RECEIVED
JUN 12 2014
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE..... Petitioner,

v.

STATE OF SOUTH CAROLINA..... Respondent.

APPENDIX
VOLUME XV OF XV

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201
(803)765-1044

JOHN H. BLUME
Cornell Law School
158 Myron Taylor Hall
Ithaca, New York 14853
(607) 255-1030
Counsel for Petitioner

ALPHONSO SIMON
Office of the Attorney General
P.O. Box 11549
Columba, SC 29211
(803) 734-4037
Counsel for Respondent

INDEX

INDEX	i
RECORD ON APPEAL (First Trial 1997)	1
January 28, 1997 (Prepared by Kathleen M. Simmons)	5
Gary Metts (Cross by Littlejohn)	6
Peggy Kubala (Direct by Kolb)	7
Kevin Kubala (Direct by Kolb)	12
Fred Kubala (Direct by Kolb)	14
State's Exhibit #75 (Photo) entered into evidence	22
State's Exhibit #76 (Photo) entered into evidence	22
Leanna Crookshanks (Direct by Kolb)	26
Teresa Kubala (Direct by Kolb)	38
State's Exhibit #77 (Photo) entered into evidence	44
State's Exhibit #78 (Photo) entered into evidence	44
State's Exhibit #79 (Photo) entered into evidence	44
State's Exhibit #80 (Photo) entered into evidence	44
State's Exhibit #81 (Photo) entered into evidence	44
State's Exhibit #82 (Photo) entered into evidence	44
State's Exhibit #83 (Photo) entered into evidence	44
Dr. Harold Morgan (Direct by Littlejohn)	58
Dr. Harold Morgan (Cross by Kolb)	67
Dr. Harold Morgan (Redirect by Littlejohn)	71
Bernice Perry (Direct by Babb)	83
Bernice Perry (Cross by Kolb)	95
Bernice Perry (Redirect by Babb)	96
Tammy Windham (Direct by Babb)	97
Tammy Windham (Cross by Kolb)	101
Melinda Parrott (Direct by Babb)	102
Melinda Parrott (Cross by Kolb)	110
Michelle Lynch (Direct by Babb)	114
Mary Wilson (Direct by Babb)	116
Mary Wilson (Cross by Kolb)	119
Diane Renea Conner (Direct by Babb)	119
Diane Renea Conner (Cross by Kolb)	121
Teanne Oehler (Direct by Littlejohn)	122
Teanne Oehler (Cross by Kolb)	155
Jerry Hyatt (Direct by Littlejohn)	165
Defendant's Exhibit #8 (Checklist) entered into evidence	167
Defendant's Exhibit #9 (Checklist) entered into evidence	167
Defendant's Exhibit #10 (Checklist) entered into evidence	167
Defendant's Exhibit #11 (Checklist) entered into evidence	167
Defendant's Exhibit #12 (Copy of Two Photos) entered into evidence	170
Jerry Hyatt (Cross by Kolb)	171

Denise Lewis (Direct by Kolb)	184
Dr. John Dunlap (Direct by Kolb)	191
Charge of the Court	245
Verdict of the Jury	265
Sentence of the Court	269
January 20, 21 and 22, 1997 (Prepared by Virginia Roland)	272
General Jury Qualification	284
Preliminary Remarks	326
Case Qualification	334
Court's Exhibit #1 (Jury Information) marked for identification	369
Court's Exhibit #2 (Letter from Player) marked for identification	369
Court's Exhibit #3 (Juror Sheet) marked for identification	375
Ora Bowers (Questioning by the Court)	376
Ora Bowers (Questioning by Kolb)	383
Ora Bowers (Questioning by Littlejohn)	388
Vona H. Graham (Questioning by the Court)	395
Vona H. Graham (Questioning by Littlejohn)	397
Teresa I. McDaniel (Questioning by the Court)	400
Connie L. Keegan (Questioning by the Court)	404
Connie L. Keegan (Questioning by Kolb)	411
Connie L. Keegan (Questioning by Littlejohn)	413
Jean S. Pieterse (Questioning by the Court)	418
Jean S. Pieterse (Questioning by Kolb)	425
Jean S. Pieterse (Questioning by Babb)	426
Jean S. Pieterse (Questioning by the Court)	428
Cynthia H. Barnhill (Questioning by the Court)	430
Cynthia H. Barnhill (Questioning by Kolb)	431
Cynthia H. Barnhill (Questioning by Littlejohn)	434
Cynthia H. Barnhill (Questioning by the Court)	438
Cynthia H. Barnhill (Questioning by Kolb)	442
Emily W.B. Sweatman (Questioning by the Court)	446
Emily W.B. Sweatman (Questioning by Kolb)	454
Emily W.B. Sweatman (Questioning by Babb)	455
Barbara J. Stewart (Questioning by the Court)	459
Barbara J. Stewart (Questioning by Kolb)	467
Barbara J. Stewart (Questioning by Littlejohn)	473
Barbara J. Stewart (Questioning by the Court)	477
Krystal M. Radcliffe (Questioning by the Court)	480
Krystal M. Radcliffe (Questioning by Hilliard)	485
Krystal M. Radcliffe (Questioning by Babb)	486
Krystal M. Radcliffe (Questioning by the Court)	490
Brandon E. Cromer (Questioning by the Court)	492
Brandon E. Cromer (Questioning by Littlejohn)	494
Ladonna L. Jordan (Questioning by the Court)	497

Ladonna L. Jordan (Questioning by Hilliard)	502
Ladonna L. Jordan (Questioning by Babb)	505
Tamika A. Gardner (Questioning by the Court)	513
Tamika A. Gardner (Questioning by Williams)	520
Tamika A. Gardner (Questioning by Littlejohn)	521
Joyce H. Gann (Questioning by the Court)	525
Joann Walker (Questioning by the Court)	527
Joann Walker (Questioning by Williams)	535
Joann Walker (Questioning by Littlejohn)	537
Joann Walker (Questioning by the Court)	539
Roger Coles (Questioning by the Court)	543
Roger Coles (Questioning by Littlejohn)	547
Roger Coles (Questioning by Williams)	549
Shirley A. Legette (Questioning by the Court)	553
Shirley A. Legette (Questioning by Williams)	561
Shirley A. Legette (Questioning by Littlejohn)	562
Christopher L. Carroll (Questioning by the Court)	565
Christopher L. Carroll (Questioning by Williams)	570
Christopher L. Carroll (Questioning by Littlejohn)	571
Christopher L. Carroll (Questioning by the Court)	572
Walter L. Frank (Questioning by the Court)	575
Walter L. Frank (Questioning by Littlejohn)	578
Roy A. Goss (Questioning by the Court)	581
Roy A. Goss (Questioning by Kolb)	588
Roy A. Goss (Questioning by Babb)	591
Debra R. Semple (Questioning by the Court)	594
Debra R. Semple (Questioning by Kolb)	600
Debra R. Semple (Questioning by Littlejohn)	601
Janette M. Miller (Questioning by the Court)	603
Janette M. Miller (Questioning by Littlejohn)	606
Jeanetta E. Tindall (Questioning by the Court)	608
Jeanetta E. Tindall (Questioning by Littlejohn)	617
Jeanetta E. Tindall (Questioning by Williams)	620
John V. Singletary (Questioning by the Court)	623
John V. Singletary (Questioning by Kolb)	629
John V. Singletary (Questioning by Littlejohn)	630
David C. McConnell (Questioning by the Court)	634
David C. McConnell (Questioning by Littlejohn)	638
Herbert D. McClary (Questioning by the Court)	641
Herbert D. McClary (Questioning by Kolb)	648
Herbert D. McClary (Questioning by Littlejohn)	649
Donna M. Moss (Questioning by the Court)	655
Donna M. Moss (Questioning by Williams)	662
Donna M. Moss (Questioning by Littlejohn)	663
Sean P. O'Rear (Questioning by the Court)	672

Sean P. O'Rear (Questioning by Williams)	684
Sean P. O'Rear (Questioning by Babb)	685
Matthew Brunson (Questioning by the Court)	690
Matthew Brunson (Questioning by Williams)	696
Matthew Brunson (Questioning by Littlejohn)	699
Matthew Brunson (Questioning by the Court)	702
Matthew Brunson (Questioning by Littlejohn)	703
Betty J. Keesee (Questioning by the Court)	707
Betty J. Keesee (Questioning by Williams)	715
Betty J. Keesee (Questioning by Babb)	716
Joseph K. Gallegos (Questioning by the Court)	722
Joseph K. Gallegos (Questioning by Williams)	731
Joseph K. Gallegos (Questioning by Littlejohn)	733
Joseph K. Gallegos (Questioning by the Court)	735
Joseph K. Gallegos (Questioning by Littlejohn)	736
Ingrid V. Brown (Questioning by the Court)	741
Ingrid V. Brown (Questioning by Williams)	743
Ingrid V. Brown (Questioning by the Court)	745
Sadie M. Jenkins (Questioning by the Court)	748
Sadie M. Jenkins (Questioning by Williams)	754
Sadie M. Jenkins (Questioning by Littlejohn)	756
Dan E. Riegle (Questioning by the Court)	758
Dan E. Riegle (Questioning by Williams)	767
Dan E. Riegle (Questioning by Littlejohn)	770
Priscilla Ann Gore (Questioning by the Court)	774
Priscilla Ann Gore (Questioning by Kolb)	781
Priscilla Ann Gore (Questioning by Babb)	783
Cindy W. Jones (Questioning by the Court)	786
Cindy W. Jones (Questioning by Kolb)	793
Cindy W. Jones (Questioning by Babb)	794
Larry L. Roberts (Questioning by the Court)	798
Larry L. Roberts (Questioning by Kolb)	804
Larry L. Roberts (Questioning by Littlejohn)	804
Gene C. Bratcher (Questioning by the Court)	809
Gene C. Bratcher (Questioning by Kolb)	814
Gene C. Bratcher (Questioning by Babb)	816
Alton Cribb, Jr. (Questioning by the Court)	820
Alton Cribb, Jr. (Questioning by Kolb)	829
Alton Cribb, Jr. (Questioning by Littlejohn)	830
Alton Cribb, Jr. (Questioning by the Court)	834
Patrick M. Collins (Questioning by the Court)	838
Patrick M. Collins (Questioning by Williams)	847
Patrick M. Collins (Questioning by Babb)	850
George O. Phillips (Questioning by the Court)	855
George O. Phillips (Questioning by Kolb)	864

George O. Phillips (Questioning by Littlejohn)	867
George O. Phillips (Questioning by the Court)	868
Dan Lee Hurell (Questioning by the Court)	872
Dan Lee Hurell (Questioning by Kolb)	874
Dan Lee Hurell (Questioning by Babb)	879
Karen L. Graham (Questioning by the Court)	881
Karen L. Graham (Questioning by Kolb)	889
Karen L. Graham (Questioning by Littlejohn)	890
Neomie M. Jordan (Questioning by the Court)	893
Neomie M. Jordan (Questioning by Littlejohn)	896
Marlene C. Deacon (Questioning by the Court)	897
Marlene C. Deacon (Questioning by Kolb)	904
Marlene C. Deacon (Questioning by Littlejohn)	906
Amy White Condon (Questioning by the Court)	912
Amy White Condon (Questioning by Kolb)	919
Amy White Condon (Questioning by Babb)	919
Phillip K. Allen (Questioning by the Court)	926
Phillip K. Allen (Questioning by Kolb)	933
Phillip K. Allen (Questioning by Littlejohn)	934
Clydie B. Thompson (Questioning by the Court)	936
Clydie B. Thompson (Questioning by Williams)	944
Clydie B. Thompson (Questioning by Littlejohn)	945
Carolyn L. Montagne (Questioning by the Court)	947
Carolyn L. Montagne (Questioning by Kolb)	958
Carolyn L. Montagne (Questioning by Littlejohn)	961
Carolyn L. Montagne (Questioning by Kolb)	963
Carolyn L. Montagne (Questioning by the Court)	966
Cecil M. McGee (Questioning by the Court)	970
Cecil M. McGee (Questioning by Williams)	978
Cecil M. McGee (Questioning by Babb)	980
Cecil M. McGee (Questioning by the Court)	983
John K. Crotts (Questioning by the Court)	988
Edward R. Goude (Questioning by the Court)	994
Edward R. Goude (Questioning by Williams)	1002
Edward R. Goude (Questioning by Littlejohn)	1003
Eugenia Maybank (Questioning by the Court)	1006
Eugenia Maybank (Questioning by Kolb)	1017
Eugenia Maybank (Questioning by Babb)	1022
James D. Woodard (Questioning by the Court)	1026
James D. Woodard (Questioning by Kolb)	1032
James D. Woodard (Questioning by Babb)	1035
Glenn D. Yarborough (Questioning by the Court)	1038
Glenn D. Yarborough (Questioning by Kolb)	1050
Glenn D. Yarborough (Questioning by Babb)	1053
Glenn D. Yarborough (Questioning by the Court)	1055

Patricia A. Haynes (Questioning by the Court)	1058
Patricia A. Haynes (Questioning by Williams)	1061
Ruby E. Brockington (Questioning by the Court)	1064
Mary Armstrong (Questioning by the Court)	1070
Mary Armstrong (Questioning by Williams)	1078
Mary Armstrong (Questioning by Babb)	1081
Mary Armstrong (Questioning by the Court)	1083
Mary Armstrong (Questioning by Babb)	1084
Mary Armstrong (Questioning by Williams)	1085
Strike Jury	1099
Court's Exhibit #4 (Strike List) marked for identification	1110
Call Roll of Jury Pool	1115
Impanel Jury	1117
January 20-22, 1997 (Prepared by Debra R. Jernigan)	1123
Swearing of the Jury Pool	1125
Roll Call	1128
General Qualification	1142
Opening Remarks	1165
Ora Bowers (Questioning by the Court)	1205
Ora Bowers (Questioning by Kolb)	1213
Ora Bowers (Questioning by Littlejohn)	1218
Vona Graham (Questioning by the Court)	1224
Vona Graham (Questioning by Littlejohn)	1226
Teresa McDaniel (Questioning by the Court)	1229
Connie Keegan (Questioning by the Court)	1232
Connie Keegan (Questioning by Kolb)	1239
Connie Keegan (Questioning by Littlejohn)	1240
Jean Pieterse (Questioning by the Court)	1245
Jean Pieterse (Questioning by Kolb)	1251
Jean Pieterse (Questioning by Babb)	1252
Jean Pieterse (Questioning by the Court)	1254
Cynthia Barnhill (Questioning by the Court)	1256
Cynthia Barnhill (Questioning by Kolb)	1258
Cynthia Barnhill (Questioning by Littlejohn)	1260
Cynthia Barnhill (Questioning by the Court)	1264
Cynthia Barnhill (Questioning by Kolb)	1268
Emily Sweatman (Questioning by the Court)	1272
Emily Sweatman (Questioning by Kolb)	1280
Emily Sweatman (Questioning by Babb)	1281
Barbara Stewart (Questioning by the Court)	1285
Barbara Stewart (Questioning by Kolb)	1292
Barbara Stewart (Questioning by Littlejohn)	1298
Barbara Stewart (Questioning by the Court)	1302
Krystal Radcliffe (Questioning by the Court)	1304

Krystal Radcliffe (Questioning by Hilliard)	1309
Krystal Radcliffe (Questioning by Babb)	1311
Krystal Radcliffe (Questioning by the Court)	1314
Brandon Cromer (Questioning by the Court)	1315
Brandon Cromer (Questioning by Littlejohn)	1317
Ladonna Jordan (Questioning by the Court)	1319
Ladonna Jordan (Questioning by Hilliard)	1325
Ladonna Jordan (Questioning by Babb)	1327
Tamika Gardner (Questioning by the Court)	1330
Tamika Gardner (Questioning by Kolb)	1338
Tamika Gardner (Questioning by Littlejohn)	1339
Joyce Gann (Questioning by the Court)	1342
Joyce Gann (Questioning by Hilliard)	1350
Joyce Gann (Questioning by Babb)	1352
Joyce Gann (Questioning by Hilliard)	1354
Joyce Gann (Questioning by the Court)	1355
Richard Bourne (Questioning by the Court)	1355
Richard Bourne (Questioning by Kolb)	1361
Richard Bourne (Questioning by Littlejohn)	1363
Danny Lucas (Questioning by the Court)	1366
Norman Williamson (Questioning by the Court)	1372
Norman Williamson (Questioning by Hilliard)	1377
Norman Williamson (Questioning by Littlejohn)	1380
Norman Williamson (Questioning by the Court)	1383
Joann Walker (Questioning by the Court)	1386
Joann Walker (Questioning by Hilliard)	1394
Joann Walker (Questioning by Littlejohn)	1396
Joann Walker (Questioning by the Court)	1399
Roger Coles (Questioning by the Court)	1401
Roger Coles (Questioning by Littlejohn)	1406
Roger Coles (Questioning by Hilliard)	1408
Shirley Legette (Questioning by the Court)	1411
Shirley Legette (Questioning by Hilliard)	1419
Shirley Legette (Questioning by Littlejohn)	1420
Christopher Carroll (Questioning by the Court)	1422
Christopher Carroll (Questioning by Hilliard)	1428
Christopher Carroll (Questioning by Littlejohn)	1429
Christopher Carroll (Questioning by the Court)	1430
Walter Frank (Questioning by the Court)	1432
Walter Frank (Questioning by Littlejohn)	1435
Roy Goss (Questioning by the Court)	1438
Roy Goss (Questioning by Hilliard)	1445
Roy Goss (Questioning by Babb)	1449
Debra Semple (Questioning by the Court)	1452
Debra Semple (Questioning by Kolb)	1458

Debra Semple (Questioning by Littlejohn)	1458
Janette Miller (Questioning by the Court)	1461
Janette Miller (Questioning by Littlejohn)	1463
Jeanetta Tindall (Questioning by the Court)	1465
Jeanetta Tindall (Questioning by Littlejohn)	1475
Jeanetta Tindall (Questioning by Kolb)	1477
John W. Singletary (Questioning by the Court)	1479
John W. Singletary (Questioning by Kolb)	1485
John W. Singletary (Questioning by Littlejohn)	1487
David McConnell (Questioning by the Court)	1490
David McConnell (Questioning by Littlejohn)	1494
Herbert McClary (Questioning by the Court)	1497
Herbert McClary (Questioning by Hilliard)	1504
Herbert McClary (Questioning by Littlejohn)	1505
Donna Moss (Questioning by the Court)	1510
Donna Moss (Questioning by Hilliard)	1522
Donna Moss (Questioning by Littlejohn)	1523
Sean O'Rear (Questioning by the Court)	1531
Sean O'Rear (Questioning by Hilliard)	1542
Sean O'Rear (Questioning by Babb)	1544
Matthew Brunson (Questioning by the Court)	1548
Matthew Brunson (Questioning by Hilliard)	1555
Matthew Brunson (Questioning by Littlejohn)	1557
Matthew Brunson (Questioning by the Court)	1560
Matthew Brunson (Questioning by Littlejohn)	1561
Betty Keesee (Questioning by the Court)	1564
Betty Keesee (Questioning by Hilliard)	1573
Betty Keesee (Questioning by Babb)	1574
Joseph Gallegos (Questioning by the Court)	1579
Joseph Gallegos (Questioning by Kolb)	1588
Joseph Gallegos (Questioning by Littlejohn)	1590
Joseph Gallegos (Questioning by the Court)	1592
Joseph Gallegos (Questioning by Littlejohn)	1593
Ingrid Brown (Questioning by the Court)	1598
Ingrid Brown (Questioning by Kolb)	1600
Sadie Jenkins (Questioning by the Court)	1605
Sadie Jenkins (Questioning by Kolb)	1612
Sadie Jenkins (Questioning by Littlejohn)	1613
Dan Riegle (Questioning by the Court)	1616
Dan Riegle (Questioning by Hilliard)	1626
Dan Riegle (Questioning by Littlejohn)	1628
Priscilla Ann Gore (Questioning by the Court)	1631
Priscilla Ann Gore (Questioning by Kolb)	1639
Priscilla Ann Gore (Questioning by Babb)	1640
Cindy Jones (Questioning by the Court)	1643

Cindy Jones (Questioning by Kolb)	1651
Cindy Jones (Questioning by Babb)	1653
Larry Roberts (Questioning by the Court)	1656
Larry Roberts (Questioning by Kolb)	1662
Larry Roberts (Questioning by Littlejohn)	1662
Gene Bratcher (Questioning by the Court)	1666
Gene Bratcher (Questioning by Kolb)	1673
Gene Bratcher (Questioning by Babb)	1674
Alton Cribb, Jr. (Questioning by the Court)	1678
Alton Cribb, Jr. (Questioning by Kolb)	1688
Alton Cribb, Jr. (Questioning by Littlejohn)	1689
Patrick Collins (Questioning by the Court)	1697
Patrick Collins (Questioning by Hilliard)	1706
Patrick Collins (Questioning by Babb)	1709
George Phillips (Questioning by the Court)	1713
George Phillips (Questioning by Kolb)	1721
George Phillips (Questioning by Littlejohn)	1724
Dan Lee Hurell (Questioning by the Court)	1729
Dan Lee Hurell (Questioning by Kolb)	1731
Dan Lee Hurell (Questioning by Littlejohn)	1735
Karen Graham (Questioning by the Court)	1737
Karen Graham (Questioning by Kolb)	1745
Karen Graham (Questioning by Littlejohn)	1746
Neomie Jordan (Questioning by the Court)	1748
Neomie Jordan (Questioning by Littlejohn)	1751
Marlene Deacon (Questioning by the Court)	1752
Marlene Deacon (Questioning by Kolb)	1759
Marlene Deacon (Questioning by Littlejohn)	1761
Amy White Condon (Questioning by the Court)	1765
Amy White Condon (Questioning by Kolb)	1771
Amy White Condon (Questioning by Babb)	1772
Phillip Allen (Questioning by the Court)	1776
Phillip Allen (Questioning by Kolb)	1783
Phillip Allen (Questioning by Littlejohn)	1785
Clydie Thompson (Questioning by the Court)	1786
Clydie Thompson (Questioning by Kolb)	1795
Clydie Thompson (Questioning by Littlejohn)	1796
Carolyn Montagne (Questioning by the Court)	1797
Carolyn Montagne (Questioning by Kolb)	1808
Carolyn Montagne (Questioning by Littlejohn)	1809
Carolyn Montagne (Questioning by Kolb)	1812
Carolyn Montagne (Questioning by the Court)	1814
Cecil McGee (Questioning by the Court)	1819
Cecil McGee (Questioning by Hilliard)	1825
Cecil McGee (Questioning by Babb)	1828

Cecil McGee (Questioning by the Court)	1830
Edward Crotts (Questioning by the Court)	1834
Edward Goude (Questioning by the Court)	1838
Edward Goude (Questioning by Hilliard)	1846
Edward Goude (Questioning by Littlejohn)	1847
Eugenia Maybank (Questioning by the Court)	1850
Eugenia Maybank (Questioning by Kolb)	1857
Eugenia Maybank (Questioning by Babb)	1862
James D. Woodard (Questioning by the Court)	1865
James D. Woodard (Questioning by Kolb)	1871
James D. Woodard (Questioning by Babb)	1876
Glenn D. Yarborough (Questioning by the Court)	1879
Glenn D. Yarborough (Questioning by Kolb)	1891
Glenn D. Yarborough (Questioning by Babb)	1893
Glenn D. Yarborough (Questioning by the Court)	1895
Patricia Haynes (Questioning by the Court)	1898
Patricia Haynes (Questioning by Kolb)	1901
Ruby Brockington (Questioning by the Court)	1903
Mary Armstrong (Questioning by the Court)	1908
Mary Armstrong (Questioning by Williams)	1916
Mary Armstrong (Questioning by Babb)	1919
Mary Armstrong (Questioning by the Court)	1921
Mary Armstrong (Questioning by Babb)	1922
Mary Armstrong (Questioning by Williams)	1923
Jury Strikes	1936
Roll Call of Jury Pool	1950
Jury Impanelled	1952
June 21, 1996 – Transcript of Arraignment	1957
August 20, 1996 – Motions Hearing	1965
Court's Exhibit #1 (Copies of articles) marked for identification	1970
Court's Exhibit #2 (Affidavits) marked for identification	1972
September 26, 1996 – Motions Hearing	2027
Court's Exhibit #1 (Copy of Newspaper Article) marked for identification	2047
Court's Exhibit #2 (Advertisement, Fund Raiser) marked for identification	2047
January 10, 1997 – Hearing Regarding Jury Excuses	2053
Notice of Intent to Seek the Death Penalty	2097
Indictments	2098
Jury Forms	2100
Report of the Trial Judge	2117
Final Brief of Appellant	2129
Brief of Respondent	2171
South Carolina Supreme Court Opinion	2244
RECORD ON APPEAL (Re-sentencing 2005)	2252
General Jury Qualification	2258
Pinky Walker, Juror 228 (Questioning by the Court)	2340

Juror 228 (Questioning by Saleeby)	2346
Juror 228 (Questioning by Littlejohn)	2349
Juror 228 (Questioning by Saleeby)	2350
Juror 228 (Questioning by Littlejohn)	2351
Ms. Hudson, Juror 95 (Questioning by the Court)	2354
Juror 95 (Questioning by Saleeby)	2358
Juror 95 (Questioning by Littlejohn)	2359
Linda Blue, Juror 20 (Questioning by the Court)	2361
Juror 20 (Questioning by Saleeby)	2365
Ronald A. Beard, Juror 13 (Questioning by the Court)	2367
Juror 13 (Questioning by Saleeby)	2374
Juror 13 (Questioning by Littlejohn)	2381
William Montibono, Juror 150 (Questioning by the Court)	2385
Juror 150 (Questioning by Saleeby)	2390
Juror 150 (Questioning by Littlejohn)	2393
Juror 150 (Questioning by Saleeby)	2396
Bonnie Trainer, Juror 219 (Questioning by the Court)	2398
Juror 219 (Questioning by Saleeby)	2403
Juror 219 (Questioning by Littlejohn)	2403
Betty Bolden, Juror 21 (Questioning by the Court)	2414
Juror 21 (Questioning by Saleeby)	2418
Juror 21 (Questioning by Littlejohn)	2418
Vincent Sims, Juror 195 (Questioning by the Court)	2422
Juror 195 (Questioning by Saleeby)	2427
Juror 195 (Questioning by Littlejohn)	2427
Ricky Labruno, Juror 115 (Questioning by the Court)	2432
Juror 115 (Questioning by Saleeby)	2439
Juror 115 (Questioning Littlejohn)	2442
Heather Roland, Juror 188 (Questioning by the Court)	2444
Juror 188 (Questioning by Saleeby)	2449
Cheryl Benjamin, Juror 15 (Questioning by the Court)	2455
Juror 15 (Questioning by Saleeby)	2459
Juror 15 (Questioning by Littlejohn)	2462
Juror 15 (Questioning by Saleeby)	2465
Juror 15 (Questioning by the Court)	2467
Mr. Sumter, Juror 210 (Questioning by the Court)	2470
Juror 210 (Questioning by Saleeby)	2475
Juror 210 (Questioning by Littlejohn)	2476
Mr. Burgess, Juror 31 (Questioning by the Court)	2482
Juror 31 (Questioning by Saleeby)	2486
Juror 31 (Questioning by Littlejohn)	2487
Unidentified, Juror 33 (Questioning by the Court)	2492
Juror 33 (Questioning by Saleeby)	2499
Juror 33 (Questioning by Babb)	2506
Ms. Sooner, Juror 197 (Questioning by the Court)	2511

Ms. Williamson, Juror 242 (Questioning by the Court)	2514
Juror 242 (Questioning by Jackson)	2520
Juror 242 (Questioning by Babb)	2524
Mr. Holstein, Juror 168 (Questioning by the Court)	2528
Juror 168 (Questioning by Saleeby)	2534
Juror 168 (Questioning by Littlejohn)	2537
Mr. Brody, Juror 24 (Questioning by the Court)	2543
Juror 24 (Questioning by Jackson)	2549
Juror 24 (Questioning by Littlejohn)	2552
Ms. Dowe, Juror 56 (Questioning by the Court)	2557
Juror 56 (Questioning by Jackson)	2563
Juror 56 (Questioning by Littlejohn)	2565
Ms. Drake, Juror 57 (Questioning by the Court)	2570
John McCloud, Juror 140 (Questioning by the Court)	2575
Juror 140 (Questioning by Jackson)	2583
Juror 140 (Questioning by Littlejohn)	2586
Mr. Slater, Juror 198 (Questioning by the Court)	2594
Juror 198 (Questioning by Saleeby)	2599
Juror 198 (Questioning by Babb)	2600
Mr. Tomlin, Juror 218 (Questioning by the Court)	2603
Mr. Cochran, Juror 39 (Questioning by the Court)	2606
Ms. Fulwood, Juror 64 (Questioning by the Court)	2609
Ms. Blanchette, Juror 19 (Questioning by the Court)	2613
Juror 19 (Questioning by Saleeby)	2618
Juror 19 (Questioning by Babb)	2620
Mr. Price, Juror 175 (Questioning by the Court)	2624
Juror 175 (Questioning by Jackson)	2630
Juror 175 (Questioning by Littlejohn)	2632
Emerericiana Ulery, Juror 222 (Questioning by the Court)	2642
Juror 222 (Questioning by Jackson)	2648
Juror 222 (Questioning by Littlejohn)	2650
Ms. Weston, Juror 235 (Questioning by the Court)	2656
Ms. Weeks, Juror 233 (Questioning by the Court)	2658
Juror 233 (Questioning by Saleeby)	2664
Juror 233 (Questioning by Babb)	2665
Mr. Brooks, Juror 26 (Questioning by the Court)	2673
Juror 26 (Questioning by Littlejohn)	2677
Nickie Jones, Juror 110 (Questioning by the Court)	2679
Juror 110 (Questioning by Jackson)	2685
Juror 110 (Questioning by Babb)	2689
Rosada Heriot, Juror 88 (Questioning by the Court)	2694
Juror 88 (Questioning by Jackson)	2698
Juror 88 (Questioning by Babb)	2700
Juror 88 (Questioning by the Court)	2704
Ms. Sanders, Juror 189 (Questioning by the Court)	2706

Juror 189 (Questioning by Jackson)	2711
Juror 189 (Questioning by Babb)	2714
Mr. Harsch, Juror 86 (Questioning by the Court)	2718
Juror 86 (Questioning by Jackson)	2723
Juror 86 (Questioning by Babb)	2725
Ms. Smith, Juror 199 (Questioning by the Court)	2734
Juror 199 (Questioning by Jackson)	2742
Juror 199 (Questioning by Littlejohn)	2744
Ms. Myers, Juror 157 (Questioning by the Court)	2749
Juror 157 (Questioning by Jackson)	2754
Juror 157 (Questioning by Babb)	2760
Mr. Rewis, Juror 180 (Questioning by the Court)	2774
Juror 180 (Questioning by Saleeby)	2779
Juror 180 (Questioning by Babb)	2780
Mr. Copeland, Juror 41 (Questioning by the Court)	2785
Juror 41 (Questioning by Jackson)	2794
Juror 41 (Questioning by Babb)	2799
Jury Selection	2830
Case Called	2863
State's Exhibit #84 (Diagram) entered into evidence	2871
State's Exhibit #85 (Diagram) entered into evidence	2871
State's Exhibit #86 (Diagram) entered into evidence	2871
Opening Statements	2884
Tommy Mims (Direct by Saleeby)	2898
Lillie Britt (Direct by Saleeby)	2907
State's Exhibit #63 (copy of indictment) entered into evidence	2910
State's Exhibit #64 (copy of indictment) entered into evidence	2910
State's Exhibit #65 (copy of indictment) entered into evidence	2910
State's Exhibit #66 (copy of indictment) entered into evidence	2910
State's Exhibit #67 (copy of indictment) entered into evidence	2910
State's Exhibit #68 (copy of indictment) entered into evidence	2910
State's Exhibit #69 (copy of indictment) entered into evidence	2910
Sharon Holland (Direct by Saleeby)	2915
Kathy Miles (Direct by Saleeby)	2923
State's Exhibit #4 (911 tape) played for the jury	2930
Kathy Miles (Cross by Littlejohn)	2930
Mary Ruth Williamson (Direct by Saleeby)	2937
State's Exhibit #56 (coat) entered into evidence	2944
State's Exhibit #13 (gun) entered into evidence	2946
State's Exhibit #6 (photo) entered into evidence	2951
State's Exhibit #9 (photo) entered into evidence	2953
State's Exhibit #8 (photo) entered into evidence	2954
State's Exhibit #15 (photo) entered into evidence	2955
State's Exhibit #10 (photo) entered into evidence	2955
State's Exhibit #12 (photo) entered into evidence	2956

Mary Ruth Williamson (Cross by Babb)	2957
Daniel Bethea (Direct by Saleeby)	2974
Daniel Bethea (Cross by Littlejohn)	2980
Ruth Griffith (previous testimony read into the record)	2984
Landrow Taylor (previous testimony read into the record)	3036
John Prince (Direct by Saleeby)	3058
State's Exhibit #13 (shotgun) entered into evidence	3071
State's Exhibit #31 (photo) entered into evidence	3072
State's Exhibit #19 (photo) entered into evidence	3072
John Prince (Cross by Littlejohn)	3074
John Prince (Redirect by Saleeby)	3079
Gene Edward Hobbs, Jr. (Direct by Saleeby)	3081
State's Exhibit #27 (Smith and Weston nine millimeter) entered into evidence	3091
State's Exhibit #26 (rounds) entered into evidence	3091
Gene Edward Hobbs, Jr. (Cross by Littlejohn)	3100
Fred Powell, Jr. (Direct by Saleeby)	3107
State's Exhibit #40 (photo) entered into evidence	3122
Fred Powell, Jr. (Cross by Littlejohn)	3123
Dana Wingate (Direct by Saleeby)	3129
State's Exhibit #60 (knife) entered into evidence	3134
Dana Wingate (Cross by Littlejohn)	3135
Perry Herod (Direct by Saleeby)	3143
State's Exhibit #1 (advisement of rights form) entered into evidence	3150
State's Exhibit #2 (sketch) entered into evidence	3156
State's Exhibit #3 (written statement) entered into evidence	3157
Perry Herod (Cross by Littlejohn)	3170
Dr. Joel Sexton (Direct by Saleeby)	3177
State's Exhibit #18 (portions of lead bullet) entered into evidence	3190
State's Exhibit #17 (22 long rifle bullet) entered into evidence	3190
Dr. Joel Sexton (Cross by Littlejohn)	3195
Raymond Mackessy (Direct by Saleeby)	3197
State's Exhibits #41-46 (photos of beer cans) entered into evidence	3207
State's Exhibits #40-70 (fired 22-caliber cartridge casing) entered into evidence	3207
State's Exhibit #40 (photo) entered into evidence	3207
State's Exhibits #29 and 30 (photos) entered into evidence	3208
State's Exhibit #35 (photo) entered into evidence	3210
State's Exhibits #53 and 54 (22-caliber cartridge casings) entered into evidence	3211
State's Exhibit #31 (photo) entered into evidence	3212
State's Exhibit #20 (photo) entered into evidence	3212
State's Exhibits #21 and 25 (photos) entered into evidence	3213
State's Exhibit #23 (photo) entered into evidence	3214
State's Exhibit #57 (cut portion of screen) entered into evidence	3218
Thomas Darnell (Direct by Saleeby)	3221

Thomas Darnell (Cross by Babb)	3234
Jeffery Hollifield (Direct by Saleeby)	3244
Jeffry Hollifield (Cross by Babb)	3252
John Barron (Direct by Saleeby)	3259
John Barron (Cross by Babb)	3273
Ira Parnell (Direct by Saleeby)	3275
Ira Parnell (Cross by Littlejohn)	3297
Peggy Kubala (Direct by Jackson)	3309
Ferdinand Kubala (Direct by Jackson)	3317
Kevin Kubala (Direct by Jackson)	3329
Teresa Kubala-Hanvey (Direct by Jackson)	3333
Gary Metts (Direct by Saleeby)	3357
State Rests	3368
Court's Exhibit #1 (death certificate of Mary Etta Wilson)	3376
Defense's Case	3391
Teanne Oehler (Direct by Babb)	3391
Teanne Oehler (Cross by Saleeby)	3414
Teanne Oehler (Redirect by Babb)	3430
Melinda Parrott (Direct by Babb)	3431
Melinda Parrott (Cross by Saleeby)	3451
Elizabeth Perry (Direct by Babb)	3457
Defendant's 5-7 (family photos)	3463
Linda Parrott (Direct by Babb)	3466
Mary Jean Wilson (Direct testimony is read into record by Littlejohn)	3469
Mary Jean Wilson (Cross read into the record by Jackson)	3477
Mary Jean Wilson (Continued testimony read by Littlejohn)	3482
Dr. William Alexander Morton, Jr. (Direct by Babb)	3485
Dr. William Alexander Morton, Jr. (Cross by Jackson)	3509
Dr. William Alexander Morton, Jr. (Redirect by Babb)	3520
James Aiken (Direct by Littlejohn)	3522
James Aiken (Cross Examination)	3537
James Aiken (Redirect by Littlejohn)	3542
State's Closing	3561
Defense's Closing	3581
Jury Charges	3599
Verdict	3630
Defense Motion for Directed Verdict	3635
Sentence	3636
Pre-trial Hearing Transcript (November 2, 2004)	3639
Pre-Trial Hearing Transcript (February 11, 2005)	3670
Pre-Trial Hearing Transcript (February 14, 2005)	3889
Dr, William Stavrou (Direct by Jackson)	3890
Dr. William Stavrou (Cross by Littlejohn)	3902
State's Exhibit #1 (letter)	3898
State's Exhibit #2 (letter)	3901

Letter From Court Reporter Regarding Transcription of Jury Selection (December 15, 2006)	3913
Statutory Instructions	3914
Sentence Form (Jury)	3915
Affirmation of Death	3917
Sentence Form (Judge)	3918
Certificate of Appellant	3919
Final Brief of Appellant	3920
Final Brief of Respondent	3937
Certificate of Counsel	3966
South Carolina Supreme Court Opinion	3969
Petition for Rehearing	3972
Order Denying Petition for Rehearing	3976
Initial Application for Post-Conviction Relief	3978
First Amended Application for Post-Conviction Relief	3985
Second Amended Application for Post-Conviction Relief	3995
Third Amended Application for Post-Conviction Relief	4004
Respondent's Return and Motion to Dismiss	4011
Post-Conviction Relief Hearing Transcript (April 23rd & 24th, 2012)	4075
Opening Remarks	4081
Dr. James Merikangas (Direct by Blume)	4092
Dr. James Merikangas (Cross by Zelenka)	4121
Dr. James Merikangas (Redirect by Blume)	4149
Dr. Howard Becker (Direct by Blume)	4155
Dr. Howard Becker (Cross by Zelenka)	4187
Dr. Arlene Andrews (Direct by Blume)	4196
Dr. Arlene Andrews (Cross by Zelenka)	4243
Joseph Savitz, III (Direct by Lominack)	4254
Joseph Savitz, III (Cross by Simon)	4257
Wayne Hill (Direct by Blume)	4263
Wayne Hill (Cross by Simon)	4301
Wayne Hill (Redirect by Blume)	4317
Wade Kolp (Direct by Zelenka)	4320
Wade Kolp (Cross by Blume)	4338
Wade Kolp (Redirect by Zelenka)	4346
Peter Skidmore (Direct by Blume)	4347
Peter Skidmore (Cross by Simon)	4350
James Babb (Direct by Lominack)	4353
James Babb (Cross by Simon)	4365
James Babb (Redirect by Lominack)	4402
State's Case	4415
Simon Majors, Jr. (Direct by Simon)	4415
Simon Majors, Jr. (Cross by Lominack)	4421
Cecil Jackson (Direct by Simon)	4425
Cecil Jackson (Cross by Blume)	4429

Ira Parnell (Direct by Simon)	4432
Ira Parnell (Cross by Blume)	4441
Ira Parnell (Redirect by Simon)	4446
Post-Conviction Relief Hearing (August 10, 2012)	4450
James Babb (Direct by Lominack)	4455
James Babb (Cross by Simon)	4458
Cameron Littlejohn (Direct by Simon)	4462
Cameron Littlejohn (Cross by Blume)	4486
Jill Rider (Direct by Blume)	4491
Post-Conviction Relief Exhibits	4506
Applicant's Exhibit #1 (Dr. Shine's Affidavit and Report)	4506
Applicant's Exhibit #2 (Dr. Gur's Affidavit and Report)	4511
Applicant's Exhibit #3 (Dr. Bookstein's Affidavit and Report)	4517
Applicant's Exhibit #10 (Dr. Andrews' Curriculum Vita)	4530
Applicant's Exhibit #11 (Dr. Andrew's Charts, Sociogram)	4536
Applicant's Exhibit #12 (Sanatorium Records- Bobby O. Stone)	4079
Applicant's Exhibit #13 (Sanatorium Records- Maybell Stone)	4611
Applicant's Exhibit #14 (Screen Door Diagram)	4651
Applicant's Exhibit #16 (Dr. Harold Morgan's Records)	4652
Applicant's Exhibit #18 (DEHEC- Turkey Creek Records)	4657
Applicant's Exhibit #25 (Death Certificates)	5099
Applicant's Exhibit #26 (Coroner's Report)	5101
Applicant's Exhibit #27 (TB Records)	5108
Applicant's Exhibit #28 (Jerry Stone's Medical Records)	5119
Applicant's Exhibit #29 (Melinda Stone's Medical Records)	5131
Applicant's Exhibit #30 (Tammy Stone's Medical Records)	5199
Applicant's Exhibit #31 (Bobby Stone's School Records)	6438
Applicant's Exhibit #32 (Melinda Stone's School Records)	6457
Applicant's Exhibit #33 (Tammy Stone's School Records)	6475
Applicant's Exhibit #34 (Bobby O. Stone's School Records)	6493
Applicant's Exhibit #35 (Douglas Edwards' Criminal Records)	6496
Applicant's Exhibit #36 (Jerry Edwards' Criminal Records)	6541
Applicant's Exhibit #37 (Terry Edwards' Criminal Records)	6606
Applicant's Exhibit #38 (Baker Floyd's Criminal Records)	6734
Applicant's Exhibit #39 (Walter Floyd's Criminal Records)	6737
Applicant's Exhibit #40 (Michelle Lynch's Criminal Records)	6818
Applicant's Exhibit #41 (Lovia Miles' Criminal Records)	6854
Applicant's Exhibit #42 (Wesley Miles Criminal Records)	6869
Applicant's Exhibit #43 (Melinda Stone Parrott's Criminal Records)	6911
Applicant's Exhibit #44 (Bobby O. Stone's Criminal Records)	6921
Applicant's Exhibit #45 (Anthony Turner's Criminal Records)	6931
Applicant's Exhibit #46 (Thomas Windham's Criminal Records)	7069
Applicant's Exhibit #47 (Social Security Records)	7090
Applicant's Exhibit #48 (Department of Juvenile Justice Records)	7095
Respondent's Exhibit #1 (James Babb's Time Sheets)	7102

Respondent's Exhibit #2 (James Babb's Notes)	7106
Respondent's Exhibits #3 (James Babb's Notes)	7107
Respondent's Exhibit #4 (Interview with Elizabeth Bernice Perry 9/9/96)	7108
Order Substituting Counsel	7110
Applicant's Post-Hearing Brief	7112
Respondent's Post-Trial Brief	7165
Order Denying Post-Conviction Relief	7259
Applicant's Motion to Alter or Amend Judgment	7291
Respondent's Motion to Alter or Amend Judgment	7302
Transcript of Hearing on Motion to Alter or Amend Judgment	7306
Amended Order Denying Post-Conviction Relief	7339
Notice of Appeal	7371

GS 11-29-82

RETURN

9/8/, 1982

H.L. Burke

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

John Earl Chelly

on the 8TH day of Sept., 1982

H.L. Burke

Constable or Law Enforcement Officer

This Warrant is certified for service in _____ County [or _____ Municipality.] The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)

Signature of Judge

A741643

206

#55

6944

STATE OF SOUTH CAROLINA

County of SUMTER
or Municipality of SUMTER
206

THE STATE
against

John Earl Cheely
CHELLY

ARREST WARRANT

Offense Housebreaking and Grand Larceny

Code [or Ordinance] Section 16-11-320

Date 9/8/82

Officer and Agency County Inv.

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name John Earl Cheely

Address [redacted]

Phone 481-9146

Sex M Race W Height 5'6

Weight 140 Birthdate [redacted]

Social Security Number [redacted]

INFORMATION ON WITNESSES

Name Stephen A. Russell

Address County Inv.

Phone

Name

Address

Phone

Name

Address

Phone

003092

PRELIMINARY HEARING held by

Judge D.C. Aycock

on 10-8, 1982,

with John Ford
Attorney for Defendant.

Decision: Prob Cause

BAIL

Date Set 9/9, 1982

Judge D.K. Barrett

Amount

Surety Third Party Custody w/conditions

DATE 9/17/82 WARRANT AND BOND

Third Party Custody w/conditions

TURNED IN TO SOLICITOR FOR R AT IN GENERAL SESSIONS COURT.

