 A Certainly, if I didn't argue it. Yes, I believe
23 that I argued that. I would have.

24 Q Okay. Is there anything that you can think of
25 looking back that you should have investigated or should

1 have looked further into? I believe that Mr. Simuel said
2 something about a couple of witnesses, Jesse Reese and
3 Charlene Williams and then he said something about some
4 phone records, anything that you look at and say looking
5 back I should have got that, it would have helped?

6 A No, not really. I mean, I thought that I would at
7 least send the investigator out to go and find Jesse Reese.
8 I am not sure if he was successful in subpoenaing him. I
9 got Martin Guzman. I think that he called him Charlie
10 Williams just now, but I got Martin Guzman that I did call.
11 People who were in the area that, you know, did or didn't
12 see something. Exactly what they said to my investigator, I
13 don't recall.

14 Q All right. So you felt like anything that was
15 important you made an effort to get it whether it was made
16 available?

17 A Correct.

18 Q All right. Now, Mr. Simuel was also charged with
19 burglary first, correct?

20 A Correct.

21 Q Let me back up first. Yeah, in that burglary
22 first and I guess, yeah, and the ABWIK triggered the -- the
23 LWOP statute into effect; is that right?

24 A Correct.

25 Q Okay. And were they saying that it was a two

1 strike two most serious life without parole, or two most
2 serious offenses that would lead to the life without parole?

3 A That he had a prior most serious offense and that
4 these two offenses would, I guess, together, be the second
5 most serious offense.

6 MR. JOHNSON: Your Honor, at this time I renew my
7 motion to that as being a direct appeal issue.

8 THE COURT: I understand. Proceed.

9 BY MR. LEE:

10 Q And again, I don't want to get into what the Court
11 held and everything, but that issue of whether or not that
12 Georgia conviction was going to count as a first strike and
13 would lead to an automatic life without parole, that
14 issue -- in your mind you weren't sure whether it would or
15 not, correct?

16 A Yes. I mean, I felt -- I didn't believe that it
17 should under the law as it existed then, that it should.
18 That a false imprisonment from Georgia would trigger, would
19 count as a most serious offense and therefore trigger the
20 life without parole mandatory sentencing. I didn't think
21 that it -- you know, under my understanding of the law at
22 the time, that out of state conviction -- and the way that I
23 analyzed the elements of the offense I didn't think that it
24 should trigger life without parole.

25 Q And did you have discussions with Mr. Simuel about

1 that very issue?

2 A We did.

3 Q Okay. And what was the advice that you gave him?

4 A That -- I mean, I shared with him my, my belief
5 that the law didn't support the triggering of the life
6 without parole statute. I mean, it was obvious that the
7 Solicitor believed that it did and he and I had a difference
8 of opinion. But really I relied upon, I believe that the
9 name of the case was Hinton versus South Carolina Department
10 of Probation and Parole where an out of state abduction case
11 from Ohio didn't count as a prior violent offense in
12 deciding whether or not someone is parole eligible.

13 And so I thought, Well, abduction from Ohio
14 doesn't, you know, doesn't meet up with kidnapping in South
15 Carolina, then I wouldn't think false imprisonment would,
16 especially when there is a kidnapping in Georgia, you know.
17 So the way that I analyzed it, I shared with him my opinion
18 that I didn't think that the law should support that result.

19 Q Okay. And the reason that it was important is if
20 he was convicted of burglary first, if it's not a life
21 without parole he could get as little as 15 years, correct?

22 A Exactly. Extremely, important. You can't
23 overstate the importance.

24 Q Okay. And if he was convicted it was, no
25 question, life without parole?

1 A Well, we didn't deal with that issue until there
2 was a conviction.

3 Q Right.

4 A And so --

5 Q And that is what I was getting to.

6 A And yes, if I lose on that issue and he's
7 convicted, life without parole, nothing that the Judge can
8 do about it.

9 Q Okay. And do you remember when you were put on
10 notice, vis-a-vis the start of the trial, when you were put
11 on notice of the life without parole issue?

12 A It was in advance.

13 Q I mean just ballpark, a day, a week, a month, two
14 months?

15 A I think that I can narrow it down. Let's see if I
16 can on this. Something looks like it was faxed on September
17 1st of 2009 from the Solicitor's office. So, September 1st,
18 2009 is what I can nail down.

19 Q Okay.

20 A It may have been -- I don't know the date of the
21 trial -- was November?

22 Q So, November the 16th is when the trial started,
23 so if that's right it would be two and a half months?

24 A Correct.

25 Q Okay. So, no time in that two and a half months

1 did you file any kind of motion for clarification or to get
2 a ruling on whether or not the life without parole would
3 apply?

4 A I did not.

5 Q Okay. In pretrial, it looks like you briefly
6 touched on it but said that is not a matter for now. So,
7 that issue really is not discussed, argued, litigated until
8 after he was convicted; right?

9 A Correct.

10 Q Okay. Do you think that it would have been
11 helpful for him to try to have an answer to that question
12 before considering any plea offers that might have been
13 made?

14 A Yes.

15 Q Okay. And were any plea offers made to him?

16 A Yes, he did have a plea offer.

17 Q Okay. What was that?

18 A It was for twenty years. I heard him testify -- I
19 heard Mr. Simuel testify to it earlier. It was 20 years. I
20 didn't specifically remember that the condition was
21 testifying, but if he says that is what it was, then I'm
22 pretty sure that it was.

23 Q Okay. And obviously he didn't take that plea
24 offer, unfortunately?

25 A He did not.

1 Q Okay. When he made that decision not to take it,
2 there was no way that he could have known with absolute
3 certainty that life without parole was going to kick in if
4 he was convicted, right?

5 A Correct.

6 Q And assuming the prosecutor would have agreed or a
7 judge would have agreed you could have gotten -- at least
8 filed a motion for some clarification and have a ruling on
9 what that Georgia conviction meant, right?