SIGNED MKH MAGISTRATE

003093

FORM 1

The State of South Carolina

County of SUMTER

INDICTMENT FOR HOUSEBREAKING AND LARCENY

At a Court of General Sessions, convened on the 29th day of November, 1982, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE—HOUSEBREAKING

That one JOHN EARL CHEELY and one ANTHONY WAYNE TURNER

did in Sumter County on or about the 19th day of August, 1982, break and enter the house, to wit: residence, of one Curtis Dailey, Jr., with intent to commit a crime therein.

COUNT TWO—LARCENY

That one JOHN EARL CHEELY and one ANTHONY WAYNE TURNER

did in Sumter County on or about the 19th day of August, 1982, feloniously take and carry away the personal goods of another of the value of more than ~~fifty~~ two hundred dollars, to wit: the personal goods of Curtis Dailey, Jr.

Described as follows: $182.00 in dimes, fifty Kennedy half dollars, ten Eisenhower dollars, one R. G. automatic 25 calibre pistol, one mans 18 kt. gold ring and one Bulova watch,
with intent to deprive the owner permanently of such goods.

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

R. Kirk Lindsay

Solicitor

R. Kirk McLeod

6945

Witnesses

Stephen A. Russell COUNTY

Curtis Daley, Jr.

Rt. 2, Box 111

Sumter, S. C.

Warrant No. A 741653

A 741643

Verdict

Foreman

INDICTMENT FOR

Housebreaking and Larceny

Foreman of Grand Jury

82-GS-43-704 P.V.

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

NOVEMBER Term, 1982.

THE STATE

vs.

JOHN EARL CHEELY (Early)

ANTHONY WAYNE TURNER (Bill)

THE PRISONER Anthony Wayne Turner ARE ~~IS~~ PUT TO THE BAR AND ARRAIGNED AND, UPON ~~HIS~~ THEIR ARRAIGNMENT PLEADS GUILTY AS CHARGED, AND WAIVES PRESENTMENT OF THE GRAND JURY.

ATTEST:

O. V. Player Jr.
S.C.P.A.G.S.

John Earl Cheely

Anthony Turner

THE SENTENCE OF THE COURT IS THAT THE PRISONER Anthony Wayne Turner BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Six (6) years OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, ~~OR PAY A FINE OF $~~

John Grimball
PRESIDING JUDGE

NOV 29 1982

Concurrent

THE SENTENCE OF THE COURT IS THAT THE PRISONER John Earl Cheely BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Six (6) Yrs ~~OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF $~~

John Grimball
PRESIDING JUDGE

NOV 29 1982

Sec 51C Youthful Offender Act

003094

6946

003095

14040

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

THE STATE)
-vs-)
JOHN EARL CHEELY) SENTENCE
(DEFENDANT)) IND. #82-GS-43-704

DOB: 8/3/65

INDETERMINATE SENTENCE

SECTION 5(c)

The Court finds the Defendant was 17 (17-20) years of age at the date of conviction((21-24) years of age at date of conviction and has consented in writing to be treated as a youthful offender), and is suitable for handling under the Youthful Offender Act.

IT IS THE SENTENCE OF THIS COURT that Pursuant to Section 5(c) of the Youthful Offender Act, the Defendant is committed to the custody of the Department of Corrections, Youthful Offender Division, for an indeterminate period of time not to exceed six (or maximum allowable for offense if less than six) years.

DATE: November 29, 1982

PRESIDING JUDGE
John Grimball
Third Judicial Circuit

SPECIAL CONDITIONS:

IND. #82-GS-43-705: YOA - 6 yrs concurrent

NAME: Cheek, John Earl IND. # 82 GS 43 705

Address: [redacted] Warrant # 741647

DOB: [redacted] SS# [redacted] Phone: 481-9146

Offense: Housebreaking & Larceny

Magistrate: M. K. Herbert

Co-Defendant:

Attorney:

Disposition: Confined at H/L — Indeterminate sentence of not less than 6 yrs 5 (c) Y. O. A.

NAME: Cheek, John Earl IND. # 82-GS-43-704

Address: [redacted] Warrant # 741643

DOB: [redacted] SS# [redacted] Phone:

Offense: Housebreaking & Larceny

Magistrate: M. K. Herbert

Co-Defendant:

Attorney:

Disposition:

See ind. 82-705

Con - 705

NAME: Turner, Anthony Wayne IND. # 82-GS-43-704

Address: Rt. 2 Box 452 Sumter, S.C. Warrant # 741653

DOB: [redacted] SS# Date-

Phone:

Offense: Housebreaking & L-Larceny

Magistrate: M.K. Herbert

Co-Defendant:

Attorney:

Disposition: Confined at H/L - Six (6) yrs

Con. 705

725

NAME: Turner, Anthony Wayne IND. # 82-GS-43-725

Address: [redacted] Warrant # 776117

DOB: [redacted] SS# Date-

Phone:

Offense: Housebreaking & C. Larceny

Magistrate: M.K. Herbert

Co-Defendant:

Attorney:

Disposition:

see file 82-704

003066

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

THE STATE

vs.

Ind. #80-GS-43-308 H/B & Larc.

Tony Turner
Defendant TRUE NAME: Anthony Turner
DOB: 10-19-62

COMMITMENT FOR STUDY AND RECOMMENDATION

SECTION 5(b)

The Court finds the Defendant was Seventeen (17) (17-20) years of age at date of conviction (_____ (21-24) years of age and has consented in writing to be treated as a Youthful Offender), and is suitable for handling under the Youthful Offender Act.

It is ordered that the Defendant be and is hereby committed to the custody of the Department of Corrections, Youthful Offender Division, for observation and evaluation, pursuant to Section 5(b) of the Youthful Offender Act, the results of such evaluation and recommendations to be reported to the Court by the Reception and Evaluation Center within sixty days, at which time, the Defendant shall be returned to the Court for imposition of such sentence as the court may find appropriate.

Date: March 21, 1980

Presiding Judge
E. A. Finney, Jr.

S.C.: The court recognizes that there is a drug related problem in this case & feels that the R & E Center should handle this problem as it deems necessary.

003067

Form Approved By
S. C. Attorney General
Section 17-15-40
January 1, 1979

Ticket or Warrant No. A240570

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court — Copy For The Defendant

BAIL PROCEEDING

FORM 2

STATE OF SOUTH CAROLINA
COUNTY OF Sumter

IN THE COURT OF GENERAL SESSIONS
~~COUNTY COURT~~
~~MAGISTRATE COURT~~
~~MUNICIPAL COURT~~

State,

v.

Tony Turner
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Offense Charged Viol. 4 Larceny

Trial Court Gen. Sessions

Name of Surety _____

At a bail hearing conducted by the undersigned Magistrate, for the defendant named above, it was determined by the court that (check one or both):

(✓) The release of the defendant on recognizance without surety will not reasonably assure his appearance as required.

( ) The release of the defendant on recognizance without surety will result in an unreasonable danger to the community.

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance with surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and to do what shall be ordered by the court, and not depart the State without the permission of the court and be of good behavior.

II

That the above named defendant be released from custody provided as follows (check one or more):

(✓) The defendant will execute an appearance recognizance with surety approved by the court in the form set forth below.

Appearance Recognizance With Surety

On the _____ day of _____, 19___ personally appeared before the undersigned Magistrate the surety named above who acknowledged himself indebted to the State of South Carolina, in the sum of ~~$~~ 1,000.00 dollars, such money to be levied on his real and personal property for the use of the State, if the above named defendant shall fail in performing the conditions of this order.

The surety, being duly sworn, says that he is a resident and free holder within this State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt by law from execution.

_____ (L.S.)
Signature of Surety

_____
Address

_____
Telephone

FORM CONTINUES ON BACK

6951

003068

III

(X) The defendant is placed in the custody of: [redacted]

Name of person or organization JULIA TURNER

Address [redacted]

City and State

Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any condition of his release or disappears.

Julia Turner
Signature of Custodian
(If Appointed)

IV

Restrictions On Travel, Association Or Residence

( ) The defendant will comply with each of the following conditions Will be release to Vanderhall McDaniel County Columbia S.C. Defendant will remain there Until date of trial

V

Part-Time Release

( ) The defendant will be released from custody from _____ a.m./p.m. to _____ a.m./p.m. on _____

_____ on condition that he return to the custody of _____
(Specify days of week)

at _____ _____ as designated.

VI

Other Conditions

( ) The defendant agrees that he will notify the court promptly if he changes his address from the one contained in this order and that he will comply with the following other conditions of release _____

IT IS FURTHER ORDERED

That the defendant shall appear at Lowndes County Court House Mon. 10 March 1980 10:00AM
Place of Trial Date and Time

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

ACKNOWLEDGMENT BY DEFENDANT

I understand that if I violate any condition of this order, a warrant for my arrest will be issued.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

Attorney Representing Accused
(If Known)

Anthimus W. Turner (L.S.)
[redacted]

Robert N. Davis
Signature of Judge

24 Jan. 1980
Date

003069

CHECKLIST FOR MAGISTRATES
TO BE USED UPON DIRECTION
OF THE CHIEF JUDGE FOR ADMINISTRATIVE PURPOSES
IN CRIMINAL CASES IN WHICH AN ARREST WARRANT
HAS BEEN ISSUED PURSUANT TO THE CODE OF LAWS

This form is to be used upon direction of the Chief Judge for Administrative Purposes for criminal cases on which action is taken pursuant to an arrest warrant in the magistrate courts.

The form should be retained in the office of the magistrate for 3 years. It should be transmitted to the clerk of court in cases for the circuit court or to the clerk of court in appeals.

Magistrate Mary K. Herbert County Sumter
Date Warrant was Issued 1/23/80
State v. Tony Burgess Crime Viol. of Larceny

I. Arrest Warrant

1. Was the information provided by the complainant given under oath? Yes ✓ No ___ Other ___

2. Did the information plainly and substantially set forth the crime charged? Yes ✓ No ___ Other ___

3. Was the arrest warrant on a form approved by the Attorney General? Yes ✓ No ___ Other ___

II. Transmittal of Arrest Warrant to Officer for Service

4. Was the arrest warrant transmitted to an officer or law enforcement agency for service? Yes ✓ No ___ Other ___
If so, date and name of officer or law enforcement agency 1/23/80 County

III. Return by Officer of Executed Arrest Warrant

5. Was the arrested person brought before the magistrate for a bond proceeding? Yes ✓ No ___ Other ___
If so, date the defendant was brought before the magistrate 1/23/80

6. Was the defendant informed of the charges against him and the nature of the charges? Yes ✓ No ___ Other ___

7. Was the defendant advised of his right to counsel and his right to the appointment of counsel by the court if he was financially unable to employ counsel? Yes ✓ No ___ Other ___

8. Does the arrest warrant show that the defendant received a copy? Yes ✓ No ___ Other ___

9. Did the officer return the original arrest warrant to the magistrate? Yes ✓ No ___ Other ___

IV. Bond Proceedings

10. Was the defendant informed in person by the magistrate that he had a right to be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes ✓ No ___ Other ___

11. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes ✓ No ___ Other ___

(OVER)

SCCA-M1 (Rev. 4/5/77)

12. Was Appearance Recognizance Form 1 and Form 2 prescribed by the Attorney General used as an order of the court stating the conditions of release? Yes ✓ No ___ Other _____

13. Did the defendant acknowledge in writing in the presence of the magistrate his understanding of the terms and conditions of release and the penalties and forfeitures applicable in the event of the violation of the order of the court? Yes ✓ No ___ Other _____
If so, date of the acknowledgment by the defendant 1/23/80

14. Was the defendant told a date, time and place to appear for trial? Yes ✓ No ___ Other _____
If so, date for defendant to appear for trial 3/10/80

V. Procedure Where Prison Sentence Might be Imposed

15. In cases within the trial jurisdiction of the magistrate, where a prison sentence might be imposed following any conviction, was the defendant informed as provided by Rule 2 of Act No. 309, 1969 as listed below? Yes ___ No ___ Other _____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county.

16. In cases within the trial jurisdiction of the magistrate, where a prison sentence might be imposed following any conviction, did the defendant waive his right to have appointed counsel or service of the Public Defender? Yes ___ No ___ Other _____
If yes, use the following form:

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL
OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this ___ day of _____, 19__.

_____ _____
Signature of Magistrate Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This ___ day of _____, 19__. _____
Judge

17. In cases within the trial jurisdiction of the circuit courts, was the defendant released on the condition that he report within an appointed time to the clerk of court or other officer for the purpose of securing to the accused the right to counsel? Yes ___ No ___ Other _____
If so, date by which the defendant had to report and name of person to report to: Date _____ Person _____

003071

Form Approved by
S.C. Attorney General
Section 17-13-160
October 18, 1979

Arrest Warrant A 240570

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF SUMTER

OR MUNICIPALITY OF SUMTER

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF SUMTER, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Tony Turner did on the 21st day of January, 1980, violate the criminal laws of the State of South Carolina [or ordinances of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Housebreaking and Larceny in Violation of Section 16-11-320 of the 1976 South Carolina Code of Laws

Now, therefore, you are empowered and directed to arrest the said defendant and bring him before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at SUMTER, S.C., this 22nd day of January, 19 80.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SUMTER

Personally appeared before me, judge of this Court, one W. T. Sims, who, first being duly sworn, deposes and says that [name of defendant] Tony Turner

did within this County and State on the 21st day of January, 19 80, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Housebreaking and Larceny in Violation of Section 16-11-320 of the 1976 South Carolina Code of Laws

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On the 21st day of January, 1980, one Tony Turner did break and enter in the day time the residence of Route 2, Box 891-E of Karen Atkins with intent to steal; and did take, steal and carry away one gold pocket watch, one musket rifle manufactured in 1777, one double barrell .16 gauge Fox shotgun, one .22 caliber Remington rifle] one Panasonic AM/FM 8-Track Stero and 2 speakers, one blee metal box containing silver change, belonginb to Karen Atkins of the value of $3,000.00. PROBABLE CAUSE: Jeffrey Sandford was arrested on 1-22-80 with part of the property in his possession (shotgun, rifle, and stereo equipment; admitting to Law Enforcement Officials that he received the said property from Tony Turner)

Sworn to and Subscribed before me this 22nd day of Jan, 19 80.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert

Wayne T. Sims
Affiant
W. T. Sims
Address County Invest.

Phone

FORM CONTINUES ON BACK

ORIGINAL

6955

003072

RETURN

Sumter S.C., 1980

H. A. Mathis

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Tony Turner

on the 22nd day of January, 1980

H. A. Mathis

Constable or Law Enforcement Officer

This Warrant is certified for service in _____ County [or _____ Municipality.] The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Warrant No. A2405-70

Ticket No. 2471

Bk. #17 Page _____

9569

STATE OF SOUTH CAROLINA

County of SUMTER
or Municipality of SUMTER

2471

THE STATE
against

Tony Turner

ARREST WARRANT

Offense Housebreaking and Larceny

Code [or Ordinance] Section 16-11-320

Date January 22, 1980

Officer and Agency W. T. Sims County Invest.

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name Tony Turner

Address

Phone

Sex M Race W Height

Weight Birthdate

Social Security Number

INFORMATION ON WITNESSES

Name J. B. Broadway

Address

Phone

Name John Johnson, SLED

Address

Phone

Name L. C. Durant, County Invest.

Address

Phone

PRELIMINARY HEARING held by

Judge M. K. Hubert

on 3/7, 1980,

with Phil Noonan,

Attorney for Defendant.

Decision: Probable Cause

BAIL

Date Set 1/24, 1980

Judge M. K. Hubert

Amount

Surety Third Party

DATE 1/24/80 WARRANT AND BOND

Third Party

TURNED IN TO SOLICITOR FOR TRIAL IN GENERAL SESSIONS COURT.

SIGNED M. K. Hubert MAGISTRATE

FORM 1

003073

The State of South Carolina

County of SUMTER

INDICTMENT FOR HOUSEBREAKING AND LARCENY

At a Court of General Sessions, convened on the 10th day of March, 19 80, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE—HOUSEBREAKING

That one TONY TURNER

did in Sumter County on or about the 21st day of January, 19 80, break and enter the house, to wit: dwelling house at Route 2, Box 281-E, of one Karen Atkins, with intent to commit a crime therein.

COUNT TWO—LARCENY

That one TONY TURNER

did in Sumter County on or about the 21st day of January, 19 80, feloniously take and carry away the personal goods of another of the value of more than fifty dollars, to wit: the personal goods of Karen Atkins

Described as follows: one (1) gold pocket watch, one (1) musket rifle manufactured in 1777, one (1) .16 gauge Fox shotgun, one (1) .22 caliber Remington Rifle, one (1) Panasonic stereo and two (2) speakers, metal box of change, valued at $3000.00 with intent to deprive the owner permanently of such goods.

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

R. Kirk McLeod Solicitor

6957

80 GS 43 308

Witnesses

W.T. Sims S

J.B. Broadway S

John Johnson SLED

L.C. DuRant S

Warrant No. A 240570

Verdict

Foreman

003074

Division Public Defender

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH Term, 1980

THE STATE

vs.

TONY TURNER R+F 3/80

INDICTMENT FOR

Housebreaking and Larceny

TRUE BILL

Foreman of Grand Jury

McCAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205.

THE PRISONER Tony Turner IS PUT TO THE BAR AND ARRAIGNED AND UPON HIS ARRAIGNMENT IS SAY GUILTY AS CHARGED.

O. V. Rogers Jr. C.P.P.G.S.

Anthony W. Turner

THE SENTENCE OF THE COURT IS THAT THE PRISONER

_____ BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF YOA SC -6Yr OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF $_____.

recommend upon release that drug abuse treatment be continued.

James M Mann

MAR 21 1980 PRESIDING JUDGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

IND. 80-GS-43-308
HOUSEBREAKING & LARCENY

THE STATE

-VS-

SENTENCE

Tony Turner
(DEFENDANT)
DOB: 10/19/62

INDETERMINATE SENTENCE

SECTION 5(c)

The Court finds the Defendant was Seventeen (17) (17-20) years of age at the date of conviction(~~(21-24) years of age at date of conviction and has entered in writing to be treated as a youthful offender~~), and is suitable for handling under the Youthful Offender Act.

IT IS THE SENTENCE OF THIS COURT that Pursuant to Section 5(c) of the Youthful Offender Act, the Defendant is committed to the custody of the Department of Corrections, Youthful Offender Division, for an indeterminate period of time not to exceed six ~~(but not to exceed the maximum allowable for an offense if less than six)~~ years.

SPECIAL CONDITION: Recommend upon release that Drug Abuse treatment be continued.

DATE: 5/14/80

James M Morris
PRESIDING JUDGE
JAMES M. MORRIS

CERTIFIED TRUE COPY OF ORIGINAL
FILED IN THIS OFFICE.

O. V. Rogers, Jr. BY
C.C.C. P. & G. S.

SUMTER COUNTY Joye Atkinson
SOUTH CAROLINA Clerk

TURNER, TONY 4/14 80-308

AGE 17 Grand

Housebreaking & Larceny Plead Guilty 3/21/80

Atty: P Clemmons

Y.C.A. to stay

on ct.

Brought before Court

again 5-14-80

YOA - not to exceed 6 yrs.

Committed to

Rivendell Drug

Treatment Center

Lake Avenue

Colo.

per: Wayne Bailey

jil trial March 10th

* def. admitted → due to verbal st. wt.

"drug addict."

003120

FORM 6

The State of South Carolina

County of SUMTER

INDICTMENT FOR

HOUSEBREAKING, GRAND LARCENY & CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on the 6th day of May, 19 85, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - HOUSEBREAKING

That one DOUGLAS LAVERN EDWARDS and one ANTHONY WAYNE TURNER

did in Sumter County on or about the 31st day of March, 19 85, break and enter the house, to wit: store building, of one Geddings Liquor Store, with intent to commit a crime therein.

COUNT TWO - LARCENY

That one DOUGLAS LAVERN EDWARDS and one ANTHONY WAYNE TURNER did in Sumter County on or about the 31st day of March, 1985, feloniously take and carry away the personal goods of another of the value of more than two hundred dollars, to wit: the personal goods of Geddings Liquor Store, described as follows: approximately one hundred fifty-eight (158) bottles assorted liquors, valued at a total of $712.00, with intent to deprive the owner permanently of such goods.

COUNT THREE - CRIMINAL CONSPIRACY

That one DOUGLAS LAVERN EDWARDS and one ANTHONY WAYNE TURNER did in Sumter County on or about lthe 31st day of March, 1985, and at various times before said date, unlawfully, wilfully, knowingly, wickedly, and feloniously unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other and with divers other evil-disposed persons, whose names are unknown to the Grand Jurors, for the purpose of breaking into Geddings Liquor Store and stealing merchandise.

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

Wade S. Kolb, Jr., Solicitor

85-GS-43 -304

Witnesses

SHERIFF'S DEPT

Benny Webb

Laura Jean Geddings

4-1-85

Verdict

Foreman

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY Term, 19 85

THE STATE

vs.

DOUGLAS LAVERN EDWARDS

ANTHONY WAYNE TURNER

INDICTMENT FOR

HOUSEBREAKING, LARCENY & CRIMINAL CONSPIRACY

True Bill

Elgie L. Avery
Foreman of Grand Jury

McCAW PRINTERS, COLUMBIA, S. C. 29205

003121

6962

The sentence of the court is that the defendant Douglas Laverne Edwards be committed to the State Department of Corrections for a period of _____ or pay a fine of _____ plus cost
That upon the service of _____ of this sentence or the payment of _____ plus cost, the balance of the said sentence shall stand suspended and the defendant shall be placed upon probation for a period of _____

Date MAY 6 1985

Presiding Judge

Ant Wayne Turner
Anthony Wayne Turner

THE PRISONER Douglas Lavern Edwards IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED. Housebreaking + Grand Larceny

ATTEST: C. O. P. & G. S.

Anthony Wayne Turner

X Douglas L Edwards
Douglas Lavern Edwards

The sentence of the court is that the defendant Anthony Wayne Turner be committed to the State Department of Corrections for a period of 4 or pay a fine of _____ plus cost
That upon the service of 2 of this sentence or the payment of _____ plus cost, the balance of the said sentence shall stand suspended and the defendant shall be placed upon probation for a period of _____

Yuka restitution in amount of $251 (Concurrent w/ Ind. 84-771)

Date MAY 6 1985

Presiding Judge

JR# 156498 003122

Clerk of Court

O.V. Player, Jr. Courthouse

436 - 2227

Sumter County

Sumter, South Carolina 29150

Deborah Q. Mathis
Chief Deputy Clerk
436 - 2232

FAX: 436 - 2223

ANTHONY W. TURNER
4870 SILO ROAD
SUMTER SC 29150

October 1, 1998

Dear ANTHONY W. TURNER :

This letter will serve as a notice that you owe Sumter County a debt in the amount of $1931.71. This debt is for HOUSEBREAKING AND GRAND LARCEY.

Pursuant to the Setoff Debt Collection Act, Title 12, Chapter 56, of the South Carolina Code of Laws, as amended, the debt will be turned over to the South Carolina Department of Revenue and Taxation. The amount of the debt will be withheld from any income tax refund you may be due from the State of South Carolina. Please be advised that should this occur, administrative fees totaling $40.00 for collection of this debt through this method will be added to your debt and subtracted from your income tax refund.

You may avoid having your state income tax refund reduced by paying this debt in full at the Clerk of Court's office, Room 308, Sumter County Courthouse, Sumter, S. C. All payments must be made prior to November 2, 1998.

If for any reason you feel this information is incorrect, you must notify Gloria Goff in my office within seven (7) calendar days from the date of this notice. You may call (803) 436-2227 or send a written notification to the Clerk of Court as addressed above. Any person requesting a review of debt shall furnish a correct mailing address and a telephone number at which he or she can be reached during normal business hours.

O. V. Player, Jr., Clerk of Court

O.V. PLAYER, JR.
CLERK OF COURT
COURTHOUSE
SUMTER, SC 29150

CERTIFIED

Z 201 358 718

MAIL

RETURNED TO SENDER

FROM SUMTER, S.C. 29150 TURNER
UNCLAIMED
DO NOT USE THIS ENVELOPE OR WRAPPER AGAIN
SUMTER, S.C. 29150

15649B

2.77

PB MATEN

Z 201 358 718

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to: Luther W. Turner
Street & Number: 2990 Dolo Rd
Post Office, State & ZIP Code: Sumter, SC 29153

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.77
Postmark or Date	10-1-98

PS Form 3800, April 1995

15649B

003123

6964

O.V. PLAYER, JR.
CLERK OF COURT
COURTHOUSE, ROOM 308
SUMTER, S.C. 29150

CERTIFIED

P 405 259 846

MAIL

JP#15649B

SUMTER S.C. METER 54130 $2.52 U.S. POSTAGE

RETURNED TO SENDER

ANTHONY W. TURNER
[redacted]

- ☐ Not Deliverable As Addressed
- ☐ Unable To Forward
- ☐ Moved Left No Address
- ☐ Unclaimed ☐ Refused
- ☐ Attempted Not Known
- ☐ No Such Street
- ☐ No Such Number
- Route No. 2
- Carr/Initials
- Date 2/6/13

6965

O.V. PLAYER, JR.
CLERK OF COURT
COURTHOUSE, ROOM 308
SUMTER, S.C. 29150

CERTIFIED
P 482 482 196
MAIL

84-771
15649

SUMTER SC OCT 1995 PB METER 7153380 $2.52 U.S. POSTAGE

RETURNED TO SENDER

Anthony W Turner
[redacted]

☐ MOVED, LEFT NO ADDRESS
☐ FORWARDING ORDER EXPIRED
☑ ATTEMPTED-NOT KNOWN
☐ INSUFFICIENT ADDRESS
ROUTE NO. 18 DATE 10-20
CARR. INITIALS KE

18

9669

003126

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES TO BE USED IN CRIMINAL CASES IN WHICH AN ARREST WARRANT HAS BEEN ISSUED (INCLUDING TRAFFIC CASES)

This checklist is to be used in all criminal cases on which action is taken pursuant to an arrest warrant (including traffic cases), whether triable in Municipal, Magistrate or General Sessions Court. The checklist should be used in compliance with the Orders of Chief Justice J. Woodrow Lewis. The checklist should be used only in those cases where an arrest warrant is issued, not in traffic cases where a Uniform Traffic Ticket is used. The checklist should be attached to every arrest warrant at the time of the bail proceeding or first appearance of the defendant before a magistrate or municipal judge.

The checklist should be retained in the office of the judge for three (3) years, at the end of which time it may be detached from the warrant, and disposed of. It should be transmitted to the Clerk of Court in cases for trial in the circuit court. It should be transmitted to the Clerk of Court in appeals.

Judge [illegible] County Sumter Warrant No(s). 34517

State v. TONY TURNER Offense(s) Viol. § 2.

I. **BOND PROCEEDING AND CONDITIONS OF BOND** (For Non-Bailable Offenses, Proceed to Section II).

1. Date of bond proceeding 4/2/81

2. Was the defendant informed in person by the judge that he would be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes ✓ No ____

3. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes ✓ No ____

4. Which Bail Proceeding form was used? Form 1 ____ Form 2 ✓

5. The defendant was informed that he must appear at SCC [place of trial or appearance] on May 6, 1981 [date of trial or appearance.]

6. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ✓ No ____

7. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1). Yes ✓ No ____

II. **FIRST APPEARANCE OF DEFENDANT FOR NON-BAILABLE OFFENSES**

8. Date of first appearance ____

9. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ____ No ____

10. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1). Yes ____ No ____

III. **RIGHTS OF THE DEFENDANT**

11. The Defendant was informed that he has a right to a trial by jury, as provided in the Sixth Amendment to the United States Constitution, and Article I, Section 14 of the South Carolina Constitution. Yes ✓ No ____

12. The Defendant was informed that pursuant to the Fifth Amendment to the United States Constitution, he has the right to remain silent, and that anything he says can be used against him in a court of law. Yes ____ No ____

13. The Defendant was informed that he has the right to talk to a lawyer and have a lawyer present at any time during interrogation or questioning by law enforcement officers. Yes ____ No ____

003127

IV. PROCEDURE WHERE PRISON SENTENCE MIGHT BE IMPOSED

14. In all criminal cases, including those within the trial jurisdiction of the magistrate or municipal judge, the defendant was informed as provided by Rule 2 of Act No. 309, 1969 as listed below. Yes✓ No____

    (1) Inform the accused of the charges against him and of the nature of the charges.

    (2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.

    (3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

15. In cases within the trial jurisdiction of the magistrate or municipal judge, where a prison sentence might be imposed following any conviction, did the defendant waive his right to have appointed counsel or service of the Public Defender? Yes✓ No____

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this _____ day of _____, 19____.

_____ Signature of Judge

_____ Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This _____ day of _____, 19____.

_____ Judge

16. In cases within the trial jurisdiction of the circuit courts, the defendant was released on the condition that he report within an appointed time to the clerk of court or other officer for the purpose of securing to the accused the right to counsel.

To report on: _____ Date

To report to: _____ Person

. . . . . .

_____ Judge

_____ Date

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

AFFIDAVIT

003128

Personally appeared before me, judge of the Court, one Benny L. Webb who being duly sworn, deposes and says that Anthony Wayne Turner (name of defendant) did within this County and State on March 31 19 85, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

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

The above named defendant, along with a co-defendant, did break and enter Geddings Liquor Store, located at Rt. 2, Box 325, Pinewood, in the County of Sumter, State of S. C., with the intent to steal, and did take, steal and carry away approximately 158 bottles of assorted liquors, including Vodka, Gin and Jim Beam Whiskey, all with the intent to convert same to his own use and to permanently deprive the owner of same, the value being approximately $712.00. Probable Cause: a co-defendant has given a written statement to Law Enforcement Officials admitting his participation in the above offense and implicating the above named defendant in same.

B 34511

Sworn to and Subscribed before me,

This 1st day of April, 19 85

Mary K. Herbert (L.S.)
Signature of Issuing Judge

Mary K. Herbert
Address 12 Law Range - P. O. Box 1394
Sumter, SC 29150
Phone: 775-2365

Benny L. Webb
Signature of Affiant

Benny L. Webb
Address Sumter County Inv. Div.
107 E. Hampton Ave., Sumter, SC
Phone: 773-1561

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF SUMTER

[or MUNICIPALITY OF SUMTER]

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

It appearing from the above affidavit that there are reasonable grounds to believe that Anthony Wayne Turner (name of defendant) did on March 31 19 85, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

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

Done at SUMTER S. C.
on APRIL 1 19 85

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert

Form Approved by
S.C Attorney General
May 13, 1983

FORM CONTINUES ON BACK
ORIGINAL

6969

GS 56-85 RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

ANTHONY WAYNE TURNER

on the 1 day of APRIL, 1985

BENNY L. WEBB

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

_____ County / Municipality (Circle one)

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

_____ (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge M K Herbert

on 4-25, 1985

with Ed Bell

Attorney for Defendant

Decision: Probable Cause

BAIL

Date Set 4/2, 1985

Judge M.K. HERBERT

Amount BOND REFUSED

Surety JAIL

TO SCI 4-3-85

RETURN WARRANT TO: Mary K. Herbert
12 Law Range
P. O. Box 1394
Sumter, SC 29150

003129

ARREST WARRANT

No. B 345117 CASE # 93366 BOOK # 80

STATE OF SOUTH CAROLINA

SUMTER County / Municipality (Circle one)

THE STATE

against

Ed Bell

ANTHONY WAYNE TURNER

Address [redacted]

Phone 481-8337 SSN [redacted]

Sex M Race W Height 6'0 Weight 150

DOB [redacted] DL _____

Offense Housebreaking and Grand Larceny

Code (or Ordinance) § 16-11-320

Date of Offense 03-31-85

Date of Warrant 04-01-85

Officer Benny L. Webb

Agency County Inv. Div.

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name Laura Jean Geddings
Geddings Liquor Store
Address Rt. 2, Box 325, Pinewood, SC
Phone 452-5311

Name _____
Address _____
Phone _____

Name _____
Address _____
Phone _____

Name _____
Address _____
Phone _____

Name _____
Address _____
Phone _____

Name _____
Address _____
Phone _____

JURORS

6970

JR# 15649B

003130

Clerk of Court O.V. Player, Jr. Courthouse

436 - 2227

Sumter County

Sumter, South Carolina 29150

Deborah Q. Mathis
Chief Deputy Clerk
436 - 2232

FAX: 436 - 2223

ANTHONY W. TURNER
4870 SILO ROAD
SUMTER, S. C. 29150

RE: SET OFF DEBT COLLECTION

DEAR MR. ANTHONY W. TURNER:

THIS IS TO ADVISE YOU THAT THIS OFFICE HAS RECEIVED $ 654.75 FROM THE STATE REVENUE DEPARTMENT IN PAYMENT OF AN OUTSTANDING DEBT IN THIS OFFICE FOR THE CHARGE OF HOUSEBREAKING AND GRAND LARCENY, UNDER INDICTMENT # 84-771. YOUR BALANCE FOR THIS DEBT IS $ 1875.45. IN ORDER TO AVOID HAVING YOUR INCOME TAXES SET OFF IN THE FUTURE, YOU SHOULD MAKE ARRANGEMENTS WITH THIS OFFICE TO PAY THE BALANCE DUE ON YOUR ACCOUNT.

SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, PLEASE CONTACT THIS OFFICE.

SINCERELY,

O. V. PLAYER, JR.
CLERK OF COURT FOR SUMTER COUNTY

DATED: MAY 5, 1997

6971

Form Approved By
S.C. Attorney General
Section 17-15-40
January 1, 1982

SEP. 21 1984

Ticket or Warrant No. 003131

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy for the Trial Court - Copy For the Defendant

BAIL PROCEEDING
FORM 2

STATE OF SOUTH CAROLINA
COUNTY OF Sumter

STATE, v.

Anthony Wayne Turner
Name of Defendant

IN THE G.S. COURT

ORDERING SPECIFYING METHODS AND CONDITIONS OF RELEASE

Offense Charged 1 Viol. & G.L.

At a bail hearing conducted by the undersigned judge, for the defendant named above, it was determined by the court that (check one or both):

( ) The release of the defendant on recognizance will not reasonably assure his appearance as required.
( ) The release of the defendant on recognizance will result in an unreasonable danger to the community.

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required, to answer the charge made against him and to do what shall be ordered by the court, and not depart the State without the permission of the court and be of good behavior.

II

That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

( ) The defendant acknowledging himself to be indebted to the State of South Carolina, deposits $_____ in cash, to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this order, this sum or money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

( ) The defendant acknowledges himself to be indebted to the State of South Carolina, in the sum of $_____, his release to be obtained by payment to the Court of _____ percent (_____%) of this bond in cash, this being $_____. The defendant will be obligated to the State in the full amount of $_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this order.

APPEARANCE RECOGNIZANCE WITH SURETY

(X) The defendant will provide good and sufficient surety approved by the court in the form set forth below.

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $ 10,000.00, such sum to be levied on his real and personal property for the use of the State, if the above named defendant shall fail in performing the conditions of this order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

_____ (L.S.)
Signature of Surety

_____
Name of Surety (Print or Type)

_____
Address

_____
Telephone

IT IS FURTHER ORDERED

That the defendant shall appear at Sumter County Courthouse, Sumter, SC on Mon., Nov. 26, 1984, 10 AM.
Place of Trial — Date and Time

Initials of Defendant _____

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued..

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

Anthony Turner (L.S.)
Signature of Defendant

Rt. 2, Box 182
Address

Sumter, SC

_____
Social Security

_____
Attorney Representing Accused (If Known)

M. K. Herbert
Signature of Judge

9/18/84
Date

FORM CONTINUES ON BACK

6972

SEP. 21 Recd

003132

O. V. PLAYER, JR.
Clerk of Court

Sumter County

Sumter, South Carolina

29150

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT ACCORDING TO THE ASSESSED VALUATION OF REAL ESTATE FOR SUMTER COUNTY IN THE NAME OF Claude T. Tuenie _____, HE/SHE HAS REAL ESTATE WORTH $ 3830.00 DOLLARS OVER ANY RECORDED MORTGAGES AND CONTRACTS OF SALE.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 20th DAY OF September, 1984.

Debra P Riles Deputy
Clerk of Court, Sumter County, SC

Bond reduced to above amount
M K Herbert
9/6/84

6973

ACKNOWLEDGMENT OF DEFENDANT

I understand that I have a right to be present at my trial on the charge(s) for which I have been arrested, and that the trial will proceed in my absence should I fail to attend the court.

Date: 9/6/84 Signature: [signature] Defendant

- -

NOTIFICATION BY JUDGE

By signature below, I hereby affirm that this Court informed the defendant, _____, that (s)he has the right to be present at the trial on the charge(s) for which named defendant has been arrested, and that the trial will proceed in the defendant's absence should the defendant fail to attend the court. I further affirm that said defendant voluntarily refused to execute the attached ACKNOWLEDGMENT OF DEFENDANT.

Date: _____ Signature: _____ Judge

SCCA (1-84)

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

AFFIDAVIT

003134

Personally appeared before me, judge of the Court, one John Wannamaker who being duly sworn, deposes and says that Anthony Wayne Turner (name of defendant) did within this County and State on or about Aug. 30 19 84, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny (Auto) in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts: The above named defendant did commit the herein stated offense in that he did break into the business of M & M Auto Sales, 1400 South Guignard Drive, in the County of Sumter, State of S. C., with the intent to steal, and did take, steal and carry away one 1978 Chevrolet Corvette belonging to one Clara Gordon, valued at $8000.00, all with the intent to permanently deprive the owner of same. Further, when the vehicle was stolen, the defendant drove through the fence at M & M Auto Sales and also struck another vehicle. Total property damage being approximately $4500.00. Probable Cause: The breakin occurred sometime between 6:30 P. M. August 30, 1984 and 7:30 A.M..August 31, 1984. On August 31, 1984 at approximately 6:00 A. M. the above named defendant was found in possession of the car after a traffic accident.

Sworn to and Subscribed before me,

This 5th day of September, 19 84

Mary K. Herbert (L.S.)
Signature of issuing Judge

Mary K. Herbert

Address 12 Law Range - P.O. Box 1394
Sumter, SC 29150

Phone: 775-2365

John Wannamaker
Signature of Affiant

John Wannamaker

Address Sumter County Inv. Div.
107 E. HamptonSt., Sumter,SC 29150

Phone: 773-1561

STATE OF SOUTH CAROLINA — ARREST WARRANT

COUNTY OF SUMTER

[or MUNICIPALITY OF SUMTER]

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

It appearing from the above affidavit that there are reasonable grounds to believe that Anthony Wayne Turner (name of defendant) did on or about August 30 19 84, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny (Auto) in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

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

Done at SUMTER, S. C.
on SEPTEMBER 5 19 84

Mary K. Herbert (L.S.)
Signature of Judge

Mary K. Herbert

Form Approved by
S.C Attorney General
May 13, 1983

FORM CONTINUES ON BACK
ORIGINAL

6975

GS 11-26-84

ARREST WARRANT

No. B 154529 CASE# B058389 Book # 74

STATE OF SOUTH CAROLINA

SUMTER County / Municipality (Circle one)

THE STATE

against

ANTHONY WAYNE TURNER

Address [redacted]

Phone 481-8337 SS [redacted]

Sex M Race W Height 6'1" Weight 150

DOB [redacted] DL

Offense Hsbkg & GL (Auto)

Code (or Ordinance) § 16-11-320

Date of Offense on or about 08-30-84

Date of Warrant 09-05-84

Officer John Wannamaker

Agency County Inv. Div.

Date of Disposition

Disposition

Sentence

Co-Defendants

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

Anthony Wayne Turner

on the 5 day of Sept. 19 84

John Wannamaker

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in Sumter County / Municipality (Circle one)

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

(L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge

on , 19

with Attorney for Defendant

Decision:

BAIL

Date Set 9/6, 1984

Judge M. K. Herbert

Amount

Surety

To Sol 9-21-84 $3830.00 Prop. Surety Claude L. Dunn

RETURN WARRANT TO: Mary K. Herbert
12 Law Range
P. O. Box 1394
Sumter, SC 29150

WITNESSES:

Name R. D. Hembree, SCHP 003135
R. F. Roark, III, SCHP

Address

Phone

Name Albert Mouzome
M & M Auto Sales

Address 1400 S. Guignard Dr., Sumter, SC

Phone 773-9418

Name Clara Gordon

Address

Phone

Name

Address

Phone

Name

Address

Phone

JURORS

SUMTER COUNTY, S.C.
CLERK OF COURT
O.V. PLAYER, JR.
84 SEP 21 PM 2 42

6976

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT

HOUSEBREAKING, GRAND LARCENY OF VEHICLE, MALICIOUS INJURY TO PERSONAL PROPERTY - 2 COUNTS, MALICIOUS INJURY TO REAL PROPERTY & RECEIVING STOLEN GOODS

At a Court of General sessions, convened on May 6, 1985, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - HOUSEBREAKING

That one ANTHONY WAYNE TURNER did in Sumter County on or about the 30th day of August, 1984, break and enter the house, to wit: store building, of one M & M Auto Sales, with intent to commit a crime therein.

COUNT TWO - GRAND LARCENY OF VEHICLE

That one ANTHONY WAYNE TURNER did in Sumter County on or about the 30th day of August, 1984, feloniously take and carry away the personal property, to wit: one (1) 1978 Chevrolet corvette, valued at $8000.00, of another, to wit: Clara Gordon, of the value of more than two hundred dollars, with intent to deprive the owner permanently of such property.

COUNT THREE - MALICIOUS INJURY TO PERSONAL PROPERTY

That one ANTHONY WAYNE TURNER did in Sumter County on or about the 30th day of August, 1984, wilfully, unlawfully and maliciously drive through a fence, striking another vehicle and totally destroy in a traffic accident the personal property, to wit: one (1) Chevrolet corvette, valued at $8000.00, of one Clara Gordon, the damage to such personal property being in the amount of $8000.00

COUNT FOUR - MALICIOUS INJURY TO PERSONAL PROPERTY

That one ANTHONY WAYNE TURNER did in Sumter County on or about the 30th day of August, 1984, wilfully, unlawfully and maliciously strike with another vehicle, the personal property, to wit: automobile, of one M & M Auto Sales, the damage to such personal property being in the amount of $500.00

COUNT FIVE - MALICIOUS INJURY TO REAL PROPERTY

That one ANTHONY WAYNE TURNER did in Sumter County on or about the 30th day of August, 1984, wilfully, unlawfully and maliciously drive an automobile through and damage the real property, to wit: gate, of one M & M Auto Sales, the damage to such real property being in the amount of $450.00.

FORM 6

The State of South Carolina

County of SUMTER

INDICTMENT FOR

HOUSEBREAKING, GRAND LARCENY OF VEHICLE, MALICIOUS INJURY TO PERSONAL PROPERTY - 2 COUNTS, ~~MALICIOUS INJURY TO REAL PROPERTY &~~ RECEIVING STOLEN GOODS
(Continued)

At a Court of General Sessions, convened on the _____ day of _____, 19____, the Grand Jurors of _____ County present upon their oath:

COUNT SIX - RECEIVING STOLEN GOODS

That one ANTHONY WAYNE TURNER

did in Sumter County on or about the 30th day of August, 19 84, have in his possession certain personal goods of Clara Gordon, described as follows: one (1) 1978 chevrolet Corvette, valued at $8000.00, of the value of more than two hundred dollars, such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said ANTHONY WAYNE TURNER knowing such goods to have been stolen.

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

Wade S. Kolb, Jr. Solicitor

Witnesses

HERIFF'S DEPT.
ohn Wannamaker
.D. Hembree
ussell Roark
lbert Mouzome
lara Gordon

-5-84

Verdict

Foreman

AMENDED 84-GS-43-771

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY Term, 19 85

THE STATE

VS.

ANTHONY WAYNE TURNER

INDICTMENT FOR

HOUSEBREAKING, GRAND LARCENY OF VEHICLE, MALICIOUS INJURY TO PERSONAL PROPERTY - 2 COUNTS, MALICIOUS INJURY TO REAL PROPERTY & RECEIVING STOLEN GOODS

True Bill

Foreman of Grand Jury

McCAW PRINTERS, COLUMBIA, S. C. 29205

Three

THE PRISONER Anthony Wayne Turner IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY ~~AS CHARGED~~ To use of vehicle without owners consent.

ATTEST:

C. C. P. & G. S.

The sentence of this court is that the defendant Anthony Wayne Turner be committed to the State Department of Corrections for a period of three years or pay a fine of ____ plus cost. That upon the service of 1 of this sentence or the payment of ____ plus cost, the balance of the said sentence shall stand suspended and the defendant shall be placed upon probation for a period of ____

Date MAY 6 1985

Presiding Judge

Felony reduction on amount of $ 2,200.13

Concurrent to Ind. 85-304

003138

6979

STATEMENT

003098

TIME _____ DATE _____ PLACE _____

I, _____ HAVING been advised of my rights under the FIFTH AMENDMENT to the CONSTITUTION as to compulsory self incrimination, my right of counsel and my right of trial, and knowing that anything that I say may be used against me in a court of law, and knowing that I do not have to make any statement at all do hereby volunteer the following to _____

who has identified himself as _____

I have read the above statement consisting of _____ pages and attest that it is a true and accurate account of the events which took place on _____ It was given by me freely and voluntarily, without fear of threat or promise of reward.

Witnessed by _____

Signature

Witnessed by _____ Page _____ of _____ pages

Page 2

14021

003099

Anthony Wayne Turner
Rt. 4 Box 227 Sumiton, Al
10/5/84

kept the nite watch, the bearding nite shotgun was one of the .22 pistols. John kept the 30-30 rifle and the rest of the weapons all in the woods down from our residences. I do not remember what happened to the ring that were out of the breechs. The .22 pistol I got out of this residence I but Randy Skelton took it from me and as far as I know, Randy still has the pistol.

I hereby certify that the above statement is the truth and accurate to the best of my knowledge and I have received a copy of my statement.

Anthony Wayne Turner

WITNESSED BY

6981

STATEMENT

003100

TIME 9:00 a.m. DATE 9/9/81 PLACE Law Enforcement Center

I, John Earl Cheely HAVING been advised of my rights under the FIFTH AMENDMENT to the CONSTITUTION as to compulsory self incrimination, my right of counsel and my right of trial, and knowing that anything that I say may be used against me in a court of law, and knowing that I do not have to make any statement at all do hereby volunteer the following to Wayne T. Sims who has identified himself as an Investigator with the Sumter County Sheriff's Dept.

JEC My name is John Earl Cheely. I am 17 years of age. My date of birth is August 3, 1965. I live at Rt. 2 Box 83 in Sumter with my Aunt. JEC 83

On 8/19/82, Tony Turner and I were riding around in my Aunt Julian's car, which is a malibu, black in color with red pin stripes on it. Tony was driving the car. The reason I remember this is because my Uncle who had died was to be buried and this was before the funeral.

As Tony and I were riding around, we decided to break into a house and as we were driving down Cox Road, we saw this house that looked like nobody was home and Tony pulled into the driveway and I got out and went to the door and knocked on the door and rang the doorbell and when nobody came to the door, I went back to the car and told Tony that nobody was home. Tony then backed out of the driveway and we drove down the road and backed up into a small road that lead into a field and parked the car. Tony and I both got out of the car and walked back to the house that we had just left and went to the back of the house and used a screwdriver to pry the backdoor open.

Once inside the house, Tony and I split up and started going through the house and I kept finding some change when I heard Tony yell out for me to come back to the bedroom. When I got there, Tony showed me a yellow envelope that contained 100 dollar bills, 50 dollar bills. We also found a large glass jar that contained dimes. We alsotook a .25 automatic pistol in a black holster. Tony and I then left and walked back to the car and we left and drove to another dirt road where we split the money and we got $1,300.00 a piece. I have shown Investigators Wayne Sims and Steve Russell the above mentioned residence on September 8, 1981 and have learned from them that this is where Curtis Daley Jr. lives.

I would also like to say that I have shown the above investigators where I hid the .25 automatic pistol and also turned over to them the jar that the dimes were in. JEC

I hereby certify that the above statement is the truth and accurate to the best of my knowledge and I have received a copy of my statement. John Earl Cheely

I have read the above statement consisting of 1 pages and attest that it is a true and accurate account of the events which took place on the above dates and times. It was given by me freely and voluntarily, without fear of threat or promise of reward.

Witnessed by Wayne T. Sims John Earl Cheely
Signature

Witnessed by Steve Russell Page 1 of 1 pages

6982

STATE OF SOUTH CAROLINA COUNTY OF SUMTER EX PARTE: Curtis Daley, Jr. Petitioner, IN RE: The State, - vs - Anthony Wayne Turner, Defendant.	IN THE COURT OF GENERAL SESSIONS PETITION

Petitioner, Curtis Daley, Jr., would respectfully show unto the Court:

1. Petitioner is a resident of Sumter County and at all times here pertinent resided at [redacted]

2. On August 19, 1982, the Petitioner's home was broken into and numerous items of personal property and money were stolen, including approximately Three Thousand Two Hundred and no/100ths ($3200.00) Dollars in cash. (Approximately Three Thousand and no/100ths ($3000.00) Dollars was in $100.00 and $50.00 dollar bills from a bonus paid by Petitioner's employer and the rest was in bills and coins from a collection.)

3. Petitioner has determined from arresting law enforcement officers that Anthony Wayne Turner and John Earl Cheely were apprehended and each gave a voluntary written statement admitting his participation in this crime and the theft of the above-described money, along with the other articles that were stolen.

4. Petitioner has also determined from law enforcement officers that when Anthony Wayne Turner was arrested on September 8, 1982, he was found in possession of Fourt Hundred Eighty and 83/100ths ($480.83) Dollars, most of which was in $100.00 and $50.00 dollar bills and which the Sheriff of Sumter County has held and is now holding as evidence in the case.

5. Petitioner is informed and believes that on November 29, 1982, Anthony Wayne Turner and John Earl Cheely plead guilty to Housebreaking and

Larceny on Indictment 82-GS-43-704 for the crime committed against Petitioner on August 19, 1982, and the defendants were sentenced by The Honorable John Grimball, Presiding Judge, as shown by Judgment Roll 14040.

6. Petitioner is informed by the Sheriff of Sumter County that Anthony Wayne Turner has made no demand for return of the money and that the Sheriff is holding same for disposition as ordered by the Court.

7. That Petitioner believes that the Four Hundred Eighty and 83/100ths ($480.83) Dollars seized by the Sheriff from Anthony Wayne Turner constitutes the remainder of the money stolen from Petitioner and that since the criminal case has now been concluded, such money should be returned to Petitioner.

WHEREFORE Petitioner prays that the Court issue its Order authorizing the Sheriff of Sumter County to turn over to Petitioner the Four Hundred Eighty and 83/100ths ($480.83) Dollars now being held as evidence in this case.

Curtis Daley, Jr.

Petitioner

Sumter, South Carolina

March 22, 1983

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

VERIFICATION

PERSONALLY APPEARED before me the Petitioner, Curtis Daley, Jr., who on oath states that he has read the attached Petition and that the matters stated therein are true of his own knowledge except those matters stated on information and belief and as to those, he believes them to be true.

Curtis Daley Jr.

SWORN to and subscribed before me
this 22nd March, 1983

Martha L. Brabham
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7-11-85

74029 03104

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
EX PARTE: Curtis Daley, Jr.)
Petitioner,)
IN RE:)
The State,)
- vs -)
Anthony Wayne Turner,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

'83 MAR 8 AM 8 57

ORDER

This matter comes before the Court on Petition of Curtis Daley, Jr. for return to him of certain monies stolen from his residence on August 19, 1982 by the defendant Anthony Wayne Turner. Besides the sworn Petition, the Court has before it the sworn statements of the defendant Anthony Wayne Turner and a co-defendant, John Earl Cheely, admitting to the theft.

The Court finds that the criminal case has now been concluded, and it is no longer necessary for the Sheriff of Sumter County to hold said monies as evidence, and it is appropriate and proper that said monies be returned to the rightful owner, Curtis Daley, Jr. It is therefore

ORDERED that the Sheriff of Sumter County deliver to the said Curtis Daley, Jr. the sum of Four Hundred Eighty and 83/100ths ($480.83) Dollars now being held by him.

JAMES M. MORRIS, PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

Sumter, South Carolina
March 22, 1983

003105

FORM 1

The State of South Carolina
County of SUMTER

INDICTMENT FOR HOUSEBREAKING AND LARCENY

At a Court of General Sessions, convened on the 29th day of November, 19 82, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE—HOUSEBREAKING

That one ANTHONY WAYNE TURNER and one RANDY GORDON BETHEA

did in Sumter County on or about the between 8th & 9th day of May, 19 82, break and enter the house, to wit: DuBose Bates Center, on Hwy. 15 South, of one DuBose Bate Center,

with intent to commit a crime therein.

COUNT TWO—LARCENY

That one ANTHONY WAYNE TURNER and one RANDY GORDON BETHEA

did in Sumter County on or about the between 8th &9th day of May, 19 82, feloniously take and carry away the personal goods of another of the value of more than ~~fifty~~ two hundred dollars, to wit: the personal goods of DuBose Bates Center of the total value of $5000.00,

Described as follows: sun-glasses, field glasses, assorted ammunition, buck knives, case knives, playing cards, Timex watches, cigarettes and beer,

with intent to deprive the owner permanently of such goods.

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

R. Kirk McLeod

Solicitor
R. Kirk McLeod

6987

Witnesses

Stephen A. Russell COUNTY

Verdict

Warrant No. A 776117
A 776116

Foreman

INDICTMENT FOR
Housebreaking and Larceny

Foreman of Grand Jury

THE STATE
vs.
ANTHONY WAYNE TURNER
RANDY GORDON BETHEA

COURT OF GENERAL SESSIONS
NOVEMBER Term, 19 82

The State of South Carolina
County of SUMTER

82-GS-43-725

THE PRISONER Randy Gordon Bethea IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED, AND WAIVES PRESENTMENT OF THE GRAND JURY.

ATTEST:

J. V. Kneece, Jr.
C. C. P. & G. S.

Randy Bethea

THE PRISONER Anthony Wayne Turner IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED, AND WAIVES PRESENTMENT OF THE GRAND JURY.

ATTEST:

J. V. Kneece, Jr.
C. C. P. & G. S.

Anthony Turner

Concurrent

THE SENTENCE OF THE COURT IS THAT THE PRISONER Anthony Wayne Turner BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Six (6) years OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF $

John Grimball
PRESIDING JUDGE

Concurrent

NOV 29 1982

THE SENTENCE OF THE COURT IS THAT THE PRISONER Randy Gordon Bethea BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Six (6) years ~~OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF $~~

John Grimball
PRESIDING JUDGE

Sec. 5C youthful offender act

NOV 29 1982

NOV 29 1982

003406

6988

003107

RETURN

Oct 7, 1982

Wayne T Sims
Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Randy Gordon Bethea

on the 7 day of Oct, 1982.

Wayne T Sims
Constable or Law Enforcement Officer

This Warrant is certified for service in _____ County [or _____ Municipality.] The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)
Signature of Judge

Warrant No. A776116

Docket No. 282

Book 56 Page _____

6869

STATE OF SOUTH CAROLINA

County of SUMTER
or Municipality of SUMTER
Docket # 282

THE STATE
against

*
Randy Gordon Bethea

ARREST WARRANT

Offense Housebreaking and G. Larceny

Code [or Ordinance] Section 16-11-320

Date 10-4-82

Officer and Agency Stephen A. Russell
County Inv. Div.

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name Randy Gordon Bethea

Address [redacted]

Phone 481-2591

Sex M Race W Height _____

Weight _____ Birthdate [redacted]

Social Security Number [redacted]

INFORMATION ON WITNESSES

Name Stephen A. Russell, County Inv.

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Judge _____

on _____, 19___,

with _____,
Attorney for Defendant.

Decision: _____

BAIL

Date Set 10-7, 1982

Judge Mary K Herbert

Amount _____

Surety P Recog

DATE 10/20/82 WARRANT AND BOND
Appearance Recog.
TURNED IN TO CLERK OF COURT FOR TRIAL IN GENERAL SESSIONS COURT.

MAGISTRATE

003108

Form Approved by
S.C. Attorney General
Section 17-13-160
October 18, 1979

Arrest Warrant A 776116

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF SUMTER

OR MUNICIPALITY OF SUMTER

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF SUMTER, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Randy Gordon Bethea
did ~~on the~~ between 10:00P.M. May 8, 1982 ~~day of~~ and 10:00A.M. May 9, 1982, violate the criminal laws of the State of South Carolina [or ordinances of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

Now, therefore, you are empowered and directed to arrest the said defendant and bring him before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at SUMTER, S.C., this 11th day of October, 19 82.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SUMTER

Personally appeared before me, judge of this Court, one Stephen A. Russell, who, first being duly sworn, deposes and says that [name of defendant]

Randy Gordon Bethea

did within this County and State ~~on the~~ between 10:00P.M. 5-8-82 ~~day of~~ and 10:00A.M. 5-9-82, 19____, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

One Randy Gordon Bethea, along with a co-defendant, did break and enter the DuBose Bates Center located on Hwy 15 South, in the County of Sumter, State of S. C., all with the intent to steal, and did take, steal and carry away sunglasses, field glasses, assorted ammunition, buck knives, case knives, playing cards, Timex watches, cigarettes, and beer, all valued at approximately $5000.00, all with the intent to convert same to his own use and to permanently deprive the owner of same. Probable Cause: The above named defendant has given a written statement to Law Enforcement Officials admitting to the above stated offense and implicating a co-defendant in the above stated offense.

Sworn to and Subscribed before me

this 11th day of October, 1982.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert
Address of Judge 12 Law Range
Sumter, SC
Phone 775-2365

Stephen A. Russell
Affiant
Stephen A. Russell
Address Sumter County Inv. Div.
Sumter, SC
Phone

FORM CONTINUES ON BACK

ORIGINAL

GS 11-29-82

003109

RETURN

7 Oct 4, 19 82

Wayne T Sims
Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Anthony Wayne Turner

on the 4 day of Oct, 19 82

Wayne T Sims
Constable or Law Enforcement Officer

This Warrant is certified for service in _____ County [or _____ Municipality.] The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)
Signature of Judge

Warrant No. A776117

Docket No. 283

Book 56 Page _____

STATE OF SOUTH CAROLINA

County of SUMTER
or Municipality of SUMTER
Docket # 283

OCT. 5 RECD

THE STATE
against

Anthony Wayne Turner

ARREST WARRANT

Offense Housebreaking and G. Larceny

Code [or Ordinance] Section 16-11-320

Date 10-4-82

Officer and Agency Stephen A. Russell
County Inv. Div.

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name Anthony Wayne Turner

Address [redacted]

Phone _____

Sex M Race W Height _____

Weight _____ Birthdate [redacted]

Social Security Number _____

INFORMATION ON WITNESSES

Name Stephen A. Russell, County Inv.

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Judge MNH

on 10-5-82,

with Ed Bell
Attorney for Defendant.

Decision: waived.

BAIL

Date Set 10/5, 19 82

Judge DTK Norbert

Amount _____

Surety $50,000.00 Covers all chgs.

DATE 10/6/82 WARRANT AND BOND

Jail
COMMITTED TO CLERK OF COURT FOR TRIAL IN GENERAL SESSIONS COURT.

MKH
MAGISTRATE

6991

003110

Form Approved by
S.C. Attorney General
Section 17-13-160
October 18, 1979

Arrest Warrant A 776117

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF SUMTER

OR MUNICIPALITY OF SUMTER

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF SUMTER, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Anthony Wayne Turner did ~~on the~~ between 10:00P.M. May 8, 1982 and ~~day of~~ 10:00A.M. May 9, 1982, violate the criminal laws of the State of South Carolina [or ordinances of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

Now, therefore, you are empowered and directed to arrest the said defendant and bring him before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at SUMTER, S.C., this 4th day of October, 1982.

Mary K. Herbert (L.S.)

Signature of Judge
Mary K. Herbert

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SUMTER

Personally appeared before me, judge of this Court, one Stephen A. Russell, who, first being duly sworn, deposes and says that [name of defendant]

Anthony Wayne Turner

did within this County and State ~~on the~~ between 10:00P.M. 5-8-82 ~~day of~~ and 10:00A.M. 5-9-82, 19____, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Housebreaking and Grand Larceny in Violation of Section 16-11-320 of the 1976 S. C. Code of Laws, as amended

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

The above named defendant, along with a co-defendant, did break and enter the DuBose Bates Center located on Hwy 15 South, in the County of Sumter, State of South Carolina, with the intent to steal, and did take, steal and carry away sunglasses, field glasses, assorted ammunition, buck knives, case knives, playing cards, Timex watches, cigarettes and beer, all valued at approximately $5000.00, all with the intent to convert same to his own use and to permanently deprive the owner of same. Probable Cause: A co-defendant has given a written statement to Law Enf. Officials admitting to the above offense and implicating the above named defendant in the above stated offense.

Sworn to and Subscribed before me

this 4th day of October, 1982.

Mary K. Herbert (L.S.)

Signature of Judge
Mary K. Herbert

Address of Judge 12 Law Range
Sumter, SC

Phone 775-2365

Stephen A. Russell

Affiant
Stephen A. Russell

Address Sumter County Inv. Div.
Sumter, SC

Phone

FORM CONTINUES ON BACK

ORIGINAL

6992

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES
TO BE USED IN CRIMINAL CASES
IN WHICH AN ARREST WARRANT HAS BEEN ISSUED
(INCLUDING TRAFFIC CASES)
PURSUANT TO THE CODE OF LAWS OF SOUTH CAROLINA

This Checklist is to be used in all criminal cases on which action is taken pursuant to an arrest warrant (including traffic cases), whether triable in Municipal, Magistrate, or General Sessions Court. The Checklist should be used in compliance with the Orders of Chief Justice J. Woodrow Lewis, dated August 29, 1977 and February 22, 1979 as amended by Order dated June 26, 1980. The Checklist should be used only in those cases where an arrest warrant is issued, not in traffic cases where a Uniform Traffic Ticket is used. The Checklist should be attached to every arrest warrant at the time of the bail proceeding.

The Checklist should be retained in the office of the judge for three (3) years, at the end of which time, it may be detached from the warrant, and disposed of. It should be transmitted to the clerk of court in cases for trial in the circuit court. It should be transmitted to the clerk of court in appeals.

Judge MKJ County Sumter

Warrant No. A776123 Offense(s) _____

State v. _____

I. Bond Proceeding and Conditions of Bond

1. Date of bond proceeding _____.

2. Was the defendant informed in person by the judge that he would be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes ____ No ____

3. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes ____ No ____

4. Which Bail Proceeding Form was used? Form 1 ____ Form 2 ____

5. The defendant was informed that he must appear at _____ [place of trial or appearance] on _____, 19 ___ [date of trial or appearance].

6. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ____ No ____

7. In cases within the trial jurisdiction of the circuit court, the defendant was furnished a Request for Preliminary Hearing form. Yes ____ No ____

II. Rights of the Defendant

8. The defendant was informed that he has a right to a trial by jury, as provided in the Sixth Amendment to the United States Constitution, and Article I, Section 14 of the South Carolina Constitution. Yes ____ No ____

9. The defendant was informed that pursuant to the Fifth Amendment to the United States Constitution, he has the right to remain silent, and that anything he says can be used against him in a court of law. Yes ____ No ____

10. The defendant was informed that he has the right to talk to a lawyer and have a lawyer present at any time during interrogation or questioning by law enforcement officers. Yes ____ No ____

FORM CONTINUES ON BACK

III. Procedure Where Prison Sentence Might be Imposed

11. In all criminal cases, including those within the trial jurisdiction of the magistrate or municipal judge, the defendant was informed as provided by Rule 2 of Act No. 309, 1969 as listed below. Yes_____No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointmtent of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

12. In cases within the trial jurisdiction of the magistrate or municipal judge, where a prison sentence might be imposed following any conviction, did the defendant waive his right to have appointed counsel or service of the Public Defender? Yes_____No_____

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL
OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this_____day of_____, 19_____.

_____ _____
Signature of Judge Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This_____day of_____,19___. _____
Judge

13. In cases within the trial jurisdiction of the circuit courts, the defendant was released on the condition that he report within an appointed time to the clerk of court or other officer for the purpose of securing to the accused the right to counsel.

To report on: _____ To report to: _____
Date Person

* * * * * * * * * * * * * * *

_____ _____
Judge Date

003113

Form Approved By
S. C. Attorney General
Section 17-15-40
January 1, 1979

Ticket or Warrant No. A776116

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court — Copy For The Defendant

BAIL PROCEEDING

FORM 1

STATE OF SOUTH CAROLINA
COUNTY OF Sumter

IN THE COURT OF GENERAL SESSIONS ✓
COUNTY COURT
MAGISTRATE COURT
MUNICIPAL COURT

State,

v.

Randy Gordon Bethea
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Offense Charged Dsb & GL

Trial Court GS

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and to do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the _____ day of _____, 19___ personally appeared before the undersigned magistrate the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of $500.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of this order.

III

The defendant agrees that he will notify the court promptly if he changes his address from the one contained in this order and that he will comply with the following other conditions of release _____

IT IS FURTHER ORDERED

That the defendant shall appear at

Sumter Co. Courthouse
Place of Trial

Mon. Nov. 29 1982, 10 AM
Date and Time

Sumter, SC

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

FORM CONTINUES ON BACK

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, a warrant for my arrest will be issued.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

Attorney Representing Accused
(If Known)

Randy Cotton (L.S.)

[redacted]

Signature of Judge

10/7/92

Date

003115

Form Approved by
S.C. Attorney General
Section 17-13-160
October 18, 1979

Arrest Warrant **A 726922**

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF SUMTER

OR MUNICIPALITY OF SUMTER

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF SUMTER, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Randy ~~Lee~~ Bethea
did on the (aka) GORDAN 14th day of July, 1982, violate the criminal laws of the State of South Carolina [or ordinances of the municipality of SUMTER] as set forth below:

DESCRIPTION OF OFFENSE

Grand Larceny - Common Law

Now, therefore, you are empowered and directed to arrest the said defendant and bring him before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at SUMTER, S.C., this 26th day of July, 1982.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SUMTER

Personally appeared before me, judge of this Court, one Stephen A. Russell, who, first being duly sworn, deposes and says that [name of defendant]
GORDAN
Randy ~~Lee~~ Bethea
(aka)
did within this County and State on the 14th day of July, 19 82, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of SUMTER] in the following particulars:

DESCRIPTION OF OFFENSE

Grand Larceny - Common Law

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

The above named defendant, along with two co-defendants, did take, steal and carry away one 1980 K2 440 Kawasaki motorcycle from the residence at 109 Vernon Drive, in the County of Sumter, State of S. C. and belonging to one Harley Trimnal, all with the intent to convert same to his own use and to permanently deprive the owner of same, the value being $1300.00. Probable Cause: A co-defendant has given a written statement to Law Enforcement Officials implicating the above named defendant in the above stated offense: further, the above named defendant has verbally admitted to the above offense.

Sworn to and Subscribed before me

this 26th day of July, 1982.

Mary K. Herbert (L.S.)
Signature of Judge
Mary K. Herbert
Address of Judge 12 Law Range
Sumter, SC
Phone 775-2365

Stephen A. Russell
Affiant
Stephen A. Russell
Address Sumter County Inv. Div.
Phone

FORM CONTINUES ON BACK

ORIGINAL

6997

003116

TURN

July 27 1982

Wayne T Sims
Constable or
Law Enforcement Officer

copy of this Arrest Warrant was delivered
ne to the following defendant:

Randy Gordon Bethea

he 27 day of July,

Wayne T Sims
Constable or
Law Enforcement Officer

his Warrant is certified for service in

nty [or _____ Municipality.]
accused is to be arrested and brought
ore me to be dealt with according to law.

(L.S.)
Signature of Judge

rrant No. A726922

cket No. 64

ok 54 Page _____

8669

STATE OF SOUTH CAROLINA

County of SUMTER
or Municipality of SUMTER
Docket # 64

THE STATE
against

Randy ~~Lee~~ GORDAN Bethea
(Ba)

ARREST WARRANT

Offense Grend Larceny

Code [or Ordinance] Section Common Law

Date 7-26-82

Officer and Agency Stephen A. Russell
County Inv. Div.

Disposition

Sentence

Co-Defendants

Alvin Lightsey A726920

Tracy Lee Inman A726921

INFORMATION ON DEFENDANT

Name Randy Lee Bethea

Address [redacted]

Phone

Sex M Race W Height 5'9"

Weight 150 Birthdate [redacted]

Social Security Number

INFORMATION ON WITNESSES

Name Stephen A. Russell, County Inv.

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Judge M.K. Herbert

on 8-27, 1982

with Jack Hawk,
Attorney for Defendant.

Decision: Prob. Cause

BAIL

Date Set July 27, 1982

Judge G.C. Aycock

Amount

Surety THIRD PARTY CUSTODY

7/30/82
DATE WARRANT AND BOND

THIRD PARTY CUSTODY
TURNED OVER TO TRIAL IN
GENERAL SESSIONS COURT

MKH
MAGISTRATE

003117

FORM 27

The State of South Carolina

County Of SUMTER

INDICTMENT FOR LARCENY

At a Court of General Sessions, convened on the 7th day of September, 19 82, the Grand Jurors of Sumter County present upon their oath:

That one RANDY CORDAN BETHEA, one TRACY LEE INMAN and one ALVIN LIGHTSEY did in Sumter County on or about the 14th day of July, 19 82, feloniously take and carry away the personal goods of Harley Trimnal of the value of $1300.00, ~~of the value of more than fifty~~ dollars described as follows: one 1980 K2 440 Kawasaki motorcycle, with intent to deprive the owner permanently of such goods.

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

R. Kirk McLeod

Solicitor

R. Kirk McLeod

6999

Witnesses

Stephen A. Russell S COUNTY

Verdict

Warrant No. A 726920
A 726921
A 726922

Foreman

Solicitor

INDICTMENT FOR

LARCENY

TRUE BILL

Foreman of Grand Jury

McCaw Printers, Columbia, South Carolina

THE STATE

vs.

RANDY CORDAN BETHEA
TRACY LEE INMAN
ALVIN LIGHTSEY

COURT OF GENERAL SESSIONS

SEPTEMBER Term, 19 82

The State of South Carolina

County of SUMTER

82-GS-43 V 471

THE PRISONER Randy Bethea IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED.

ATTEST:

O. V. Thayer, Jr. Randy Bethea
C.C.P. & G.S.

THE PRISONER Alvin Lightsey Tracy Lee Inman IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY ~~AS CHARGED~~ Temp. Use of Motor Vehicle without owners consent

ATTEST:

O. V. Thayer, Jr. Tracy Inman
C.C.P. & G.S.

Alvin Lightsey

Concurred

THE SENTENCE OF THE COURT IS THAT THE PRISONER Randy Bethea BE HELD TO HARD LABOR BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF Six (6) years ~~OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES OR PAY A FINE OF $~~

Joseph Russell
PRESIDING JUDGE

NOV 29 1982

Sec. 5 C
Youthful Offenders
A.J.

Received cash bond #1000.00
12-6-82
X

003118

7000

14029 1 of 3 003119

This is a large file. I did not copy the rest of the part pertaining to Bethea / Inman / Lights. Turner was not involved in this crime, but same file as his

– Kathy LaMotte
11/2011

GS 10-24-94

NAME Turner, Anthony IND. # 94-1041 B

ADDRESS [redacted] WARRANT # E176522

PHONE # 481-8337

D.O.B. [redacted] RACE/SEX W/M SSN [redacted]

OFFENSE Burg, 2nd & GL 1st D.L. # —

County MAGISTRATE MPU

D.O.O. 08-21-94 D.O.A. 08-30-94 DATE FILED 09-06-94

ATTORNEY John D Clark CO-DEF. Rodney L. Reed

pleads to Burg, 2ND (Violent) F.G.L. 2 yrs" - 5 yrs" — Sys conc Sym

SENTENCE: AND/OR $

SUSPENDED TO: AND/OR $

PROBATION:

SPECIAL CONDITIONS:

DATE: 07-29-95 JUDGE: 033 M A Shuler COURT REPORTER: K Simmons

DTN

3rd Party: Julia F. Turner
8-31-94 3435 Barkley Rd
Sumter SC 29150
481-8337

(Todd Kirkley)
Pocalla Springs Country Club
Sumter, SC
stolen: lawn core equipment
welder
Value: $1700.

1756.00

$1606.00
value by prop
Still missing!

FORM 32 (12/87)

003172

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

BURGLARY - FIRST DEGREE, GRAND LARCENY & ACCESSORY AFTER THE FACT

At a Court of General Sessions, convened on October 24, 1994,

the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - BURGLARY - FIRST DEGREE

That one ANTHONY TURNER did in Sumter County on or about August 8, 1994, willfully and unlawfully enter the building of Pocalla Springs Country Club without consent and with the intent to commit a crime therein and the defendant had two or more convictions for burglary or housebreaking, to wit: convicted of housebreaking May, 1980, December, 1982 and May, 1985, and defendant entered or remained therein in the nighttime, in violation of Code § 16-11-311, as amended.

COUNT TWO - GRAND LARCENY

That one ANTHONY TURNER did in Sumter County on or about August 8, 1994, feloniously take and carry away personal goods of Pocalla Springs Country Club, of the value of more than One Thousand Dollars, described as follows: lawn care equipment and welder, valued at a total of $1,700.00, in violation of § 16-13-30 (B), as amended.

COUNT THREE - ACCESSORY AFTER THE FACT

That one RODNEY L. REED did in Sumter County on or about August 21, 1994, knowing of the commission and completion of the felony Burglary - First Degree and Grand Larceny by the principal felon Tony Turner, aid, harbor, and assist such felon to escape detection or arrest or otherwise avoid the consequences of the crime.

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

Wade S. Kolb, Jr.

SOLICITOR WADE S. KOLB, JR.

7004

7005

DOCKET NO. 94-GS-43 1041

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER TERM 1994

THE STATE

vs.

RODNEY L. REED

✓ ANTHONY TURNER

Indictment for

BURGLARY - FIRST DEGREE, GRAND LARCENY & ACCESSORY AFTER THE FACT

WITNESSES

000173

SHERIFF'S DEPT.

Glenn Harrell

Todd Kirkley

Clarence Johnson

Pocalla Springs Country Club

ARREST WARRANT NO. E 176521-22

8-30-94

ACTION OF GRAND JURY

True Bill

[illegible]

Steve Richardson

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

304.4-1-94

Ticket or Warrant No.: E 176522 003174

STATE OF SOUTH CAROLINA
COUNTY OF Lee
STATE OF SOUTH CAROLINA
v.
Tony Turner
Name of Defendant

IN THE ( ) COURT OF GENERAL SESSIONS
(X) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Burglary 2nd + GL

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

Nature of the Offense

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____(%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☐ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $ 10,000.00

3. That the defendant shall appear at (check one):
☐ the term of the court of general sessions beginning on [Date:] 9-6-94 at [Time:] 9:00 o'clock, A .M., at [Place:] Lee County Circuit House and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date:]_____ at [Time:]___:___ o'clock, ___.M., at [Place:]_____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant: TT

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Signature of Judge

8-31-94
Date

AUG 31

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

[redacted]

Signature of Defendant

8-31-94
Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

7006

003175

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is released to the custody of Julia F. Turner
[redacted] Name of person or organization
Address City State/Zip Telephone
who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

Julia F. Turner 8-31-94
Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from ___:___ o'clock, ___.M. to ___:___ o'clock, ___.M. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $_____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Name of Surety (Printed or Typed) Signature of Surety

Address of Surety Signature of Judge

City/State/Zip Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 7, 1990

GENERAL SESSIONS DOCKET REPORT FOR SUMTER COUNTY

(B) REPORT RUN DATE 090794

INDICTMENT NUMBER:00GS43 94-1044

DEFENDANT NAME:TURNER ANTHONY AKA

ADDRESS 48[illegible] LG ROAD TN SUMTER STATE SC 29

SOCIAL SECURITY NUMBER: [redacted] SEX:M MALE RACE:W WHITE

DATE OF BIRTH [redacted] DRIVERS LICENSE STATE NO

WARRANT OR TICKET NUMBER:E[illegible]652 COUNTS:01 OFFENSE CODE 0085

NO WARRANT N NAME OF OFFENSE:BURGLARY 2ND D VIOLENT LARCEN

DATE OF ARREST:083094 DATE REC'D BY CLERK 090694 SUMMAR JUDGE 99

DISP DATE 07-29-95 DISP TYPE (1) plea

DISP TYPE EXPLANATION

JUDGE NAME 033 M D Shuler SOLICITOR K Simmons

OFFENSE 01 OFFENSE 085 Burg, 2nd (Viol) & GC

SENTENCE 5yrs on Ea ct conc

DEFENSE ATTORNEY J Clark PROSECUTING ATTORNEY Deborah Lucas Wilson

003176

7008

003177

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT # 94-GS-43-1041

The State -vs- Anthony Turner

Court Reporter: Kathy M. Simmons Attorney: John Clark

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his arraignment, pleads guilty ~~as charged~~ to Burglary 2nd degree (violent)

S. C. Statute: 16-11-312(B) Classification: Offense Code:

Attest: O.V. Player Jr. Anthony Turner
Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of 5 ~~months~~/years and/or to pay a fine of $ _____; provided upon the service of _____ months/years and/or payment of $_____ (plus non-waivable 62% assessment fee) the balance is suspended, with probation for _____ months/years.

RESTITUTION: YES/NO FOR PHYSICAL INJURY $ _____

PAYABLE TO CLERK FOR: PROPERTY DAMAGE $ _____

(VICTIM) _____

(Pay to Victim's Comp. Fund, if subrogated)

Other conditions _____

DATE: JUL 12 1995

M. DUANE SHULER
PRESIDING JUDGE, THIRD JUDICIAL CIRCUIT

FINE: _____
62% FEE: _____
ADSAP: _____
RESTITUTION: _____
P.D. FUND _____

TOTAL DUE: _____

O. V. PLAYER, JR.
CLERK OF COURT

7009

003178

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT # 94-GS-43-1041

The State -vs- Anthony Turner

Court Reporter: Kathy M. Simmons Attorney: John Clark

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his arraignment, pleads guilty as charged to Grand Larceny ($1,000 < $5,000)

S. C. Statute: Classification: Offense Code:

Attest: O. V. Player Jr. Anthony Turner
Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of 5 ~~months~~/years and/or to pay a fine of $ _____; provided upon the service of _____ months/years and/or payment of $_____ (plus non-waivable 62% assessment fee) the balance is suspended, with probation for _____ months/years.

RESTITUTION: YES/NO FOR PHYSICAL INJURY $ _____

PAYABLE TO CLERK FOR: PROPERTY DAMAGE $ _____

(VICTIM) _____

(Pay to Victim's Comp. Fund, if subrogated)

Other conditions Concurrent

DATE: JUL 12 1995

M. DUANE SHULER
PRESIDING JUDGE, THIRD JUDICIAL CIRCUIT

FINE: _____
62% FEE: _____
ADSAP: _____
RESTITUTION: _____
P.D. FUND _____

TOTAL DUE: _____

O. V. Player Jr.
O. V. PLAYER, JR.
CLERK OF COURT

7010

Tony Turner — Name of Defendant

E 176122 — Warrant/Ticket Nos.

County/Municipality of Polk

Charges: Burglary 2nd & GL — Trial Court: [X] General Sessions [ ] Magistrate [ ] Municipal Court

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for **ALL GENERAL SESSIONS CASES** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE.** The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

[X] BAIL PROCEEDING
[ ] FIRST APPEARANCE (Non-Bailable Offenses)

1. Form used at bail proceeding
   a. Bond Form I (personal recognizance)
   X b. Bond Form II (surety, cash, percentage)
   c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:
   a. Warrant for arrest will be issued for violation of any condition of bail bond order.
   X b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
   c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than $5,000 or imprisonment for not more than five (5) years, or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than $1,000 or imprisonment for not more than one (1) year, or both.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
   X a. Orally
   X b. In writing
   [NOTE: Defendant must be informed of right both orally and in writing]

X 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
   X a. Charges against defendant and nature of the charges.
   X b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
   c. [(Optional: Local procedures may require judge to refer defendants to indigency screener. If so, note referral here) (Required) to appear before SCCA on 10-24, 1994 for appointment of counsel.]

Appearance or Hearing Date: 8/31/94

Judge's Signature

SCCA/507(Rev.11-93)

SOUTH CAROLINA DRIVER'S LICENSE
TURNER, JULIA F
EXPIRES 12/02/1996
[redacted]
SUMTER
CLASS D
ISSUED
DOB
RESTRICTIONS NONE

GS 10-24-94

ARREST WARRANT

E-176522

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of SUMTER

RECORDED
'94 SEP 6 PM 2 55
O.V. PLAYER JR.
CLERK OF COURT
R COUNTY, S.C.

THE STATE

against

~~TONY~~ anthony TURNER

Address: [redacted] Sumter, S.C. 29154

Phone: 481-8337 SSN: [redacted]

Sex: M Race: W Height: 5'10 Weight: 185

DL State: [redacted] SC0430000

DOB: [redacted] Agency ORI#:

Prosecuting [illegible] RIFF'S DEPT

Prosecuting Officer:

Offense: BURGLARY 2ND DEGREE ORS

GRAND LARCENY Offense Code: 16-11-312

Code/Ordinance Sec. COMMON LAW

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant TONY TURNER on 8-30-94

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Sol. 9-2-94

$10,000.00
3rd Party Release Julia F Turner

7013

STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of SUMTER

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant INV GLENN HARRELL who being duly sworn deposes and says that defendant TONY TURNER did within this county and state on 08/21/94 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of SUMTER) in the following particulars:

DESCRIPTION OF OFFENSE: INCIDENT # 94054464
BURGLARY 2ND DEGREE (16-11-312)GRAND LARCENY (COMMON LAW)

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

THAT THE DEFENDANT DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID IN THE NIGHT TIME BREAK INTO AND ENTER A SHED AT POCALLA SPRINGS COUNTRY CLUB, LOCATED IN THE COUNTY OF SUMTER,STATE STATE OF S.C., ALL WITH THE INTENT TO COMMIT A CRIME THEREIN. ONCE INSIDE THE DEFENDANT DID STEAL, TAKE, AND CARRY AWAY LAWN CARE EQUIPMENT AND A WELDER VALUED AT $1700.00.CO-DEFENDANT IS RODNEY REED.

PROBABLE CAUSE:CO-DEFENDANT HAS SIGNED STATEMENT IMPLICATING THE DEFENDANT IN THE ABOVE.

Sworn to and subscribed before me on 8/29/94

Signature of Issuing Judge

_____
Signature of Affiant

Affiant's Address: INV GLENN HARRELL/107 E HAMPTON AVE
SUMTER SC 29150

Affiant's Telephone: 773-1561

STATE OF SOUTH CAROLINA
[X] County/ [ ] Municipality of SUMTER

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 08/21/94 defendant TONY TURNER did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of SUMTER) as set forth below:

DESCRIPTION OF OFFENSE:
BURGLARY 2ND DEGREE (16-11-312)GRAND LARCENY (COMMON LAW)

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

Signature of Issuing Judge

Judge Code: 824

Judge's Address: MARTHA P UPSHUR/115 N.HARVIN ST/PO BOX 1394
SUMTER, S.C. 29151

Judge's Telephone: 803-436-2280

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

AUG 3 1

0031811

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)
)
STATE OF SOUTH CAROLINA)
)
VS.) NOTICE OF MOTION
)
Anthony Wayne Turner,)
)
DEFENDANT.)

RECORDED
'94 DEC 2 PM 3 59
CLERK OF COURT
SUMTER COUNTY, S.C.

TO: THE HONORABLE WADE S. KOLB, JR.:

PLEASE TAKE NOTICE that the Defendant by and through his undersigned attorney, will move before this Court on November 28, 1994 or as soon thereafter as counsel may be heard, for an Order of the Court requiring the Solicitor's Office, Sumter City/Law Enforcement and/or other agencies of the State of South Carolina, to produce and make available to the Defendant for inspection and copying, the following pursuant to Brady vs. Maryland, 373 U.S. Ct. 1194 (1963):

1. The names and addresses of all persons who have been interviewed or questioned by the Sheriff's department at any time or place in conducting this investigation;

2. A list of the names and addresses of any and all potential witnesses known to the State who might give testimony or information favorable to the Defendant, together with any statements made by any prospective witnesses to the Sumter Police Department's investigators or other law enforcement agencies, concerning the crimes alleged, as well as other crimes in which the Defendant or his co-Defendant(s) are allegedly involved;

3. A list of all State witnesses which the Defendant might

be required to cross-examine in a trial pursuant to the pending indictment;

4. Any and all witnesses' statements and/or other writings including investigative notes concerning the charges pending against this Defendant and any other related information which may have occurred within the sphere of this investigation;

5. Any confession, admission, and/or statements made by the Defendant to any investigator whether reduced to writing or not, including the original notes taken by either the arresting officer or other investigative officers while questioning this Defendant either openly or surreptitiously as an undercover agent;

6. Any and all confessions, admissions, and/or statements made by the Defendant which may have been heard by law enforcement officials;

7. A summary reflecting criminal records of all persons the state intends to call at trial; together with any information in the hands of the police which is available to the State indicating that any and all of these prospective witnesses have a tendency for untruthfulness or has made false statements to the police previously;

8. Any and all information concerning the identification procedures used in identifying this Defendant in relation to the charges made against him, including but not limited to, all photos of any photo line up, initial notes taken by the investigators from the victims of the alleged crimes which

identified or held to identify the alleged assailant, and any and all other notes or otherwise which have to do with the descriptions of this Defendant;

9. The names and addresses of any police office and/or agent of law enforcement division who has had contact with this Defendant subsequent to his arrest;

10. The existence of any pending, concluded, or potential investigations involving the Defendant or any person related with this case or the other cases previously mentioned as they relate to the charges;

11. Any and all other evidence now in your possession favorable to the accused or material evidence relevant to the accused's guilt;

IT IS FURTHER MOVED that is the Solicitor is unable to decide on the materiality of exculpatory nature of any such evidence the Solicitor shall be required to turn over such material to the Court for its determination in camera.

On your failure to produce the above information, a motion will be made to preclude the introduction of any evidence relating to the same, the contents thereof, or any particulars pertaining thereto and motion will be made to strike testimony of any witnesses who testified to the aforementioned matters, the contents thereof, or an particulars pertaining thereto.

John D. Clark
Attorney for the Defendant
27 West Calhoun Street
Sumter, South Carolina 29150
(803) 773-1943

November 30, 1994
Sumter, South Carolina

RECORDED
94 DEC 2 PM 4 01
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)	GENERAL SESSIONS COURT
)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	
)	
STATE OF SOUTH CAROLINA)	
)	
-vs-)	MOTION FOR DISCLOSURE
)	OF EVIDENCE
Anthony Wayne Turner,)	
)	
DEFENDANT.)	

The Defendant under the authority of the South Carolina Rules of Criminal Procedure Rule 5, and on the Motion of John D. Clark, Attorney for the Defendant, request that the State of South Carolina and the Sumter City/County Law Enforcement produce and make available to the Defendant for inspection and copying, the following pursuant to the aforementioned Rule:

1. STATEMENTS OF DEFENDANT

(a) All relevant written or recordings made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become unknown, to the attorney for the prosecution. Any written memoranda which contains the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant, whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent.

2. DEFENDANT'S PRIOR RECORD

(a) A copy of all prior criminal violations and the dispositions thereof, if any, as in the possession, custody, or control of the prosecution, the existence of which is

known or by the exercise of due diligence may become known, to the attorney for the prosecution.

3. DOCUMENTS AND TANGIBLE OBJECTS

(a) All papers, books, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the prosecution, and which are material to the preparation of the Defendant's case or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant.

4. REPORTS OR EXAMINATION AND TESTS

(a) A copy of all, or any results or reports of physical or mental examination, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial.

5. WITNESSES AND INVESTIGATIONS

(a) A list of all who have been questioned concerning the matter involving the investigation conducted and a copy of any memorandum of said questioning, together with a list of the names and addresses of any and all potential witnesses known to the State who might give testimony or information favorable to the Defendant, together with any

statements made by any witnesses to the investigators and police officers which the State intends to call as witnesses in the trial of this case.

John D. Clark
Attorney for the Defendant
27 West Calhoun Street
Sumter, South Carolina 29150
(803) 773-1943

November 30, 1994

Sumter, South Carolina

E 17652

COMMITTMENT ~~RELEASE~~

SUMTER COUNTY CORRECTIONAL CENTER

Date 8/31/97

Defendant Tracy Farmer

Offense Burglary 2nd & G.L.

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☒ Amount of Bond $ 10,000.00
- ☒ Type of Bond Thru Bail
- ☒ Bond Paid Bail
- Sentence: _____
- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☒ Trial Officer CJ
- Time Released _____
- ☒ Arresting Officer _____

(Releasing Magistrate (or) Receiving Official)

Mary K. Herbert AUG 31

FORM 6 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR UNLAWFUL DRUGS

At a Court of General Sessions, convened on April 10, 1989, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE — POSSESSION

That one ANTHONY W. TURNER did in Sumter County on or about Februry 5, 1989, knowingly and intentionally possess a quantity of Marijuana, a controlled substance under provisions of §§ 44-53-110, *et. seq., Code of Laws of South Carolina* (1976), as amended, such possession not having been authorized by law. (THIS BEING A THIRD OFFENSE)

COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That _____ did in _____ County on or about _____, possess with intent to distribute a quantity of _____, a controlled substance under provisions of §§ 44-53-110, *et. seq., Code of Laws of South Carolina* (1976), as amended, such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That _____ did in _____ County on or about _____, distribute to one _____ a quantity of _____, a controlled substance under provisions §§ 44-53-110, *et. seq., Code of Laws of South Carolina* (1976), as amended, such distribution not having been authorized by law.

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

Wade S Kolb

SOLICITOR WADE S. KOLB, JR.

003140

WITNESSES

SHERIFF'S DEPT.

Robert Stuckey

D. Florence

ARREST WARRANT NO. C 334443

2-6-89

ACTION OF GRAND JURY

True Bill

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

DOCKET NO. 89-GS-43 400

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL **TERM** 1989

THE STATE

vs.