10 A Yes.

11 Q Okay. So, burglary first, Mr. Simuel and Price
12 were both charged with burglary first, correct?

13 A Correct.

14 MR. LEE: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 BY MR. LEE:

17 Q Actually, I'm handing up the indictment, a few
18 pages of the transcript. All right. I'll hand you some
19 documents. The first is a burglary first indictment. I
20 have extra copies if you need them. The burglary first
21 indictment, did you review that prior to trial?

22 A I did.

23 Q Okay. And what it says is that Lucius Simuel did
24 enter the dwelling of Deon Cannick and Deverol Cannick
25 without consent with intent to commit a crime therein, and

1 it says that, in addition, defendant was armed with a deadly
2 weapon in violation of Section 16-11-311 of South Carolina
3 code of laws. That is what it says, isn't it?

4 A It is.

5 Q All right. So, the indictment, what he's charged
6 with says that he entered and he was armed with a deadly
7 weapon?

8 A Correct.

9 Q If you look at the burglary first degree statute,
10 which is 16-11-311 it talks about what is required to be a
11 burglary first degree; would you agree with that?

12 A I would agree with that.

13 Q Okay. And under 16-11-311(a)(1), there are four
14 elements or four ways in which someone -- that can be bumped
15 up to a burglary first; do you agree with that?

16 A I agree with that.

17 Q (A) is armed with dead deadly weapon or explosive.
18 (B) is causes physical injury to a person who is not a
19 participant in the crime. (C) is uses or threatens the use
20 of a dangerous instrument. Or (D), displays what is or
21 appears to be a knife, pistol, revolver, rifle, shotgun,
22 machine gun or other firearm.

23 So, there's four ways to get to a burglary
24 first, right?

25 A Correct. ✓

1 Q Okay. And in the indictment they only allege that
2 he was armed with a deadly weapon, correct?

3 A Correct.

4 Q All right. Now, the charge from Judge Cooper, on
5 Page 908, starting at line nine, he charges burglary first
6 degree and he charges all four of those elements; does he
7 not?

8 A He does.

9 Q But Mister -- and he says, If you can prove any of
10 those it is a burglary first; correct?

11 A Correct.

12 Q But Mr. Simuel in his indictment was only put on
13 notice that he was armed with a deadly weapon, correct?

14 A Correct.

15 Q Okay. So, we -- there's no way to know whether a
16 jury verdict was based upon what the indictment says or what
17 the surplusage language that essentially increased the
18 nature of the charge gave the State more options to prove to
19 prove his case, right?

20 A Correct.

21 Q That wasn't said very artfully, but I think that
22 you understand. So, he essentially gave him three other
23 chances to get it to burglary first; right?

24 A Correct.

25 Q The reason that that's important -- and also, in

1 his charge he doesn't say that all 12 of y'all have to agree
2 that the armed part applies rather than the three other
3 ones? There's nothing in there that says that you all have
4 to agree on which specific element of armed robbery -- I
5 mean burglary first applies; correct?

6 A Correct.

7 Q Which could lead to a verdict of guilty that
8 really is unanimous, right?

9 A Correct.

10 Q I know that we are speculating. So, is it safe to
11 say that you never objected to that charge?

12 A Correct.

13 Q Okay. And the significance of I guess the whole
14 thing is that if the ABWIK conviction doesn't happen, the
15 burglary conviction may not happen if they use that as the
16 basis for the crime, right?

17 A Correct.

18 Q Okay. And if it's not a burglary first -- for
19 example, if it was not proved that he was armed, the jury
20 believed that he was not armed, there would not be a
21 burglary first and therefore it would not trigger the life
22 without parole; correct?

23 A Correct.

24 Q Okay. And again, no -- you didn't ask for any
25 type of specific verdict form saying that we the jury find

1 Lucius Simuel committed burglary, first and he was armed with
2 a deadly weapon; you didn't ask for a specific?

3 A I did not.

4 Q Okay. And isn't it true that, in light of the
5 burglary, the burglary charge that the Judge gave expanded
6 the possibilities of the things that the State could prove,
7 that plus the hand of one is the hand of all really expanded
8 the net by which the State could give Mr. Simuel, correct?

9 A Correct.

10 Q For example, if they proved an element that was
11 not indicted just saying that, you know, someone was injured
12 and they proved it as to Mr -- they believed as to Mr. Price
13 and then they applied the hand of one is the hand of all to
14 that, all of a sudden Mr. Simuel is trapped in a net for a
15 burglary first conviction that has a couple -- that is
16 bumped out a couple of elements, when in fact it was saying
17 he was armed with a deadly weapon and he went into
18 somebody's house, which is a far cry from what that could
19 be; correct?

20 A Correct. I know that I went around about.

21 Q Okay.

22 MR. LEE: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. LEE: That is all of the questions that we

1 have. Thank you for the indulgence, Your Honor.

2 THE COURT: Cross examination.

3 MR. JOHNSON: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. JOHNSON:

8 Q Counsel, would you agree with me that you did
9 discuss the life without parole possibility with Mr. Simuel?

10 A I did.

11 Q Did you also discuss that burglary first can carry
12 up to life without parole even without an ABWIK?

13 A Yes.

14 Q And even without the prior conviction?

15 A Correct, that the possible penalty for burglary
16 includes life.

17 Q So he was put on notice that he could get a
18 possible life sentence out of this case?

19 A Yes.

20 Q And your testimony is that you did actually fully
21 investigate this case?

22 A I did.

23 Q Try to speak with witnesses?

24 A I did.

25 Q Hire a private investigator?

1 A Well, we had a staff investigator at the Public
2 Defender's Office.

3 Q And these witnesses were based on the
4 conversations that you would have had with Mr. Simuel?

5 A Yes.

6 Q And did he explain his version of facts with you?

7 A He did.

8 Q And what was that?

9 A I think pretty much what he said when he
10 testified, that there wasn't an intention to do any type of
11 violence or anything like that when going over to the place
12 in question, that once him and his co-defendant got there
13 that the alleged victims then tried to commit a robbery and
14 then that's how everything went down hill from there.

15 Q But he's admitted that he went there to sell
16 drugs, right?

17 A I mean, I heard him say it earlier today, and I
18 believe that is consistent with what we talked about.

19 Q The victim's testimony is that he and the
20 co-defendant broke into the apartment, right?

21 A That they either got the door slightly opened and
22 forced their way in the rest of the way after knocking on
23 the door. I mean, that is what the victim's story was.

24 Q And the victim's statement is also that they never
25 had any guns and that they didn't have any sort of physical

1 altercation?

2 A What the victim said they did, I'm not -- I can't
3 exactly remember what their full story was.

4 Q Would you agree with me if I said that was in the
5 transcript, that is what they, you know, testified to?

6 A Yes.

7 Q And that they had the right to be in their own
8 home?

9 A Sure, yes.

10 Q And you cross-examined them at trial on their
11 inconsistent statements, or on their statements?

12 A Yes.

13 Q Were you aware that Mr. Reese was an eye witness
14 in this case?

15 A I was. He was referred to. Well, whether he was
16 an eye witness to the shooting itself or the running
17 afterwards.

18 Q And you attempted to track him down?

19 A I did.

20 Q And had you tracked him down, you would have
21 subpoenaed him to court?

22 A Correct.

23 Q And I believe that your testimony was that you
24 didn't ask for severance in this case because you, at the
25 time, you thought a lot of those portions that may be

1 pursuant to Bruton would have been redacted in this case?

2 A Correct.

3 Q That turned out not to be, right?

4 A Right.

5 Q But at the time, that is what you were thinking?

6 A That is what I was thinking.

7 Q Okay. And that you argued about the recordings,
8 and you think that they were destroyed intentionally, but
9 the Judge denied that; correct?

10 A Yeah, I -- correct.

11 MR. JOHNSON: That is all that I have at the time.

12 Your Honor, I may recall him as a State's witness.

13 THE COURT: Anything else?

14 MR. LEE: No more witnesses. No more redirect.

15 THE COURT: You may step down. The State may call
16 its witnesses.

17 MR. JOHNSON: Your Honor, the State rests at this
18 time.

19 THE COURT: Okay, I'll hear from the applicant and
20 argument.

21 MR. LEE: Judge, I'll try to keep it brief. A
22 couple of weeks ago I was at Clemson getting rained on
23 for hours and it made me think of this case. That
24 wasn't one big storm, it was almost like the perfect
25 storm. There were different high pressure things this

1 way and tropical water here. But anyway, that is what
2 this case is about, Judge.

3 You know, all of these things that we have raised
4 are not in and of themselves a smoking gun saying, yes,
5 yes, that is a real big problem. What this case is, is
6 almost like death by pin pricks. All of these things
7 are related. So, we believe that there are individual
8 reasons that are sufficient to grant the PCR. But more
9 importantly, the combined effect of all of them really
10 was kind of a perfect storm which led to the result --
11 we believe led to the result that we got. And, you
12 know, with all due respect to trial counsel, we believe
13 that his errors led to these and that it surely did
14 prejudice Mr. Simuel.

15 And I think that the way to do it is probably
16 chronologically. And number one, there was no motion
17 for severance made to sever the two, to sever the two
18 defendants. Clearly they had antagonistic defenses.
19 The law, when you look it up, always says, Well, it is
20 the trial judge's discretion, and you know, it is
21 either harmless error or it was in the Judge's
22 discretion.

23 So, when you look at these things on appeal, not
24 many of them get flipped when a Judge denies a motion
25 for severance. And while the law used to be if you had

1 antagonistic defenses, you should severe. Now, it says
2 that you don't really need to, it is in the trial
3 Judge's discretion. So again --

4 THE COURT: Let me ask you a little something
5 about that. What I have gathered from what I have
6 heard. I certainly haven't read this transcript, it is
7 about three inches thick.

8 MR. LEE: Yes, sir.

9 THE COURT: So I haven't gone through it in full.
10 But the co-Defendant's, I think his defense was he
11 wasn't there. Is that what I heard? He didn't
12 participate in this at all?

13 MR. LEE: His statements to the police were, I
14 wasn't in Bluffton that day. Well, we have video of
15 your car. Well, somebody must have taken my car. So,
16 at first he was completely ignoring it. And then the
17 defense at trial kind of morphed into, They are all a
18 bunch of drug dealers and gang bangers, and they are
19 all lying, and this is the big lie. Everybody is
20 lying, they can't keep track of their lies.

21 Q Again, he was denying that he participated in
22 anything at that time?

23 A Yes.

24 Q He didn't take the stand I guess?

25 A No, neither one of them took the stand.

1 Q His lawyer must have argued something to the jury.
2 I don't know what he argued to the jury, but it was his
3 position that there was no proof that his client
4 participated?

5 MR. LEE: I think in general that was -- even
6 though there were eye witnesses who said, Yes, that is
7 the guy who shot me. The connection between the
8 victims and Mr. Price was Mr. Simuel. There was some
9 family connection between one of them and he knew
10 Mr. Price. But, I mean everybody knew that. But his
11 defense was -- the other defense kind of was a
12 reasonable doubt, these victims are scums and drugs and
13 all of that kind of stuff and, you know, they haven't
14 proven it.

15 THE COURT: Well, even the thing that you gave me
16 that was a shot at, you said, this Defense's attorney.

17 MR. LEE: Right.

18 THE COURT: He says, and my guess is that
19 Mr. Deysach is going to say some of the same things
20 that I said, probably cover the same things that I
21 just -- some things I forgot, and then he's also
22 probably going to say, Well, if you don't really
23 believe what I'm telling you, then it was all the other
24 guy.

25 MR. LEE: Right.

1 THE COURT: I take that argument for what it is
2 worth. He really didn't -- he just said, Take it for
3 what it's worth. He didn't argue against it.

4 MR. LEE: I think the manner in which you say take
5 that for what it's worth is that you are scoffing at
6 the suggestion, Well, he is going to give you all of
7 this stuff and if you don't believe that, he's going to
8 try something else completely different.