ANTHONY W. TURNER - 26

Indictment for Unlawful Drugs

POSSESSION OF MARIJUANA
(THIRD OFFENSE)

Harris

7022

ARREST WARRANT

No. C 334443

STATE OF SOUTH CAROLINA

County
Municipality (Circle one)

THE STATE

against

Anthony Wayne Turner

Address: [redacted]

Sumter, S. C. 29150

Phone 481-8337 SSN [redacted]

Sex M Race W Height 6' Weight 140

DOB [redacted] DL

Offense Simple Possession of Marijuana

3rd Offense

Offense Code

Code (or Ordinance) § 44-53-370

Issuing Judge William Sanders

Judge Code

Officer D. Florence

Agency Sheriffs Dept.

ORI No.

Date of Offense 2/5/89

Date of Disposition

Disposition

Sentence

Co-Defendants

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

Anthony Wayne Turner

on the 11 day of Feb., 19 89

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

County
Municipality (Circle one)

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

(L.S.)
Signature of Judge

PRELIMINARY HEARING held by

Judge

on 2:45 3/10 19 89

with None Waived
Attorney for Defendant

Decision:

BAIL

Date Set 2/6 19 89

Judge

Amount $5,000.00

Surety

RETURN WARRANT TO:

WITNESSES:

Name

Address

Phone

RECORDED

89 MAR 13 AM 10:54

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

JURORS

CERTIFIED TRUE COPY OF ORIGINAL FILED

Deborah G. Mathis
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

003141

7023

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

AFFIDAVIT

003142

Personally appeared before me, judge of the Court, one Inv. Robert Stuckey, who being duly sworn, deposes and says that Anthony W. Turner (name of defendant) did within this County and State on 2/5/ 19 89, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] in the following particulars:

DESCRIPTION OF OFFENSE

Simple Possession of Marijuana in Violation of Section 44-53-370 of the 1976 Codes of Laws of S. C. as Amended (3rd Offense)

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

The above name defendant did commit the above stated offense in that he did have in his possession less than an ounce of Marijuana. Said offense having occured at and on Dollard Dr., in the County of Sumter, S. C. Probable Cause: Defendant was arrested for Public Disorderly Conduct and Brown Bagging. During a routine inventory and search of defendant car, marijuana was found inside of his car. First and Second offense having occured on November 12, 1984.

C 33441

Sworn to and Subscribed before me,

This 6th day of Feb, 19 89.

William Sanders (L.S.)

Signature of Issuing Judge

Address Route 2, Box 137 A.
Dalzell, S. C. 29040

Phone: 499-3566

R. L. Stuckey

Signature of Affiant

Address Sumter County Sheriffs Dept.
Sumter, S. C. 29150

Phone: 773-1561

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Sumter

[or MUNICIPALITY OF _____]

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

It appearing from the above affidavit that there are reasonable grounds to believe that Anthony Wayne Turner (name of defendant) did on Feb. 5, 19 89, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

Simple Possession of Marijuana in Violation of Section 44-53-370 of the 1976 Codes of Laws of S. C. as Amended (3rd Offense)

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

Done at Sumter, S.C.
on Feb. 6, 19 89.

William Sanders (L.S.)

Signature of Judge

Judge William Sanders

Form Approved by
S.C. Attorney General
May 13, 1983
SCCA / 518 (REV. 7/87)

FORM CONTINUES ON BACK
ORIGINAL

7024

ARREST WARRANT

No. C 334443

STATE OF SOUTH CAROLINA

County
Municipality (Circle one)

RECORDED
89 FEB 5 PM 4:28

THE STATE

against

Anthony Wayne Turner

Address: [redacted]

Sumter, S. C. 29150

Phone 481-8337 SSN [redacted]

Sex M Race W Height 6' Weight 140

DOB [redacted] DL

Offense Simple Possession of Marijuana

3rd Offense

Offense Code

Code (or Ordinance) § 44-53-370

Issuing Judge William Sanders

Judge Code

Officer D. Florence

Agency Sheriffs Dept.

ORI No.

Date of Offense 2/5/89

Date of Disposition

Disposition

Sentence

Co-Defendants

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

Anthony Wayne Turner

on the 6 day of Feb., 19 89

Robin C Stuckey

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

County
Municipality (Circle one)

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

(L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge

on , 19

with
Attorney for Defendant

Decision:

BAIL

Date Set 2/6/, 19 89

Judge [signature]

Amount $ 5,000.00

Surety

RETURN WARRANT TO:

WITNESSES:

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

JURORS

003143

7025

STATE OF SOUTH CAROLINA
COUNTY OF Sumter

AFFIDAVIT

003144

Personally appeared before me, judge of the Court, one Inv. Robert Stuckey, who being duly sworn, deposes and says that Anthony W. Turner (name of defendant) did within this County and State on 2/5/ 19 89, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] in the following particulars:

DESCRIPTION OF OFFENSE

Simple Possession of Marijuana in Violation of Section 44-53-370 of the 1976 Codes of Laws of S. C. as Amended (3rd Offense)

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

The above name defendant did commit the above stated offense in that he did have in his possession less than an ounce of Marijuana. Said offense having occured at and on Dollard Dr., in the County of Sumter, S. C. Probable Cause: Defendant was arrested for Public Disorderly Conduct and Brown Bagging. During a routine inventory and search of defendant car, marijuana was found inside of his car. First and Second offense having occured on November 12, 1984.

C 334443

Sworn to and Subscribed before me,

This 6th day of Feb, 19 89.

William Sanders (L.S.)
Signature of Issuing Judge

Address Route 2, Box 137 A
Dalzell, S. C. 29040

Phone: 499-3566

R. L. Stuckey
Signature of Affiant

Address Sumter County Sheriffs Dept.
Sumter, S. C. 29150

Phone: 773-1561

STATE OF SOUTH CAROLINA # ARREST WARRANT

COUNTY OF Sumter

[or MUNICIPALITY OF _____]

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

It appearing from the above affidavit that there are reasonable grounds to believe that Anthony Wayne Turner (name of defendant) did on Feb. 5, 19 89, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

Simple Possession of Marijuana in Violation of Section 44-53-370 of the 1976 Codes of Laws of S. C. as Amended (3rd Offense)

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

Done at Sumter, S.C.
on Feb. 6, 19 89.

William Sanders (L.S.)
Signature of Judge

Judge William Sanders

Form Approved by
S.C. Attorney General
May 13, 1983
SCCA / 518 (REV. 7/87)

FORM CONTINUES ON BACK
ORIGINAL

m 16.1

W-43- 91-0021

003145

Form Approved by
S. C. Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA

SID# 89-GS-43-400

ARREST WARRANT
PROBATION

COUNTY OF Sumter

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Sumter, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Anthony Turner

did on the 30th day of January, 19 91, violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE

Violation of Probation pursuant to Section 24-21-450

Now, therefore, you are empowered and directed to arrest the said defendant and bring Anthony Turner before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Sumter, S. C. this 30th day of January, 19 91.

Ravenell D Cantley (L.S.)
Signature of Probation and Parole Agent
Ravenell D. Cantley, III

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

AFFIDAVIT

Personally appeared before me, one Ravenell D. Cantley, III, who, first being duly sworn, deposes and says that [name of defendant] Anthony Turner

did within this County and State on the 30th day of January, 19 91, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

By violating conditions of Probation 4, 12 and 16 ordered in Cause Number 89-GS-43-400 by the Sumter County Court of General Sessions.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By failing to follow the advice and instructions of his Agent; By failing to report to his Agent as directed (last report 6-21-90); By failing to pay Supervision Fees as ordered (arrears $220.00).

Sworn to and Subscribed before me

this 30th day of January, 19 91.

T. J. Lowery (L.S.)
Signature of Notary Public

Thomas J. Lowery
My Commission Expires 4-18-2000

Ravenell D. Cantley
Affiant Ravenell D. Cantley, II

Address 115 N. Harvin
Sumter, SC 29150

Phone 778-5185

(Form Continues on Back)

RETURN

2/22/, 1991

Constable or
Law Enforcement Officer

003146

A copy of this Arrest Warrant was delivered by me to the following defendant:

Anthony Turner

on the 22 day of Feb.,

19 91

Constable or
Law Enforcement Officer

This Warrant is certified for service in _____

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

_____ (L.S.)
Signature of Judge

$220.00 Cash/Release
Sol. 3/1/91

STATE OF SOUTH CAROLINA

County of Sumter 89-400

91 MAR -6 AM 9:37

CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE
against

4/24/91

Anthony Turner

ARREST WARRANT

Offense Violation of Probation

Code Section 24-21-430

Date January 30, 1991

Officer and Agency S.C. Department of Probation, Parole, & Pardon Services

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name Anthony Turner

Address [redacted]

Phone _____

Sex M Race W Height 6'0"

Weight 145 Birthdate [redacted]

Social Security Number [redacted]

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____, 19____,

with _____,
Attorney for Defendant.

Decision: _____

BAIL

Date Set _____, 19____

Magistrate _____

Amount _____

Surety _____

7028

003147

STATE OF SOUTH CAROLINA
COUNTY OF Sumter
STATE OF SOUTH CAROLINA

Ticket or Warrant No.: 443-91-0021

IN THE (X) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF _____

Anthony Turner
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Viol Prob

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☐ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $_____.

3. That the defendant shall appear at (check one):
☐ the term of the court of general sessions beginning on [Date:] 2/22/91 at [Time:] __:__ o'clock, ___.M., at [Place:] _____
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] __:__ o'clock, ___.M., at [Place:] _____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant AT

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Signature of Judge — 2/22/91 Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or b

I [redacted] understand the conditions of my release and the penalties applicable to me in th[redacted] o appear as required.

Anthony Turner
Signature of Defendant

2/22/91
Date

Attorney Representing Accused (If known)

ORI[redacted]SE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Trial Court – Copy for the Defendant

SCCA/511 (3/90) FORM CONTINUES ON BACK

7029

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:_____
Name of person or organization

_____ _____ _____ _____
Address City State/Zip Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

_____

_____

_____

_____

_____

c. ☐ Part-time Release. The defendant will be released from custody from ___:___ o'clock, ___.M. to ___:___ o'clock, ___.M. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

_____

_____

_____

_____

_____

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $_____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

_____ _____
Name of Surety (Printed or Typed) Signature of Surety

_____ _____
Address of Surety Signature of Judge

_____ _____
City/State/Zip Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 7, 1990

003149

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES TO BE USED IN CRIMINAL CASES IN WHICH AN ARREST WARRANT HAS BEEN ISSUED (INCLUDING TRAFFIC CASES)

The checklist is to be used in all criminal cases on which action is taken pursuant to an arrest warrant (including traffic cases), whether triable in Municipal, Magistrate or General Sessions Court. The checklist should be used in compliance with the Orders of the Chief Justice. The checklist should be used only in those cases where an arrest warrant is issued, not in traffic cases where a Uniform Traffic Ticket is used. The checklist should be attached to every arrest warrant at the time of the bail proceeding or first appearance of the defendant before a magistrate or municipal judge.

The checklist should be retained in the office of the judge for three (3) years, at the end of which time it may be detached from the warrant, and disposed of. It should be transmitted to the Clerk of Court in cases for trial in the circuit court. It should be transmitted to the Clerk of Court in appeals.

Judge Wm Sanders County Sumter Warrant No(s): C334444

State v. Anthony W. Turner Offense(s) Poss Marij 3rd offense

I. **BOND PROCEEDING AND CONDITIONS OF BOND** (For Non-Bailable Offenses, Proceed to Section II).

1. Date of bond proceeding 2/6/89

2. Was the defendant informed in person by the judge that he would be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes ✓ No ____

3. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes ✓ No ____

4. Which Bail Proceeding form was used? Form 1 ____ Form 2 ✓

5. The defendant was informed that he must appear at SCCC [place of trial or appearance] on 4-10, 19 89 [date of trial or appearance.]

6. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ✓ No ____

7. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes ✓ No ____

II. **FIRST APPEARANCE OF DEFENDANT FOR NON-BAILABLE OFFENSES**

8. Date of first appearance ____

9. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ____ No ____

10. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes ____ No ____

III. **RIGHTS OF THE DEFENDANT**

11. The Defendant was informed that he has a right to a trial by jury, as provided in the Sixth Amendment to the United States Constitution, and Article I, Section 14 of the South Carolina Constitution.
Yes ✓ No ____

12. The Defendant was informed that pursuant to the Fifth Amendment to the United States Constitution, he has the right to remain silent, and that anything he says can be used against him in a court of law.
Yes ✓ No ____

13. The Defendant was informed that he has the right to talk to a lawyer and have a lawyer present at any time during interrogation or questioning by law enforcement officers. Yes ✓ No ____

IV. PROCEDURE WHERE PRISON SENTENCE MIGHT BE IMPOSED

14. In all criminal cases within the trial jurisdiction of General Sessions Court, the defendant was informed of the following as provided by Supreme Court Rule 51. Yes✓ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

15. In cases within the trial jurisdiction of the magistrate or municipal court in which a prison sentence is likely to be imposed following any conviction, the defendant was informed when the case was called for disposition of the following as provided by Supreme Court Rule 51, and the defendant did waive his right to have appointed counsel of the services of the Public Defender.

Yes✓ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this _____ day of _____, 19_____.

_____ Signature of Judge

_____ Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This _____ day of _____, 19_____. _____ Judge

16. In cases within the trial jurisdiction of the circuit court, the defendant was released on the condition that he report within an appointed time to the Clerk of Court or other officer for the purpose of securing to the accused the right to counsel.

To report on:_____ Date To report to:_____ Person

. . . . . .

_____ Judge

_____ Date

Ticket Or Warrant No. I-23443
003151

STATE OF SOUTH CAROLINA
COUNTY OF Aiken

IN THE
(X) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

v.

Anthony W. Towne
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

(Bond Proceeding Form 2)

Offense Charged: Simple Possession of Marijuana 3rd Offense

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

( ) The release of the defendant on recognizance will not reasonably assure his appearance as required.

(X) The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: Nature of the offense

Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required, to answer the charge made against him and do what shall be ordered by the court, and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

( ) The defendant acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

( ) The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this order.

APPEARANCE RECOGNIZANCE WITH SURETY

(X) The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtness to the State in the amount of $ 5000.00

IT IS FURTHER ORDERED:

3. That the defendant shall appear at Aiken County Court House April 10, 89 10 AM
Place of Trial — Date — Time

Initials of Defendant AWT

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

4. That those conditions described on the reverse side which are marked are also imposed.

Signature of Judge — 2/10/89 Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I [redacted] ons of my release and the penalties applicable to me in the event

Anthony Towne (L.S.)
Signature of Defendant

2/10/89
Date

Attorney Representing Accused (If known)

[redacted] VERY BAIL PROCEEDING IN WHICH IT IS USED
or the Defendant

SCCA/511 (5/86)

7033

003152

SPECIAL CONDITIONS OF RELEASE

a. ( ) Placement in custody. The defendant is placed in the custody of: _____
Name of person or organization

_____ _____ _____ _____
Address City State Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
Signature of Custodian (If Appointed) Date

b. ( ) Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

_____

_____

_____

_____

c. ( ) Part-Time Release. The defendant will be released from custody from _____ a.m./p.m. to _____ a.m./p.m. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ( ) Other Conditions. The defendant agrees that he will notify the court promptly if he changes his address from the one contained in this order and that he will comply with the following other conditions of release: _____

_____

_____

_____

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19_____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $_____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum ackn[redacted] over all his debts and liabilities, and exclusive of property exempt from execution.

X [redacted] _____ (L.S.)

X _____

X _____ S.C.

X [redacted] _____ (L.S.)

X _____

X _____

Form Approved by
S.C. Attorney General
Section 17-15-40
September 3, 1986

Approved
2/6/89

7034

FORM 10.1

Form Approved by
S. C. Attorney General
Section 17-13-160
March 15, 1978

003153

W-43-90-0077

STATE OF SOUTH CAROLINA

SID# 270949-02

ARREST WARRANT
PROBATION

COUNTY OF Sumter

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Sumter, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Anthony Turner

did on the 16th day of March, 19 90, violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE

Violation of probation pursuant to Section 24-21-450.

Now, therefore, you are empowered and directed to arrest the said defendant and bring Anthony Turner before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Sumter, S. C. this 16th day of March, 19 90.

Ravenell D Cantley III (L.S.)
Signature of Probation and Parole Agent
Ravenell D. Cantley, III

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

AFFIDAVIT

Personally appeared before me, one Ravenell D. Cantley, III who, first being duly sworn, deposes and says that [name of defendant] Anthony Turner

did within this County and State on the 16th day of March, 19 90, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

By violating conditions of Probation 4, 12, 13 & 16 ordered in Cause Number 89-GS-43-400 by the Sumter County Court of General Sessions.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By failing to follow the advice and instructions of his Agent; By failing to report to his Agent as directed (last report 11-16-89); By failing to pay Supervision Fees as directed (arrears $160.00); By failing to pay all Fines as directed (arrears $800.00).

Sworn to and Subscribed before me

this 16th day of March, 19 90.

Marcell R Merolli (L.S.)
Signature of Notary Public
Marcell R. Merolli
My Commission Expires 5-4-99

Ravenell D Cantley III
Affiant
Ravenell D. Cantley, III
Address 115 N. Harvin St.
Sumter, S.C. 29150
Phone 778-5185

(Form Continues on Back)

RETURN

3-16-, 1990

Constable or
Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

on the 16th day of March,

19 90.

Constable or
Law Enforcement Officer

This Warrant is certified for service in _____

_____

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

_____ (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

County of Sumter 89-400

Sid 270949-RECORDED

90 MAR 20 PM 4:27

THE STATE

against

U.V. PLAYER, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

Anthony Turner

ARREST WARRANT

Offense Violation of Probation

Code Section 24-21-430

Date March 16, 1990

Officer and Agency S.C. Probation, Parole, and Pardon Services

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name Anthony Turner

Address [redacted]

Phone _____

Sex M Race W Height 6'0"

Weight 145 Birthdate [redacted]

Social Security Number [redacted]

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____, 19____,

with _____,
Attorney for Defendant.

Decision: _____

BAIL

Date Set _____, 19____

Magistrate _____

Amount 1000 w/o Surety

Surety _____

003154

7036

003155

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES TO BE USED IN CRIMINAL CASES IN WHICH AN ARREST WARRANT HAS BEEN ISSUED (INCLUDING TRAFFIC CASES)

The checklist is to be used in all criminal cases on which action is taken pursuant to an arrest warrant (including traffic cases), whether triable in Municipal, Magistrate or General Sessions Court. The checklist should be used in compliance with the Orders of the Chief Justice. The checklist should be used only in those cases where an arrest warrant is issued, not in traffic cases where a Uniform Traffic Ticket is used. The checklist should be attached to every arrest warrant at the time of the bail proceeding or first appearance of the defendant before a magistrate or municipal judge.

The checklist should be retained in the office of the judge for three (3) years, at the end of which time it may be detached from the warrant, and disposed of. It should be transmitted to the Clerk of Court in cases for trial in the circuit court. It should be transmitted to the Clerk of Court in appeals.

Judge A.K. Warren County Sumter Warrant No(s). 270949-00

State v. ANTHONY TURNER Offense(s) _____

I. BOND PROCEEDING AND CONDITIONS OF BOND (For Non-Bailable Offenses, Proceed to Section II).

1. Date of bond proceeding 8/

2. Was the defendant informed in person by the judge that he would be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes _____ No _____

3. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes_____ No_____

4. Which Bail Proceeding form was used? Form 1 _____ Form 2 SCCA

5. The defendant was informed that he must appear at Sum Hall of Ct. 19 91 [place of trial or appearance] on _____ [date of trial or appearance.]

6. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes_____ No_____

7. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes_____ No_____

II. FIRST APPEARANCE OF DEFENDANT FOR NON-BAILABLE OFFENSES

8. Date of first appearance _____

9. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes_____ No_____

10. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes_____ No_____

III. RIGHTS OF THE DEFENDANT

11. The Defendant was informed that he has a right to a trial by jury, as provided in the Sixth Amendment to the United States Constitution, and Article I, Section 14 of the South Carolina Constitution.
Yes_____ No_____

12. The Defendant was informed that pursuant to the Fifth Amendment to the United States Constitution, he has the right to remain silent, and that anything he says can be used against him in a court of law.
Yes_____ No_____

13. The Defendant was informed that he has the right to talk to a lawyer and have a lawyer present at any time during interrogation or questioning by law enforcement officers. Yes_____ No_____

300.00 TRAF
250.00 TRAF
1000.00 SW
5000.00
10000
160

SCCA/507 (9/85)

7037

IV. PROCEDURE WHERE PRISON SENTENCE MIGHT BE IMPOSED

14. In all criminal cases within the trial jurisdiction of General Sessions Court, the defendant was informed of the following as provided by Supreme Court Rule 51. Yes_____ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

15. In cases within the trial jurisdiction of the magistrate or municipal court in which a prison sentence is likely to be imposed following any conviction, the defendant was informed when the case was called for disposition of the following as provided by Supreme Court Rule 51, and the defendant did waive his right to have appointed counsel of the services of the Public Defender.

Yes_____ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this _____ day of _____, 19_____.

_____ Signature of Judge

_____ Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This _____ day of _____, 19_____. _____ Judge

16. In cases within the trial jurisdiction of the circuit court, the defendant was released on the condition that he report within an appointed time to the Clerk of Court or other officer for the purpose of securing to the accused the right to counsel.

To report on:_____ Date To report to:_____ Person

. . . . . .

_____ Judge

_____ Date

GJ 4-10-89

NAME Duncan Anthony Wayne IND.# 89-400

ADDRESS [redacted] WARRANT # C-334443

Sumter S.C. PHONE # 481-8337

D.O.B. [redacted] RACE/SEX W/M SSN [redacted]

OFFENSE Simp. Poss. of Marij. (Cnt) 2ND D.L.#

MAGISTRATE MKN

D.O.O. 2/5/89 D.O.A. 2/6/89 DATE FILED 2-9-89

ATTORNEY None PH RESULTS

CO-DEF: Pleads to 2ND offense

SENTENCE: 1yr (AND)/OR $1000.00

SUSPENDED TO 4m (AND)/OR $ 1000.00 $1240.25

PROBATION: 2yrs

SPECIAL CONDITIONS:

work release recommended

DATE: 4-10-89 JUDGE: DJ Mahaney COURT REPORTER: V. Roland

$5,000 Surety Prop: Claude J. Lenser

GENERAL SESSIONS DOCKET SHEET

STATE VS

T U R N E R A N T H O N Y W A Y N E
LAST FIRST MIDDLE

AKA

WARRANT TRACKING NUMBER: 89GS4304004 —

LAST FIRST MIDDLE

[redacted]
STREET ADDRESS

Sumter
CITY

SC
STATE

29150
ZIP CODE

[redacted]
SOCIAL SECURITY NUMBER

SEX CODE 1. MALE 2. FEMALE: 1 (SEX)

RACE CODE 1. WHITE 2. BLACK 3. OTHER: 1 (RACE)

[redacted]
DATE OF BIRTH

STATE

unk
DRIVERS LICENSE NUMBER

WARRANT/TICKET NO.: C — 334443

NO WARRANT/TICKET

OFFENSE CHARGED: 01 COUNTS; 182 OFFENSE CODE; S. POss. Marij., 3rd off OFFENSE NAME

DATE OF ARREST: 02/06/89

DATE RECEIVED BY CLERK: 02/09/89

SUMMARY JUDGE CODE

1. DATE TRANSMITTED TO SOLICITOR AND S.C.C.A. 02-14-89

2. DATE DISPOSITION RECEIVED BY CLERK 04-10-89

3. DATE DISPOSITION SENT TO S.C.C.A. 04-14-89

4. DATE TRANSMITTED TO SUMMARY COURT (FOR REMANDED WARRANTS ONLY)

DATE OF DISPOSITION: 04/10/89

INDICTMENT NO. ____ CHECK "NONE" IF NO INDICTMENT ____ NONE COUNTS ____

DISPOSITION
1. ✓ GUILTY PLEA
2. TRIAL (GUILTY)
3. TRIAL (NOT GUILTY)
4. DISM/NOL PROS/PROS ENDED
5. PTI*
6. JUDICIAL DISMISSAL
7. REMANDED *
8. DISMISSED AT PRELIM.
8. NO BILL
8. OTHER *
9. JUDICIAL COMMITMENT

* EXPLAIN:

JUDGE: 25 David F. McInnis
CODE NAME

Virginia Roland
COURT REPORTER

~~N/A~~ NONE
DEFENSE ATTORNEY

OFFENSE OF CONVICTION: 01 COUNTS; 182 OFFENSE CODE; S. Poss. Marij. 2ND OFFENSE NAME

SENTENCE: 1yr & $1000.00 susp to 4 months & $1000.00

2yrs prob

Judge recommends work release

Martha McElveen Horlick
SOLICITOR

D. Mathis, Deputy
CLERK

003159

7041

SCCA / 211 (3/88) SOUTH CAROLINA COURT ADMINISTRATION CLERK'S ORIGINAL

MARY K. HERBERT
Magistrate
Phone: 775-2365

Sumter County

Sumter, South Carolina

29150

P.O. Box 1394
115 North Harvin Street
Sumter, South Carolina
29151-1394

February 24, 1989

Anthony Wayne Turner
Rt. 2 Box 482
Sumter, S.C. 29150

Re: Preliminary Hearing

Dear Mr. Turner,

As per your request, a Preliminary Hearing has been scheduled for you on Friday, March 10, 1989, commencing at 2:45 p.m. in this office. If you are not present, the hearing will be waived.

According to my records, you do not have an attorney to represent you. If you have retained one, please be sure to advise your attorney of the scheduled hearing. Thank you for your co-operation in this matter.

Sincerely,

Kathryn Pace, Clerk
Magistrate's Office
Sumter County

003161

Sumter County

O.V. PLAYER, JR.
Clerk of Court

Sumter, South Carolina
29150

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT ACCORDING TO THE ASSESSED VALUATION OF REAL ESTATE FOR SUMTER COUNTY IN THE NAME OF Claude O Turner, HE/SHE HAS REAL ESTATE WORTH $ ~~$~~5000.00 OVER ANY RECORDED MORTGAGES AND CONTRACTS OF SALE.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 6 DAY OF February, 1989.

O. V. Player Jr.

CLERK OF COURT, SUMTER COUNTY

OK
ORK

7043

003162

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

The State -vs- Anthony W. Turner

Indictment Number: 89-GS-43-400

Maximum Sentence: 1 year / $1000

Court Reporter: Virginia Roland Attorney: none

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his arraignment, pleads guilty as charged to Possession of Marijuana (3rd Offense)

Attest: O. V. Player, Jr. Anthony W. Turner

O. V. Player, Jr., Clerk of Court Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of One (1) year ~~months~~/years and/~~or~~ to pay a fine of $ 1,000.00; provided upon the service of Four (4) months/~~years~~ and/~~or~~ payment of $ 1,000.00, plus pay/~~waive~~ costs and assessments as applicable*, the balance suspended with probation for Two (2) ~~months~~/years.

Restitution Yes/No For physical injury $

property damage $

to be paid

(Pay to Victim's Compensation if Subrogated)

Other conditions

work release recommended

Date APR 10 1989

David F. McInnis
Presiding Judge, Third Judicial Circuit

Fine $

*Cost and Assessments

Non-waivable $

Not Waived $

TOTAL COSTS AND ASSESSMENTS $

TOTAL AMOUNT DUE $

O. V. Player, Jr.
Clerk of Court

7044

Form 2

003163

STATE OF SOUTH CAROLINA
COUNTY OF Sumter

COURT General Sessions
April 10th, 19 89
Term

STATE

-VS-

Anthony W. Turner
Defendant

PROBATION ORDER

No. 89-GS-43- 400

OFFENSE Possession of Marijuana (2nd)

The sentence of the Court is that the defendant, Anthony W. Turner, shall be in the custody of the Board of Corrections of the State of South Carolina for a term of One (1) year (and/~~or~~) pay a fine of $ 1,000.00; provided that upon the service of 4 months (and/~~or~~) payment of $ 1,000.00+* that the balance of the aforesaid sentence be and the same is hereby suspended and that the said defendant is hereby placed on probation for a period of 2 years under the supervision of the South Carolina Board of Probation, Parole, and Pardon Services and its agents, subject to the provisions of the laws of this State and the rules and orders of the Board and its agents, with leave that the suspended sentence may be revoked at any time during the period of probation.

THAT AS CONDITIONS OF PROBATION THE AFORESAID SHALL:

1. Report in person within 48 hours after arrival at his destination to the Supervising Agent.
2. Restrict his activities as directed by his Supervising Agent and agree to future modifications by duly authorized representatives of the Court.
3. Refrain from changing his residence or employment without first procuring the consent of his supervising agent.
4. Make a complete and truthful report to his Supervising Agent each month and whenever instructed to by his Supervising Agent until his final release.
5. Not use a controlled substances, except when properly prescribed by a licensed physician.
6. Not consume alcoholic beverages to excess or visit establishments whose primary business is the dispensation and consumption of alcoholic beverages.
7. Avoid injurious habits and shall associate only with law-abiding persons.
8. In all respects, conduct himself honorably, work diligently at a lawful occupation, and support his dependents, if any, to the best of his ability.
9. Refrain from the violation of any Federal, State, or Local penal law, and shall contact his supervising agent immediately if arrested or questioned by a law enforcement official.
10. Not leave the State without authorization and shall waive all extradition rights and process and agree to return to South Carolina when directed to by the Court or pursuant to a warrant.
11. Not possess or purchase a weapon.
12. Promptly and truthfully answer all inquiries from the Court or Supervising Agent and allow the Agent to visit at any time in his home, at his employment site or elsewhere, and carry out all instructions given by the Agent.
13. Pay any restitution, fines, or other payments which have been ordered as a part of this order.
14. Immediately notify his supervising agent in case of unemployment and/or absenteeism from work and in case of illness or injury.
15. Submit to urinalysis test and/or a blood test when requested by his Supervising Agent and agree that the test results may be used as evidence that he did nor did not violate these conditions.
16. Pay a supervision fee to the South Carolina Department of Probation, Parole, and Pardon Services of $10 per week while under intensive supervision and $240 per year while under any other level of supervision during conditional release.

Additional Conditions ordered by the Court: *Pay $40.25 Court Cost, $200.00 Assessment fee, total amount of fine, CC & AF = $1,240.25 to Sumter County Clerk of Court at the rate of $100.00 per month, beg. 30 days upon release. Recommend that defendant be placed on work release.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this district, or if defendant is under bond, then such bond shall remain in full force until said defendant reports to the Probation Office. The conditions of probation begin (~~under~~/after service of required portion of suspended sentence). It is further ordered that the Clerk of Court in his office and that he forthwith forward a copy (certified) of this order to the Probation Office or the South Carolina Department of Probation, Parole, and Pardon Services.

This 10th day of April,
19 89, Sumter, SC.

Presiding Judge
David F. McInnis, Third Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or without order, by the Probation Agent. At any time within the period of your probation, the Court may, if it sees fit, impose the judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order of Probation and the Conditions set out therein. I agree to comply with such conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: Dupree Cantley

Signed: X
Probationer

Signed this 11th day of April, 19 89 at Sumter, SC.

7045

Ticket Or Warrant No.: 270949-02
003164

STATE OF SOUTH CAROLINA
COUNTY OF Sumter
STATE OF SOUTH CAROLINA

v.

Anthony Turner
Name of Defendant

IN THE ( ) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF _____

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

(Bond Proceeding Form 2)

Offense Charged: Viol. Prob

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

( ) The release of the defendant on recognizance will not reasonably assure his appearance as required.
( ) The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

Dec - Jan - Feb -
100.00 - Sup Fees
$1000 fine

Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required, to answer the charge made against him and do what shall be ordered by the court, and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

( ) The defendant acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

( ) The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this order.

APPEARANCE RECOGNIZANCE WITH SURETY

( ) The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtness to the State in the amount of $_____.

IT IS FURTHER ORDERED:

3. That the defendant shall appear at Sumter County Courthouse
Sumter SC
Place of Trial
All of Court
Date
_____
Time
Initials of Defendant

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

4. That those conditions described on the reverse side which are marked are also imposed.

Mary K Herbert 3/16/90
Signature of Judge Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

[redacted] stand the conditions of my release and the penalties applicable to me in the event [redacted]ed.

_____ (L.S.)
Signature of Defendant
3/16/90
Date

_____
Attorney Representing Accused (If known)

OMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

SCCA/511 (9/86) Original Copy for the Trial Court - Copy for the Defendant

FORM CONTINUES ON BACK

7046

Form 9
State of South Carolina

003165

IN THE COURT OF GENERAL SESSIONS

County of Sumter

No. 89-GS-43 400

STATE

-VS-

Anthony Turner
DEFENDANT

RECORDED
90 APR 20 PM 3:39
O.W. PLAYER, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

ORDER

Whereas the above named defendant has been charged with violating the conditions of probation ordered on April 10, 19 89 in the Court of General Sessions of Sumter County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated March 16, 19 90 a copy of which is incorporated by reference.

After considering the violations:

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the sentence identified above, and/or pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence (and/or) pay $_____; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years (and/or) pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☒ IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ Additional Conditions ordered by the Court:

This 20th day of April, 19 90

Presiding Judge

Sumter, SC

Third Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: Dupree Cantley Jr.

Signed: [signature]
Probationer

Signed this 20th, day of April, 19 90, at Sumter, SC

Form 9
State of South Carolina

003166

IN THE COURT OF GENERAL SESSIONS

County of Sumter

No. 89-GS-43-400

STATE

-VS-

Anthony Turner
DEFENDANT

SID# 270949-01

ORDER

Possession of Marij 2nd
Name of Offense

10-19-62
SCDC# or DOB

Whereas the above named defendant has been charged with violating the conditions of probation ordered on April 10, 19 89 in the Court of General Sessions of Sumter County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated January 30, 19 91 a copy of which is incorporated by reference.

[X] IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve 1 ~~months~~/(years) of the 1 ~~months~~/(years) sentence identified above, and/or pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

[ ] IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original _____ months/years sentence (and/or) pay $_____; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

[ ] IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years (and/or) pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

[X] The defendant has previously served 4 (months)/~~years~~ on this sentence.

[ ] IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

[ ] Additional Conditions ordered by the Court:

This 26th day of April, 19 91

Sumter, SC

Dan Lanier, Presiding Judge

3rd Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: _____ Signed: _____
Probationer

Signed this _____ day of _____, 19_____, at _____, SC.

C. 33443

COMMITTMENT — RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 2/6/89

Defendant Anthony W. Turner

Offense Simple Possession of Marijuana 3rd Offense

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☑ Amount of Bond $5,000.00
- ☑ Type of Bond Surety
- ☑ Bond Paid Property Bond
- Sentence:
- ☐ Charges Withdrawn
- ☐ Hold For:
- ☐ Others:
- ☑ Trial Officer GV
- Time Released
- ☑ Arresting Officer D. Flowers

(Releasing Magistrate (or) Receiving Official)

C. 33443

COMMITTMENT — RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 2/6/89

Defendant Anthony W. Turner

Offense Simple Poss of Marijuana 3rd Offense

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☑ Amount of Bond $5,000.00
- ☑ Type of Bond Surety
- ☑ Bond Paid
- Sentence:
- ☐ Charges Withdrawn
- ☐ Hold For:
- ☐ Others:
- ☑ Trial Officer GV
- Time Released
- ☒ Arresting Officer D. Flowers

(Releasing Magistrate (or) Receiving Official)

003167

7049

COMMITTMENT — RELEASE

SUMTER COUNTY CORRECTIONAL CENTER

Date 3/16/90

Defendant Anthony Jones

Offense Viol. Prob

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☐ Amount of Bond $100.00 w/out
- ☐ Type of Bond _____
- ☐ Bond Paid _____

Sentence: _____

- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: GS - Call of Court
- ☐ Trial Officer _____

Time Released _____

- ☐ Arresting Officer Prob

M. K. Herbert

(Releasing Magistrate (or) Receiving Official)

7050

003168

COMMITTMENT — RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 3/20/91

Defendant (illegible)

Offense Viol of Probation

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☐ Amount of Bond $2000.00
- ☐ Type of Bond _____
- ☐ Bond Paid _____

Sentence: _____

- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☐ Trial Officer _____

Time Released _____

- ☐ Arresting Officer _____

(Releasing Magistrate (or) Receiving Official)

7051

COMMITTMENT — RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 3/20/91

Defendant [illegible]

Offense Viol of Probation

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☒ Amount of Bond $2000.00
- ☒ Type of Bond Bond
- ☐ Bond Paid _____

Sentence: _____

- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☒ Trial Officer J.S.

Time Released _____

- ☒ Arresting Officer [illegible]

(Releasing Magistrate (or) Receiving Official)

003169

003189

STATE OF SOUTH CAROLINA)
COUNTY OF Sumter)
STATE VS. Anthony Wayne Turner)
AKA:)
Race: W Sex: M Age:)
DOB: [redacted] SS#: [redacted])
Address:)
City, State, Zip Sumter, SC 29150)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2002 -GS- 43 - 683
A/W#: 2-236216
Date of Offense: 6-9-00
S.C. Code §: 16-13-180
CDR Code #: 0 1 5 1 1 3
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO: Receiving stolen goods
in violation of § 16-13-180 of the S.C. Code of Laws, bearing CDR Code # 0 1 5 1 1 3
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☑ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 3 ~~day/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that ~~upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*~~; the balance is suspended with **probation** for 18 months/~~years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

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

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

Deborah G. Mathis
Clerk of Court/ Deputy Clerk
Court Reporter: Margaret Sullivan

PRESIDING JUDGE
Judge Code: 0 1 7 1 2 1 7
Sentence Date: 06-18-04

White – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant SCCA/217 (7/2003)

7052

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT WITH THE AFORESAID NAME OF ANTHONY WAYNE TURNER SHOWN THEREON:

COUNT FIVE – RECEIVING STOLEN GOODS

That ANTHONY WAYNER TURNER did in Sumter County on or about June 9, 2000, violate Section 16-13-180 of the Code of Laws of South Carolina (1976), as amended in that he did buy, receive and/or have certain personal goods of Lakewood Links Golf Course described as follows: Cushman truckster and miscellaneous tools, of the value of more than one thousand dollars, but less than five thousand dollars, such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said ANTHONY WAYNER TURNER knowing such goods to have been stolen.

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

C. Kelly Jackson

SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR
BURGLARY (3rd Degree),
BURGLARY (2nd Degree) AND
GRAND LARCENY (TWO COUNTS)

At a Court of General Sessions, convened on September 5, 2002, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – BURGLARY (3rd Degree)

That ANTHONY WAYNE TURNER did in Sumter County on or about June 9, 2000, enter a building of Chris Steele at 3000 Tindal Road without consent and with the intent to commit a crime therein, in violation of Section 16-11-313, South Carolina Code of Laws (1976), as amended.

COUNT TWO – BURGLARY (2nd Degree)

That ANTHONY WAYNE TURNER did in Sumter County on or about June 9, 2000, enter a building at Lakewood Links Golf Course, without consent and with the intent to commit a crime therein and said defendant entered or remained in said building in the nighttime in violation of Section 16-11-312(B), South Carolina Code of Laws of South Carolina (1976), as amended.

COUNT THREE – GRAND LARCENY

That ANTHONY WAYNE TURNER did in Sumter County on or about June 9, 2000, violate Section 16-13-30(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously take and carry away the personal goods of Chris Steele, of the value of more than One Thousand dollars, described as follows: assorted tools, toolbox, chain saw and other items with intent to deprive the owner thereof permanently of such goods.

COUNT FOUR – GRAND LARCENY

That ANTHONY WAYNE TURNER did in Sumter County on or about June 9, 2000, violate Section 16-13-30(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously take and carry away the personal goods of Lakewood Links Golf Course, of the value of more than Five Thousand dollars, described as follows: Cushman truckster and miscellaneous tools with intent to deprive the owner thereof permanently of such goods.

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

C. Kelly Jackson
SOLICITOR

7055

WITNESSES

SHERIFF'S OFFICE

John Davis

03152

ARREST WARRANT NUMBER

G236816 (1 & 3); G457313 (2 & 4)

D/A: 12/10/01

ACTION OF GRAND JURY

True Bill

B.T. Hatfield

Foreperson of Grand Jury

Date: 4-5-02

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-43- 1683

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2002

THE STATE

vs.

✓ ANTHONY WAYNE TURNER

6-18-04 Defendant waives presentment of Count 5 (Receiving Stolen Goods) to the Grand Jury

Anthony Wayne Turner

Indictment for

BURGLARY (3rd Degree),
BURGLARY (2nd Degree) AND
GRAND LARCENY (TWO COUNTS)

C. KELLY JACKSON, SOLICITOR

7056

GENERAL SESSIONS DOCKET SHEET FOR SUMTER COUNTY

003193

2001-683

REPORT RUN DATE - 12/18/2001

INDICTMENT NUMBER: GS43 ENTRY DATE:12/18/2001 LAST UPDATE:12/18/2001

DEFENDANT NAME: TURNER, ANTHONY WAYNE AKA:

ADDRESS: [redacted] CITY:SUMTER STATE:SC ZIP:29150

SOCIAL SECURITY NUMBER: [redacted] SEX:M MALE RACE:W WHITE

DATE OF BIRTH: [redacted] DRIVERS LICENSE STATE/NO.: SC [redacted]

WARRANT OR TICKET NUMBER:G236816 COUNTS:01 OFFENSE CODE: 427

NO WARRANT? Y NAME OF OFFENSE:Burglary / Burglary (After June 20, 1985) - Third

DATE OF ARREST:12/10/2001 DATE RECD BY CLERK:12/18/2001 SUMMARY JUDGE: 944

RESTORE DATE:

DISP DATE: 06-18-04 DISP TYPE: (1)

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 127 CNewman REPORTER: 3 MS

CONVICTION: CTS:01 OFFENSE: 513 RSG

SENTENCE: 3 yrs susp to 18 m prob

DEFENSE ATTORNEY: 39 RW Burkett PROSECUTING ATTORNEY: 125 WJC

COMMENTS: CASE #

1/28 75

#91
06-18-04
1223pm

7057

003194

ARREST WARRANT

G- 236816

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of RECORDED

01 DEC 18 AM 8:47

Q.V. PLAYER, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE

against

Anthony Wayne Turner
Address: [redacted] Ed
Sumter S.C.
Phone: 481-8330 SSN: [redacted]
Sex: M Race: W Height: 6' Weight: 155
DL State: — DL #: —
DOB: [redacted] Agency ORI #: 0430000
Prosecuting Agency: Sumter S.O.
Prosecuting Officer: Inv. John Davis
Offense: Burglary 3rd
Offense Code: 0427
Code/Ordinance Sec. 16-11-313

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was ~~delivered~~ to defendant Anthony W. Turner on 12-10-01

D E Sa
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DOC 12-14-2001 | $15,000 | Surety Bond

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of Sumter

AFFIDAVIT

1-2-02

Form Approved by S.C. Attorney General's Office SCCA 618

DECISION: Prob Cause

Personally appeared before me the affiant Inv. John Davis who being duly sworn deposes and says that defendant Anthony Wayne Turner did within this county and state on or about 12-9-00 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Sumter) in the following particulars:

RECORDED
02 JAN -8 PM 2:36
Q.V. PLAYER, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

DESCRIPTION OF OFFENSE: 16-11-313 Burglary 3rd in violation of S.C. Code of Laws as Amended.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: The defendant did enter a building located at 3000 Tindal Rd by breaking out a side window. Once inside the defendant did take, steal and carry away assorted tools, toolbox, suitcase, chainsaw and a white cowboy hat all valued in excess of $1,000.00. This offense occurred on Tindal Rd in the County of Sumter, State of South Carolina.

P.C.: Investigations have collected physical and eyewitness evidence which indicates that the above named defendant did commit the above offense

Sworn to and subscribed before me on 6-10-00

Roger M. Gelzer (L.S.)
Signature of Issuing Judge

John T Davis Jr.
Signature of Affiant

Affiant's Address 107 E Hampton St
Sumter, SC

Affiant's Telephone 436-2015

CERTIFIED TRUE COPY OF ORIGINAL FILED

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of Sumter

ARREST WARRANT

Lillie L Britt
DEPUTY CLERK OF COURT
SUMTER COUNTY

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 6-9-00 defendant Anthony Wayne Turner did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Sumter) as set forth below:

DESCRIPTION OF OFFENSE: Burglary 3rd in violation of Section 16-11-313 of The 1976 S.C. Code of Laws as Amended

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

Roger M. Gelzer (L.S.)
Signature of Issuing Judge

Judge Code: 691

Judge's Address 115 North Harvin St.
Sumter, S.C.

Judge's Telephone 436-2400

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

GS 1-1-00

ARREST WARRANT

G- 236816

003195

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

RECORDED
01 DEC 10 AM 8:17
O.V. PLAYER, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE

against

Anthony Wayne Turner

Address: [redacted]
Sumter SC 29150

Phone: 481-8339 SS: [redacted]

Sex: M Race: W Height: 6' Weight: 155

DL State: — DL #: —

DOB: [redacted] Agency ORI #: 0430000

Prosecuting Agency: Sumter S.O.

Prosecuting Officer: Inv. John Davis

Offense: Burglary 3rd

Offense Code: 0427

Code/Ordinance Sec.: 16-11-313

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Anthony W. Turner on 12-10-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Dec 12-14 2001 | $15,000 | Surety | 1990 | 215
12/12/01 $15,000. Prop Claude T. Tuten 691

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Sumter)

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant Inv. John Davis who being duly sworn deposes and says that defendant Anthony Wayne Turner did within this county and state on 6-9-00 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Sumter) in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-313 Burglary 3rd in violation of S.C. Code of Laws as Amended

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: The defendant did enter a building located at 3000 Tindal Rd. by breaking out a side window. Once inside the defendant did take, steal and carry away assorted tools, toolbox, suitcase, chain saw and a white cowboy hat all valued in excess of $1,000.00. This offense occurred on Tindal Rd in the County of Sumter, State of South Carolina.