9 THE COURT: He may say the other guy did it, but
10 take it for what it's worth. Okay, go ahead.

11 I'm trying to see just how antagonistic they were
12 at trial. Do you follow where I'm going?

13 MR. LEE: Yes, sir.

14 THE COURT: And apparently the one defendant --
15 the other defendant didn't get on the stand. He never
16 gave a story that implicated Mr. Simuel that I heard.
17 Even if he doesn't blame Mr. Simuel, it just says -- he
18 may say some of the same stuff that I said. He may
19 remember some things that I forgot. He may tell you
20 that my guy did it, but take it for what it's worth.

21 MR. LEE: I think that is a good question, Judge.
22 And most of the times when you have these antagonistic
23 defenses is two guys and they are saying, He shot him.

24 THE COURT: Exactly.

25 MR. LEE: So, this one is actually I think more

1 persuasive than we know somebody did it and we are
2 pointing like that. This is more persuasive because,
3 again, I think that you have the other defendant and,
4 you know, you interpret that thing how you want. They
5 are almost -- they are almost not mocking, but they are
6 saying, Well, they are going to say this stuff and he's
7 going to say if you don't believe that, well maybe the
8 other guy did it. I think that's kind of just taking a
9 shot at the defense that these people put up, which is
10 certainly the one more borne out by the evidence.

11 Because he knew, he knew some of these people
12 here. There were phone calls that they were going to
13 come over. And his thing was, We went over there and
14 this Price guy went crazy and started shooting.

15 THE COURT: There are shots across the brow and
16 then there are shots right at you.

17 MR. LEE: I understand.

18 THE COURT: Do you see what I am saying?

19 MR. LEE: Yes, sir.

20 THE COURT: Okay. I think that you understand my
21 point.

22 MR. LEE: I do.

23 THE COURT: I haven't read the entire transcript.
24 I'm not sure just how antagonistic they were.

25 MR. LEE: In their -- I understand what you are

1 saying and there is -- the reasons, I mean, not arguing
2 for severance. I mean, you rarely get it, but not even
3 asking for it.

4 THE COURT: Well, judicial economy and there are a
5 lot of factors that go into, do you try a case twice,
6 who goes first if you severe it. The fairness of who
7 goes first and when. It creates some issues too
8 sometimes. Just from a judicial perspective it does --

9 MR. LEE: Yes, sir. I don't think that there's
10 anything to lose to request to severe, particularly in
11 a case like this. But the reason, the strategy reason
12 given was because of Bruton. But that -- even if
13 Bruton applied it would not have helped his client --
14 it would not have helped Mr. Deysach's client. All it
15 would have helped is the co-defendant if he was
16 mentioned in these things, so it certainly wouldn't
17 have helped my client, Mr. Deysach's client. Because
18 let's just say, instead of saying, Mr. Price and I went
19 to Bluffton it would say, you know, me and Mike, or me
20 and another guy went to Bluffton.

21 It doesn't help him at all. It may help the other
22 guy because his name isn't going to be called like it
23 could be. But, you know, so I don't think that that,
24 Bruton, is a proper reason to do it. But anyway, we
25 can debate. I mean, I -- but that's kind of what

1 started the ball rolling.

2 THE COURT: Did both victims testify?

3 MR. LEE: Yes, sir.

4 THE COURT: Did they identify their shooters?

5 MR. LEE: I think two -- correct me if I am wrong.

6 I think either two or three people identified Mr. Price
7 as the one who shot Deon. He was the one on the stairs
8 on the inside. Everybody who said anything identified
9 Mr. Price shooting Deon. That is why the indictment
10 says that.

11 And then what happened was they left and Deverol
12 says he waits about 45 seconds and he comes running out
13 of the house, ostensibly, to look for a tag number or
14 something, and he says when he gets out of the house
15 that Mr. Simuel and Mr. Price are arguing and Mr.
16 Simuel was saying to Mr. Price, Man, why you shoot
17 little dude; why you shoot little dude.

18 He said that they were arguing and he was asking
19 Price, Why did you shoot little dude, who was Deon, who
20 was the one in there. And then Deverol says when he
21 sees that, they turn around, he goes to the floor, and
22 he gets shot. He specifically says that he doesn't
23 know who shot him, he didn't see anybody. So, but
24 again, his indictment says Lucius shot Deverol, which
25 happened outside.

1 So, you have -- you have the two of them being
2 tried together. And then you have the weird way in
3 which they did the indictments as to the ABWIK saying
4 that Lucius shot Deverol and Price shot Deon. That is
5 what it says. It doesn't say while with another
6 defendant or in the furtherance of a conspiracy, it
7 says, He shot this guy.

8 Then the burglary statute, or the burglary
9 indictment, you know, says that they went to the house
10 and attempted to commit a crime therein and he was
11 armed with a deadly weapon. So what we have, again,
12 with all of these things going together where you have
13 an indictment that just charges him with shooting one
14 person. They get the hand of one in, the jury comes
15 back and says, Hey, what does the hand of one apply to.
16 And he says, Burglary and ABWIK, even though the
17 indictment specifically says that he shot that victim.
18 And the problem, again, that I think that you get when
19 you have the hand of one --

20 THE COURT: So, are you taking the position that
21 the indictment would have to specifically invoke the
22 theory of hand of one hand of all?

23 MR. LEE: No, sir, I don't think that it needs to.

24 THE COURT: I don't think it does either, but I,
25 just wanted to know if that was your position.

1 MR. LEE: But I think that it needs to put you on
2 notice of what you are on trial for. And I think that
3 typically the way that they handle that is saying that,
4 you know, the defendant, Lucius Simuel, along with
5 another defendant, or what another co-defendant did,
6 you know, attempt to -- attempt to kill, whatever, the
7 victim.

8 I think that it should have some type of heads up
9 if they are going that way. And the case that I passed
10 up, Judge, that I think is most on point regarding that
11 issue is Bailey versus State 392 SC 422 from 2011. And
12 basically what it says is that a defendant must be
13 convicted, if at all, of the particular offense charged
14 in the indictment. And what the headnote says, When a
15 conviction results from an indictment that facially
16 charges a complete offense but the State presents
17 evidence which convicts under a different theory than
18 that alleged, such conviction violates the principles
19 of due process because the State has failed to prove
20 beyond a reasonable doubt.

21 THE COURT: What specifically happened in that
22 case?

23 MR. LEE: This is one that, and I'll pass it up,
24 if I may approach. This is a case where there was a
25 homicide by child abuse. And they erroneously enlarged

1 the indictment by saying that they could convict the
2 defendant of a crime not alleged in the indictment.
3 So, it is by reference -- but it still talks about that
4 there needs to be some type of indictment. Now, I
5 think that it's akin to the charge on the burglary
6 saying that these are the four ways that you can have
7 burglary first when, in fact, they just put him on
8 notice that one is what they are charging him with.

9 So, again, I have been all over the place on this,
10 Judge, but we have set forth what our position is. I
11 believe that this hand of one issue does have some legs
12 to it and it was not raised, it was not argued as part
13 of the appeal. I don't know why. I guess appellate
14 counsel could tell me if that's something that they
15 would want to argue or not and why they didn't. But,
16 you know, I think that the hand of one in light of
17 everything else -- and I think that the big problem on
18 a lot of these is, again, you can sit here and
19 speculate, and that is all that we can do because we
20 can't talk to the jury, but what this, the problem that
21 it leads to is, number one, this really raises the
22 spectrum of whether this was a non-unanimous verdict.
23 Because, based upon the failure to clarify things and
24 to object, there were just -- there were tentacles all
25 over the place that the State could grab Lucius Simuel,

1 and some of them are so far removed from what actually
2 happened and what he was charged with, you are putting
3 this upon this upon this, when the foundation isn't
4 even there to convict.

5 So, I think that it -- for example, the -- the
6 charge on burglary, it gives four reasons that they
7 could do it. Armed with a deadly weapon. Someone is
8 injured. Displays a knife. Well, if you charge all
9 four of them and say, This is what the State has to
10 prove, if three jurors believe A, three believe B, and
11 three believe C, and three D, under that charge which
12 wasn't objected to they say, Yep, here we go, he has
13 met one of those things, so it is a conviction for
14 burglary first which then takes us into the LWOP.

15 The ABWIK, same thing. If the jury believed that
16 he had nothing -- that he did not shoot anyone and he's
17 merely the hand of one is the hand of all, he could
18 have been convicted improperly because he's charged --
19 or, for example, if the jury thought that just because
20 he was there -- they don't know -- suppose they said,
21 We don't know who shot Deverol. We know that Demetrius
22 shot Deon because everybody testified to that. He was
23 with him so we are going to find him guilty, hand of
24 one is hand of all. Well, the indictment doesn't say
25 that. The indictment says he shot Deverol.

1 So, anyway, it leads to a bunch of problems I
2 could sit here and speculate. But based on the
3 entirety of everything that happened, Judge, we believe
4 that counsel was deficient. Again, it was a perfect
5 storm of things, but it could have been prevented. And
6 we respectfully suggest that we have shown the
7 necessary ineffectiveness and we have shown the
8 necessary prejudice as a result. Thank you for
9 listening.

10 THE COURT: Thank you. Anything from the State?

11 MR. JOHNSON: May it please the Court, Your Honor?
12 First, what I believe counsel is trying to get at is a
13 cumulative error analysis. Green versus State, and I
14 will have to bring up that cite for you, has held --
15 our Supreme Court has held that the State has not held
16 that so far. So, I would ask that you take each of
17 these individual and not lump them together as the
18 applicant is trying to do. As far as this entire case,
19 Your Honor, State versus Butler which is 286 SC 441
20 which cites Strickland versus Washington, a fair
21 assessment of attorney's performance requires that
22 every effort be made to eliminate the distorting
23 effects of hindsight to reconstruct the circumstances
24 as counsel challenges conduct and to evaluate the
25 conduct from counsel's perspective at the time.

1 Specifically, the motion for severance. I asked
2 counsel at the time why didn't he move for a severance.
3 He said, Well, I thought that this Bruton thing was
4 going to help my client. So, you must view that
5 decision not to ask for a severance at the time. And I
6 believe that he gave a valid trial strategy. He
7 thought that it was going to help. It ended up it
8 didn't, but now you can't go back and say, Well, you
9 should have done that, you should have done this. So,
10 we would ask you to deny that allegation.

11 As far as the ABWIK, the hand of one is the hand
12 of all first, Your Honor, I'm looking at two specific
13 pages where two witnesses identify that Mr. Simuel had
14 a gun. One is page 324, this is the Deon Cannick. He
15 says, When you came down the stairs, do you know
16 whether Lucius was armed? He said, I saw him holding
17 something in his hand. It was aimed towards my
18 brother. That brother being the man who was named in
19 the ABWIK indictment.

20 So I think that that kind of takes care of the
21 ABWIK indictment situation. Counsel is not required to
22 object to it because there was testimony in the record
23 to support that indictment. And then I think Sharita
24 Willingham on Page 397 answers the question: Okay, so
25 Lucius had appeared to you, what, to be a revolver?

1 Yes, sir.

2 So, there's evidence in the record to support that
3 counsel didn't have to object to either the burg first
4 or the ABWIK. Because the burg first says he was armed
5 with a deadly weapon. Well, that shows right there
6 there was evidence in the record for that. So, the
7 State's position is that counsel even knows he tried to
8 fall on his sword in this case. You have to look at it
9 without the distortion of hindsight and find that he
10 has not met his burden of proving that counsel is
11 deficient; therefore there should be no prejudice by
12 him either.

13 THE COURT: How about the failure to object to the
14 Judge charging the additional elements of the burg?

15 MR. JOHNSON: Your Honor, I think any error of him
16 not objecting and maybe he should have objected, I
17 still think that because he was armed there was
18 evidence that he was armed with a deadly weapon. The
19 Judge said that -- you know, he charged 16-11-311. He
20 charged the entirety of the statute.