P.C.: Investigations have collected physical and eye witness evidence which indicates that the above named defendant did commit the above offense

Sworn to and subscribed before me on 6-10-00

Signature of Issuing Judge (L.S.)

John T. Davis Jr.
Signature of Affiant

Affiant's Address 107 E Hampton St
Sumter, SC

Affiant's Telephone 436-2015

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Sumter)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 6-9-00 defendant Anthony Wayne Turner did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Sumter) as set forth below:

DESCRIPTION OF OFFENSE: Burglary 3rd in violation of Section 16-11-313 of The 1976 S.C. Code of Laws as Amended

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

Signature of Issuing Judge (L.S.)

Judge Code: 691

Judge's Address 115 North Harvin St.
Sumter, S.C.

Judge's Telephone 436-2400

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

7058

SOV 12-17-01

6-376816 6-45958 003196

Ticket or Warrant No.:

STATE OF SOUTH CAROLINA
COUNTY OF Sumter
STATE OF SOUTH CAROLINA
v.
Name of Defendant

IN THE ( ) COURT OF GENERAL SESSIONS
(X) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Burg 3rd x2

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

Nature & circumstances of offense charged / Possible allegations from victim / other pending matters

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____(%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved by the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $ 5,000 OC

C/S D.S. to 01-01-02
D.S. to Hold 12-11-01

3. That the defendant shall appear at (check one):

☒ the term of the court of general sessions beginning on [Date:] 2/25/01 at [Time:] 9:30 o'clock, A M., at [Place:] 141 N. MAIN ST., SUMTER, SC and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of magistrate/municipal (circle one) court beginning on [Date:]_____ at [Time:]___:___ o'clock, ___M., at [Place:] 115 N. HARVIN ST., 1ST FLOOR, SUMTER, SC. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant [illegible]

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

[illegible]
Signature of Judge

12/11/01
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me [illegible] to appear as required.

[redacted]

[illegible]
Signature of Defendant

12/11/01
Date

Attorney Representing Accused (If known)

[illegible] ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90) FORM CONTINUES ON BACK

7059

003197

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
Name of person or organization

_____ _____ _____ _____
Address City State/Zip Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

_____

_____

_____

_____

_____

c. ☐ Part-time Release. The defendant will be released from custody from ___:___ o'clock, ___.M. to ___:___ o'clock, ___.M. on _____ on condition that he return to the custody of _____ _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

_____

_____

_____

_____

_____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 12th day of December, 2001, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $15,000.00, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Property

Claude T Jurrs
Name of Surety (Printed or Typed)

[redacted]

Signature of Surety

Signature of Judge

Date 12/12/01

Form Approved by
S.C. Attorney General
Section 17-15-40
March 4, 2000

G-236816
G 457 313

COMMITTMENT RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 12-12-01

Defendant Centrony Turner

Offense Burg 3rd (2)

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☒ Amount of Bond $15,000.00
- ☒ Type of Bond Surety
- ☒ Bond Paid Property Bonds Turner (Father)

Sentence:

- ☐ Charges Withdrawn
- ☐ Hold for:
- ☐ Others:
- ☒ Trial Officer GS 1-7-02 8:30am

Time Released

- ☒ Arresting Officer

Releasing Magistrate or Receiving Official

7061

G-236816 / G-457313

COMMITTMENT - RELEASE
SUMTER COUNTY CORRECTIONAL CENTER

Date 12/11/01

Defendant Anthony Wayne Turner

Offense Burg 3rd x 2

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☒ Amount of Bond 15K
- ☒ Type of Bond SM
- ☐ Bond Paid

Sentence:

- ☐ Charges Withdrawn
- ☐ Hold for:
- ☐ Others:
- ☒ Trial Officer GS 2/28/01

Time Released

- ☐ Arresting Officer Capt Neal

Releasing Magistrate or Receiving Official

003198

Sumter County
Clerk of Court

003199

O. V. Player, Jr.
Clerk of Court

Phone: 803-436-2227
FAX: 803-436-2223

Sumter County Courthouse
141 N. Main St., Sumter, South Carolina 29150

CLERK OF COURT
BOND CERTIFICATE

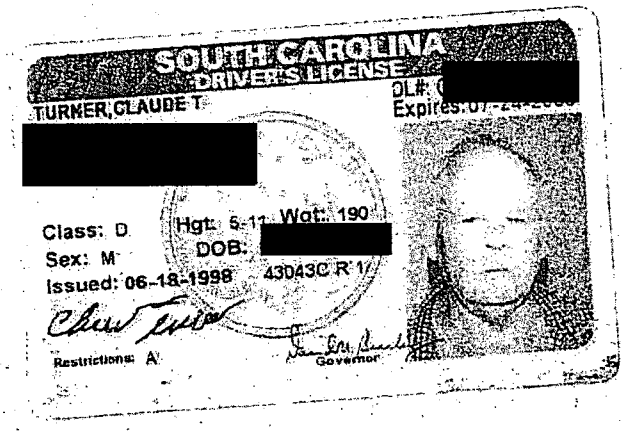
TO WHOM IT MAY CONCERN:

This is to certify that according to the assessed valuation of real estate for Sumter County in the name of Claude Turner he/she has real estate worth $15,000.00 over any recorded mortgages and contracts of sale. Said real estate is located at 3435 Barkley Rd, Sumter, S. C. 29154, tax map number 212-04-01-002 .

Given under my hand and official seal this 15th day of December 2001.

Kimberly Hedgepeth Deputy Clerk

Clerk of Court for
Sumter County, South Carolina.


SOUTH CAROLINA
DRIVER'S LICENSE
TURNER,CLAUDE T
[redacted]
Class: D
Sex: M
Issued: 06-18-1998
Hgt: 5-11
Wgt: 190
DOB: [redacted]
430430 R 1
Restrictions: A
Governor

003201

Anthony Turner
Name of Defendant

G236816 G 45733
Warrant/Ticket Nos.

County/Municipality of Sumter

Charges: Burg 3rd (2)

Trial Court: [X] General Sessions
[ ] Magistrate
[ ] Municipal Court

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for **ALL GENERAL SESSIONS CASES** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE.** The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

[X] BAIL PROCEEDING
[ ] FIRST APPEARANCE (Non-Bailable Offenses)

1. Form used at bail proceeding
   - [ ] a. Bond Form I (personal recognizance)
   - [X] b. Bond Form II (surety, cash, percentage)
   - [ ] c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:
   - [X] a. Warrant for arrest will be issued for violation of any condition of bail bond order.
   - [X] b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
   - [X] c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than $5,000 or imprisonment for not more than five (5) years, or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than $1,000 or imprisonment for not more than one (1) year, or both.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
   - [X] a. Orally
   - [X] b. In writing

   [NOTE: Defendant must be informed of right both orally and in writing]

[X] 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
   - [X] a. Charges against defendant and nature of the charges.
   - [X] b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
   - [ ] c. [(Optional: Local procedures may require judge to refer defendants to indigency screener. If so, note referral here) Required to appear before _____ on _____ _____, 20___ for appointment of counsel.]

Appearance or Hearing Date: 12-1-01

Judge's Signature

SCCA/507 (Rev. 4/00)

George M. McFaddin, Jr. 436-2280
Chief Magistrate
Mary K. Herbert 436-2280
William Sanders 436-2347

Sumter County
Summary Court

115 North Harvin Street
P.O. Box 1394
Sumter, S.C. 29151-1394

George R. Gibson 453-5280
Lee A. Tindal 436-2280
Joseph B. Davis, Jr. 436-7273
FAX 436-2300

M E M O R A N D U M

TO: Anthony Turner

FROM: Sumter County Summary Court

DATE: 12-12-01

SUBJECT: CORRECTION IN GENERAL SESSIONS COURT DATE

You were given a bond for Burg 3rd (2) and a date returnable when you should appear in General Sessions Court. The date you were given was 2-25-02 at 8:30 A.M.

You must be present 1-7-02, at 8:30 A.M. at the Sumter County Courthouse on 141 N. Main St.

Thank you.

/ts

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

SCCC

VS.

Anthony Wayne Taylor

IN THE SUMMARY COURT

Check and complete one of the following:

☒ A representative of Sumter County Correctional Center (the facility having custody of the Defendant) acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s): Mrs. Chris Steele
Sumter, SC

OR

☐ A representative of Sumter County Correctional Center (the facility having custody of the Defendant) indicates that the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s): _____

Barbara Jean Wilkes
Representative's Signature**

_____
Judge's Signature

****Or the arresting officer's signature if defendant is brought directly before the judge.**

SCCA/560

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

SCCC

VS.

Anthony Wayne Turner

IN THE SUMMARY COURT

Check and complete one of the following:

☒ A representative of Sumter County Correctional Center (the facility having custody of the Defendant) acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s): Lakewood Golf Course
Sumter SC

OR

☐ A representative of Sumter County Correctional Center (the facility having custody of the Defendant) indicates that the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s): _____

Barbara Jean Wiley, Victim Assistance
Representative's Signature**

_____
Judge's Signature

****Or the arresting officer's signature if defendant is brought directly before the judge.**

SCCA/560

Duplicate (Y6/05)

NAME Turner Anthony Wayne
ADDRESS [redacted]
SSN # [redacted] D/O/B

JUDGMENT ROLL # 2003205.83
IND. # 11278
SENTENCE DATE 6/18/04
OFFENSE RSD

SENTENCE 3yrs Susp
PROB 18 mo

FINE	
107.5% OF FINE	
RESTITUTION	
P.D. FUND ($500)	
DRUG SUR.($100)	
SURCHARGE($100)	100.00
DUI SUR. ($100)	
LAW ENF. ($25)	25.00
DUI ASSESS. ($12)	
DUI AUTO FEE ($40)	
GRAND TOTAL	$125.00

COMMENTS

FIRST PAYMENT DATE

PAYMENT AMOUNT

DATE PAID	FINE	ASSESS	P.D. FUND	DRUG SURCHARGE/ SURCHARGE	DUI ASSESS/ DUI SURCHG	LAW ENFORCE/ DUI AUTO FEE	3%	BALANCE
7/8/04				24.28			.72	100.72
8/27/04				24.28			.72	76.44
1/6/05				48.55			1.45	27.89
4-7-05				27.89		25.10	.83	—

Form 438
Rev. 1-91

SOUTH CAROLINA STATE HIGHWAY PATROL
UNIFORM TRAFFIC TICKET GS 9-16-91

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME: Thomas MIDDLE NAME: [redacted] LAST NAME: [redacted]

[redacted] CITY: [redacted] STATE: S.C.

STATE LICENSED: S.C. | DRIVER'S LICENSE NO.: [redacted] | DRI. LIC. CLASS: /

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM VEH	AUTO	TRUCK	COMB.
ATB-219	S.C.	Ford	90	HAZ. MT.	MOPED	MTRCYCL.	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER: Gen Sessions | STREET AND NO.: Sumter County Court House

DATE OF TRIAL: Call 19 | TIME OF TRIAL: to court | CITY: Sumter | STATE: S.C. | ZIP CODE: 29150

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO: Driving Under Suspension | VIOLATION SECTION NO.: E 56-1-460

OWNER OF VEHICLE: Mikell Sloop | DATE OF ARREST: 7 13 19 91

ADDRESS OF OWNER: Sumter S.C. | DATE OF VIOLATION: 7 13 19 91

BAIL DEPOSITED: JAIL | NAME OF ARRESTING OFFICER: T.L. Herbert | RANK: TFC

DESCRIPTION OF ACCUSED — RACE: W | SEX: M | BIRTH DATE: [redacted] | WT.: 160 | EYES: BL | COUNTY: Sumter | NUMBER: 45

DATE BAIL: 19 | BADGE: [illegible] | DISTRICT: 1

DOCKET NO.

CASE BEFORE — MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

DAY: S 1 | M 2 | T 3 | W 4 | T 5 | F 6 | S 7

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE:

TIME OF VIOLATION MILITARY TIME: 2250 | WEATHER: CL

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION — GUILTY ☐ PLED: NOLO CONTENDERE ☐ FORFEITED BOND ☐

I 1 | U 2X | P 3 | S 4 | O 5 | HWY. NO.: 15

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ | DATE OF TRIAL IF ANY: 19

MILES: 0 | N 1 | E 2 | S 3 | W 4

JAIL	SUSPEND.	FINE	AMT. COLLECTED	AMT. SUSPENDED

CITY: Sumter | CODE: 1

COMMITTED TO: | Arrest as Result of Accident: N/O | OFFENSE CODE: 87 | B.A. LEVEL: —

CERTIFIED CORRECT | DATE: 19 | Q 808495

TRIAL OFFICER'S COPY

$1,000. Harris
Sol. 7-19-91

Form 438
Rev. 1-91

SOUTH CAROLINA STATE HIGHWAY PATROL

UNIFORM TRAFFIC TICKET GS 9-16-91

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME: Thomas | MIDDLE NAME: Charles | LAST NAME: Windham

STREET AND NO. [redacted] | CITY | STATE

STATE LICENSED	DRIVER'S LICENSE NO.	DRI. LIC. CLASS
S.C.	[redacted]	C

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM VEH	AUTO	TRUCK	COMB.
ATB-219	S.C.	Ford	86	HAZ MT.	MOPED	MTRCYCL.	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER: Gen Sessions | STREET AND NO.: Sumter County Court House

DATE OF TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
CALL 19 91	court	Sumter	S.C.	29150

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO | VIOLATION SECTION NO.: Driving Under Suspension 56-1-460

OWNER OF VEHICLE: MAGILL Steve | DATE OF ARREST: 7/13/91

ADDRESS OF OWNER: Sumter S.C. | DATE OF VIOLATION: 7/13/91

BAIL DEPOSITED: JAIL | NAME OF ARRESTING OFFICER: T.L. Herbert | RANK: TPC

DESCRIPTION OF ACCUSED

RACE	SEX	WT.	EYES
W	M	160	Blu

COUNTY: Sumter | NUMBER: 43

BADGE: 165 | DISTRICT: 1

DOCKET NO.

DATE BAIL REC'D. | BY

CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION: GUILTY ☐ FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ | DATE OF TRIAL IF ANY 19

D A Y	S 1	M 2	T 3	W 4	T 5	F 6	S 7

TIME OF VIOLATION MILITARY TIME: 2230 | WEATHER

I 1	U 2	P 3	S 4	O 5
	X			

HWY. NO.: 15

MILES: 0 | N 1 | E 2 | S 3 | W 4

CITY: Sumter | CODE: 1

OFFENSE CODE: 87 | B.A. LEVEL

JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED

COMMITTED TO: | Arrest as Result of Accident: NO

CERTIFIED CORRECT | DATE 19

Q 808495

TRIAL OFFICER'S COPY

$1,000. Harris
Sol. 7-19-91

Ticket or Warrant No.: Q 808495 | 003207

☐ COURT OF GENERAL SESSIONS
☐ MAGISTRATE'S COURT
☐ MUNICIPAL COURT OF

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

RECORDED

91 JUL 22 PM 2:52

O.V. PLYLER, JR.
CLERK OF COURT, S.C.

TRUE COPY
CERTIFIED TO BE A TRUE COPY
OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

...endant named above, it was determined by the court (check one or

...bly assure his appearance as required. ☐ ☐
...unreasonable danger to the community.

...the accused's family ties, employment, financial resources, character ...unity, his record of convictions, and any record of flight to avoid

...the condition that he will personally appear before the designated ...e made against him and do what shall be ordered by the court and ...be of good behavior.
...rovided as follows (check one):

...ate of South Carolina, deposits $_____ to secure his release ...terms and conditions of this Order, this sum of money is subject to

...ate of South Carolina in the sum of $_____, his release to ...s bond in cash, this amount being $_____. The defendant ..., such sum to be levied on his real and personal property for ... of this Order.

...proved in the court, in the form set forth on the reverse side, $1,000.00

RECORDED
SEP 20 PM 2:
O.V. PLYLER, CLERK OF COURT, SUMTER COUNTY, S.C.

...Date:] Sept. 16, 91 at [Time:] 1000 o'clock, A M., at ...HS.
...ion is made during that term, the defendant shall appear and remain ...on is made of his case, unless otherwise ordered by the court.
...g on [Date:] _____ at [Time:] ___:___ o'clock, ___M., ... If no ...hall appear at such other times and places as ordered by the court.

Initials of Def.

...his address from the one contai... ...e marked.

Signature of Judge

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included ... warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial a... the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additiona... against me. If the failure to appear is in connection with a felony charge, or while awaiting sente... after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than fi... in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or impriso... or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release in the event I violate any condition of the Order or fail to appear as required.

[redacted]

X Thomas
Signature of Defendant

7-19
Date

Attorney Representing Accu...

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCE...

Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

DEFENDANT: Windham Thomas Charles
OFFICER: T. L. Herbert
WARRANT/TICKET NO.: Q808495
CHARGE: DUS II
PRELIMINARY HEARING HELD BY:
JUDGE
ON 8-30-91 @ 3:30 PM 19 91
WITH ATTY:
DECISION: Continued to 9-4

003208

Ticket or Warrant No.: Q 80 8790

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
STATE OF SOUTH CAROLINA
v.
Thomas C. Windham
Name of Defendant

IN THE (✓) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: DUS II

RECEIVED
91 JUL 22 PM 2:32

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

Nature of the offense

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____(%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $ 4,000.00

3. That the defendant shall appear at (check one):
☒ the term of the court of general sessions beginning on [Date:] Sept. 16, 91 at [Time:] 10:00 o'clock, A M., at [Place:] Dillon County Court House and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date:]_____ at [Time:]___:___ o'clock, ___M., at [Place:]_____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant TCW

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Signature of Judge — Date: 7-24-91

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

[redacted]

X Thomas Windham
Signature of Defendant

7-19-91
Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:_____
Name of person or organization

_____ _____ _____ _____
Address City State/Zip Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

_____

_____

_____

_____

_____

c. ☐ Part-time Release. The defendant will be released from custody from __:__ o'clock, ___.M. to __:__ o'clock, ___.M. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

_____

_____

_____

_____

_____

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $_____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

_____ _____
Name of Surety (Printed or Typed) Signature of Surety

_____ _____
Address of Surety Signature of Judge

_____ _____
City/State/Zip Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 7, 1990

Duplicate

003210

Ticket or Warrant No. Q8084495

STATE OF SOUTH CAROLINA
COUNTY OF Hunter
STATE OF SOUTH CAROLINA

IN THE (X) COURT OF GENERAL SESSIONS
( ) MAGISTRATE'S COURT
( ) MUNICIPAL COURT OF

Thomas C Windham
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: DUS #

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits $_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of $_____, his release to be obtained by payment to the court of _____(%) of this bond in cash, this amount being $_____. The defendant will be obligated to the State in the full amount of $ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

☐ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of $10000.00.

3. That the defendant shall appear at (check one):
☐ the term of the court of general sessions beginning on [Date:] 9-16-91 at [Time:] 10:00 o'clock, A.M., at [Place:]_____
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date:]_____ at [Time:]___:___ o'clock, ___.M., at [Place:]_____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant TW

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

George R. Hilton
Signature of Judge

7-19-91
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than $5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than $1,000 or imprisonment for not more than one year, or both.

[redacted] understand the conditions of my release and the penalties applicable to me appear as required.

Thomas Windham
Signature of Defendant

Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court – Copy for the Defendant

SCCA/511 (3/90)

FORM CONTINUES ON BACK

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
Name of person or organization

_____ _____ _____ _____
Address City State/Zip Telephone

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

_____ _____
Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

_____
_____
_____
_____
_____

c. ☐ Part-time Release. The defendant will be released from custody from ___:___ o'clock, ___M. to ___:___ o'clock, ___M. on _____ on condition that he return to the custody of _____ _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

_____
_____
_____
_____
_____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 16th day of Feb, 19 92, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of $_____, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and [redacted]ve of property exempt from execution.

_____
Signature of Surety

_____
Signature of Judge

_____
Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 7, 1990

FORM 12 (12/87)

003212

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR DRIVING UNDER SUSPENSION

At a Court of General Sessions, convened on September 16, 1991, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE — DRIVING UNDER SUSPENSION

That one THOMAS CHARLES WINDHAM did in Sumter County on or about July 13, 1991, drive a motor vehicle on a public highway of this State when his license to drive was suspended, such not being the first such offense within a period of five years including and immediately preceding the foregoing date. (THIS BEING A SECOND OFFENSE)

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

Wade S Kolb

SOLICITOR WADE S. KOLB, JR.

003213

WITNESSES

SCHP

T. L. Herbert

ARREST WARRANT NO. Q 808495

7-13-91

ACTION OF GRAND JURY

True Bill

9-12-91

Herbert L. Nelson

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

DOCKET NO. 91-GS-43 958

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER **TERM** 1991

THE STATE

vs.

✓ THOMAS CHARLES WINDHAM

Indictment for Driving Under Suspension

(SECOND OFFENSE)

Bexley Truett

7076

COMMITTMENT – RELEASE

SUMTER COUNTY CORRECTIONAL CENTER

Date July 17th, 91

Defendant Thomas C Wunderlich

Offense D.U.S.I.

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☑ Amount of Bond 1,000.00
- ☐ Type of Bond Surety
- ☑ Bond Paid Hackett B.R.
- Sentence: _____
- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☐ Trial Officer G.S.
- Time Released _____
- ☐ Arresting Officer Hackett

George F. Gilbert

(Releasing Magistrate (or) Receiving Official)

7077

COMMITTMENT – RELEASE

SUMTER COUNTY CORRECTIONAL CENTER

Date 7-17-91

Defendant Thomas C. Wunderlich

Offense D.U.S.I.

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☑ Amount of Bond 1,000.00
- ☐ Type of Bond Surety
- ☐ Bond Paid Hackett B.R.
- Sentence: _____
- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☑ Trial Officer GS
- Time Released _____
- ☑ Arresting Officer T.C. Wunderlich

Little Lawson

(Releasing Magistrate (or) Receiving Official)

003214

COMMITTMENT — RELEASE

SUMTER COUNTY CORRECTIONAL CENTER

Date Aug 14 TH, 91

Defendant Thomas C Hamilton

Offense D.U.S.I.

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☑ Amount of Bond 1,000.00
- ☐ Type of Bond Surety
- ☑ Bond Paid Harold's B.R.

Sentence: _____

- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☐ Trial Officer C.S.
- Time Released _____
- ☐ Arresting Officer Hazbett

Isaac R. Gibson

(Releasing Magistrate (or) Receiving Official)

7078

COMMITTMENT — RELEASE

SUMTER COUNTY CORRECTIONAL CENTER

Date 7-10-91

Defendant Thomas C. Hamilton

Offense D.U.S.I.

- ☐ Hold for General Sessions Court
- ☐ Charges Dismissed at Preliminary Hearing
- ☐ Amount of Bond _____
- ☑ Type of Bond Surety
- ☐ Bond Paid Paid

Sentence: _____

- ☐ Charges Withdrawn
- ☐ Hold For: _____
- ☐ Others: _____
- ☑ Trial Officer C.S.
- Time Released _____
- ☑ Arresting Officer T. C. Wallace

Billie Sapp

(Releasing Magistrate (or) Receiving Official)

003215

003216

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES TO BE USED IN CRIMINAL CASES IN WHICH AN ARREST WARRANT HAS BEEN ISSUED (INCLUDING TRAFFIC CASES)

The checklist is to be used in all criminal cases on which action is taken pursuant to an arrest warrant (including traffic cases), whether triable in Municipal, Magistrate or General Sessions Court. The checklist should be used in compliance with the Orders of the Chief Justice. The checklist should be used only in those cases where an arrest warrant is issued, not in traffic cases where a Uniform Traffic Ticket is used. The checklist should be attached to every arrest warrant at the time of the bail proceeding or first appearance of the defendant before a magistrate or municipal judge.

The checklist should be retained in the office of the judge for three (3) years, at the end of which time it may be detached from the warrant, and disposed of. It should be transmitted to the Clerk of Court in cases for trial in the circuit court. It should be transmitted to the Clerk of Court in appeals.

Judge Willis Smith County Lee Warrant No(s). 9508195

State v. Thomas C. Windham Offense(s) DUS. H

I. **BOND PROCEEDING AND CONDITIONS OF BOND** (For Non-Bailable Offenses, Proceed to Section II).

1. Date of bond proceeding 7-14-95

2. Was the defendant informed in person by the judge that he would be ordered released pending trial on his own recognizance without surety in the amount specified by the court, unless the court determined in its discretion that such a release would not reasonably assure the appearance of the defendant as required or unreasonable danger to the community would result? Yes ✓ No _____

3. In determining the conditions of release did the court take into account: the nature and circumstances of the crime charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution, or failure to appear at other court proceedings? Yes ✓ No _____

4. Which Bail Proceeding form was used? Form 1 _____ Form 2 ✓

5. The defendant was informed that he must appear at SCCA [place of trial or appearance] on Sept 16, 19 95 [date of trial or appearance.]

6. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes ✓ No _____

7. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes ✓ No _____

II. **FIRST APPEARANCE OF DEFENDANT FOR NON-BAILABLE OFFENSES**

8. Date of first appearance _____

9. In cases within the trial jurisdiction of the circuit court, the defendant was informed orally of his right to a preliminary hearing. Yes _____ No _____

10. In cases within the trial jurisdiction of the circuit court, the defendant was informed in writing of his right to a preliminary hearing and was furnished a Request for Preliminary Hearing Form (SCCA PH-1).
Yes _____ No _____

III. **RIGHTS OF THE DEFENDANT**

11. The Defendant was informed that he has a right to a trial by jury, as provided in the Sixth Amendment to the United States Constitution, and Article I, Section 14 of the South Carolina Constitution.
Yes ✓ No _____

12. The Defendant was informed that pursuant to the Fifth Amendment to the United States Constitution, he has the right to remain silent, and that anything he says can be used against him in a court of law.
Yes ✓ No _____

13. The Defendant was informed that he has the right to talk to a lawyer and have a lawyer present at any time during interrogation or questioning by law enforcement officers. Yes ✓ No _____

SCCA/507 (9/85)

IV. PROCEDURE WHERE PRISON SENTENCE MIGHT BE IMPOSED

14. In all criminal cases within the trial jurisdiction of General Sessions Court, the defendant was informed of the following as provided by Supreme Court Rule 51. Yes_____ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

15. In cases within the trial jurisdiction of the magistrate or municipal court in which a prison sentence is likely to be imposed following any conviction, the defendant was informed when the case was called for disposition of the following as provided by Supreme Court Rule 51, and the defendant did waive his right to have appointed counsel of the services of the Public Defender.

Yes_____ No_____

(1) Inform the accused of the charges against him and of the nature of the charges.
(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if he is financially unable to employ counsel.
(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of Public Defender where the latter is available in the county, or refer him to the appropriate authority for such purposes.

WAIVER OF RIGHT TO HAVE APPOINTED COUNSEL OR SERVICES OF PUBLIC DEFENDER

The undersigned certifies that he has been informed of the charges against him and the nature thereof, and that he is unable to employ counsel. However, the undersigned now states that he does not at this time desire to apply for the appointment of counsel or for the services of the Public Defender, and expressly waives his desire to services of counsel provided by the State at this time, which he understands he has a right to do.

Executed before me this _____ day of _____, 19_____.

_____ Signature of Judge

_____ Signature of Defendant

DEFENDANT HAS SIGNED (OR REFUSED TO SIGN) A WAIVER

I hereby certify that the above-named defendant has been fully informed in open Court of the charges against him and of his right to have counsel appointed by the Court to represent him in this case; that he has elected in open Court to be tried in this case without the appointment of counsel; and that he (strike one or the other) [has signed] or [has refused to sign] the above waiver in my presence after its meaning and effect have been fully explained to him.

This _____ day of _____, 19_____. _____ Judge

16. In cases within the trial jurisdiction of the circuit court, the defendant was released on the condition that he report within an appointed time to the Clerk of Court or other officer for the purpose of securing to the accused the right to counsel.

To report on:_____ Date To report to:_____ Person

. . . . . .

_____ Judge

_____ Date

MARY K. HERBERT
Magistrate
Phone: 775-2365

Sumter County

Sumter, South Carolina
29150

P.O. Box 1394
115 North Harvin Street
Sumter, South Carolina
29151-1394

August 19, 1991

Re: Preliminary Hearing

Dear Minnie C. Wrotten,

As per your request, a Preliminary Hearing has been scheduled for you on August 30th 1991, commencing at 3 PM in this office. If you are not present, the hearing will be waived.

According to my records, you do not have an attorney to represent you. If you have retained one, please be sure to advise your attorney of the scheduled hearing. Thank you for your co-operation in this matter.

Sincerely,
Valerie Graves
Valerie Graves, Legal Clerk
Magistrate's Office
Sumter County

Form 9
State of South Carolina

003219

IN THE COURT OF GENERAL SESSIONS

County of Sumter

No. 91-GS-43-958

STATE

-VS-

ORDER

Thomas Charles Windham

DUS 2nd

DEFENDANT

[redacted]
SCDC# or DOB

SID# [redacted]

Whereas the above named defendant has been charged with violating the conditions of probation ordered on Sept. 16, 19 91 in the Court of General Sessions of Sumter County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated August 27, 19 92 a copy of which is incorporated by reference.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the _____ months/years sentence identified above, and/or pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original _____ months/years sentence (and/or) pay $_____; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years (and/or) pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☐ The defendant has previously served _____ months/years on this sentence.

☐ IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☒ Additional Conditions ordered by the Court:

Extend probation for six (6) months from September 15, 1992. Terminate probation upon full payment of fine balance and completion of public service employment. Exempt $190.00 supervision fee arrearage and future fees. No further Service

This 16th day of September 19 92

Sumter, SC

David F. Miller, Presiding Judge
Third Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: Dupree Cantey III

Signed: Thomas Windham
Probationer

Signed this 10th day of September, 19 92, at Sumter, SC.

7082

Form 9
State of South Carolina

003220

IN THE COURT OF GENERAL SESSIONS

County of Sumter

No. 91 -GS- 43 - 958

STATE
-VS- Hadley

ORDER

DUS 2nd

Thomas Windham
DEFENDANT

RECORDED

[redacted]
SCDC# or DOB

SID# [redacted]

'93 DEC 1 PM 3 23

CLERK OF COURT
SUMTER COUNTY, S.C.

Whereas the above named defendant has been charged with violating the conditions of probation ordered on 9-16, 19 91 in the Court of General Sessions of Sumter County as set forth in the warrant or affidavit filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated 11-16, 19 92 a copy of which is incorporated by reference.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the _____ months/years sentence identified above, and/or pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original _____ months/years sentence (and/or) pay $_____; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years (and/or) pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☐ The defendant has previously served _____ months/years on this sentence.

☒ IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☒ Additional Conditions ordered by the Court:

- extend probation for 6 months from today
- terminate probation when fine is paid and PSW complete.
- Intensive Supervision for 6 months with Home Detention to be changed to electronic Monitoring once available. Pay Fine $50/week
- Reinstate 100 hours PSE with Additional 88 hours PSE.

This 1st day of Dec, 19 93

Sumter, SC

, Presiding Judge

3 Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: _____

Signed: _____
Probationer

Signed this _____ day of _____, 19_____, at _____, SC.

7083

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

003221

The State -vs- Thomas Charles Windham

Indictment Number: 91-GS-43 -958

Court Reporter: Kathy Modzelewski Attorney: None

GUILTY PLEA

The defendant is put to the bar and arraigned and, upon his arraignment, pleads guilty as charged to Driving Under Suspension 2nd Offense

Attest: O. V. Player Jr. Thomas Charles Windham

Signature of Defendant

SENTENCE

The defendant is committed to the State Department of Corrections/County for a term of sixty (60) days ~~months/years~~ and/~~or~~ to pay a fine of $ five hundred (500) ;provided upon the service of 0 ~~months/years~~ ~~and/or~~ payment of $ three hundred (300), plus pay/waive costs and assessments as applicable*, the balance suspended with probation for one (1) ~~months/~~years.

Restitution Yes/No to be paid _____ For physical injury $_____ property damage $_____

(Pay to Victim's Compensation if Subrogated)

Other conditions _____

Date SEP 16 1991

Dan F. Laney, Jr.
Presiding Judge, Third Judicial Circuit

Fine $_____
*Cost and Assessments
Non-waivable $_____
Not Waived $_____
TOTAL COSTS AND ASSESSMENTS $_____
TOTAL AMOUNT DUE $_____

O. V. Player, Jr.
Clerk of Court

003222

Form 2 (11/90)

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

RECORDED
91 SEP 18 P...
O.V. PLAYER
CLERK OF C...
SUMTER COUNTY, S.C.

COURT General Sessions

September 16 Term, 19 91

STATE

-VS-

PROBATION ORDER

Thomas Charles Windham
Defendant

No. 91 -GS- 43 - 958

OFFENSE Driving Under Suspension 2nd Offense

The sentence of the Court is that the defendant, Thomas Charles Windham, shall be in the custody of the Board of Corrections of the State of South Carolina for a term of Sixty (60) days (and/~~or~~) pay a fine of $ 500.00; provided that upon the ~~service~~ payment of $ 300.00 + *CC that the balance of the aforesaid sentence be and the same is hereby suspended and that the said defendant is hereby placed on probation for a period of 1 years under the supervision of the South Carolina Probation, Parole, and Pardon Services Board and its agents, subject to the provisions of the laws of this State and the rules and orders of the Board and its agents, with leave that the suspended sentence may be revoked at any time during the period of probation.

THAT AS CONDITIONS OF PROBATION THE AFORESAID SHALL:

1. Report in person within 48 hours after arrival at his destination to the Supervising Agent.
2. Restrict his activity to those programs approved by his Supervising Agent.
3. Refrain from changing his residence or employment without first procuring the consent of his Supervising Agent.
4. Make a complete and truthful report to his Supervising Agent each month and whenever instructed to by his Supervising Agent until his final release.
5. Not use controlled substances, except when properly prescribed by a licensed physician.
6. Not consume alcoholic beverages to excess or visit establishments whose primary business is the dispensation and consumption of alcoholic beverages.
7. Avoid injurious habits and shall associate only with law-abiding persons.
8. In all respects, conduct himself honorably, work diligently at a lawful occupation, and support his dependents, if any, to the best of his ability.
9. Refrain from the violation of any Federal, State, or Local penal law, and shall contact his supervising agent immediately if arrested or questioned by a law enforcement official.
10. Not leave the State without authorization and shall waive all extradition rights and process and agree to return to South Carolina when directed to by the Court or pursuant to a warrant.
11. Not possess or purchase a weapon.
12. Promptly and truthfully answer all inquiries from the Court or Supervising Agent and allow the Agent to visit at any time in his home, at his employment site or elsewhere, and carry out all instructions given by the Agent.
13. Comply with all provisions of this order including the payment of fines, restitution or other payments and the service of any period of incarceration.
14. Immediately notify his supervising agent in case of unemployment and/or absenteeism from work and in case of illness or injury.
15. Submit to a urinalysis test and/or a blood test when requested by his Supervising Agent and agree that the test results may be used as evidence that he did or did not violate these conditions.

ORDER CONTINUED ON REVERSE SIDE

003223

ORDER CONTINUED FROM REVERSE SIDE

91 -GS- 43 - 958

16. Pay a supervision fee to the South Carolina Department of Probation, Parole, and Pardon Services of $10 per week while under intensive supervision and $240 per year while under any other level of supervision during conditional release.

Additional Conditions ordered by the Court: *$80.25 Assessment Fee, $85.00 Court Cost. Total amount of Fine, Assessment Fee & Court Cost $465.25 payable to the Sumter County Clerk of Court at the rate of $100.00 per month beginning 10-16-91 until paid in full.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officer who has the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this district, or if defendant is under bond, then such bond shall remain in full force until said defendant reports to the Probation Office. The conditions of probation begin (today/~~after service of required portion of suspended sentence~~). It is further ordered that the Clerk of Court file this order in his office and that he forthwith forward certified copy to Probation Office or the South Carolina Probation, Parole, and Pardon Services Board.

This 16th day of September 19 91, Dan F. Laney Jr.
Presiding Judge

Sumter, SC. Hon. Dan F. Laney, Jr., Third Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or without order of the Court, by the Probation Agent. At any time within the period of your probation, the Court may, if it sees fit, impose the judgement and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order of Probation and the Conditions set out therein. I agree to comply with such conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: Jon Walker Signed: Thomas Windham
Probationer

Signed this 16 day of Sept, 19 91, at Sumter, SC.

7086

JUDGEMENT ROLL # 30-5[illegible] 003224

NAME Windham, Sharon Charles

IND. # 91-958

ADDRESS [redacted]

SENTENCE DATE 9-16-91

OFFENSE DUS 2nd

SENTENCE 60 ds + $500.00 Susp.

$300.00 PROB. 1yr

COMMENTS Extend prob. 6 mths

1.	FINE	$300.00	Jail 300
	LAW ENF.	50.25	
	25%	75.00	Assess 165.25
	CC ASSESS	30.00	
	CHEM ASSESS		
	SUB TOTAL	($ 455.25)	
	NEW COURT COST	$ 10.00	
2.	ADSAP		
3.	RESTITUTION		
4.	INDIGENT FUND		
	GRAND TOTAL	$465.25	

VICTIM

FIRST PAYMENT DATE 10-16-91

PAYMENT AMOUNT $ 100.00

ACCOUNT	DATE PAID	AMOUNT PAID	BALANCE	REST. PAID TO VICTIM, AMT., DATE, CK. #
1	10-28-91	100.00	365.25	Assess: 165.25
	11-25-91	60.00	305.25	Fine: 188.59
	1-15-92	50.00	255.25	Jan-Feb.
	3-9-92	35.00 ✓	220.25	
	8-14-92	30.00 ✓	190.25	(90) ✓
	10-29-93	38.84	151.41	116
1	11-4-93	40.00	111.41 ✓	120 ✓
	4/8/96	111.41	0	

7087

RECORD OF PAYMENT TO VICTIM(S) **003225**

1. Victim:_____ Address:_____

TOTAL AMOUNT OF RESTITUTION DUE: $_____

Date Received	Amount Paid	Balance Owed to Victim	Date Check Requested	Check Number	Date Check Mailed to Victim	Notes

2. Victim:_____ Address:_____

TOTAL AMOUNT OF RESTITUTION DUE: $_____

Date Received	Amount Paid	Balance Owed to Victim	Date Check Requested	Check Number	Date Check Mailed to Victim	Notes

3. Victim:_____ Address:_____

TOTAL AMOUNT OF RESTITUTION DUE: $_____

Date Received	Amount Paid	Balance Owed to Victim	Date Check Requested	Check Number	Date Check Mailed to Victim	Notes

2054

GS 9-16-91

NAME WINDHAM, THOMAS CHARLES IND. # 91-958

ADDRESS [redacted] WARRANT # Q808495

GET D L

PHONE # 773-0538

D.O.B. [redacted] RACE/SEX W, SSN [redacted]

OFFENSE DUS, 2nd offense D.L. # SC 8541716

SCHP MAGISTRATE MKH

D.O.O. 07-13-91 D.O.A. 07-13-91 DATE FILED 07-22-91

ATTORNEY NONE CO-DEF. Total Due $ 465.25

SENTENCE: 60 days AND/OR $ 500.00

SUSPENDED TO: AND/OR $ 300.00 + cc

PROBATION: 1yr

SPECIAL CONDITIONS:

DATE: 9-16-91 JUDGE: Laney COURT REPORTER: Kathy M

NAME: [illegible] Windham RK

FINE: 300.00

CC ASSESSMENT & LAW ENF. COURT COST: [illegible]

25% COURT COST: 75.00

$10.00 COURT COST: $10.00

ADSAP: 300.00

RESTITUTION:

INDIGENT FUND:

CHEMICAL TEST ASSESS:

TOTAL AMOUNT DUE: $ [illegible]

FIRST PAYMENT DUE: [illegible] 91

MONTHLY PAYMENT: $ [illegible] 00

AMT. PAID TODAY:

BALANCE:



Prevent identity theft—protect your Social Security number **000583**

Your Social Security Statement

www.socialsecurity.gov

Prepared especially for Bobby W. Stone

August 23, 2010

See inside for your personal information →

000008807 01 MB 0.362 X 0006
BOBBY W. STONE
C/O JOHN BLUME
BLUME WEYBLE LLC
PO BOX 11744
COLUMBIA SC 29211-1744

Your Estimated Benefits 2
Your Earnings Record 3
Some Facts About Social Security 4
If You Need More Information 4
To Request This *Statement* In Spanish 4
(Para Solicitar Una Declaración en Español)

What Social Security Means To You

We are pleased to send you the *Social Security Statement* you requested. This *Statement* can help you plan for your financial future. It provides estimates of your Social Security benefits under current law and updates your latest reported earnings.

Please read this *Statement* carefully. If you see a mistake, please let us know. That's important because your benefits will be based on our record of your lifetime earnings. We recommend you keep a copy of your *Statement* with your financial records.

Social Security is for people of all ages...
We're more than a retirement program. Social Security also can provide benefits if you become disabled and help support your family after you die.

Work to build a secure future...
Social Security is the largest source of income for most elderly Americans today, but Social Security was never intended to be your only source of income when you retire. You also will need other savings, investments, pensions or retirement accounts to make sure you have enough money to live comfortably when you retire.

Saving and investing wisely are important not only for you and your family, but for the entire country. If you want to learn more about how and why to save, you should visit www.*mymoney*.*gov*, a federal government website dedicated to teaching all Americans the basics of financial management.

About Social Security's future...
Social Security is a compact between generations. Since 1935, America has kept the promise of security for its workers and their families. Now, however, the Social Security system is facing serious financial problems, and action is needed soon to make sure the system will be sound when today's younger workers are ready for retirement.

In 2016 we will begin paying more in benefits than we collect in taxes. Without changes, by 2037 the Social Security Trust Fund will be exhausted* and there will be enough money to pay only about 76 cents for each dollar of scheduled benefits. We need to resolve these issues soon to make sure Social Security continues to provide a foundation of protection for future generations.

Social Security on the Net...
Visit ***www.socialsecurity.gov*** on the Internet to learn more about Social Security. You can read publications, including *When To Start Receiving Retirement Benefits*; use our Retirement Estimator to obtain immediate and personalized estimates of future benefits; and when you're ready to apply for benefits, use our improved online application—it's so easy!

Michael J. Astrue
Commissioner

* These estimates are based on the intermediate assumptions from the Social Security Trustees' Annual Report to the Congress.

Your Estimated Benefits

000584

***Retirement** To get retirement benefits, you need 40 credits of work. Your record shows you have at least 16 credits at this time, including assumed credits for last year and this year if you continue to work.

***Disability** To get benefits if you become disabled right now, you need 23 credits of work. Your record shows you have at least 16 credits at this time.

***Family**
***Survivors** If you get retirement or disability benefits, your spouse and children also may qualify for benefits. For your family to get survivors benefits if you die this year, you must have 23 credits of work. Your record shows you have at least 16 credits at this time.

Medicare To get Medicare benefits at age 65, you need the same number of credits that you need for retirement benefits (shown above). You do not have enough credits to qualify at this time. However, if you don't have enough credits when you reach age 65, you may contact a local Social Security office to learn whether you're eligible to buy Medicare coverage.

***Your estimated benefits are based on current law. Congress has made changes to the law in the past and can do so at any time. The law governing benefit amounts may change because, by 2037, the payroll taxes collected will be enough to pay only about 76 percent of scheduled benefits.**

We based your benefit estimates on these facts:

Your date of birth (please verify your name on page 1 and this date of birth)	September 19, 1965
2009 earnings	None
2010 earnings	None
Your estimated taxable earnings per year after 2010	None
Age you plan to stop working	31
Your Social Security number (only the last four digits are shown to help prevent identity theft)	[redacted]

How Your Benefits Are Estimated

To qualify for benefits, you earn "credits" through your work — up to four each year. This year, for example, you earn one credit for each $1,120 of wages or self employment income. When you've earned $4,480, you've earned your four credits for the year. Most people need 40 credits, earned over their working lifetime, to receive retirement benefits. For disability and survivors benefits, young people need fewer credits to be eligible.

We checked your records to see whether you have earned enough credits to qualify for benefits. If you haven't earned enough yet to qualify for any type of benefit, we can't give you a benefit estimate now. If you continue to work, we'll give you an estimate when you do qualify.

What we assumed — If you have enough work credits, we estimated your benefit amounts using your average earnings over your working lifetime. For the first retirement amount shown, and your credits through 2009, we assumed you would stop work at the retirement age you gave us. For later retirement ages we assumed you will continue working up to those ages. In all the estimates, we used the earnings amounts you gave us for last year, this year and future years.

Generally, the older you are and the closer you are to retirement, the more accurate the retirement estimates will be because they are based on a longer work history with fewer uncertainties such as earnings fluctuations and future law changes. We encourage you to use our online Retirement Estimator at ***www.socialsecurity.gov/estimator*** to obtain immediate and personalized benefit estimates.

We can't provide your actual benefit amount until you apply for benefits. **And that amount may differ from the estimates stated above because:**

(1) Your earnings may increase or decrease in the future.