21 THE COURT: Not incorrect statement of the law,
22 but maybe too much?

23 MR. JOHNSON: Correct.

24 THE COURT: Okay.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. JOHNSON: Thank you, Your Honor.

3 THE COURT: All right. I'll take the matter under
4 advisement. Thank you very much.

5 MR. LEE: Thank you, sir.

6 THE COURT: Yes, sir.

7 (Hearing concluded.)

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 8th day of November, 2016.

11

12

Mona L. Manley /s/

13

MONA L. MANLEY

14

Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Lucius Simuel, #338144,

2013-CP-07-0287

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

2016 FEB -8 PM 1:44
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL CIRCUIT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2013. The Respondent made its Return on May 29, 2014. An evidentiary hearing into the matter was convened on October 20, 2015, at the Beaufort County Courthouse. Scott W. Lee, 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. Ian Deysach, Esquire, also testified. This Court had before it a copy of the records of the Beaufort County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript, the appellate records and memoranda submitted by both the Applicant and Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the September 2008 term of the Beaufort County Grand Jury for accessory before the fact to a felony (2008-GS-07-1858), assault and battery with intent to kill (ABWIK) (2008-GS-07-2009),

ABW
P1

burglary- first degree (2008-GS-07-1761), possession of a weapon during the commission of a violent crime (2008-GS-07-1762), and possession of a handgun by a prohibited person (2009-GS-07-1366). The Applicant was represented by Ian Deysach, Esquire.

On November 16-20, 2009, the Applicant proceeded to trial and was found guilty as indicted¹. The Applicant was sentenced by the Honorable Thomas W. Cooper, Jr. to confinement for a period of life without parole for ABWIK and burglary-first degree and five years for possession of a weapon during the commission of a violent crime and possession of a weapon by a prohibited person. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Dayne Phillips, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Simuel, No. 2012-MO-031 (S.C. July 25, 2012). The Remittitur was issued on August 10, 2012.

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

1. Ineffective assistance of counsel.
2. "Sentencing court without jurisdiction to impose sentence."
3. "Violation of his due process rights 14th, 6th, and 5th."

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

¹ The Applicant's accessory before the fact to a felony charge was *nolle prossed*.

observe the witnesses 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

The Applicant alleges he is entitled to post-conviction relief on the basis that he received ineffective assistance of trial 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). To be entitled to post-conviction relief, the applicant must prove both of the following: (1) his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) the applicant suffered prejudice by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Under this standard, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A. Trial counsel's failure to move for a severance of Applicant's case from his co-defendant.

Applicant contends that counsel was ineffective for failing to move for severance in this case.

This argument is without merit.

Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d, 529 (1992).

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) (emphasis added), 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.

First, trial counsel is not deficient for not requesting a severance in this case because based on the facts of the case and the evidence at trial, it is highly unlikely the trial judge would grant a severance. "Motions for a severance and separate trial are addressed to the discretion of the trial court." State v. Dennis, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999). "The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood

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24

he and a codefendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime.” Dennis at 281. Simply because Applicant claimed codefendant was the shooter in this case and he allegedly had no knowledge of codefendant’s decision to shoot the victim, the trial judge still had discretion as to whether to grant severance. Second, it was trial counsel’s testimony at the PCR hearing that at the time of the trial, he did not perceive the defense of Applicant and the defense of codefendant as antagonistic. Further, it was trial counsel’s testimony that he could not find a case in which the trial judge was overturned on appeal because of lack of severance. Lastly, trial counsel testified that his trial strategy was that he did not want a severance because portions of Applicant’s statements to law enforcement would not be admissible under Bruton.

Under Butler and Whitehead, counsel’s representation of Applicant in this regard was not ineffective based on his particular trial strategy. Thus, this allegation is denied.

B. Trial Counsel properly advised Applicant as to life without parole.

Under Lafler v. Cooper, 132 S.Ct. 1376 (2012), trial counsel has an affirmative duty to relay plea offers from the State to the Applicant/Defendant. Where counsel’s advice leads a defendant to reject a plea offer and he receives a harsher sentence, i.e. via trial, a defendant can meet both prongs of the Strickland test. Id.

While Applicant claims that he was not properly advised concerning life without parole based on his prior conviction in Georgia, Counsel clearly testified at the hearing that Applicant was fully aware that he was facing life without parole if convicted. Specifically, Counsel testified the State served Applicant with a life without parole notice on September 1, 2009. This trial did not occur until November 16-20, 2009. Further, it was Counsel’s testimony that Applicant was offered 20 years



and rejected that offer. Applicant provided no testimony that he relied on Counsel's advice in rejecting the plea offer from the State. This is simply a case of buyer's remorse. As such, Counsel fulfilled his duty under Strickland and Lafler. Thus, this allegation is denied.

C. Trial counsel was not ineffective for failing to properly argue and preserve Applicant's ABWIK charge because the trial judge properly charged the jury with "hand of one, hand of all" based on the evidence presented at trial. Thus, trial counsel had no basis on which to object to the charge.

While Applicant contends that Counsel failed to properly argue and preserve the ABWIK charge related to the injury upon victim with respect to the theory of "hand of one hand of all," Applicant must have been charged with ABWIK for the jury to even consider charging him under accomplice liability.

"Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002). "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000).

For Applicant to be convicted under the theory of accomplice liability, South Carolina law is clear that he must have been charged with the principal offense. In this case, Applicant was indicted for ABWIK on Victim. Evidence presented at the trial shows that Applicant was the master mind behind the plan to rob Victim of pills. (Tr. p. 442 lines 9). There was additional evidence presented that Applicant was present at the scene and participated in the crimes with which he was charged.

(Tr. p. 564 lines 12-17; p. 565 lines 8-19; p. 566 lines 2-11). Further, evidence was presented at the trial that Applicant's codefendant shot victim. (Tr. 568 lines 22-24). Therefore, based on the evidence presented at trial and the indictment charging applicant with the crime of ABWIK as a principal, the trial judge properly charged the jury with an instruction on "hand of one hand of all." As such, Counsel cannot be said to be ineffective when he had no legal ground on which to object. This argument is without merit. Thus, this allegation is denied.

D. Counsel had no reason to object to the jury instruction regarding the elements of burglary first degree, as it was a proper instruction.

Counsel cannot be held ineffective for not objecting to a proper jury charge by the trial judge. When the charge given adequately covers the crime, counsel will not be held ineffective for failing to request an additional or more specific jury charge. Pinckney v. State, 368 S.C. 502, 629 S.E.2d 367 (2006); see also Cartrette v. State, 323 S.C. 15, 448 S.E.2d 553 (1994).

S.C. Code Ann. 16-11-311 states that Burglary, 1st degree occurs when:

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:
(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

- (a) is armed with a deadly weapon or explosive; or
- (b) causes physical injury to a person who is not a participant in the crime; or
- (c) uses or threatens the use of a dangerous instrument; or

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; ...

The trial judge charged exactly what the law is. (Tr. 908-910). Because this is a correct statement of law, this is a proper jury charge. As such, Counsel cannot be held ineffective under Pinckney. Thus, this allegation is denied.

E. Cumulative Error

Applicant contends that there is cumulative effect of Counsel's errors in this case. First, it is unsettled law in South Carolina whether cumulative error is a viable claim. Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002) ("Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina."). Nevertheless, as Applicant has failed to meet his burden of proving any of his claims, Counsel cannot be said to be ineffective in his representation of Applicant. Further, as there is overwhelming evidence of Applicant's guilt in this case, Applicant can prove no resulting prejudice from any of counsel's alleged errors. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994). Thus, 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.

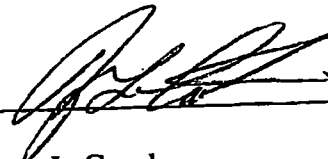
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

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. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

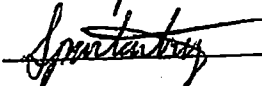
IT IS THEREFORE ORDERED:

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!



Roger L. Couch
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

1/28, 2016
, South Carolina

2013-CP-07-0287

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
LUCIUS SIMUEL #338144,	)	
Applicant	)	Case No.: 2013-CP-07-0287
-versus-	)	
STATE OF SOUTH CAROLINA,	)	APPLICANT'S MOTION TO ALTER AND
Respondent	)	AMEND JUDGMENT

FILED 11 MAR 16 3:58

Applicant Lucius Simuel, by and through his undersigned counsel and pursuant to SCRCF Rule 59, hereby moves for reconsideration of the Court's Order of Dismissal signed January 28, 2016 in the above-captioned Post-Conviction Relief case, a copy of which is attached hereto. The purpose of this motion is to request that the Court reconsider its findings and rulings so that issues raised and facts presented by Applicant are adequately addressed for preservation and appellate review should the Court not find an alteration of the judgment appropriate. In support of this motion, Applicant respectfully asserts as follows:

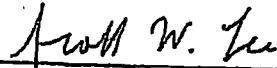
1. Applicant's PCR Petition was heard on October 20, 2015 by the Honorable Roger L. Couch in the Beaufort County Court of Common Pleas.
2. At the conclusion of the hearing, Judge Couch informed the parties that he would be taking the matter under advisement.
3. On November 3, 2015 the parties were advised by Judge Couch's law clerk via e-mail that Judge Couch was requesting memoranda of the issues raised at the October 20, 2015 hearing.
4. On January 7, 2016, Applicant's attorney received via e-mail the State's Memorandum in Opposition to Applicant's Application for Post-Conviction Relief.
5. On January 8, 2016 the parties were advised by Judge Couch's law clerk via e-mail that Judge Couch was denying Applicant's petition, and that he would like Assistant Attorney General Rutledge Johnson to prepare a proposed Order of Dismissal and to forward same to Applicant's attorney for review.

6. On January 28, 2016, Applicant's attorney received via e-mail the State's proposed Order of Dismissal.
7. Later in the day on January 28, 2016, and before he could forward any objections or exceptions to the State's proposed Order, Applicant's attorney received an e-mail from Judge Couch's law clerk advising the parties that Judge Couch had already signed the State's proposed Order of Dismissal.
8. On February 9, 2016, Applicant's attorney received a signed, but unfiled Order of Dismissal.
9. Applicant respectfully requests that the Court reconsider its Order of Dismissal, signed on January 28, holding that plea counsel was not ineffective, on the following grounds:
 - a. The Court incorrectly found that plea counsel's failure to move for a severance was not ineffective assistance of counsel;
 - b. The Court incorrectly found that plea counsel had properly advised Applicant as to the mandatory applicability of life without parole;
 - c. The Court incorrectly found that plea counsel had no basis on which to object to, argue, and preserve the trial judge's jury instructions on "the hand of one is the hand of all";
 - d. The Court incorrectly found that plea counsel had no reason to object to the trial judge's jury instruction on the Burglary 1st Degree charge; and
 - e. The Court incorrectly found that the cumulative error doctrine need not be considered in evaluating Applicant's petition because it found there was "overwhelming evidence of Applicant's guilt", and that as such there was no resulting prejudice.
10. Applicant hereby incorporates by reference, and realleges the arguments made at the October 20, 2015 hearing, in support of the above grounds.

For the reasons set forth above, Applicant respectfully requests that the Court reconsider its Order of Dismissal signed January 28, 2016, and amend same to grant the relief sought by Applicant in his PCR Application.

Signature page follows

Respectfully submitted,



Scott W. Lee
Attorney for Applicant
Post Office Box 2124
Beaufort, South Carolina 29901
(843) 986-9030

Beaufort, South Carolina

February 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BeaufortLucius Simvel #338144

Plaintiff,

vs.