(2) After you start receiving benefits, they will be adjusted for cost-of-living increases.

(3) Your estimated benefits are based on current law. **The law governing benefit amounts may change.**

(4) Your benefit amount may be affected by **military service, railroad employment or pensions earned through work on which you did not pay Social Security tax.** Visit ***www.socialsecurity.gov/mystatement*** to learn more.

Windfall Elimination Provision (WEP) — In the future, if you receive a pension from employment in which you do not pay Social Security taxes, such as some federal, state or local government work, some nonprofit organizations or foreign employment, and you also qualify for your own Social Security retirement or disability benefit, your Social Security benefit may be reduced, but not eliminated, by WEP. The amount of the reduction, if any, depends on your earnings and number of years in jobs in which you paid Social Security taxes, and the year you are age 62 or become disabled. For more information, please see *Windfall Elimination Provision* (Publication No. 05-10045) at ***www.socialsecurity.gov/WEP***.

Government Pension Offset (GPO) — If you receive a pension based on federal, state or local government work in which you did not pay Social Security taxes and you qualify, now or in the future, for Social Security benefits as a current or former spouse, widow or widower, you are likely to be affected by GPO. If GPO applies, your Social Security benefit will be reduced by an amount equal to two-thirds of your government pension, and could be reduced to zero. Even if your benefit is reduced to zero, you will be eligible for Medicare at age 65 on your spouse's record. To learn more, please see *Government Pension Offset* (Publication No. 05-10007) at ***www.socialsecurity.gov/GPO***.

Your Earnings Record

000585

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1984	$ 1,296	$ 1,296
1985	465	465
1986	7,922	7,922
1987	4,274	4,274
1988	0	0
1989	0	0
1990	0	0
1991	0	0
1992	0	0
1993	5,379	5,379
1994	0	0
1995	0	0
1996	0	0
1997	0	0
1998	0	0
1999	0	0
2000	0	0
2001	0	0
2002	0	0
2003	0	0
2004	0	0
2005	0	0
2006	0	0
2007	0	0
2008	0	0
2009	Not yet recorded	

You and your family may be eligible for valuable benefits:

When you die, your family may be eligible to receive survivors benefits.

Social Security may help you if you become disabled—even at a young age.

A young person who has worked and paid Social Security taxes in as few as two years can be eligible for disability benefits.

Social Security credits you earn move with you from job to job throughout your career.

Total Social Security and Medicare taxes paid over your working career through the last year reported on the chart above:

Estimated taxes paid for Social Security:		Estimated taxes paid for Medicare:	
You paid:	$1,122	You paid:	$274
Your employers paid:	$1,122	Your employers paid:	$274

Note: You currently pay 6.2 percent of your salary, up to $106,800, in Social Security taxes and 1.45 percent in Medicare taxes on your entire salary. Your employer also pays 6.2 percent in Social Security taxes and 1.45 percent in Medicare taxes for you. If you are self-employed, you pay the combined employee and employer amount of 12.4 percent in Social Security taxes and 2.9 percent in Medicare taxes on your net earnings.

Help Us Keep Your Earnings Record Accurate

You, your employer and Social Security share responsibility for the accuracy of your earnings record. Since you began working, we recorded your reported earnings under your name and Social Security number. We have updated your record each time your employer (or you, if you're self-employed) reported your earnings.

Remember, it's your earnings, not the amount of taxes you paid or the number of credits you've earned, that determine your benefit amount. When we figure that amount, we base it on your average earnings over your lifetime. If our records are wrong, you may not receive all the benefits to which you're entitled.

Review this chart carefully using your own records to make sure our information is correct and that we've recorded each year you worked. You're the only person who can look at the earnings chart and know whether it is complete and correct.

Some or all of your earnings from **last year** may not be shown on your *Statement*. It could be that we still were processing last year's earnings reports when your *Statement* was prepared. Your complete earnings for last year will be shown on next year's *Statement*. **Note:** If you worked for more than one employer during any year, or if you had both earnings and self-employment income, we combined your earnings for the year.

There's a limit on the amount of earnings on which you pay Social Security taxes each year. The limit increases yearly. Earnings above the limit will not appear on your earnings chart as Social Security earnings. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, **all** of your earnings are taxed for Medicare.)

Call us right away at **1-800-772-1213** (7 a.m.–7 p.m. your local time) if any earnings for years **before last year** are shown incorrectly. Please have your W-2 or tax return for those years available. (If you live outside the U.S., follow the directions at the bottom of page 4.)

Some Facts About Social Security

About Social Security and Medicare...

Social Security pays retirement, disability, family and survivors benefits. Medicare, a separate program run by the Centers for Medicare & Medicaid Services, helps pay for inpatient hospital care, nursing care, doctors' fees, drugs and other medical services and supplies to people age 65 and older, as well as to people who have been receiving Social Security disability benefits for two years or more. Medicare does not pay for long-term care, so you may want to consider options for private insurance. Your Social Security covered earnings qualify you for both programs. For more information about Medicare, visit ***www.medicare.gov*** or call **1-800-633-4227** (TTY **1-877-486-2048** if you are deaf or hard of hearing).

Retirement — If you were born before 1938, your full retirement age is 65. Because of a 1983 change in the law, the full retirement age will increase gradually to 67 for people born in 1960 and later.

Some people retire before their full retirement age. You can retire as early as 62 and take benefits at a reduced rate. If you work after your full retirement age, you can receive higher benefits because of additional earnings and credits for delayed retirement.

Disability — If you become disabled before full retirement age, you can receive disability benefits after six months if you have:

- enough credits from earnings (depending on your age, you must have earned six to 20 of your credits in the three to 10 years before you became disabled); and
- a physical or mental impairment that's expected to prevent you from doing "substantial" work for a year or more *or* result in death.

If you are filing for disability benefits, please let us know if you are on active military duty or are a recently discharged veteran, so that we can handle your claim more quickly.

Family — If you're eligible for disability or retirement benefits, your current or divorced spouse, minor children or adult children disabled before age 22 also may receive benefits. Each may qualify for up to about 50 percent of your benefit amount.

Survivors — When you die, certain members of your family may be eligible for benefits:

- your spouse age 60 or older (50 or older if disabled, or any age if caring for your children younger than age 16); and
- your children if unmarried and younger than age 18, still in school and younger than 19 years old, or adult children disabled before age 22.

If you are divorced, your ex-spouse could be eligible for a widow's or widower's benefit on your record when you die.

Extra Help with Medicare — If you know someone who is on Medicare and has limited income and resources, extra help is available for prescription drug costs. The extra help can help pay the monthly premiums, annual deductibles and prescription co-payments. To learn more or to apply, visit ***www.socialsecurity.gov*** or call **1-800-772-1213** (TTY **1-800-325-0778**).

Receive benefits and still work...

You can work and still get retirement or survivors benefits. If you're younger than your full retirement age, there are limits on how much you can earn without affecting your benefit amount. When you apply for benefits, we'll tell you what the limits are and whether work would affect your monthly benefits. When you reach full retirement age, the earnings limits no longer apply.

Before you decide to retire...

Carefully consider the advantages and disadvantages of early retirement. If you choose to receive benefits before you reach full retirement age, your monthly benefits will be reduced.

To help you decide the best time to retire, we offer a free publication, *When To Start Receiving Retirement Benefits* (Publication No. 05-10147), that identifies the many factors you should consider before applying. Most people can receive an estimate of their benefit based on their actual Social Security earnings record by going to ***www.socialsecurity.gov/estimator.*** You also can calculate future retirement benefits by using the Social Security Benefit Calculators at ***www.socialsecurity.gov.***

Other helpful free publications include:

- *Retirement Benefits* (No. 05-10035)
- *Understanding The Benefits* (No. 05-10024)
- *Your Retirement Benefit: How It Is Figured* (No. 05-10070)
- *Windfall Elimination Provision* (No. 05-10045)
- *Government Pension Offset* (No. 05-10007)
- *Identity Theft And Your Social Security Number* (No. 05-10064)

We also have other leaflets and fact sheets with information about specific topics such as military service, self-employment or foreign employment. You can request Social Security publications at our website, ***www.socialsecurity.gov***, or by calling us at **1-800-772-1213**. Our website has a list of frequently asked questions that may answer questions you have. We have easy-to-use online applications for benefits that can save you a telephone call or a trip to a field office.

You may also qualify for government benefits outside of Social Security. For more information on these benefits, visit ***www.govbenefits.gov.***

If you need more information— Visit ***www.socialsecurity.gov/mystatement*** on the Internet, contact any Social Security office, call **1-800-772-1213** or write to Social Security Administration, Office of Earnings Operations, P.O. Box 33026, Baltimore, MD 21290-3026. If you're deaf or hard of hearing, call TTY **1-800-325-0778.** If you have questions about your personal information, you must provide your complete Social Security number. If your address is incorrect on this *Statement*, ask the Internal Revenue Service to send you a Form 8822. We don't keep your address if you're not receiving Social Security benefits.

Para solicitar una *Declaración* en español, llame al 1-800-772-1213

000379

DJJ Records
Stone. Bobby

[redacted]

379

7094

South Carolina Department of Juvenile Justice
Bill Byars, Director

P.O. Box 21069
Columbia, SC 29221-1069

Mark Sanford
Governor
State of South Carolina

August 19, 2008

Emily Paavola
Center for Capital Litigation
Post Office Box 11311
Columbia, South Carolina 29211

Re: Stone, Bobby Wayne

Dear Ms. Paavola:

Enclosed, per your request, please find the education records from the Department of Juvenile Justice for the individual Bobby Wayne Stone, [redacted] unknown. Also enclosed is a copy of a spinoff record of the individual's juvenile offense history from the Agency's automated information system. All other records have been destroyed per Retention Schedules, DYS-AS-ASS-2R and DYS-CPCS-5R.

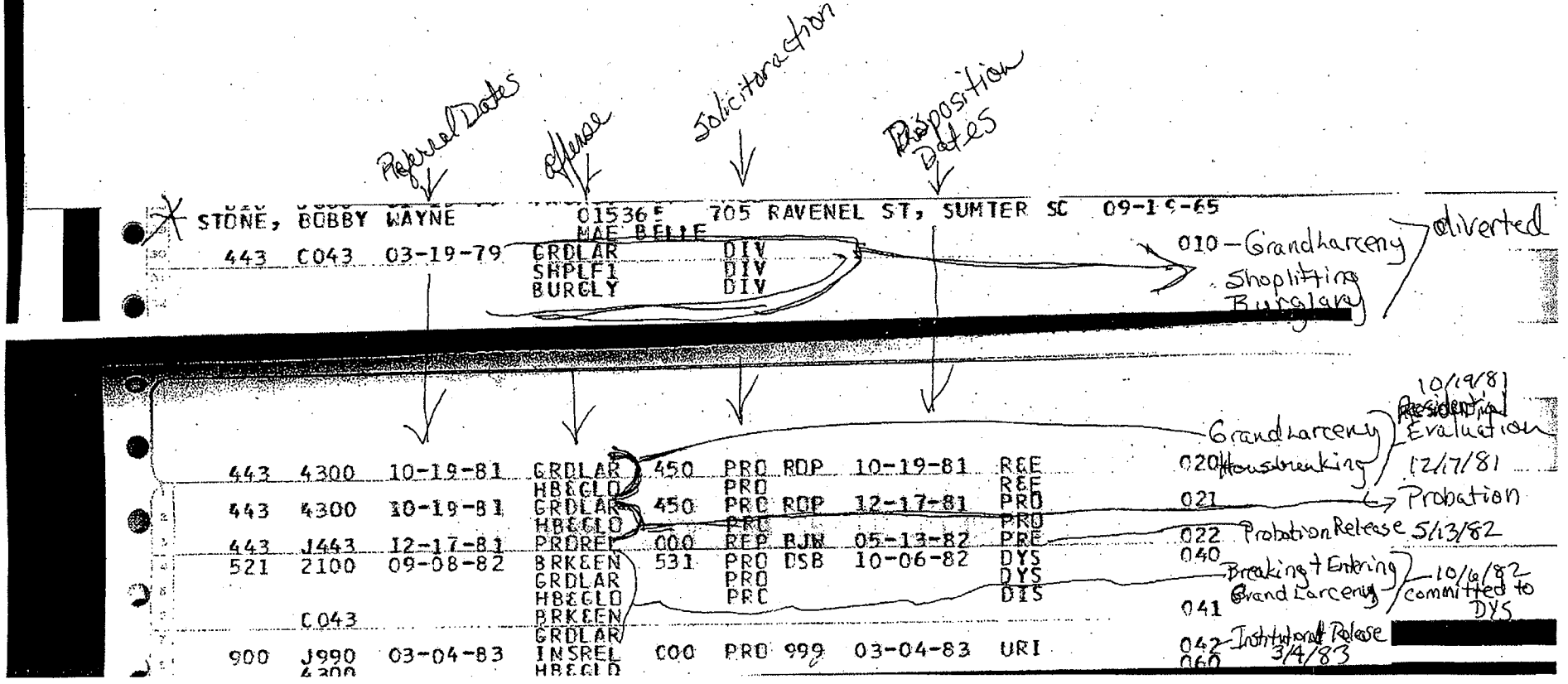
This information is confidential and is released only for purposes authorized. Please do not hesitate to contact me if you have any questions, at the above address or at the following phone number (803) 896-7537.

Sincerely,

Martha Hoy
Record Analyst

Enclosure

Computer Printout



CERTIFICATE
OF

Birchwood High School

COLUMBIA, SOUTH CAROLINA

This Certifies That

BOBBY STONE

has been a student in our Training Course in

AUTO MECHANICS

for a total of 66 HOURS.

In Witness Hereof we have hereunto affixed our signatures and seal at Columbia, South Carolina, this 2nd day of MARCH A. D. 19 83

Edward J. Feaster
Chairman of the Board

Thomas D. Mackey
Instructor

J. Blaine Kolb

South Carolina Department of Youth Services

000382

7097

SCHOOL: Birchwood High

NAME: Stone, Bobby

BIRTHDATE. _____

COMMITMENT DATES: 1. 10-6-82 TO: 3-4-83
2. _____ TO: _____
3. _____ TO: _____
4. _____ TO: _____

Enrolled in Title I Classes:

Math Yes _____ No ✓

Reading Yes _____ No ✓

Enrolled in Special Education: Yes _____ No ✓

If yes, which category: EMH _____ EH _____ LD _____ SPEECH _____

35 - day enrollment: Yes ✓ No _____

COMMENTS: We recommend a vocational program for Bobby.

S/ Sara Barefoot
Guidance Counselor

If further information is needed, please call 758-6422

000384

SOUTH CAROLINA DEPARTMENT OF YOUTH SERVICES

School Scholarship Record

[X] Birchwood High School

[ ] Willow Lane Junior High School

Student STONE, BOBBY WAYNE Race W Sex M DO [redacted]
Last, First Middle

Home Address [redacted] Phone 775-7453
Street or Box Number City County ZIP Code

Parents or Guardians Mae Bell Stone

Last School Attended Sumter High County Sumter Grade ____ Phone ____

Transcript Received: ✓ YES ____ NO (Check one) Date (Graduated, Passed GED) ____ (Circle one) Month Day Year

Commitment Date(s)	Withdrawal Date(s)	Transcript Sent To	Date
10-6-82	3-4-83	Isaac Johnson	3-7-83

CURRICULUM CODE: I. Remedial Curriculum; II. Regular Curriculum; III. G.E.D. or college Preparatory Curriculum.

GRADING SCALE	NUMERICAL SCALE
A= Excellent	93-100
B= Commendable	87-92
C= Satisfactory	76-86
D= Needs Improvement	70-75
F= No Credit	69 and below
*= Enrolled less than 10 days	

School: Birchwood Year: 82-83 Grade: 10 Curriculum: I

SUBJECT	TEACHERS	Hrs. per Week	1st	Days	2nd	Days	3rd	Days	4th	Days	5th	Days	Final	F.D.	CR
English I	Byrnes	5	*	5	C	33	C	23					C	61	
Math II	Bands	5	*	6	C	35	C	23					C	64	
Economics	Foley	5	*	8	B	34	C	24					B	66	
Gen. Science	Fitzpatrick	5	*	5	C	31	C	23					C	59	
Auto Mech.	Mabry	10	*	6	C	33	C	23					C	* 60	½

* 120 Hours

Counselor Sarah Bayfoot

Date 3-4-83

TOTAL CREDITS FOR YEAR ½

7099

000385

CONDITIONAL CERTIFICATE OF IMMUNIZATION

This certificate permits

(first) Middle Last Date of Birth

to be enrolled in a school in South Carolina on a temporary basis under one of the following conditions (check one box below).

- ☐ Child has received one or more immunizations and will complete them within 120 days.
- ☐ Transfer student admitted pending receipt of immunization records.
- ☐ Child has health problem. Immunizations will be resumed and/or completed within 120 days.

(Check (✓) one)

M.H.M.D. ☐ Priv. M.D. ☐ Mil. M.D. ☐

Authorized Medical Signature Date

For conditional certificate, dates of immunizations must be entered.

IMMUNIZATION & TUBERCULIN TEST RECORD

DTP						
Td						
TETANUS						
POLIO						
MEASLES						
RUBELLA						
TB TEST						

CERTIFICATE OF IMMUNIZATION

South Carolina Department of Health and Environmental Control

Bobby Wayne Stone

Child's Full Name

9-19-66

Date of Birth

Mabelle Stone

Full Name of Parent or Guardian

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

[signature]

Authorized Medical Signature

Parents: After school registration, keep this form with your child's health records.

8-26-77

Date

DHEC 1125 80M (Rev. 5/75)

7100

000386

FLORENCE COUNTY HEALTH DEPARTMENT
Florence, S. C.

Date Issued Aug. 13, 1973 Birth No. 139- 65 037899

NAME BOBBY WAYNE STONE

Birthdate Sex Male

Birthplace: Florence County, S. C. File Date Oct. 26, 1965

This is a true certification of name and birth facts recorded in this office.

COUNTY REGISTRAR By Mrs. Fred Holliday
Deputy County Registrar

7101

The State of South Carolina,
- vs -
Bobby Wayne STONE

CASE No.: 96-GS-43-698

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

	DATE	ACTIVITY (Please make explanation detailed enough to determine what service was performed.)	Out-of-Court TIME	In-Court TIME
1	7/29/02	Discuss Remand w/Judge Newman, Cam Littlejohn, & Prepare Order of Appointment.	1.5	
2	7/30/02	Client Consultation @ Lieber Correctional Institution (Includes driving time).	4.5	
3	7/31/02	File Order of Appointment.	0.5	
4	8/1/02	Client Consultation @ Lieber Correctional Institution (Includes driving time).	5.5	
5	8/2/02	Telephone Consult w/co-counsel re potential PCR action.	0.3	
6	8/5/03	Telephone Conference w/Teresa Norris re PCR interview with Client (& Fielding Pringle).	0.3	
7	8/17/02	LD Collect Call from Client	0.2	
8	8/21/03	Call from co-counsel re scheduling next meeting w/Client.	0.2	
9	8/27/02	Call from co-counsel re need to reschedule next Client conference.	0.1	
10	8/28/02	Client Consultation @ Lieber Correctional Institution (Includes driving time).	4.8	
11	8/28/02	LD Collect Call from Client re selection of investigator.	0.2	
12	10/28/02	Client Consultation @ Lieber Correctional Institution (Includes driving time).	5.0	
13	7/2/04	Review Letter from Judge King & Attached Order.	0.1	
14	7/2/04	E-mail to co-counsel re scheduling of pretrial hearing conference & possible issues.	0.2	
15	7/6/04	Telephone conference with co-counsel.	0.4	
16	7/8/04	Client Consultation @ Lieber Correctional Institution (Includes driving time).	4.5	
17	7/12/04	Deliver Trial Transcript to co-counsel	0.5	
18	7/18//04	LD Collect Call from Client re pretrial conference issues.	0.3	
19	7/23/04	Pretrial Conference.	1.0	
20	7/23/04	LD Collect Call from Client re results of pretrial conference.	0.3	
21	9/25/04	LD Collect Call from Client re request not to meet with family members.	0.3	
22	10/12/04	Attempted client consultation (denied due to lock-down @Lieber)	3.0	
23	10/13/04	Client Consultation re trial preparations and confirmation of mitigation strategy.	4.5	
24	10/20/04	Review client letter modify mitigation strategy.	0.2	
25	10/20/04	Call from Client's sister to advise of client desire for meeting.	0.1	
		TOTAL FOR THIS PAGE:	38.5	0.0
		TOTAL FOR ALL PAGES:	130.4	53.3

I hereby certify to the Court that the information set forth on this time sheet accurately reflects the time and activities performed by me for the above named client.

Signature: [signature] Date: July 28, 2005

Modified Version of CID FORM 300 (8/94)

State - vs - Stone
Docket No.: 96-GS-43-698

ATTORNEY'S TIME SHEET

	DATE	ACTIVITY (Please make explanation detailed enough to determine what service was performed.)	Out-of-Court TIME	In-Court TIME
1	10/20/04	Fax client letter to co-counsel.	0.1	
2	10/21/04	Phone consult with co-counsel re client's change in position.	0.2	
3	10/25/04	Client Consultation @ Lieber Corrections (re client change in mitigation tactics)	4.0	
4	10/27/04	Telephone calls to Dr. Morgan & Tee Ann Oehler	0.3	
5	10/28/04	Phone consult w/co-counsel re unavailability of Dr. Morgan & Tee Ann Oehler.	0.2	
6	10/29/04	Prepare, file & serve motion for continuance.	0.8	
7	11/1/04	Return call to Judge re scheduling of Motion Hearing.	0.1	
8	11/1/04	Calls to co-counsel & solicitor re scheduling of hearing.	0.3	
9	11/2/04	Pre-Hearing conference with Judge.	0.2	
10	11/2/04	Await Court Reporter & Attend Motions Hearing.	0.5	0.5
11	11/3/04	Telephone call to Dr. Morgan re continuance & rescheduling of re-sentencing hearing.	0.1	
12	11/3/04	Telephone call to Tee Ann Oehler re continuance & rescheduling of re-sentencing hearing. Left Message.	0.1	
13	11/3/04	Return call from Tee Ann Oehler re retention as expert defense witness.	0.2	
14	11/4/04	E-mails regarding availability of witnesses & need to retain additional experts.	0.3	
15	11/4/04	Organize transcript of previous trial and sentencing hearing.	2.0	
16	11/5/04	E-mail to David Bruck re juror charges on de novo sentencing in re-sentencing trial.	0.1	
17	11/5/04	Legal Research: Admissibility of evidence in re-sentencing.	0.3	
18	11/5/04	Phone Consult w/William Gammer re repeated accidental discharge of pistol.	0.2	
19	11/12/04	E-mails with Cam to reconfirm trail date and witnesses.	0.2	
20	11/12/04	Leave message w/Judge's office to confirm trial date.	0.1	
21	11/12/04	Return call from Client's sister re status.	0.1	
22	12/20/04	Call from Atty. Littlejohn	0.2	
23	12/21/04	Research & Prepare OID Funding Order	1.0	
24	12/222/04	Telephone Call from Atty. Littlejohn re need for adaptability expert.	0.2	
25	12/23/04	Revise OID funding Order	0.2	
		TOTAL FOR THIS PAGE:	12.0	0.5
		CUMULATIVE TOTAL	50.5	0.5

State - vs - Stone
Docket No.: 96-GS-43-698

ATTORNEY'S TIME SHEET

	DATE	ACTIVITY (Please make explanation detailed enough to determine what service was performed.)	Out-of-Court TIME	In-Court TIME
1	12/30/04	Client Interview w/TeeAnne Oehler @ Leiber Correctional	5.0	
2	2/2/05	Conference with mitigation team in Columbia.	4.5	
3	2/7/05	Prepare/file./serve Renewal of Motions Motion.	0.5	
4	2/8/05	Prepare Transport Order for Motions Hearing.	0.5	
5	2/9/05	Call from Judge King re Defendant logistics	0.1	
6	2/9/05	Faxes to SCDC & Lieber re transport order.	0.2	
7	2/9/05	Meet with Mitigation Specialist & Social History Investigator	2.0	
8	2/9/05	Phone consult w/Glenn Harrell re Client Drug Use	0.2	
9	2/9/05	Phone consult w/Cam re tomorrow's logistics.	2.0	
10	2/9/05	Phone consult w/Paige Tarr re Glenn Harrell info.	0.2	
11	2/9/05	Phone consult w/Carolyn Graham re logistics.	2.0	
12	2/9/05	Phone consult w/Tommy Davis re Ruth Griffith Affidavit.	2.0	
13	2/9/05	Phone consult w/Simon Major re security, housing, & transport of client.	0.2	
14	2/9/05	Draft Ruth Griffith Affidavit.	0.5	
15	2/9/05	Prepare & E-mail to do follow-ups to mitigation team .	0.5	
16	2/10/05	Review Change of Venue Statute & Case Law	0.5	
17	2/10/05	Prepare Affidavit in Support of Change of Venue	0.5	
18	2/10/05	Call from Carolyn Graham re logistics.	0.2	
19	2/10/05	Conference with Dr. Mellikian re client remorse.	0.2	
20	2/10/05	Consult with Cam re Affidavits, Motions, Etc.	0.2	
21	2/10/05	Call to Melinda Parrot re clothes for BWS	0.2	
22	2/11/05	Review files, scan & prepare press articles for filing.	1.5	
23	2/11/05	Review Juror Excuses, Argue Motions, Address Juror Exemptions & Disqualifications.		2.5
24	2/11/05	Review State's exhibits, meet w/client, and discuss OID funds with Judge.	1.0	
25	2/14/05	Legal Research - scope of admissible mitigating or extenuating circumstances.	1.5	
		TOTAL FOR THIS PAGE:	26.2	2.5
		CUMULATIVE TOTAL:	76.7	3.0

State - vs - Stone
Docket No.: 96-GS-43-698

ATTORNEY'S TIME SHEET

	DATE	ACTIVITY (Please make explanation detailed enough to determine what service was performed.)	Out-of-Court TIME	In-Court TIME
1	2/14/05	Hearing on availability of Ruth Griffith to testify.		0.5
2	2/14/05	Case review and consultation with Cam Littlejohn.	1.0	
3	2/19/05	Pretrial Conference.	1.0	
4	2/19/05	Review State Witness Testimony.	8.0	
5	2/20/05	Review Witness Testimony & Consult with Cam Littlejohn.	6.0	
6	2/21/05	Review file & organize for trial.	12.0	
7	2/22/05	Qualify Jurors	3.0	8.5
8	2/23/05	Qualify Jurors		12.2
9	2/24/05	Select Jurors prepare for State's Case.	3.5	6.2
10	2/24/05	Meet with expert witness.	1.5	
11	2/25/05	Trial	1.5	8.5
12	2/26/05	Trial	7.0	7.1
13	2/27/05	Legal Research & Review trial notes.	2.5	
14	2/27/05	Closing Arguments, Charge & await Verdict.		6.5
15	2/27/05	Receive Verdict, Poll Jurors, Motions, Sentence, Serve Notice of Appeal		0.8
16	3/1/05	Post sentence follow-up with Client @ Lieber	5.5	
17	3/1/05	Review & comment on Judge King's Report to Supreme Court.	0.2	
18	7/28/05	Review Statutes & Prepare Final Reimbursement Order	1.0	
19				
20				
21				
22				
23				
24				
25				
		TOTAL FOR THIS PAGE:	53.7	50.3
		CUMULATIVE TOTAL:	130.4	53.3

He Gallimore would tell [redacted] Judge BWS cooperated & that kid shown remorse.

[Sgt. McKnight took pictures of BWS upon being booked.

*** → Bobby thinks there is a video recording of him being booked.

@Booking = report may say "on view" arrest.

Booking report that Bobby has shows $50 once that what we have.
BWS told him where other money was.

* SCOC still has BWS's Indeas Visas.

Heard somebody holler
Turned & squatted -- went off when he squatted.

— Ruth usually parks at back door
-- People go to back door

318 1888 CAM - conference

12.51
11:11
1:40 sv 1.7

Lynchburg

1. Clothes to Jail

H) 437-2171
W) 773-3333

On Monday Can talk to Beachley's 481-0886

2. Phone # for Mary ~~Lynch~~ Griffith.

No investigation = only concrete.
Head Injuries from several accidents
Poor History

3. Psychiatric Issues? =

He is in big time denial
Family history of mental illness subst. abuse
not retarded but low I.Q.

Wesley Miles & Geraldine Have been subpoenaed.
↳ She's reluctant to help State.

~~Check ARTC for any accidents.~~

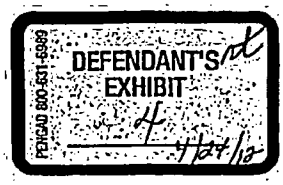
Tee Anne will be in DC Friday thru Tuesday.
In Arlington -- Tee Anne (Cynne Osbourne
703/237-7277 HHS. Dept.
FAX 703/237-2837

Candace Taylor
James E. Ameson (curve by Ruth's) } maybe able to put Bobby in Ruth's on prior occasions.
Yellow Cabs 136 S. Main

Left
Right
Lower Hemisphere.

Paid 3:39 - 4:15

.3 ~ Const with Logistics
Left Bartlett at
.4 ~ Jeoms
1st rd left quiet
.2 ~~Semantics~~
At stop make left
Look for apts on right
2 houses on left
Not white house
ask for Buddy Stanfield



STATE VS BOBBY WAYNE STONE
CASE NO E-740206

BY B.J. JOHNS AND ASSOCIATES
LESLIE M. SAPP, INVESTIGATOR

INTERVIEW WITH ELIZABETH BERNICE PERRY

Monday-September 9, 1996

This afternoon I met with Elizabeth Bernice Perry at The Shrimper in Lake City. Ms. Perry is client's Aunt Bernice (full paternal aunt). She works in Lake City as manager of the Shoe Department at Walmart, but resides in Hemingway. Both client and Melinda have indicated to me that they are closest to Bernice, and believe that she could provide the most comprehensive family history/information.

Ms. Perry was a very friendly, intelligent woman. She seemed concerned about the welfare of both Bobby Wayne and Melinda. She is aware of Melinda's daughter's pregnancy, and shared my impression that Melinda is very fragile right now. Bernice stated that at the preliminary hearing for Bobby Wayne, she was afraid that Melinda was 'just going to fall apart." After explaining our role in the mitigation phase of client's defense, I asked Bernice to provide me with a basic family history, which she did to the best of her ability.

There were five children born to Lottie Mae Howard and Deleon Ozine Stone. Two are deceased-Bobby Ozine Stone (client's father) and Elizabeth Floyd Stone, who died over twenty years ago after open-heart surgery. Two brothers are surviving: Wallace Stone, who is a Deacon in the church in Elizabethton, Tennesseee, and Luther Stone, who resides and works in Prospect, SC. A sister, Joyce McClellan, lives in Hemingway.

Client's paternal grandmother, Lottie Mae Howard, was born in either Florence or Williamsburg County, and died during open-heart surgery in Charleston in 1984. Her siblings included twins: Odell and Rudell Howard, both of whom are deceased and believed to have been alcoholics. Odell died at the VA Hospital in Charleston, and Rudell died in Andrews, SC. Two siblings are surviving-Louise Baxley of Charleston and Edith Howard of Anderson.

Client's paternal grandfather, Deleon Ozine Stone, may have been born in Florence County, and died in Charleston in 1988. His side of the family is fraught with tragedy. Brother Wesley Stone drank himself to death, and died at the VA Hospital in Charleston. Brother Charles Stone also drank-he drowned many years ago-allegedly client was very close to Charles and was there at the time of the drowning. Sister Wilma died of a cerebral hemorrage. Sister Juanita was murdered by her husband, who then committed suicide. Surviving are; a brother, Buddy Willis Stone, who lives in Marian, SC. Sister Sylvia Stone Haselden is mentally ill, and lives in Johnsonville. While some of the family

history is sketchy, Bernice said that she will get together with Joyce, so that they can get out the family Bible, and hammer down some more details and dates.

Bernice said that she was always fond of client-had never known him to be violent. She said that while he would get himself into trouble, he was the type to "give you the shirt off his back." Family strife occurred when Bobby Ozine and MayBelle moved the family to Sumter-Bernice said that family members had their feelings hurt, and that "all the trouble started when they got to Sumter."

This trouble began with Bobby's drinking, which according to all interviewed, tore the family apart. MayBelle was very intolerant of his drinking, and would kick him out of the house. Bernice reiterated that Bobby was not violent when drinking-he just couldn't control it. As a result, client and his siblings didn't get to see very much of Bobby, and MayBelle was a strong matriarch. She took care of the children, and according to Bernice, allegedly had her share of affairs. Bernice says that she cannot prove this, but supected it for quite some time.

Bernice recounted an interesting incident from client's youth. She remembers a time from when client was a little boy: Bobby was in jail for another DUI-he called Bernice from jail,and she went to see him. He told her that client had been beaten by one of MayBelle's paramours-he had actually seen the marks on Bobby Wayne. According to Bernice she **thinks** that the man was none other than Wesley Miles, who was also incarcerated at the time. Apparently MayBelle had the man arrested, but later dropped the charges. Bernice says that she cannot be positive, but suspected that Wesley and Maybelle had been involved, and thinks she remembers Bobby telling her that it was indeed Wesley.

Regarding mental illness in the family....Bernice sited the aforementioned Aunt Sylvia, as well as a cousin, Letha Strickland (who incidentally is the child of Wilma Stone and Odell Howard). Apparently, Letha also has a problem with alcohol. Bernice also shared with me a story from Melinda's childhood: Apparently Melinda was very close with her Aunt Lizzie (Elizabeth Floyd). When Lizzie died during open heart surgery, Melinda took it very hard. Bernice remembers several incidents where Melinda would actually talk to her deceased aunt, and point her out to others, who, of course could not see her.

Bernice and I got along very well. While she is naturally concerned about client and Melinda, she also confessed that the incident has been hard on her. She does not know at this point if she will attend the trial-is worried about losing her job. She seemed very willing to help in any way she can, and I asked her to try and locate the family Bible, as well as construct a family tree with as many dates and details as she can remember. She was very willing to do this-I told her that I would be in touch.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
County of Sumter	)	Case No. 08-CP-43-905
	)	
Bobby Wayne Stone, #5051, *Applicant*,	)	**ORDER GRANTING SUBSTITUTION OF COUNSEL**
	)	
vs.	)	
	)	
State of South Carolina, *Respondent*.	)	
	)	

This matter comes before the Court upon Applicant's motion to substitute Emily C. Paavola as counsel in place of Robert Lominack. This Court finds that Mr. Lominack is no longer engaged in the full-time practice of law, but has taken a new career as a high school teacher, and he therefore requests to be relieved of his duties in this matter. This Court further finds that Ms. Paavola has previously been involved in this case. She is very familiar with the files and facts of the case and has a positive, pre-existing working relationship with Applicant. Ms. Paavola has substantial experience in capital post-conviction cases and has been appointed as counsel in at least six other capital PCR cases in South Carolina. Finally, this Court finds that Applicant consents to the substitution of Ms. Paavola in place of Mr. Lominack, as evidenced by his affirmative consent under oath at an evidentiary hearing in Florence, South Carolina, on August 10, 2012.

IT IS THEREFORE ORDERED that Robert Lominack is relieved as counsel and Emily C. Paavola is substituted as counsel for Applicant effective August 10, 2012.

IT IS FURTHER ORDERED that Ms. Paavola shall be compensated for her time and reasonable expenses incurred in this matter after August 10, 2012, at the same rate that was previously approved for Mr. Lominack in an *ex parte* funding order dated December 11, 2008.

AND IT IS SO ORDERED.

Michael G. Nettles
Circuit Court Judge

December 31, 2012.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
County of Sumter	)	Case No. 08-CP-43-905
	)	
Bobby Wayne Stone, #5051, *Applicant*,	)	**APPLICANT'S POST-HEARING BRIEF**
	)	
vs.	)	
	)	
State of South Carolina, *Respondent.*	)	

RECEIVED
2013 MAR 12 AM 1:18
JANE S. ...WELL
CLERK OF COURT
SUMTER COUNTY, S.C.

INTRODUCTION

Applicant, Bobby Wayne Stone (hereafter, "Stone"), by and through undersigned counsel, files this Post-Hearing Brief in support of his Third Amended Application for Post-Conviction Relief. Stone was convicted and sentenced to death on January 28, 1997, for the shooting of a sheriff's deputy in Sumter, South Carolina. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for a new sentencing proceeding. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (S.C. 2002). On February 27, 2005, a second jury also imposed a death sentence. Cameron B. Littlejohn, Jr., and James H. Babb were appointed to represent Stone at his original trial in 1997 and for the resentencing proceeding in 2005. The South Carolina Supreme Court affirmed Stone's second death sentence on direct appeal. *State v. Stone*, 376 S.C. 32, 655 S.E.2d 487 (2007). Stone timely filed an application for post-conviction relief ("PCR"), and subsequently amended the application on two occasions prior to the evidentiary hearing. This Court held a PCR hearing on April 23-25, 2012, in Sumter, South Carolina, and on August 10, 2012, in Florence, South Carolina. Stone now submits his post-hearing brief in support of the following grounds for relief.

GROUNDS FOR RELIEF

I. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE DURING THE GUILT-OR-INNOCENCE PHASE OF THE 1997 TRIAL.

A. RELEVANT FACTS.

1. The Trial Evidence.

At the guilt-or-innocence phase of Stone's trial, the evidence presented tended to show that on February 26, 1996, he spent the day drinking beer and target-shooting in the woods near his home. *1997 ROA p.691.* Late that afternoon, he emerged from the woods into the back yard of Ruth Griffith ("Griffith") and approached her house. *Id. at 194-96.* Stone had known Griffith for years; he had dated her niece, been a guest in her home, and done odd jobs for her. *Id.* at 747-49. Griffith's daughter, Mary Ruth McLeod, who went outside and asked Stone to leave, described him as holding a can of beer and "staggering," "stumbling," "wobbling," and bearing the appearance of someone who was "hyped up on something." *Id.* at 198, 200-01, 263. McLeod then called 911 to report the incident. *Id.* at 203. Sumter Sheriff's Deputy Sgt. Charles Kubala ("Kubala") responded, checked the area, spoke with Griffith and McLeod, and left. *Id.* at 203-04. McLeod also left. *Id.* at 204.

Some time later, Stone returned and began banging on the inside door of the side porch of Griffith's house. *Id.* at 237. By this time it was dark. *See 2005 ROA p.541* (taking judicial notice of U.S. Naval Observatory data on the time of sunset).[1] Griffith called her neighbor, Landrow Taylor ("Taylor"), who came to her house and called 911 from inside her home. *Id.* at 233-34. Sgt. Kubala responded to the call and returned to Griffith's home. *Id.* at 240. He

[1] At the April PCR hearing, Stone introduced testimony from an investigator, Pete Skidmore, who went to the scene on the same day the incident occurred, but in a subsequent year, and videotaped the scene at the same time the events in question took place. Skidmore testified that it was completely dark at the time of the incident at issue; the videotape confirmed his testimony. *April 23-24, 2012 PCR Tr. p.275.*

parked facing the diagonally opposite corner of the house from where Stone was banging on Griffith's porch door. *Id.* at 272. After he "signed down" at the house, i.e., informed the dispatcher that he had arrived, he responded to another call from the dispatcher "10-6" ("I'm busy"). *Id.* at 321.[2] Kubala exited his vehicle and Taylor motioned him around the house before going back inside. *Id.* at 282.

Stone was still on the side porch, banging on the door and holding a pistol in his hand. *Id.* at 693, 713. Griffith and Taylor heard Kubala say "Halt," followed by gunshots. *Id.* at 273, 284. Taylor described it this way: he "heard one shot and just a split second there were three or four more. It was shooting so fast." *Id.* at 284. Kubala was shot twice, and both injuries, according to the medical examiner, were fatal. *Id.* at 307. Stone ran back into the woods.

Law enforcement officers located Stone a few hours later in the same woods, lying motionless between two logs. *Id.* at 518. Stone was placed under arrest; the arresting officers recovered the pistol lying under his body. *Id.* at 520. Stone waived his rights and agreed to talk to the police. *Id.* at 707. In his statement, he described Griffith as an "old drinking budd[y]." *Id.* at 711. He said he had gone there to speak with her, but no one opened the door. He heard a noise, turned toward the sound, and the gun went off. *Id.* at 725. He remembered pulling the trigger only once. *Id.* at 695.

Stone was charged with burglary in the first degree, murder, and possession of a weapon during the commission of a violent crime. *Id.* at 870-71. Cameron Littlejohn and James Babb represented him at trial. *August PCR Tr.p.14.* Littlejohn was primarily responsible for handling the defense case at the first phase, i.e., the facts and circumstances of the crime, and Babb was primarily responsible for developing and presenting the mitigation case. *Id. at 15; id. at 38.*

[2] It is impossible to determine whether that conversation took place inside or outside Kubala's vehicle. *Id.* at 170.

The State's theory at trial was that Stone "ambushed" Kubala. Distilled to its essence, the State contended that Stone saw or heard Kubala, laid in wait for him and killed him in cold blood in order to avoid serving a thirty-plus years prison term for the burglary that he was in the process of committing. *2005 ROA p.733.*[3] The defense offered a different interpretation of the evidence: Stone, grossly intoxicated, was beating on the door of Griffith's home, while holding a gun with a hair trigger that he had only obtained that day. *1997 ROA pp.692-93.* The defense maintained, consistent with Stone's statement, that Stone was unaware of Kubala's presence until he heard a man's voice "yelling" behind him in the dark, at which point he turned in the direction of the noise and reflexively discharged the gun. *See id. at 693.* Again, reduced to its' core, the defense theory was that Stone "was on the porch, he heard a noise, he turned, the gun went off. . . . [H]e didn't exactly know what happened. He just took off." *August PCR Tr. p.18.* Counsel's strategy was to show that the facts and circumstances of the case were consistent with this version. *Id.* at 38. Their plan for implementing this strategy consisted of "pointing out that it was dark, that Stone was intoxicated, the gun had a very light trigger pull, and these were consistent with his version of what happened." *Id.* at 39.[4] During the guilt/innocence phase, the defense called only two witnesses, each of whom testified to Stone's relationship with Griffith.[5]

---

[3] In summation, the State maintained that Stone heard Kubala drive up, *1997 ROA, p.838*, and also heard Kubala's "10-6" transmission. *Id. at 839.* The solicitor asserted that Kubala "was ambushed and intently (sic) shot three times," and was "a sitting duck." *Id.* at 809, 840. He used some form of the phrase "lying in wait" at least four times. *Id.* at 840, 842, 843. He described Stone as "crouching there aiming at him." *Id.* at 841.

[4] In closing, Stone's counsel argued that the State's evidence had "holes" in it, that Stone was not guilty of the burglary or the murder, and asked the jury, "Did this little guy in his drunken stupor on that evening have the intention or capacity to be that evil?" *1997 ROA Tr. p.861.*

[5] When testimony relating to startle response was proffered, the state objected that it did not rise to level of *M'Naghten*, and the court excluded the testimony. *1997 ROA pp.770-76.*

Thus cross-examination was the primary method of conveying the defense accidental shooting theory.

The jury found Stone guilty of murder and the related charges. The same jury sentenced Stone to death.

2. The Post-Conviction Evidence.

At the post-conviction relief hearing, Applicant called Wayne Hill, an experienced homicide reconstruction expert. In forming his opinions, Hill reviewed the trial testimony, witness statements and examined the gun and other physical evidence. Hill testified that the weapon had an extremely light (1.5-pound) trigger pull, (*id. at* 200), which, in his opinion, created the distinct possibility of an accidental discharge in anything other than a target shooting setting. *Id. at* 203-04. Hill also testified that the distance the trigger would have to move before firing was approximately 5/100 of an inch. He described the effort required to fire the gun as "minimal." *Id. at* 201.[6] Given these two factors alone, Hill testified: "if you have too light a trigger, it's going to [fire]. And we've got historic cases of police officers who said, 'I didn't intend to shoot the guy.' . . . And when you add in [that the trigger] only has to go five-hundredths of an inch, . . . if you're not paying attention, you could set it off before you intended to. If somebody come[s] up behind you and startle[s] you, you could set it off." *Id. at* 201-05.[7] Hill also noted that swinging the gun up – as Stone described happening when he turned towards the sound, would add centrifugal force to the likelihood of discharge, because "you're pushing the gun against your finger." *Id. at 224-25.*

[6] As demonstrated at the PCR hearing, the trigger pull is so light that, if held by the trigger, the weight of the gun itself is sufficient to fire the weapon. *Id. at* 205.

[7] Hill testified that, when startled, even trained law enforcement officers, commonly discharge their weapons unintentionally. *Id. at* 212-13.

Hill also testified that it was possible to unintentionally fire the weapon in this case more than once. He discussed a scenario in which the first accidental discharge could startle an individual into pressing the trigger accidently a second time. This is especially true given the extraordinarily light trigger pull and short distance the trigger must move to fire the semiautomatic weapon, which automatically reloads and is ready to fire again immediately. *Id. at 208.*[8]

Hill also explained how the evidence supported Stone's account that he shot from waist-level, not from his shoulder as would be expected if he aimed and fired. Stone's height, his location on the raised porch, the height and the path of Kubala's wounds, the height of the bullet holes in the screen door, and the fact that Griffith and Taylor reported that Stone was beating on the door until Kubala said "halt" are all consistent with shooting "from the hip" or unintentional shooting, and -- in combination -- are inconsistent with aiming and shooting from the shoulder which would require the bullets to travel through the screen door in a sharp downward angle, most likely into the ground. *Id. at* 220-22, 243-44.

Finally, Hill testified that the fact that Stone was intoxicated also increased the risk of unintentionally firing the weapon. *Id. at* 211-12. An intoxicated person is unable to focus simultaneously on two different things, e.g., controlling body movement while responding to cues from the environment. *See id. at 211.* Alcohol also tends to deaden sensations, including the sensation of the finger on the trigger. *Id.* Hill explained that a person, especially an impaired person, can fire multiple shots accidentally.[9] *Id. at* 213.

---

[8] Hill testified that the average shooter, even a non-practiced shooter, can fire six rounds per second with a semiautomatic pistol. *Id. at* 209.

[9] At the PCR hearing, SLED Agent Ira Parnell testified on direct and confirmed on cross-examination that firing more than one round unintentionally was possible. *April 23-24, 2012 PCR Tr. p.367.* On cross-examination he also acknowledged that the gun had "what we would

In sum, Hill's testimony was that the totality of the known evidence is consistent with Stone's statement that he did not intend to kill Sgt. Kubala. *Id. at* 222.

A second expert, Dr. James Merikangas, a board certified neurologist and psychiatrist, testified regarding Stone's mental impairments. He noted that Stone had an increased startle response, *id. at* 39, and described "[h]is jumpiness, his anxiety, his impulse control, his attention." *Id. at* 41. He opined that Stone was "suffering from a disorder of the ability to control impulses with increased startle. In other words, if someone had come up behind him in the dark, he would react not with deliberation and planning but just in a reflex way." *Id. at* 43.[10]

Merikangas also opined that it is not surprising that Stone later did not remember firing the weapon more than once, especially given his brain damage and intoxication. *Id. at* 223. When people feel threatened, the fight or flight reflex kicks in, and they "tunnel focus" on the threat. *Id. at* 223-224. Studies have shown that even trained law enforcement officers often cannot correctly remember the number of shots fired under a sense of threat. *Id. at* 223. The perception of being threatened "just changes your perspective." *Id. at* 224.

B. RELEVANT LEGAL PRINCIPLES

The Sixth Amendment right to counsel is "crucial" to the adversarial process because "access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." *Strickland v.*

---

call a hair trigger." *Id. at* 368. He agreed that standard-issue law enforcement pistols have substantially higher trigger pulls – eight to ten pounds in New York City – because startled officers have accidentally discharged their weapons. *Id.* He also testified that an intoxicated person's impaired ability to use a weapon underlies zero-tolerance policies concerning alcohol use for firing ranges and officers on duty. *Id.* at 369.

[10] Wayne Hill testified that based on standard police training procedures, Sgt. Kubala would have come around the side of the house with his flashlight off, so as not to make a target of himself "until [he was. . .] tactically ready" and then use the light to startle Stone, temporarily blinding him to gain tactical advantage. *Id. at* 238-39.

Washington, 466 U.S. 668, 685 (1984) (citing *Adams v. United States* ex rel. *McCann*, 317 U.S. 269, 275, 276 (1942)). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient, and that the deficient performance prejudiced the defendant. *Id.* at 687.

i. DEFICIENT PERFORMANCE

Counsel has a "duty to advocate the defendant's cause." *Id.* at 688. Counsel must "bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Id.* at 688 (citing *Powell v. Alabama*, 287 U.S. at 68-69). To demonstrate deficient performance, a defendant "must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To do so, a person challenging trial counsel's competency must "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.* at 690.

The *Strickland* Court recognized that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Elmore v. Ozmint,* 661 F.3d 783, 857 (4th Cir. 2011) (citing *Strickland,* 466 U.S. at 691). "[A]t a minimum, counsel has the duty to . . . make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331-32 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla. 1986), *aff'd*, 828 F.2d 670 (11th Cir. 1987)). The Supreme Court has recognized that "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence." *Burr v. Branker*, 2012 WL 1950444 (M.D.N.C. May 30, 2012) (citing

Harrington v. Richter, 131 S.Ct. 770, 788 (2011)). "With the assistance of appropriate experts, counsel should [] aggressively re-examine all of the government's forensic evidence, and conduct appropriate analyses of all other available forensic evidence." *Id.* at 330 (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases, reprinted in* 31 Hofstra L.Rev. 913, 1020 (2003)). Performance is deficient when counsel fails to sufficiently challenge the state's forensic evidence. *Ard*, 372 S.C. at 332 (finding that "trial counsel should have further investigated and more thoroughly challenged the gunshot residue evidence" when that evidence was "crucial" to the defense). Such failure is unreasonable and deficient, "especially [in] a capital case with an arguable defense to the guilt phase." *Id.* at at 336.

ii. PREJUDICE

In order to establish prejudice, a defendant must demonstrate a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *Ard*, 372 S.C. at 331. In a guilt-or-innocence phase challenge to the underlying conviction, the question before the court is whether, absent the errors, and considering the totality of the evidence, there is a reasonable probability that the jury would have had a reasonable doubt about the defendant's guilt. *Strickland* 466 U.S. at 695; *Ard* 372 S.C. at 331.

C. ARGUMENT

i. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO SECURE REASONABLY NECESSARY EXPERT ASSISTANCE TO SUPPORT THE ACCIDENT THEORY OF THE CASE.

a. Trial counsel's performance was deficient.

Counsel had a "duty to advocate the defendant's cause" and to "bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland,* 466 U.S. at 688. In this case, fulfilling that basic obligation required trial counsel to marshal and adequately present reasonably available evidence supporting Stone's claim that he did not intentionally shoot Sgt. Kubala.

It is important at the outset to note that this is not a case in which Applicant takes issue with trial counsel's basic strategy. It was a plausible defense (in fact it was the only plausible defense), it was advocated by their client, and it was consistent with the evidence and Stone's statements to law enforcement: Stone did not know Sgt. Kubala had been to the house earlier that day or that the police had been summoned while he was beating on the door of Griffith's porch; it was dark; there is no proof that Stone saw or heard Sgt. Kubala arrive at Griffith's home or knew the officer was there until Kubala said "halt." Stone was also very intoxicated and holding a gun with a light trigger pull. An unintentional killing was also consistent with Stone's background; he had absolutely no history of violence toward anyone, including the law enforcement officers who had arrested him without incident for prior nonviolent offenses.

Trial counsel's selection of the correct theory of the case, however, is only a necessary condition, not a sufficient one, to providing the effective assistance of counsel. The appropriate strategy must also be reasonably implemented. *See* NLADA Performance Guidelines for Criminal Defense Representation, Guideline 4.3 (Theory of the Case) ("During investigation and trial preparation, counsel should develop and continually reassess a theory of the case."). This, in turn requires a constitutionally adequate investigation, and in a case such as this one, counsel is obligated secure necessary expert assistance. *See* NLADA Performance Guidelines for Criminal Defense Representation, Guideline 4.1(7) (Investigation) ("Counsel should secure the

assistance of experts where it is necessary or appropriate to: (A) the preparation of the defense; (B adequate understanding of the prosecution's case; (C) rebut the prosecution's case."). In this case, trial counsel's failure to support Stone's statement that he did not intend to kill Sgt. Kubala was objectively unreasonable.

Trial counsel's method of implementing the defense theory of the case was cross-examination of the State's witnesses. Counsel presented no affirmative evidence, especially expert testimony, to support their primary contention, although, as the PCR hearing testimony established, supporting evidence was reasonably available. Wayne Hill, whose testimony was described above in detail, or another similar expert could have powerfully bolstered Stone's consistent contention that, startled by Kubala saying "halt, he turned towards the sound and the gun went off. Hill concluded, after considering the totality of the known evidence, that the evidence was more consistent with Stone's statement that the gun accidently discharged than there was to support the State's ambush theory. In sum, trial counsel's failure to secure necessary expert assistance rendered the defense case much weaker than it could – and should – have been.[11]

In *Ard v. Catoe*, 372 S.C. 318, 642 S.E. 2d 590, (2007), the South Carolina Supreme Court held that trial counsel's failure to retain an independent expert was unreasonable and prejudicial. Ard was convicted of murder and sentenced to death for the shooting of his pregnant girlfriend. Like Stone, Ard maintained that the shooting was unintentional. A state's expert testified regarding the results of gunshot residue testing on the defendant's hands, while the

[11] As discussed in the next section of this brief, trial counsel's failure to adequately assess Stone's cognitive impairments, is also relevant to this claim. Stone's low I.Q. and brain damage affect areas in his brain that are well-known to relate to the interpretation of danger signals, executive functioning, planning and flexibility, and thus are relevant to Stone's mental state at the time of the offense.

defense failed to secure an independent expert to review and challenge this testimony. Another similarity between Stone's case and *Ard*, is that trial counsel staked their case that the killing was unintentional: i) on Ard's consistent statements that he did not intend to kill his girlfriend; and, ii) through cross-examination of the prosecution's witnesses. In affirming the PCR court's grant of a new trial, the South Carolina Supreme Court found that "trial counsel should have further investigated and more thoroughly challenged the gunshot residue evidence" when that evidence was "crucial" to the defense. 372 S.C. at 332, 642 S.E. 2d at 598;[12] *See also People v. Baines*, 399 Ill.App.3d 881, 896 (2010) ("[I]t defies reason to believe that defense counsel would intentionally fail to bring out the very essence of the defense theory in the clearest possible manner."). Expert evidence supporting the defense theory that Stone did not intentionally kill Sgt. Kubala was just as, if not more, "crucial" to the defense in this case as the gunshot residue testimony was to the defense in *Ard*. Therefore, trial counsel's performance was similarly deficient, and thus unreasonable, under *Strickland*.

c. Trial counsel's deficient performance was prejudicial.

The jury in this case had, for all practical purposes, only one issue to resolve in this case: did Stone intentionally kill Sgt. Kubala, or did he, in his intoxicated state, turn towards the sound of Kubala's voice and accidently fire the shots that took Kubala's life. The Court charged the jury that they could not convict Stone if there was "another reasonable explanation" for the facts other than that Stone was guilty of malicious murder. 1997 Trial 878. As discussed above, there *was* another reasonable explanation – that the shooting was reflexive and unintentional. Unfortunately, trial counsel failed to develop and present evidence which would have persuaded

[12] At his retrial, Ard's defense team did secure and present expert testimony on this issue. The jury rejected the murder charge, instead finding Ard guilty only of the lesser-included offense of involuntary manslaughter.

the jury that Stone's account of what happened was plausible and consistent with the known evidence.

Not surprisingly, courts have consistently held that failing to secure a defense expert to corroborate the defendant's version of events is prejudicial. *See, e.g., People v. Hull,* 898 N.Y.S.2d 284, 71 A.D.3d 1336 (2010) (finding counsel's failure to call an expert gunsmith regarding the possibility of accidental discharge of a firearm unreasonable and prejudicial because the "testimony would have been directly pertinent to defendant's primary defense, and would not have been duplicative [and where there was no evidence of] 'strategic or other legitimate explanation' for the failure to call a firearms expert"); *Elmore v. Ozmint, supra,* 661 F.3d at 853 (granting habeas corpus relief in part because "[t]he defense team conducted no independent analyses of the State's forensic evidence"); *Burr v. Branker*, 2012 WL 1950444 (M.D.N.C. May 30, 2012) (finding trial counsel's failure to secure independent, expert assistance to review the prosecution's pathologist's opinion as to the cause of death to be both unreasonable and prejudicial); *Jackson v. Conway,* 765 F.Supp.2d 192, 264 (W.D.N.Y. 2011) (finding prejudice when "defense counsel needed [an] expert's testimony to . . . effectively make his arguments.").

Had Stone's jury heard testimony similar to that presented at the PCR hearing regarding the crime scene, unsafe trigger pull[13] and the ease with which the gun Stone had in his hand could be accidentally fired, the significance of the height of the bullet holes in the screen door and the angle of the bullet paths entering Sgt. Kubala's body, and Stone's significant cognitive

[13] Although at trial SLED examiners minimized the lightness of the trigger pull, Stone's trigger pull was approximately one and one-half pounds, less than half of the pressure of the trigger pull in *Ard*, which the South Carolina Supreme Court described as requiring "*only* three to three and one quarter pounds of pressure". *Ard,* 372 S.C. at 324 n.5 (emphasis added). Furthermore, at the PCR hearing, the same SLE D examiner conceded on cross-examination that the weapon had a "hair trigger." April 23-24, 2012 PCR Tr. at 368.

impairments, combined with a closing argument that connected the known facts to the defense theory, there is a reasonable probability that the jury's answer to the "ambush v. accident" question would have been different. For these reasons, counsel's failure to reasonably investigate, implement and support their chosen trial strategy was prejudicial.

ii. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO THE STATE'S IMPROPER AND PREJUDICIAL CLOSING ARGUMENT.

Arguments must be confined to evidence in the record and reasonable inferences that may be drawn from it. *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); *Vasquez v. State*, 388 S.C. 447, 458, 698 W.E.2d 561, 566 (2010). A solicitor may argue that the evidence gives rise to an inference, but the suggested inference must be reasonably drawn from the facts in evidence." *United States v. Talley,* 135 F.3d 291, 298 (4th Cir. 1998). This is "a fundamental rule, known to every lawyer." *Id.*

Testimony described Stone as essentially inert and nonresponsive when officers discovered and approached him. The gun was under his left shoulder as he lay motionless for at least twenty minutes; he made no effort to retrieve it. Nevertheless, the solicitor told the jury that Stone's intent was to ambush and kill more officers. Although there was no evidence to support his assertions, the solicitor argued that Stone: (a) had "already killed one police officer, what's keeping him from killing another?"; (b) was "thinking about using [the gun]"; (c) "kept it till the last minute in case just maybe one or two officers came to him, we would have [had] two unsolved murders maybe"; and, (d) "kept that gun in his last second to use it again." The inference was not reasonably drawn from the facts in evidence, as the law requires. Trial counsel failed to object.

As to prejudice, the concept of ambush can have only negative connotations. Its use is calculated to inflame the jury's outrage. The Supreme Court of South Carolina has found both

deficient performance and prejudice when the solicitor argues without evidentiary support. For example, in *Mincey*, the court determined that trial counsel was ineffective for failing to object to the solicitor's comments in closing, when "[t]here was, in fact, *no* evidence that [Petitioner] intimidated any of the witnesses." *Mincey v. State*, 314 S.C. 355, 358, 444 S.E.2d 510, 511 (1994). In *Huggins*, the defendant was denied a fair trial because the solicitor argued that the defendant wanted the victim dead, knew how to do it, and had offered to pay to have it done. This was "fundamentally unfair" and, when "there was no evidence in the record that she had done so, was highly prejudicial [under the circumstances]." *Huggins* 325 S.C. at 116. Trial counsel's failure to object was ineffective assistance.

II. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE DURING THE 2005 RESENTENCING PROCEEDING.

A. STATEMENT OF FACTS

i. THE STATE'S CASE FOR DEATH.

The State's case at the 2005 resentencing proceeding was substantially similar to its original trial presentation in 1997. In his opening statement, solicitor Dudley Saleeby told jurors that their only task would be to determine punishment since Bobby Stone had already been found "[g]uilty beyond a reasonable doubt of killing a deputy sheriff of Sumter County who was going about his duties . . . protecting the public." *2005 ROA p.43.* Saleeby urged jurors, "when you ultimately go back there and make that decision, bear in mind that we're all in here because of [a] series of choices that Bobby Wayne Stone made on February the 26th of 1996 including the choice to kill Charlie Kubala." *Id. at 50.* The State repeated its "ambush" theory of the case, arguing that Stone laid in wait for Kubala and then "ambushed him like a coward and dropped him dead right here." *Id. at 727; see also id. at 726-727* (arguing Stone was "sitting in the

crow's nest. He's got a birds-eye view. . . . [H]e knew the deputy was there and Charlie Kubala was coming [around] the side of the house. Bobby Wayne knows he's there.").

The State also offered evidence of Stone's prior criminal record, which consisted of two prior convictions. Stone was convicted of breaking into a motor vehicle and house breaking in 1985. *2005 ROA pp.78-79.* He was nineteen years old at the time and was sentenced to a youthful offender sentence not to exceed six years. *Id. at 79.* In 1987, Stone was convicted of burglary and grand larceny and sentenced to fifteen years and a five-year suspended sentence, respectively. *Id. at 80.* He was paroled approximately five and a half years later on June 9, 1993, and remained on parole at the time of Kubala's death. *Id. at 81.* None of these prior charges involved acts of violence or crimes against persons. They largely consisted of thefts from businesses, cars and other empty buildings carried out with the participation of one or more co-defendants. Nevertheless, the State characterized Stone as "a career criminal" and argued that he made a calculated decision to kill Kubala because he did not want to go back to jail:

> If [Stone] gets caught right here, he's got thirty hanging over his head, and he stands to get more for the burglary he's doing. He chose to kill. I submit to you he was facing the rest of his natural life this time with thirty plus, whatever you got for the burglary, at the age [of] thirty-one, I submit he was going to stay in there for life anyhow. He knew it, and there wasn't one way out. . . . It was Sgt. Charlie Kubala in the line of duty, and he wasn't going with him. He wasn't going back to jail. He didn't want to go back to jail. He had the choice and he chose not to do it, and he killed him like a coward. Shot him straight on and [Kubala] doesn't know it's coming.

2005 ROA pp.732-733.

Finally, the State offered seven victim impact witnesses. Former Sheriff Thomas Mims, Captain Gene Edward Hobbs and Major Gary Metts talked about Kubala's career with the Sheriff's department and the impact his death had on each of them personally, on the Sheriff's

department generally, and on the community as a whole. Specifically, Mims described how he heard about Kubala's death and tearfully told the jury of his personal difficulty with breaking the news to Kubala's family:

> [T]his is the first time something like this has ever happened, and as a supervisor of a group of men or women, this is the worst thing that could ever happen to you is to have one of your, your personnel under your supervision, your responsibility, under your charge to come to, to be killed. The thoughts that ran through my . . . excuse me. Thank you. I'll be all right, I hope. Thoughts ran through my mind how was I going to . . . what was I going to tell his wife Teresa. How was I going to, what was I going to tell his daddy and his momma, how would I deal with that. His daddy, Fred Kubala, made it easy for me. Before I could say anything, his words to me were he knew that Charlie died doing what he knew his son loved to do, what he had chosen to do, the profession that he had dedicated himself to.

2005 ROA pp.64-65. Mims explained that, as a supervisor in law enforcement, he would always carry the memory of Kubala's death with him. *Id. at 65* ("What do you say as a supervisor of a group of men and one that [has] lost his life in the line of duty. That's basically what I did, and you know, the memory is still there. It will never go away."). Finally, Mims testified that, like any member of law enforcement, Charlie Kubala was willing to die in the line of duty:

> [E]very officer that has raised his hand and taken that oath to serve and protect the citizens of this county or any other county or even the United States of America know that's a possibility, but yet they're willing to do it. Sgt. Kubla was willing to do it, and he did it with, with a great honor, a high degree of professionalism, and he was held in high regard by those he worked with, and I certainly hold him in high regard.

Id. at 65-66.

Captain Hobbs reiterated many of the themes from Mims' testimony. He stated that "[t]here's probably not going to be anybody closer in law enforcement than Charlie Kubala in my life," and "I loved him like a brother." *2005 ROA p.253*. Hobbs explained that Kubala took

a cut in pay after a brief break to return to work in law enforcement because he had "a sense of helping people that's important." *Id. at p.255.* Hobbs described in detail how he "did literally the hardest thing I've ever done in my life, and I told [Kubala's wife] that Charlie Kubala was dead." *Id. at 257.* Then, Hobbs explained that Kubala's death had a significant impact on the training and the operation of the Sumter County Sheriff's Department. He stated that there was a "department-wide" sentiment that "we were never going to allow this to happen again." *Id. at 258.* One of the major changes the department made is that all new trainees now visit the scene of Kubala's death during orientation where they hear about "what happened and what led up to it." *Id. at 258-259.* Next, the trainees are taken to Kubala's grave site in Sumter and are told about "the consequences of this job." *Id. at 259.* Hobbs testified that all trainees are told:

> [I]f you're in this job for the wrong reasons, if your heart's not right, if you're not able to give that sacrifice, then maybe you should think about another job. Understand this is real. And that's, that's a training that we do for every trainee since that happened.

Id.

Similarly, Gary Metts described Kubala's career in law enforcement and talked about his own personal feelings surrounding Kubala's death. He described serving as a pallbearer during Kubala's funeral and helping Kubala's wife, Teresa, get his uniform ready because she wanted to bury him in his police uniform. *2005 ROA pp.510-516.* Metts stated that he had another best friend who also passed away and Charlie was his second best friend, so "I'm not too good on having best friends anymore." *Id. at 516.* He testified that he keeps the beeper Kubala wore on the night of his death attached to the visor in his car. *Id. at 516-517* ("[I] [a]lways said I was going to throw it away, but I've never been able to."). Metts explained that Kubala had taken on a significant volunteer role in the Explorer Program, which was "a program designed for young kids . . . and it's a way that we can kind of show the community a little bit about what we do in

law enforcement, and especially kids who are interested in that field." *Id. at pp.511-512.* Metts told the jury that after Kubala's death, however, the Explorer Group "collapsed." *Id. at 517.* He also described Kubala's volunteer activities with the Special Olympics and how, right before his death, Kubala volunteered to "spend[] nights and days" working overtime to improve a law enforcement policy book. *Id. at 517-519.*

Metts testified that Kubala "was very involved in every aspect of the sheriff's department on and off duty." *Id. at 519.* He described how the Sheriff's Department honored Kubala posthumously by dedicating the policy book to him, retiring his badge number, and starting the Charles Kubala golf tournament. Metts stated, "If you live in Sumter, you've heard about the Charlie Kubala golf tournament. It's one of the biggest golf tournaments in Sumter, and we've got a lot of hard-working people putting a lot of effort in it." *Id. at 518.* The golf tournament raises money for children whose parents have died while serving in law enforcement. *Id.* ("That's what it's intended to do, and if somebody is offed, mother or father should fall in the line of duty, it will help their children go to school."). Metts noted that Kubala's son, Little Charlie, was able to go to college because of the money raised by the tournament. Metts concluded his testimony by describing how he took several members of Kubala's family, including Little Charlie, to see the scene of the crime, saying:

> Little Charlie looked up at me. He asked me if his daddy was brave. I told him he was the bravest man I've ever known.

Id. at 520.[14]

[14] In closing argument, the State asserted that law enforcement officials would have been justified in killing Stone upon his arrest. Solicitor Jackson stated:

> When they found Bobby Wayne Stone sitting on the edge of that field, getting close to his house and the Boy's Club, they could have killed him. They could have riddled him with bullets, and

Four members of Kubala's family also gave victim impact testimony. His mother, father and brother briefly described Kubala's life history and the impact of his death on their family. Teresa Kubala-Hanvey (hereafter, "Kubala-Hanvey"), the victim's former wife, remarried five years after Kubala's death. She testified that in 2003, she received a message on her answering machine informing her that "they were going to retry this case over again, that the supreme court had overturned it." *2005 ROA p.506.* As a result, she decided that she "couldn't take it any more" and attempted suicide. *ROA pp.507-508.* She stated that she was taken to the ICU and stayed in the hospital for three days "which was an eye-opener." *Id. at 508.* Littlejohn objected to Kubala-Hanvey's testimony regarding her suicide attempt, but the trial court overruled the objection.[15] *ROA pp.507, 521-523.* Defense counsel did not object to any other aspect of the State's victim impact presentation.

> nobody would have said anything different. They could have given him the death penalty just like he killed Sgt. Charlie Kubala. Some say they should have. Save us all the time and effort of being here and putting twelve people to the trouble of making the decision for them.

2005 ROA at pp.716-717.

[15] Appellate counsel, Joseph L. Savitz III, raised this issue on direct appeal arguing that Teresa's testimony regarding her suicide attempt impermissibly injected an arbitrary factor into the jury's decision making. *State v. Stone*, 655 S.E.2d 487 (2007). However, the South Carolina Supreme Court determined that this argument was not preserved for review because it was not raised at trial and thus was not ruled on by the trial court:

> Appellant alleges that his argument on appeal is simply an augmentation of his objection at trial, but a thoughtful examination reveals that this is not so. Primarily, Appellant's objection at trial was based on relevance, and that issue has been abandoned here. Second, whether the suicide attempt by the victim's spouse minimized the jury's sense of responsibility (by suggesting that the jury's ultimate decision would be subject to review by a higher court) or maximized the jury's sense of responsibility (by implying that imposing a life sentence might lead the victim's widow to attempt suicide again), these considerations are wholly independent of the

ii. TRIAL COUNSEL'S ARGUMENT FOR LIFE.

To counter the State's case for death, defense counsel argued that Bobby Stone was simply a "foolish drunk" who did not intend to shoot Kubala. *Id. at 748; see also id. at 746* ("this was a reaction and not [a] planned calculated thing"). TeAnne Oehler, a clinical social worker, testified that Stone's family was poor, with a history of alcoholism on both sides, and that Stone developed poor coping skills for dealing with life. *Id. at 549-550.* She explained that Stone's mother was separated from his biological father and engaged in a polygamous-like affair with another man, Wesley Miles, who lived next door with his own wife and children. *Id. at 550.* Miles also had an alcohol problem and was physically abusive. Oehler testified that, on one occasion when Stone was about eight or nine years old, Miles beat Stone so badly that he was taken to the emergency room. *Id. at 551.* Oehler explained that the Stone family was afraid of Miles and that he attempted to make sexually harassing moves toward Stone's sisters. *Id. at 552-555.*

Oehler briefly noted that Stone had some problems in school and that he dropped out in the tenth grade. She summarized Stone's school history as follows:

> He didn't have too much difficulty in school until about sixth grade, and at that point, it became very evident through his academic records. He was in resource class, but he didn't have the ability, according to these school records, to pay attention, to concentrate, to focus on information and to be able to internalize that to move forward with a plan.

Id. at 560. Oehler explained that Stone's family lacked structure and good academic role models. *Id. at 556, 560-561.* Finally, she noted that Stone "appeared to have been very accident

---

relevance argument presented below. If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.

Id. at 489.

prone during his growing up years" and that "[h]e had a very difficult time with dates and with sequence of when things happened or the years that they happened." *Id. at 564; see also, id. at 565* ("he was very poor on his sequence of events"). She testified that a radiator once fell on Stone's head when he was working as a mechanic. Oehler testified:

> There seemed to be a significant history of these accidents happening to him during the years. I wondered because of the radiator falling on his head or some of the injuries that he had when he was younger if there was any history of head injury, but I did not see any medical documentation that stated that.

Id. at 564-565.

On cross-examination, Oehler admitted that she did not interview any of Stone's teachers. *Id. at 571.* She did not speak to any medical doctors, employers, or anyone who had done a psychological examination of Stone. *Id. at 572-573.* She did not interview Wesley Miles.[16] Oehler further testified that Stone had no history indicating any kind of serious mental illness, neurosis or mental retardation. *Id. at 578-579.* Specifically, Oehler stated, "I examined both the academic record through the school districts that he attended, as well as the evaluation that was conducted at the State Hospital, and there's no documentation of mental retardation." *Id. at 579.*

Three of Stone's relatives – a sister, his aunt and a niece – testified that their family struggled with difficult circumstances but that Stone was generally a good person and they loved him. *Id. at pp.584-620.* Dr. William Alexander Morton described the effects of alcohol on the brain and estimated that Stone's blood alcohol level was somewhere between .18 and .71 at the time of the crime. *Id. at 655.* Dr. Morton noted that the effects of alcohol are exacerbated when

[16] Oehler also admitted that she had no documentation or other records verifying physical abuse or that Miles sexually abused the Stone children. *2005 ROA p.574-575.* Oehler also claimed that Stone witnessed the drowning death of one of his relatives at a young age, but she likewise had no death certificate or other documentation to confirm that event. *Id. at 577.*

a person drinks on an empty stomach, as Stone did prior to Kubala's death. *Id. at 658.* Finally, Jim Aiken testified that, according to prison records, Stone was not involved in systematic or predator violence and had positively adjusted to prison conditions.[17] *Id. at p.685.* Trial counsel did not offer any evidence that Bobby Stone suffers from low intellectual functioning, brain damage or any other cognitive impairments.

iii. THE JURY'S SENTENCING VERDICT.

The State alleged two statutory aggravating circumstances for the jury's consideration: (1) the murder was committed while in the commission of a burglary; and, (2) the murder was of a local law enforcement officer during or because of the performance of his official duties. *2005 ROA p.759.* Over defense counsel's objection, the jury was not charged that the State had to prove "knowledge on the part of the defendant that the person who was murdered was a law enforcement officer." *Id. at 524-525.* The jury returned with a sentence of death, finding that the law enforcement aggravator was present but rejecting the State's contention that the murder occurred during the commission of a burglary. *Id. at 783.*

B. RELEVANT LEGAL PRINCIPLES

Penalty phase claims of ineffective assistance of counsel are also reviewed under the two-prong test established by *Strickland*, 466 U.S. at 687. A PCR applicant must show that: (1) trial counsel's performance was deficient; and, (2) the deficiency resulted in prejudice. *See, e.g., Porter v. McCollum*, 130 S.Ct. 447, 452 (2009); *Wiggins v. Smith*, 539 U.S. 510, 521.

[17] Trial counsel also attempted to offer an affidavit from Ruth Griffith, whose prior testimony from the 1997 trial was read into the record over defense counsel's objection, indicating that Griffith did not want Stone to be sentenced to death. The trial court excluded Griffith's affidavit. *2005 ROA pp.531-538.*

Whether an attorney's performance was deficient is determined by a standard of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. In capital cases, the professional norms require counsel to conduct a thorough investigation into "*all reasonably available* mitigating evidence." *Wiggins*, 539 U.S. at 524 (emphasis in original); *see also*, *Porter*, 130 S.Ct. at 452 ("It is unquestioned that under the prevailing professional norms . . . counsel ha[s] an 'obligation to conduct a thorough investigation of the defendant's life and background.'") (quoting *Williams v. Taylor*, 529 U.S. 362, 396 (2000)).[18] It is well-established that trial counsel should be particularly diligent to investigate evidence of mental impairments such as brain damage or low intellectual functioning because of their powerful mitigating effect. *See, e.g., Sears v. Upton*, 130 S.Ct. 3259, 3261 (2010) (holding evidence of frontal lobe damage was "significant mitigating evidence a constitutionally adequate investigation would have uncovered"); *Porter*, 130 S.Ct. at 454 (finding evidence of brain damage and cognitive deficits in reading, writing and memory were part of "'the kind of troubled history we have declared relevant to assessing a defendant's moral culpability.'") (quoting *Wiggins*, 539 U.S. at 535); *Rompilla v. Beard*, 545 U.S. 374, 392 (2005) (holding trial counsel was ineffective for failing to discover and present evidence of organic brain damage and significant impairments in several cognitive functions); *Tennard v. Dretke*, 542 U.S. 274, 287 (2004) (holding evidence of impaired intellectual functioning is inherently mitigating in the penalty phase of a capital case); *Wiggins*, 539 U.S. at 535 (stating that a competent attorney, aware of the defendant's history of diminished mental capacities, among other things, would have introduced it in the capital

[18] The topics trial counsel should investigate and consider presenting include, among other things, "medical history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experiences, and religious and cultural influences." *Wiggins*, 539 U.S. at 523.

sentencing proceeding); *Williams*, 529 U.S. at 398 (holding evidence of Williams' borderline mental retardation "might well have influenced the jury's appraisal of his moral culpability" and could have suggested that "his violent behavior was a compulsive reaction rather than the product of cold-blooded premediation").[19]

Moreover, trial counsel must not "ignore pertinent avenues for investigation of which he should have been aware." *Porter*, 130 S.Ct. at 453. Where trial counsel fail to conduct a thorough mitigation investigation, they necessarily lack the information required to make reasonable strategic judgments concerning the selection and presentation of evidence, and deference to decisions made under such conditions is inappropriate. *See e.g., Sears*, 130 S.Ct. at 3265 ("We have rejected any suggestion that a decision to focus on one potentially reasonable trial strategy . . . can be justified by a tactical decision when counsel did not fulfill their obligation to conduct a thorough investigation of the defendant's background.").

---

[19] Numerous lower courts have likewise recognized that low intellectual functioning and brain damage are uniquely mitigating. *See, e.g., Hooks v. Workman*, 689 F.3d 1148, 1205 (10th Cir. 2012) ("Evidence of [petitioner's] educational handicaps was surely relevant to the jury's appraisal. It was readily available and should have been part of [the] mitigation case."); *id.* at 1205 ("the involuntary physical alteration of brain structures, with its attendant effects on behavior, tends to diminish moral culpability, altering the causal relationship between impulse and action."); *Wilson v. Sirmons*, 536 F.3d 1064, 1094 (10th Cir. 2008) (stating mental conditions "associated with abnormalities of the brain" are "likely to [be] regarded by a jury as more mitigating than generalized personality disorders."); *Bryan v. Mullin*, 335 F.3d 1207, 1244 (10th Cir. 2008) (Henry, J., concurring in part and dissenting in part) ("[Counsel's] performance left the jury no reason even to consider as a possibility that [the defendant] might not be morally culpable enough, as a result of his involuntarily adduced organic brain disorder, for the death penalty."); *Blystone v. Horn*, 664 F.3d 397 (3rd Cir. 2011) (trial counsel's deficient performance was prejudicial where counsel failed to investigate and present evidence that petitioner suffers "from untreated brain damage and psychiatric disorders, all of which were aggravated by a history of poly-substance abuse."); *Haliym v. Mitchell*, 492 F.3d 680 (6th Cir. 2007) (prejudice found where trial counsel failed to present evidence that, among other things, petitioner suffered a serious brain injury and functional brain impairment, which caused problems with impulsivity, judgment and problem solving); *Caro v. Woodford*, 280 F.3d 1247, 1258 (9th Cir. 2002) ("By explaining that [defendant's] behavior was physically compelled, not premeditated, or even due to a lack of emotional control, his moral culpability would have been reduced.").

To establish prejudice, a PCR applicant "'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Porter*, 130 S.Ct. at 452 (quoting *Strickland*, 466 U.S. at 694). To assess that probability, this Court must consider "'the totality of the available mitigation evidence – both that adduced at trial, and the evidence adduced in the [PCR hearing]' – and 'reweig[h] it against the evidence in aggravation.'" *Porter*, 130 S.Ct. at 453-54 (quoting *Williams*, 529 U.S. at 397-98). The test is not whether an applicant would have received a life sentence absent trial counsel's deficient performance. As the United States Supreme Court recently reiterated in *Porter*:

> [w]e do not require a defendant to show 'that counsel's deficient conduct more likely than not altered the outcome' of his penalty proceeding, but rather that he establish 'a probability sufficient to undermine confidence in [that] outcome.

130 S.Ct. at 455-56 (quoting *Strickland*, 466 U.S. at 693-94). The question is whether "the undiscovered [mitigation] evidence, taken as a whole, might well have influenced the jury's appraisal of a defendant's culpability." *Rompilla*, 545 U.S. at 393. Prejudice is established if "there is a reasonable probability that at least one juror would have struck a different balance." *Wiggins*, 539 U.S. at 536.

C. ARGUMENT

i. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE AND PRESENT EVIDENCE OF STONE'S LOW INTELLECTUAL FUNCTIONING AND BRAIN DAMAGE.

a. Trial counsel was aware of numerous facts indicating brain damage and other cognitive impairments.

Prior to trial, Cameron Littlejohn and James Babb possessed a variety of information pointing to Stone's low intellectual functioning and organic brain damage. First, trial counsel

obtained Stone's school records, which contained numerous references to academic failure, impaired intellectual functioning and potential brain damage. Stone failed the first, fourth, and sixth grades. *See Bobby Stone School Records.* He dropped out of school at age seventeen, having completed only the ninth grade. *Id.*

Stone was first referred for a psychological evaluation in 1975 by his third grade teacher. *Id.* His elementary teachers consistently reported that he tired easily and had frequent inattention and undue restlessness. *Id.* Stone obtained a full-scale IQ score of 86 on the Wechsler Intelligence Scale for Children ("WISC"). The school examiner noted that Stone exhibited weaknesses in "visual perception, visual memory and alertness to details, and in rote and immediate memory." *Id.* The examiner further observed "[w]ide variance in scores indicate deficits in sequencing and special abilities at the performance level," and that "his eyes did not seem to work together properly." *Id.* Stone was placed in the Learning Disabled Resource Program.

Over the next few years, Stone's test scores steadily declined. He was evaluated again in 1976 during his second attempt at the fourth grade. His IQ was measured at 78. *Id.* Test results indicated "very low psychological functioning" and "major problems in visual-motor coordination and integration." *Id.* The examiner observed that "Bobby is functioning overall in the borderline range of intelligence, with very substantial deficits in the performance area." *Id.* Academic achievement tests revealed that Stone was functioning at a second grade level in reading and math. *Id.* Three years later, Stone's IQ score had declined further to a full-scale range of 69-75. *Id.* Tests indicated that his adaptive functioning skills were "generally below

the normal range."[20] *Id.* Although he was fourteen years old and in the seventh grade, Stone was performing academically at only a fourth grade level in reading and at approximately the third grade level in math and spelling. These scores placed him in the bottom 1st to 4th percentile among his peers. *Id.* The school examiner determined that Stone's classification should be downgraded from Learning Disabled to Educably Mentally Handicapped ("EMH"). *Id.* The following chart summarizes the relevant test results from Stone's school records:

[20] A diagnosis of mental retardation requires an IQ score of 75 or less combined with significant deficits in adaptive functioning skills prior to the age of eighteen. *See* S.C. Code Ann. § 16-3-20(C)(b)(10); INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS, 36 (American Association on Intellectual and Developmental Disabilities, 11th ed. 2010); Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) (American Psychiatric Association) at pp.41-42.

Date/Age	School/ Grade	IQ Test/ Results	Other Tests/Results			
2/18/1975 (Age 9)	Lemira Elementary (3rd Grade)	WISC = 86				
10/12/1976 (Age 11)	Lemira Elementary (4th Grade, second attempt)	WISC-R = 78	**Peabody Picture Vocabulary Test** Low average psychological functioning	**Bender-Gestalt** Results indicate low average psychological functioning	**WRAT** Reading – 2.5 grade level Math – 2.5 grade level	**Draw-A-Man** Very low psychological functioning
11/1/1979 (Age 14)	Bates Middle (7th Grade)	WISC-R = 69-75	**Peabody Picture Vocabulary Test** Slow learner range of functioning	**Bender** Score was below the 5th percentile, at a quality level expected of an average 8-5 year old.	**WRAT** Reading – 4.2 grade Spelling – 2.9 grade Math – 3.6 grade	**AAMD** Indicated adaptive functioning generally below the normal range.

Second, trial counsel also collected the school records of Stone's siblings, Jerry Stone and Tammy Stone, which likewise indicated academic and intellectual deficits. Stone's younger brother, Jerry, failed the first, second, seventh and eighth grades. *See Stone Sibling School Summary*. His IQ was tested four times during the course of his school history, resulting in full-scale IQ scores ranging from 66 to 78. *Id.* Jerry was deemed Educably Mentally Handicapped in the fourth grade and remained in the Resource Program until he received a special education certificate after completing high school at age twenty. *Id.* Stone's younger sister, Tammy, failed the first grade and was determined to be Educably Mentally Handicapped that same year. *Id.*

Her IQ scores range from 65 to 75. *Id.* She remained in the Resource Program for the duration of her school history. Tammy failed the tenth grade three times. After her fourth attempt at the tenth grade, Tammy was given a certificate of high school completion.[21] *Id.*

Third, trial counsel possessed medical records for Bobby Stone, which showed that he was treated at the emergency room on numerous occasions. For example, when he was thirteen years old, Stone was treated at the hospital because he fell and injured his ribcage. At age fourteen, he experienced another fall during which he cut his right foot. The following year, he appeared in the ER complaining of pains in his left chest and broken ribs. Stone fell again at age sixteen, resulting in a fractured foot. Later that same year, Stone "fell about eight feet and ha[d] pain in his chest and back." At age twenty-seven, Stone was in a motor vehicle accident resulting in back pain. The following year, he was working on a car when the motor fell about a foot onto his head. Stone reported that a bolt went into his right ear. Emergency room staff noted abrasions, blood coming from the ear canal, cranial swelling and tenderness.

Fourth, TeAnne Oehler noted that Stone had difficulty concentrating and was unable to remember dates and sequencing. *2005 ROA pp.559, 564.* She also collected information from family members to the effect that Stone sustained a serious head injury at approximately age six, but no medical records were located regarding that event. Oehler pointed out that Stone's life-long tendency toward falls and accidents also suggested the possibility of head injury. *2005 ROA pp.564-656.* Finally, Oehler noted a general pattern of chaos, violence and trauma throughout Stone's social history.

---

[21] Trial counsel did not collect school records related to Stone's older sister, Melinda Stone. *See August 10, 2012 PCR Tr. p.46.* Melinda's school records indicate that she was also classified as Educably Mentally Handicapped by at least the sixth grade. *See Melinda Stone School Records.* Academic achievement testing in the sixth grade demonstrated that Melinda was performing at a second grade level in verbal skills and at a third grade level in math. *Id.* Melinda dropped out of school shortly after beginning the tenth grade. *Id.*

b. Trial counsel failed to investigate further.

Despite these multiple obvious indicators of brain damage and cognitive impairment, trial counsel failed to: (1) seek basic neuropsychological testing; (2) consult with experts on organic brain damage and low intellectual functioning; (3) obtain neuroimaging, such as an MRI or PET scan, and related analyses; (4) have Stone evaluated by a neurologist or other appropriate medical expert; and, (5) investigate the potential causes of Stone's brain damage. All of these investigative tools were available to trial counsel at the time of their trial preparations, and – as demonstrated by the evidence presented at the PCR hearing – any one of these steps would have led to a wealth of powerful mitigating evidence.

As part of the post-conviction investigation, Stone was seen by Dr. James Evans, a licensed clinical psychologist, for a neuropsychological evaluation. Dr. Evans administered a standard battery of tests, which indicated that Stone suffers from brain damage. Specifically, Evans' findings included significant problems with word finding, abstract reasoning, impulsive responding and poor tactual memory. These areas of difficulty are associated with damage to the frontal lobe, left temporal, parietal and central areas of the brain. Stone had major difficulty with additional neuropsychological testing designed to measure left frontal lobe functioning, scoring four standard deviations below average for his age group (below the first percentile). Results from a Quantitative EEG (QEEG) evaluation, which is used to measure and quantify electrical activity within the brain, were consistent with the neuropsychological test findings and likewise pointed to damage of the frontal, left temporal, parietal and central areas of Stone's brain.

Dr. Ruben Gur is a neuropsychologist and tenured professor at the University of Pennsylvania in the departments of Psychiatry, Neurology and Radiology. Dr. Gur issued a report explaining that quantitative analysis of an MRI (magnetic resonance imaging) and a PET

(positron emission tomography) scan revealed damage to Stone's brain in both its structure and function. *Gur Report at p.3.* The MRI showed that Stone's frontal lobe "is reduced in size to a clinically significant extent." *Id. at p.2.* A variety of other areas of Stone's brain are "abnormally small" as well. *Id.* By contrast, Stone's ventricles (the fluid filled spaces in the brain) are "extremely large." *Id.* Dr. Gur explained that "[w]hen brain tissue dies, the volume formerly occupied by cells is replaced by cerebrospinal fluid. Large ventricles are therefore an indicator of overall brain atrophy (death of cells) or dystrophy (failure of brain tissue to develop)." *Id.* The structural abnormalities observed in Stone's brain are known to "interfere with executive functions such as abstraction and mental flexibility, planning, moral judgment, emotional regulation, [and] impulse control." *Id. at p.3.*

The PET study revealed that certain areas of Stone's brain associated with executive functioning (including the corpus callosum) suffer from severely decreased metabolic activity. *Id. at pp.2-3.* However, other areas are functioning in a hyper-aroused state. Dr. Gur explained that this specific damage "would lead to severe emotional dysregulation." *Id. at p.4.* In other words, Stone's brain "will misinterpret danger signals" and "issue false alarms." *Id.* Moreover, when faced with these "false alarms," the areas of Stone's brain that regulate behavior are called upon to respond when they are "already at a hyper-activated state." *Id.* As a result,

> [t]he situation is analogous to a car with weak brakes that are already engaged when it begins to race. When Stone's amygdala becomes activated, his frontal lobe is unlikely to be capable of exercising control as a normal one would, because his frontal lobe is not only damaged but his cortex is operating at full capacity in its hyper-vigilant state. The frontal lobe is unable to do its job and act as the brakes on the primitive emotional impulses emanating from the amygdala when the limbic system reaches its activated stage.

Id. Thus, Dr. Gur concluded:

> The resulting behavior of someone with such brain damage could be disorganized, erratic and failing to adjust to situational demands. Notably, such individuals do respond well to structured environments, where the complexity of the surroundings and need for decision-making is reduced.

Id.