State of So. Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
14 JUDICIAL CIRCUITCASE NO.: 2013-CP-07-287MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Scott W. Lee</u> , Bar No. <u>66471</u> Address: <u>P.O. Box 2124 Beaufort SC 29901</u> Phone: <u>843-986-9130</u> Fax <u>843-525-9442</u> E-mail: <u>swlee@swlee-law.com</u>		Defendant's Attorney: <u>J Rutledge Johnson</u> , Bar No. _____ Address: <u>P.O. Box 11549 Columbia SC 29211</u> Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>to alter and amend judgment</u> Estimated Time Needed: <u>N/A</u> Court Reporter Needed: ☐ YES ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>Scott W. Lee</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant		<u>Feb. 11</u> , 20 <u>16</u> Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____, 20____	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Lucius Simuel, #338144,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2013-CP-07-0287

ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND

2016 JUL 12 PM 1:26
COURT CLERK OF COURT
BEAUFORT COUNTY, S.C.
MARI ANN ROSENEAU

This post-conviction relief matter came before the Court for an evidentiary hearing at the Beaufort County Courthouse on October 20, 2015. The Applicant was present and represented by Scott W. Lee, Esquire. The State was represented by J. Rutledge Johnson, Assistant Deputy Attorney General. After taking the matter under advisement, this Court issued a Final Order of Dismissal dated January 28, 2016. The Applicant was served with the Final Order on February 9, 2016, and he submitted, through counsel, a timely Motion for Rehearing and/or Motion to Alter or Amend the Judgment on February 11, 2016.

The Applicant raises the following issues in his Rule 59 Motion:

1. "The Court incorrectly found that plea counsel's failure to move for severance was not ineffective assistance of counsel;"
2. "The Court incorrectly found that plea counsel had properly advised Applicant as to the mandatory applicability of life without parole;"
3. "The Court incorrectly found that plea counsel had no basis on which to object to, argue, and preserve the trial judge's jury instructions on "hand of one is the hand of all"";

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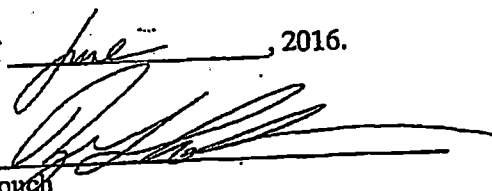
4. "The Court incorrectly found that plea counsel had no reason to object to the trial judge's jury instruction on Burglary, 1st degree charge; and"
5. "The Court incorrectly found that cumulative error doctrine need not be considered in evaluating applicant's petition because it found there was "overwhelming evidence of applicant's guilt" and that as such there was no resulting prejudice."

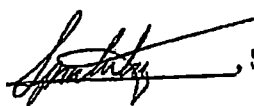
Having carefully reviewed the entire record in this matter including a motion's hearing on May 23, 2016 at the Beaufort County Courthouse, this Court finds that no basis for altering or amending is prior ruling. This Court also finds the Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

Therefore, this Court hereby denies the Applicant's Rule 59 Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty (30) days of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 29th day of June, 2016.


 Roger L. Couch
 Presiding Judge
 Fourteenth Judicial Circuit

, South Carolina

WITNESSES

Cpl. Todd Calhoun

ARREST WARRANT NUMBER

J-337445

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 6/25/09

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2009-GS-07-1366

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Lucius Simuel Jr.

Indictment for

**Weapons / Unlawful Possession of a handgun –
Prohibited Persons**

SC Code: 16-23-30; 16-23-50
CDR Code: 2364

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

1090

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

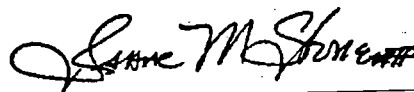
INDICTMENT
2009-GS-07-1366

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Unlawful Possession of a handgun – Prohibited Persons

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, Lucius Simuel Jr., did have in his possession a handgun after having been convicted of a crime of violence, to wit: Robbery; all in violation of Section 16-23-30(B), 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.



Solicitor

WITNESSES

Sgt. Todd Calhoun, BCSO

DOCKET NO. 2008-GS-07-2009

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

1092

Defendant

COURT OF GENERAL SESSIONS

September Term 2008

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

DIRECT INDICTMENT

THE STATE

vs.

Lucius Simuel

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

OCT 23 2008

VERDICT

Indictment for

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

SC Code: 16-03-620

CDR Code:0014

Defendant

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT.DOT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2008-GS-07-2009

At a Court of General Sessions, convened on September 25, 2008, the Grand Jurors of Beaufort County present upon their oath:

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

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Deverol Cannick, to wit: the Defendant did shoot victim with a hand gun; 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.



Solicitor

WITNESSES

Inv. Todd Calhoun, BCSO

DOCKET NO. 2008-GS-07-1762

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

1094

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

September Term 2008

ARREST WARRANT NUMBER

J-336923

THE STATE

VS.

Lucius Samuel

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 25 2008

VERDICT

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-490

CDR Code:0549

Defendant

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT.DOT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

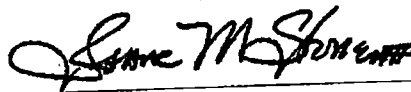
INDICTMENT
2008-GS-07-1762

At a Court of General Sessions, convened on September 25, 2008, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, Lucius Simuel, Jr., did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Burglary First 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.



Solicitor

WITNESSES

Inv. Tod Calhoun, BCSO

DOCKET NO. 2008-GS-07-1761

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2008

ARREST WARRANT NUMBER

J-336924

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 25 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

THE STATE

VS.

Samuel R.
Lucius Simuel, Jr.

Indictment for

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

SC Code: 16-11-311

CDR Code:0079

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

1096

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2008-GS-07-1761

At a Court of General Sessions, convened on September 25, 2008, the Grand Jurors of Beaufort County present upon their oath:

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

That in Beaufort County, South Carolina, on or about July 28, 2008, the Defendant, Lucius Simuel, Jr., did enter the dwelling of Deon Cannick and Devorol Cannick, located at [REDACTED] [REDACTED] without consent and with the intent to commit a crime therein. That, in addition, Defendant was armed with a deadly weapon; in violation of Section 16-11-311 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.


Solicitor