In addition to Dr. Gur, Dr. Fred Bookstein also analyzed Stone's MRI results and likewise found that Stone's brain is damaged. Dr. Bookstein is a Professor of Statistics at the University of Washington with particular expertise in damage to the corpus callosum associated with fetal alcohol spectrum disorder. He concluded that Stone's corpus callosum is abnormal in its shape, thickness and position within the brain. *Bookstein report at pp.4-8.* "The corpus callosum is the bundle of nerve fibers that connects the two halves of the cortex across the middle of the brain." *Id. at p.3.* This part of the brain develops very early in embryonic development, and it is particularly sensitive to prenatal exposure to harmful substances such as alcohol.[22] *Id. at pp.3, 9.* Regarding his analysis of Stone's corpus callosum, Dr. Bookstein

[22] At the PCR hearing, Stone offered a variety of evidence suggesting that his brain damage may be due, in part, to prenatal exposure to alcohol. For example, Stone's mother was treated for tuberculosis when Stone was a toddler. Tuberculosis is an opportunistic illness that affects people with alcoholism at a higher rate. During her treatment, Stone's mother was given Lithium, a drug designed exclusively to treat symptoms of alcohol withdrawal. *April 23-24, 2012 PCR Tr. p.75.* Moreover, Stone possesses many of the physical characteristics known to be associated with prenatal alcohol exposure, including his childhood growth deficit, heart murmur, certain facial features such as his short philtrum, and an abnormal head shape. *Id. at pp.34-37.* He also exhibits many behavioral aspects consistent with FAS, including frequent inattention, restlessness, poor judgment and impulsiveness. *Id. at pp.39-40.* Finally, much of Stone's specific brain damage, particularly the damage to his corpus callosum, is also consistent with FAS. *Id. at pp.34-35; Report of Dr. Bookstein.* However, Stone also offered evidence that some or all of his brain damage may be related to his childhood exposure to environmental neurotoxins. *See Report of Dr. Shine.* Stone and his family lived in an area contaminated by long-term dumping of toxic, industrial waste. *Id.* This area has since been designated a superfund site by the EPA. Testing over several years showed that the groundwater in this area was polluted with multiple known neurotoxins and other toxic compounds, including: print dye wastes and pigments; raw sewage; paint waste; caustic solvents; liquid asphalt; acid; textile wastes; battery waste; oil; grease; pesticides; and elevated levels of lead and other heavy metals.

concluded: "it is fair to say that with high likelihood something went wrong with this brain's development, in this region, early in the embryonic period." *Id. at p.9.* Dr. Bookstein explained that damage to the corpus callosum produces deficits in executive functioning, such as difficulties in impulse control, poor judgment, impaired moral reasoning and difficulty assessing the intentions of others. *Id. at pp.10-11.*

Finally, Dr. James Merikangas, a medical doctor with board certifications in both Neurology and Psychiatry, testified at the PCR hearing that Stone has organic brain damage. Merikangas testified that Stone's brain damage was evident on every available measure, including: (1) testing conducted by the school system when Stone was a child; (2) Dr. Evans' neuropsychological testing; (3) the MRI and PET scans and related analyses by Dr. Gur and Dr. Bookstein; and, (4) Dr. Merikangas' own physical, neurological evaluation.[23] *April 23-24, 2012 PCR Tr. pp.27-38.* Dr. Merikangas also testified that Stone has a number of psychiatric symptoms consistent with long-term effects of the trauma Stone experienced as a child, including

Id. Children are uniquely susceptible to environmental toxins since they are still developing and may have greater exposure levels due to recreational activity patterns. *Id.*; *see also*, Kevin Drum, *America's Real Criminal Element: Lead*, Mother Jones (Jan. 3, 2013), *available at* http://www.motherjones.com/print/208586 (describing a long-term study indicating that "higher childhood blood lead levels are consistently associated with higher adult arrest rates for violent crimes."). Thus, fetal alcohol exposure, environmental neurotoxins, some combination of the two, or some other, unknown cause, could have contributed to Stone's brain damage. Regardless of the likely cause, however, the critical fact that Stone's brain is damaged is clear and undisputed.

[23] Dr. Merikangas noted a number of findings during his neurological evaluation that are consistent with brain damage associated with fetal alcohol exposure and other potential causes. These findings included a counter-clockwise hair swirl, a short philtrum, tracking difficulties with Stone's eyes, swaying, small stature and feet, growth deficits, an abnormally shaped head and low-set ears. *April 23-24, 2012 PCR Tr. at pp.35-38.*

violence and terror perpetrated by Wesley Eugene Miles.[24] *Id. at p.26.* Research indicates that early childhood trauma can adversely affect brain development. *Id. at p.40.*

None of the evidence of Stone's brain damage and low intellectual functioning is in dispute. Respondent was well aware that these issues were the main focus of Stone's claim that his trial counsel was ineffective in the sentencing phase of his case. Stone provided Respondent with expert reports and affidavits on these issues in advance of the PCR hearing, including written reports from Dr. Rubin Gur, Dr. James Shine and Dr. Fred Bookstein. Respondent presented no contrary testimony or other evidence.

c. Trial counsel's performance was deficient.

Trial counsel's failure to adequately investigate and present evidence that Stone suffers from impaired intellectual functioning and organic brain damage was objectively unreasonable under prevailing professional norms for capital sentencing proceedings in 2005.[25] *See, e.g.,*

[24] Miles and his family lived next door to the Stone family. Miles, a violent alcoholic, had a long-term, essentially polygamous relationship with Stone's mother from Stone's early years until his mother's death.

[25] The American Bar Association Guidelines for the Appointment and Performance of Defense Council in Death Penalty Cases (2003) have been cited with approval and repeatedly referenced as relevant guidelines by the Supreme Court of the United States, *see, e.g., Rompilla v. Beard*, 545 U.S. 374, (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003), *Williams v. Taylor*, 529 U.S. 362, 396 (2003), and by the South Carolina Supreme Court, *see Council v. State*, 670 S.E. 2d 356, 363 (S.C. 2008); *Ard v. Catoe*, 642 S.E.2d 590, 597 (S.C. 2007). Guideline 10.7(A) provides that "[c]ounsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty." The commentary to Guideline 10.7 explains that "[c]ounsel's duty to investigate and present mitigating evidence is now well established" and includes an obligation to investigate, among other things: (1) "Medical history, including . . . neurological damage"; (2) "Family and social history, including . . . cognitive impairments"; and, (3) "Education history, including . . . special education, cognitive limitations and learning disabilities." Moreover, the commentary instructs that records, in particular, "can contain a wealth of mitigating evidence, documenting or providing clues to childhood abuse, retardation, brain damage, and/or mental illness." Similarly, Guidelines 10.11(A) and (F) instruct that "counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty" and that counsel should carefully consider presenting expert testimony "to provide

Porter v. McCollum, --- U.S.---, 130 S.Ct. 447, 452-53 (2009); *Wiggins v. Smith*, 539 U.S. 510, 524-27 (2003); *Williams v. Taylor*, 529 U.S. 362, 396 (2000); *Council v. State*, 380 S.C. 159, 170, 172-75, 670 S.E.2d 356, 361, 363-64 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607-608, 602 S.E.2d 738, 742-743 (2004). Trial counsel possessed information and documents containing multiple "red flags" pointing to a need for further investigation. *See, e.g., Sears*, 130 S.Ct. at 3263 ("Sears' history is replete with multiple head trauma, substance abuse and traumatic experiences of the type expected to lead to [brain damage and cognitive] impairments."); *Hooks*, 689 F.3d at 1205 (holding trial counsel was ineffective for failing to investigate further even though defendant's history of head injury was a "clear marker[] for organic brain damage"); *Simmons v. State*, ___ So.3d ___, 2012 WL 4936109 at *25 (Fla. 2012) (finding deficient performance where trial counsel failed to investigate brain damage and stating "[b]ecause trial counsel were aware of the low IQ, special education, Simmons' limited oral, reading, and writing abilities, and his serious alcohol abuse, it appears they did not perform an adequate mitigation investigation into possible mental mitigation based on those circumstances").

Nevertheless, Littlejohn and Babb failed to take any further investigative steps. *See, e.g., Porter*, 130 S.Ct. at 453 (trial counsel "ignored pertinent avenues for investigation of which he should have been aware"); *Wiggins*, 539 U.S. at 524 (counsel were deficient because they "abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources"); *Council*, 380 S.C. at 173, 670 S.E.2d at 363 ("Even the limited information obtained should have put counsel on notice that [defendant's] background, with additional investigation, could potentially yield powerful

---

medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s)."

mitigating evidence."). As a result, trial counsel's investigation and trial preparations were constitutionally inadequate.

Moreover, trial counsel failed to present even the mitigating evidence that they did have in their possession. *See, e.g., Williams v. Taylor*, 529 U.S. 362, 393 (2000) ("it is undisputed that Williams had a right – indeed, a constitutionally protected right – to provide the jury with the mitigating evidence that his trial counsel either failed to discover *or failed to offer*.") (emphasis added); *Council*, 380 S.C. at 172, 670 S.E.2d at 363 ("We believe it was unreasonable for trial counsel not to further investigate [defendant's] background and present even the minimal mitigating evidence that was obtained."). Stone's school records alone reveal that he consistently struggled with academic failure, very low psychological functioning, problems with visual-motor coordination, and deficits in adaptive functioning skills, among other things. Trial counsel relied on TeAnne Oehler to present Stone's social history, but failed to provide her with a complete copy of Stone's school records. *April 23-24, 2012 PCR Tr. pp.288-289.* Oehler incorrectly testified at trial that Stone "didn't have too much difficulty in school until about sixth grade," and that his academic record included no suggestion of possible mental retardation. *2005 ROA pp.560, 579.* Thus, not only did trial counsel fail to conduct an adequate investigation, but they further failed to adequately prepare Oehler's testimony, preventing the jury from hearing an accurate account of Stone's academic difficulties and intellectual impairments. *See, e.g., Von Dohlen*, 360 S.C. at 608, 602 S.E.2d at 743 (trial counsel's performance was deficient where they failed to provide their expert with "crucial medical records" preventing the expert from "conveying an accurate diagnosis and explanation of Petitioner's mental condition to the sentencing jury"); *Hooks*, 689 F.3d at 1204 (finding trial counsel "totally failed to prepare his witness, thus strongly diminishing the potential mitigating impact of the testimony").

Trial counsel had no strategic reason for their failure to thoroughly investigate and present all evidence of Stone's cognitive and neurological dysfunction. *April 23-24, 2012 PCR Tr. p.290.* Both attorneys admitted at that PCR hearing that they had no strategic reason for failing to present the fullest possible mitigating account of Stone's impairments. *Id. at pp.290-291; August 10, 2012 PCR Tr. p.38.* Even if trial counsel had not admitted that they had no strategic reason for their failure, any alleged strategic decision would be objectively unreasonable given that trial counsel's investigation was inadequate and incomplete. *See, e.g., Council v. State*, 380 S.C. at 175, 670 S.E.2d at 364 (internal quotations omitted) ("This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation"); *see also, Wiggins*, 539 U.S. at 523 (same).

d. Trial counsel's deficient performance was prejudicial.

Trial counsel's failures resulted in prejudice. In *Simmons*, the Florida Supreme Court recently found prejudice where trial counsel failed to investigate and present evidence that a PET scan showed damage to Simmons' brain. 2012 WL 4936109 at *20. Simmons' post-conviction experts testified that his brain damage "impaired his ability to learn and function socially, and to control himself and not be impulsive." *Id.* at *21. The State challenged this claim with its own expert witness, who testified that Simmons' PET scan was not abnormal in any way. *Id.* at *22. Nevertheless, the Florida Supreme Court held:

> [e]ven though the State presented expert testimony that Simmons' brain was not abnormal, the effect of Dr. Wood's testimony as possible mitigation cannot be completely discounted. As the United States Supreme Court noted in somewhat similar circumstances, 'While the State's experts identified perceived problems with the tests that Dr. Dee used and the conclusions that he drew from them, it was not reasonable to discount entirely the

> effect that his testimony might have had on the jury or the sentencing judge.'

Id. (quoting *Porter*, 130 S.Ct. at 455).

Here, Stone offered undisputed evidence at the PCR hearing that he suffers from organic brain damage and low intellectual functioning. On cross-examination, Respondent attempted to challenge some of Stone's evidence that his brain damage may be related to prenatal alcohol exposure, but Respondent offered no evidence to undermine the essential facts of the brain damage itself. As explained above, the likely cause of Stone's impairments is irrelevant. *See, e.g., Sears*, 130 S.Ct. at 3262 ("*Regardless of the cause of his brain damage*, [Sears'] scores on at least two standardized assessment tests placed him at or below the first percentile in several categories of cognitive function") (emphasis added). "Indeed, the Constitution requires that 'the sentencer in capital cases must be permitted to consider any relevant mitigating factor.'" *Porter*, 130 S.Ct. at 454-55 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)). That Stone suffers from organic brain damage and intellectual impairment is undisputed and inherently mitigating. *See, e.g., Tennard*, 542 U.S. at 287.

Moreover, the inherent mitigating effect of brain damage and/or low intellectual functioning is evident from numerous capital cases in which courts have found prejudice even where the aggravating evidence was especially strong. For example, George Porter was convicted of killing two victims – his former girlfriend, Evelyn Williams, and her new boyfriend. *Porter*, 130 S.Ct. at 448. Porter had threatened to kill Williams three months before he ultimately broke into her house and shot her. Porter also "drove past [Williams'] house each of the two days prior to the shooting" and visited her house on the night before the murder, prompting Williams to call the police. *Id.* The sentencing jury found four aggravating factors: (1) the killing of more than one person; (2) burglary; (3) the murder was committed in a cold,

calculated and premediated manner; and, (4) the murder was especially heinous, atrocious, or cruel. *Id.* at 448-49. And yet, the United States Supreme Court held that trial counsel's failure to investigate and present mitigating evidence, including evidence that Porter suffered from "[a] brain abnormality, difficulty reading and writing, and limited schooling," resulted in prejudice. *Id.* at 454. The Court further held that it was unreasonable for the state court to "discount to irrelevance" certain items of mitigating evidence simply because their introduction would have opened the door to negative information, such as the fact that Porter went AWOL on more than one occasion while serving in the military. *Id. at 455*; *see also, Sears*, 130 S.Ct. at 3264 (finding prejudice where trial counsel failed to present evidence of low intellectual functioning and brain damage and stating that "the fact that along with this new mitigation evidence there was also some adverse evidence is unsurprising.").[26]

[26] Likewise, courts have found prejudice where trial counsel failed to present similar evidence in many other highly aggravated cases. *See, e.g., Rompilla*, 545 U.S. at 393 (trial counsel's failure to offer evidence of organic brain damage resulted in prejudice where Rompilla repeatedly stabbed his victim and then set him on fire and where Rompilla had a significant history of prior violence); *Wiggins*, 539 U.S. at 536 (prejudice resulted from trial counsel's failure to offer extensive mitigating evidence, including Wiggins' limited intellectual capacities, where Wiggins robbed an elderly woman, ransacked her apartment and drowned her in a bathtub); *Williams*, 529 U.S. at 398 (prejudice resulted from trial counsel's failure to offer, *inter alia*, evidence that Williams had an IQ in the borderline mentally retarded range, suffered repeated head injuries, and might have mental impairments organic in nature where Williams killed a man with a mattock (i.e., a type of pickaxe) simply for his refusal to lend Williams "a couple of dollars" and subsequently committed two separate violent assaults on elderly victims, leaving one woman in "a vegetative state"); *Council*, 380 S.C. at 176, 670 S.E.2d at 365 (prejudice established where trial counsel failed to offer evidence of borderline IQ, frontal lobe brain dysfunction, mental illness, repeated school failures and childhood head injuries even though the State offered "overwhelming evidence" of guilt, the jury found six aggravating factors, and Council's crime was "violent and brutal"); *Hooks*, 689 F.3d at 1207 (prejudice established where Hooks raped his victim, shaved her head and then beat her to death in front of their one-year-old daughter); *Simmons*, 2012 WL 5936109 at *26 (prejudice found where Simmons kidnapped his victim from her workplace, raped her, beat her to death, fracturing her skull, and then left her naked body in a wooded area commonly used for illegal dumping).

By contrast, the State's penalty-phase case against Stone was not particularly aggravated. The jury found only a single aggravating factor – the killing of a law enforcement officer – and under circumstances that did not even require jurors to find that Stone was aware of this fact. The State introduced evidence that Stone had two prior convictions, one as a youthful offender and one as an adult. Neither conviction involved any act of violence on the part of Stone. Stone's prison history likewise did not include any suggestion of violence and largely indicated that Stone was an adaptable, compliant prison inmate.

In the absence of significant aggravating evidence, the State simply argued that jurors should impose a death sentence because Stone made an affirmative "choice" to "ambush" Charlie Kubala. Evidence of Stone's impaired intellectual functioning and brain damage would have significantly undermined this theme. Stone did not "choose" to begin his life with a damaged brain and cognitive impairments. Further, Dr. Gur's description of Stone's brain as one likely to "misinterpret danger signals" and as operating under stressful conditions like "a car with weak brakes that are already engaged when it begins to race" would have given jurors an alternative, and much more mitigating, explanation for the events of the crime. These points would have likewise supported trial counsel's accident theory of the case, making it more plausible that Stone reacted impulsively and out of a startled state of mind.

Without evidence of Stone's brain damage and intellectual impairments, trial counsel's mitigation presentation was weak. The solicitor pointed out that it was not "unusual" to grow up poor and under difficult conditions in Florence County. The solicitor noted that he himself had grown up in that area, and many jurors were likely to be familiar with that part of the State and may have found Stone's background unremarkable in many respects. Thus, evidence of brain damage and impaired cognitive abilities would have not only weakened the State's case for

death, but also significantly strengthened the mitigation case. Finally, unlike the circumstances in *Sears* and *Porter*, there was no significant disadvantage to presenting evidence of Stone's brain damage and low intellectual functioning.

In sum, trial counsel had nothing to lose and everything to gain by investigating and presenting the kind of mitigating evidence Stone offered at the PCR hearing. A full account of Stone's brain damage, cognitive impairments and their effects would have dramatically altered "the sentencing profile." *Strickland*, 466 U.S. at 699-700. Faced with the mitigating evidence that could have been presented at trial on Stone's behalf, "there is a reasonable probability [that] at least one juror would have struck a different balance and returned with a different sentence." *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *see also, e.g., Porter*, 130 S.Ct. at 454 ("Had the judge and jury been able to place Porter's life history 'on the mitigating side of the scale,' and appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the advisory jury – and the sentencing judge – 'would have struck a different balance,' and it is unreasonable to conclude otherwise.") (citing *Wiggins*, 539 U.S. at 537).

ii. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO SUPPORT THE ACCIDENT THEORY OF THE CASE.

Trial counsel's failure to properly support their accident theory was ineffective assistance in the penalty phase, as well as in the guilt-or-innocence phase. Trial counsel presented essentially the same case in 2005 as they had in the 1997 sentencing that resulted in a death sentence. Their presentation did not include meaningful support for the accident claim, despite the fact that other evidence was readily available. At closing, trial counsel focused primarily on the burglary and was successful in negating that aggravating circumstance. As to the shooting

itself, counsel argued that it was the result of "drunken stupidity," which is not equivalent to the accident theory they claimed to espouse.

This failure was especially prejudicial because, although the jury is limited in the first phase to whether the elements have been established, in the sentencing phase the jury retains much more discretion and can give life for "any reason or no reason at all." *See, e.g., State v. McClure*, 342 S.C. 403, 409 (S.C. 2000) ("We note the evaluation of the consequences of an error in the sentencing phase of a capital case are more difficult because of the discretion that is given to the sentencing jury. A capital jury can recommend a life sentence for any reason or no reason at all."); *see also, Caldwell,* 472 U.S. at 341 (When a reviewing court "cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires.").

iii. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO PRESENT EVIDENCE OF STONE'S PRIOR COOPERATION WITH LAW ENFORCEMENT.

Trial counsel failed to present evidence of Stone's past cooperation with law enforcement, including the fact that he was granted early release on a prior nonviolent charge after officials wrote letters of recommendation stating that he had been cooperative regarding his own charges and had also served as an informant about unrelated crimes. Had such evidence been presented, it would have undermined the state's argument that the shooting was the result of a calculated decision to kill a law enforcement officer in the line of duty. The solicitor argued,

> [Stone] chose to kill. I submit to you he was facing the rest of his natural life this time with thirty plus, whatever you got for the burglary, at the age [of] thirty-one, I submit he was going to stay in there for life anyhow. He knew it, and there wasn't one way out . . . He wasn't going back to jail.

2005 ROA pp.732-33.

The solicitor's argument continued with the unsupported implication that the shooting was the result of antipathy towards law enforcement: "You know, if it had been Melinda Parrott or Linda Parrott that come around that corner saying Bobby Wayne come on down from there, he would have come right down. He would have come right down. But it wasn't. It was a sheriff's deputy." *2005 ROA p.732.* The reality of Stone's historical cooperative relationship with law enforcement, had the jury heard it, would have countered this portrayal. The evidence would also have supported the argument that Stone is adaptable to prison. In both ways, it would have increased the likelihood of a life verdict.

iv. TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO PROPERLY OBJECT TO INADMISSIBLE VICTIM IMPACT EVIDENCE.

a. Relevant legal principles.

Changing its historical position on the inadmissibility of victim impact evidence, the United States Supreme Court ruled in 1991 that in a capital sentencing proceeding the Eighth Amendment "erects no *per se* bar" to relevant evidence about the victim and the impact of a murder on the victim's family. *Payne v. Tennessee,* 501 U.S. 808, 817 (1991). The state may present "a quick glimpse of the life [taken]" *Id.* at 822 (quoting *Mills v. Maryland*, 486 U.S. 367, 397 (1988)). Both Chief Justice Rehnquist, writing for the majority, and Justice O'Connor, concurring, stressed the protection offered by the Due Process Clause of the Fourteenth Amendment in the event that a witness's testimony is "unduly prejudicial." *Id.* at 825, 831. *Payne* involved the brutal and repeated stabbing of a mother and her two small children, one of whom survived. During sentencing, the children's grandmother, in response to a sole question by the solicitor, briefly explained that the surviving child cried for his mother and baby sister and did not understand their absence. In finding that the testimony was not unduly prejudicial,

Justice O'Connor opined that "this brief statement did not inflame [the jury's] passions more than did the facts of the crime." *Id.* at 832.

South Carolina allows victim impact evidence for the purpose of demonstrating the "uniqueness" of the victim and the "specific harm caused by the defendant." *State v. Hughey,* 339 S.C. 439, 457, 529 S.E.2d 721, 730 (2000). South Carolina law also relies on the courts to limit the scope of the evidence, barring evidence if it is "so unduly prejudicial that it renders the trial fundamentally unfair and violates due process under the Fourteenth Amendment." *Von Dohlen v. State,* 360 S.C. 598, 612, 602 S.E.2d 738, 745 (2004).

The Court in *Payne* specifically declined to overturn the holding in *Booth* that the Eighth Amendment bars victims' family members from characterizing or opining about the crime, the defendant, or the appropriate sentence. *Id.* at 830 n.2. The South Carolina Supreme Court reasoned that this is because such testimony goes to the ultimate issue – whether the appropriate sentence is life or death -- and is properly reserved for the jury. *State v. Wise*, 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004).

b. Kubala-Hanvey's testimony was inadmissible and unduly prejudicial.

In a recent South Carolina case in which post-conviction relief was granted, the impermissible victim impact evidence included a letter from the widow of another law enforcement officer, detailing the burden on her of attending repeated parole hearings. *Sapp v. State,* 2006-CP-08-2204 (2009). The PCR court, finding prejudice, found that this evidence was highly prejudicial and portrayed the consequences of a non-death sentence as "an additional victimization of the murder victim's family." *Id.*

Here, the victim's widow testified to a suicide attempt she made years after the crime in the context of other unrelated difficulties. Her suicide attempt was triggered by the court's

reversal of Stone's death sentence and the state's decision to re-try the case. It was fundamentally unfair to link her decision to the crime. The South Carolina Supreme Court has defined prejudicial evidence as evidence that creates a "tendency to suggest a decision on a improper basis, commonly, though not necessarily, an emotional one." *Martucci*, 380 S.C. at 250, 669 S.E.2d at 607 (discussing photographs). A suicide attempt is on its face highly emotional. It was, in essence, a form of emotional blackmail for the jury, the subtext being that a decision for life may be unbearable for Kubala-Hanvey, causing her to attempt suicide again. This constituted an arbitrary basis for a sentencing determination. It went far beyond the facts of the crime and the "quick glimpse" allowed by *Payne*, and unquestionably inflamed the passions of the jury.

In addition, Kubala-Hanvey's testimony impermissibly portrayed the consequences of a potential life sentence as "additional victimization," an argument that is irrelevant, unduly prejudicial, and an arbitrary basis for a sentencing determination. *See Sapp*. Her testimony was also a clear and impermissible statement of her opinion on the appropriate sentence. If the sentence reversal triggered a suicide attempt, the jury could have no doubt of her opinion that the prior death sentence was appropriate. The state was not entitled to elicit this opinion from the witness. *See, e.g., State v. Wise*, 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004).

Finally, Kubala-Hanvey's testimony improperly injected appellate review into the jury's deliberations and created a danger that the result was based on an arbitrary factor. The law recognizes a capital defendant's right to a sentencing proceeding that is free from "the influence of passion, prejudice, or any other arbitrary factor. S.C. Code Ann. § 16-3-25 (C)(1) (2003). The United States Supreme Court has held that "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the

responsibility for determining the appropriateness of the defendant's death rests elsewhere. *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985). Under South Carolina law, comments about the appellate review process require reversal because they "imply to the [jury] that its responsibility for determining the fate of the defendant is lessened" by suggesting that it may "pass the responsibility for a death sentence on to a higher court." *State v. Tyner*, 273 S.C. 646, 659 (1979). Kubala-Hanvey's references to the court's reversal injected the issue of appellate review into the proceedings, reminding the jury that their decision is not final. The issue was brought close to home for the jury by the mention of review and reversal, not only as some remote possibility but as a recently accomplished fact in the instant case.

c. Testimony by law enforcement officers exceeded the scope of permissible victim-impact evidence and was unduly prejudicial and fundamentally unfair.

Because of the danger of prejudice, courts have carefully limited the scope of allowable victim impact evidence. For example, in *United States v. Fields,* 516 F.3d 923, 947-48 (10th Cir. 2008), the Tenth Circuit cautioned that "[i]ncluding the community in the victim-impact inquiry is fraught with complication. It would involve not just the incremental extension from family to friends (and even co-workers), but a radical change in perspective: replacing a close-in focus on persons closely or immediately connected to the victim with a wide view encompassing generalized notions of social value and loss." *Id.* at 947. Similarly, the Louisiana Supreme Court has concluded:

> [i]ntroduction of detailed descriptions of the good qualities of the victim or particularized narrations of the emotional, psychological and economic sufferings of the victim's survivors, which go beyond the purpose of showing the victim's individual identity and verifying the existence of survivors reasonably expected to grieve and suffer because of the murder, treads dangerously on the possibility of reversal because of the influence of arbitrary factors on the jury's sentencing decision.

State v. Bernard, 608 So.2d 966, 972 (1992).

In *Sapp, supra,* the state's evidence included a law enforcement magazine containing, among other things, various tributes to the victim and other fallen officers, lists of officers killed in the line of duty, and a poem about the victim that "focuses on [the victim's] young son's loss of a father." *Sapp order at 43-45.* Viewing the evidence in the context of the "substantial" victim impact evidence already admitted, the court found the evidence "excessive." *Id. at 45.* The court described the poem, which detailed the process of telling the son that his father had been killed, as "playing more towards sympathy than showing the true man." *Id. at 46.* The court, noting the Tenth Circuit's concerns about allowing a "wide view," also pointed out that the Supreme Court has not broadened the scope of *Payne* to include co-workers and the community. *Id. (*citing *Fields,* 516 F.3d at 947). The court found the evidence impermissible because "it was focused not on the impact on the victim's family but rather the impact on the community as a whole." *Id. at 46.* The "invocation of the community's loss" is impermissible. *Id. at 47.*

Here, as part of the State's case for death, Sumter County Sheriff's Department Major Gary Metts not only testified to the impact on himself personally as Kubala's friend and co-worker, but went well beyond. He described his personal feelings and experiences, but then went on to discuss the effect of Kubala's death on the department and the community at large. He described a golf tournament that was established in Kubala's honor, explaining its size, purpose, and importance to the community. Further, he detailed the "collapse," after Kubala's death, of the Explorer Group, a Sheriff's Department program targeting children, for which Kubala volunteered.

Sumter Sheriff's Captain Gene Edward Hobbs likewise testified to his close relationship with Kubala and his wife. He described going to Kubala's house to tell Kubala-Hanvey about the shooting. He then described how, since Kubala's death, the Sheriff's Department takes all new recruits to visit the scene of the crime, and then to the victim's grave site, telling the story of Kubala's death to each new recruit. This evidence was impermissible. Sheriff's Department trainees are not proper victims in the case. They did not know Kubala and were not directly affected by his death. And yet, the image implanted in jurors' minds from this testimony, would have been emotionally powerful. The jury was left to imagine a group of fresh new deputies, hearing the story of Kubala's death from one who had loved him and worked with him, followed by an impassioned speech about the dangers they will face and the need to search their hearts about their desire to become law enforcement officers. This is far more than the "quick glimpse" into the character of the victim and the direct impact of his death anticipated by the *Payne* Court. Because the evidence was unduly prejudicial and fundamentally unfair, trial counsel should have objected.

d. Trial counsel's failure to properly object and preserve all available arguments regarding the victim impact evidence was deficient and prejudicial.

Performance is deficient when it falls below prevailing professional norms and is not the result of reasonable professional judgment. *Strickland*, 466 U.S. at 688, 690. Based on the fact that trial counsel objected, it is clear that they intended to keep out the widow's testimony about her suicide attempt. They objected on one possible basis but failed, however, to object on any of three additional, distinct, available bases. At the PCR hearing, trial testified that they had no strategic reason for failing to do so. *August PCR Tr.pp.28-29.* Given the highly prejudicial nature of the evidence, this was a significant failure and constitutes deficient performance.

In addition, trial counsel's failure to object to the irrelevant and inflammatory evidence regarding the Sheriff's Department orientation for new recruits was also deficient performance. *See Sapp,* 2006-CP-08-2204 at 47 (finding that evidence of 43 other state trooper deaths was impressible because it "placed the burden of all South Carolina trooper deaths on applicant").

Trial counsel's failure to properly preserve these issues for appellate review resulted in prejudice because, had the issues been preserved, there is a reasonable probability that the reviewing court would have found at least one of the claims meritorious and reversed his sentence. *See, e.g., Sapp,* 2006-CP-08-2204 (finding counsel ineffective for failing to object to the admission of victim impact evidence that was both beyond the scope and prejudicial); *Fields,* 516 F.3d at 947 (finding general community impact evidence to be outside the scope of proper victim impact evidence).

III. APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE DURING THE APPELLATE PROCEEDINGS.

The Constitution guarantees the right to the effective assistance of counsel on direct appeal. *Evitts v. Lucey,* 469 U.S. 387 (1985); *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Here, Stone's appellate counsel attempted to raise the issue of prejudice from the widow's victim impact evidence, but failed to do so on the basis on which trial counsel objected. *Stone*, 655 S.E.2d at 489 ("[Appellate counsel's arguments] are wholly independent of the relevance argument presented below.") As a result, the claim was deemed waived. Thus, trial counsel's failure to properly articulate the objection, combined with appellate counsel's misstep, rendered the appellate court unable to correct the error, despite its magnitude. At the post-conviction hearing, appellate counsel acknowledged that he had no strategic reason for abandoning the claim, *April 23-24, 2012 PCR Tr. p.183*, and opined that it was "some of the

worst possible testimony that I could imagine, that I certainly encountered in the time that I was at Appellate Defense." *Id. at 186-87.*

Appellate counsel's abandonment of the claim led to the court's refusal to consider the issue on any basis. *Stone*, 655 S.E.2d at 489 ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call."). Had appellate counsel raised the issue, the court would have considered it, and there is a reasonable likelihood that the court would have found reversible error. *See Southerland*, 337 S.C. at 615, 524 S.E.2d at 835 (finding both deficient performance and prejudice when appellate counsel abandoned a meritorious jury instruction claim); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) (non-capital) (finding appellate counsel ineffective for failing to adequately assert a claim of prosecutorial retaliation); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (non-capital) (finding appellate counsel ineffective for abandoning an insufficiency claim).

CONCLUSION

Stone was entitled under the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as the corresponding sections of the South Carolina Constitution, to a fair trial, sentencing, and direct appeal, and the effective assistance of counsel at all three stages. Instead, at trial, his attorneys failed to support the sole available defense theory and failed to object to an unfounded closing argument by the solicitor. At sentencing, trial counsel failed to investigate and present compelling evidence of intellectual dysfunction and brain damage, failed to properly object to impermissible victim impact evidence, and again failed to support the accident theory of the case. On direct appeal, Stone's attorney abandoned a strong, meritorious claim. For all the reasons stated above, this Court should grant post-conviction relief.

Respectfully submitted,

JOHN H. BLUME
Blume, Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
john@blumelaw.com
(803) 765-1044

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
emily@deathpenaltyresource.org
(803) 765-1044

By: Emily C. Paavola
Counsel for Applicant

March 11, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) CA No. 08-CP-43-905

RECORDED
2013 MAR 12 AM 1:48
JANE S. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

BOBBY WAYNE STONE, SK 5051)
Applicant,)
) CERTIFICATE OF SERVICE
v.)
)
)
THE STATE OF SOUTH CAROLINA.)
Respondent.)
)

The undersigned hereby certifies that a copy of Applicant's Post-Hearing Brief was served by first class United States mail, postage prepaid, this 11th day of March, 2013, upon the following:

Alphonso Simon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

Jill A. Rider

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SUMTER	)	
	)	
Bobby W. Stone	)	C/A No. 2008-CP-43-00905
	)	
Applicant,	)	**RESPONDENT'S POST-TRIAL BRIEF**
v.	)	
	)	
The State of South Carolina,	)	
	)	
	)	**(Capital Case)**
Respondent.	)	
	)	

This case is before this Court by Order of the South Carolina Supreme Court dated February 21st, 2008, granting a stay of execution to litigate this PCR, and the Order of Chief Justice Toal on December 17th, 2008, reassigning continuing jurisdiction of this case to the Honorable Michael Nettles.

An evidentiary hearing was held in this matter on April 23 and 24, 2012, and was completed on August 10, 2012. At the hearings, Applicant was present and was represented by John Blume, Esquire, and Robert Lominack, Esquire. The Respondent was represented by Senior Assistant Deputy Attorney General Donald Zelenka and Assistant Attorney General Alphonso Simon Jr. At the conclusion of the evidentiary hearing, and with the consent of Applicant, Emily Paavola, Esquire, was substituted as counsel for Robert Lominack, Esquire.

Respondent now submits its post-hearing brief.

I. Facts as Presented At Trial

It is undisputed that Applicant killed Sumter County Sheriff's Deputy Charlie Kubala.

A. 2/26/96: Sgt. Kubala is killed after responding to a 911 call from Ruth Griffith's house.

On the evening of the incident, February 26th, 1996, Ruth Griffith was being visited at her Sumter home by her daughter Mary Ruth McLeod. They heard knocking at the back door, and Ruth pulled the curtain back on the door and saw Applicant. **{1st R. 229-32; 257-58. 2nd R. 682-683}.**

Ruth told her daughter that Bobby Stone was outside and she did not want him in her home. McLeod went outside and accosted Applicant, telling him to go home because they have had trouble before. Applicant initially headed towards a little shed in Griffith's backyard, but after McLeod told him that was not the way home he headed back through the woods. As Applicant walked away, McLeod saw that he had something under the back of his jacket. She walked to the edge of the woods to make sure he was going home, and she saw Applicant standing there, holding a shotgun across his arms, and staring back at the house. McLeod again told Applicant he better go home, and said she was going to call the police. Applicant's eyes were glazed; he walked a little bit off balance; and he was holding what appeared to be a beer can. **{1st R. 232; 262-63; 277. 2nd R. 683-687; 710-712}.**

McLeod went back inside and called 911, and Sergeant Charlie Kubala responded to Ruth's house. Kubala reported arriving at the scene at 6:06 p.m. McLeod told Kubala what happened, and they walked to the edge of the woods where Applicant had gone. Applicant was nowhere to be seen. Sgt. Kubala told the women to call him if they had any more trouble. **{1st R. 232-33. 2nd R 687-689}.**

Before McLeod left to go see her daughter, she unsuccessfully begged Ruth to leave the house. Evidently Ruth should have listened, because shortly after McLeod left Ruth heard gunshots in her backyard. At 6:47 p.m., she called her neighbor Landrow Taylor, who also had heard the shooting and promptly came over. Taylor called 911 at close to 7:00 p.m. **{1st R. 232-34; 279-80. 2nd R. 689-690}.**[1]

Ruth and Taylor then heard someone jiggle the door handle to Ruth's car, which was parked right outside her bedroom window. They called 911 again at 7:02 p.m. As the two people cowered in the living room, afraid to go near the windows, they heard someone banging on the rarely-used side door, which led from the washroom onto a small screened-in porch used to store wood. The light on the porch was off, and it was dark. Taylor hollered, "What are you trying to do back there?"; there was a moment of silence but the beating started back. **{1st R. 234-38; 253-54; 265-71; 281-82}.**

Meanwhile, Sergeant Kubala reported arriving back at the scene. Taylor went out onto the front porch and motioned to the deputy, who walked around the corner of the house. Taylor went back inside the house. The dispatcher radioed Kubala about another call, but Kubala replied that he was busy. **{1st R. 282-84; 2nd R. 804-806; 826-827}.**

Suddenly, Taylor and Ruth heard someone shout, "Halt!," or "Hold it!," followed immediately by three or four gunshots. As Taylor ran back out onto the front porch, Deputy John Prince came pulling up in his cruiser. Taylor saw a flashlight and walkie-talkie lying on the ground, and yelled at Prince that Kubala was around the side of the

[1] Ms. Griffith was in poor health and Mr. Taylor was deceased, so their testimony from the first trial was read into the record.

house. Meanwhile, Ruth called 911 to report the officer down. **{1st R. 240-42; 283-85; 2nd R. 806}**. Deputy Prince shined a flashlight, saw Kubala, and ran to his side. Kubala was laying face up and bleeding profusely from his mouth and neck. His gun lay near the fingertips of his right hand, and off the fingertips of his right hand was his walkie talkie, from which the radio transmissions were clearly audible. His flashlight lay between his body and his right arm. Deputy Prince rolled Kubala over to clear an airway, but another gunshot rang out and Prince sought cover by the corner of the house. **{1st R. 285-88; 297-99; 2nd R. 807-808; 810-812}**.

Other officers and EMS arrived shortly thereafter. Because Prince had heard another shot, the police cleared a nearby shed and the surrounding area. EMS found the victim not breathing and without a pulse. Although he was wearing his protective vest, Sergeant Charles Kubala of the Sumter County Sheriff's Department died at the scene from one gunshot that entered his right ear, and another that entered his neck. **{2nd R. 809; 828-829; 924-933}**.

B. 2/26-27/96: Applicant is caught and gives a statement

Officers then began to set up a perimeter to snare the assailant. SLED bloodhound and SWAT teams were called, and off-duty officers from various jurisdictions volunteered to assist. A SLED helicopter equipped with forward-looking infrared radar and an extremely powerful spotlight called "midnight sun" began searching the woods nearby Ruth's house. After searching for a while, the SLED helicopter located a subject lying prone underneath two fallen trees. The helicopter used the midnight sun to light up the spot. **{2nd R. 848-857; 867; 887-888}**.

Meanwhile, police ground teams directed by the helicopter moved in on the suspect. It was extremely slow going through heavy brush. Finally, they neared the suspect, who lay perfectly still on his back. The officers repeatedly ordered the suspect to raise his hands, but he would not comply. Finally, one of the agents put his foot on the suspect's chest while the other officers attempted to take control of the suspect's hands. Near the suspect's left hip was found a .22 pistol. The suspect, who proved to be Applicant, resisted being handcuffed, and officers had to carry him out of the dense woods. **{2nd R. 857-862}.**

Applicant was taken to the law enforcement center where he gave a statement. In his statement, Applicant said that he woke up the morning of February 26th and smoked some marijuana. He went to the store and bought some beer, and met a man named David. David offered to sell Applicant three guns, and they agreed to meet on a nearby dirt road.

According to Applicant, David arrived at the meeting place with a .22 pistol and a .410 shotgun. The two men walked around in the woods, drinking beer and target shooting. They agreed on a price of $100 for both guns. As they walked around, Applicant decided to stop by and say hi to Ruth, whom he described as an old drinking buddy. David stayed in the woods with the guns.

Applicant claimed that as soon as he entered Ruth's backyard, a woman he did not know came out of the house "raising cane" at him and telling him to get off the property. Applicant returned to the woods, and found and paid David, who left. Applicant then walked around the woods shooting the guns and finishing off the beer. Around dark he decided to return to Ruth's.

Applicant walked up the steps to the little screen porch, set down the shotgun, but kept the .22 in his right hand. He admitted he started beating on the inside door, which broke because he hit it too hard. Applicant then heard a man's voice yelling outside the house, and as he turned, the gun went off. Applicant ran into the woods. In his statement, Applicant claimed the gun only went off once, and he never saw the deputy or his patrol car.

Applicant denied ever firing the gun again after he ran off the porch. He also claimed he did not know what was going on even though he hid in the woods for hours surrounded by police officers with a helicopter overhead. **{2nd R. 901-910}.**

C. Forensic evidence

Police processed the scene and collected various items of evidence confirming that Applicant murdered Sgt. Kubala. The pistol recovered from under Applicant at the time of his arrest was an extremely accurate target pistol which fired powerful .22 "long rifle" ammunition. The weapon was found with five rounds in its clip and a shell casing lodged in the ejection port. SLED conclusively matched this gun to two bullet fragments and one bullet taken from Sgt. Kubala's body. The .22 pistol also matched to three spent .22 cartridge cases found on the side porch as well as other casings found in the nearby woods. Kubala's 9mm service pistol, on the other hand, was found fully loaded and had not been fired. **{2nd R. 832 943; 970-973; 1016; 1022-1034}.**

Leaning up against the wall of the side porch was a single-shot .410 shotgun, with a live shell inside and its hammer cocked back in the firing position. This shotgun was conclusively matched to a spent .410 shell casing found in the woods near Ruth's house. **{2nd R. 943; 953; 1017-1019}.**

The screen door to that side porch had three holes which appeared to be from bullets. The screen around these holes not only tested positive for lead but also was microscopically consistent with holes made from bullets SLED test fired through the screen door with Applicant's .22 pistol. Ruth had nailed a board to cover a broken window pane on the door inside the screen porch that leads into the main house itself. After the incident, this board was knocked out and was hanging loosely from only one nail. **{2nd R. 695-698; 699-701; 850-853; 950-959; 1000-1007}**.

A knife was found in Applicant's coat pocket. Tests taken shortly after arrest indicated gunshot residue on the palm and back of Applicant's right hand, as well as the presence of lead on Applicant's left palm and sleeve. The victim had lead on his right palm; however, this only likely indicated handling of a weapon. The victim's shirt did not have any gunshot residue, which indicates Kubala was not hit by a close range shot. **{2nd R. 990-993}**.

D. Character and victim impact evidence

Applicant's extensive prior record was admitted. In 1985, Applicant was convicted on seven indictments for breaking into a motor vehicle, larceny, housebreaking, grand larceny, housebreaking, grand larceny, breaking into a motor vehicle, petty larceny, breaking into a motor vehicle, grand larceny, breaking into a motor vehicle, grand larceny, and grand larceny. For all of these crimes he received a youthful offender sentence not to exceed six years, and Applicant was paroled in 1985. **{2nd R. 649-660}**.

In 1987, Applicant pled guilty to two counts of 2nd degree burglary and two counts of grand larceny on one indictment, and 2nd degree burglary and grand larceny on

another indictment. For these crimes, Applicant received a total active sentence of twenty years plus five years probation. **{2nd R. 649-660}**.

Applicant was paroled in June of 1993 after serving approximately five years. The state elicited that he faced substantial time if his parole was revoked. A witness noted that Applicant's conditions of parole and probation precluded him from possessing firearms, using controlled substances, drinking alcohol to excess, or otherwise violating the law. Of course, Applicant violated all of those conditions on February 26th, 1996. **{2nd R. 660-664}**.

The state then presented Sgt. Kubala's family members, fellow officers, and friends who universally testified that he was a young, bright, and energetic officer who devoted much time to his community, including the Explorers, the YMCA, and the Special Olympics. Kubala's mother, father, and widow described the trauma of losing Sgt. Kubala, particularly on his widow and children. Particularly moving was testimony from Captain Hobbs and Major Metts, who were close friends with Sgt. Kubala on the force and particularly affected by the loss of their comrade in the line of duty. Captain Hobbs noted that all new recruits are taken to the crime scene and Sgt. Kubala's grave to impress upon them the seriousness of the job. **{2nd R. 641-648; 834-841; 1046-1093; 1095-1104}**.

E. The defense's sentencing phase case

Applicant first called social worker TeAnne Oehler, who described Applicant's upbringing – in particular the poverty and his mother's affair with the allegedly abusive and drunk Wesley Miles. Oehler theorized this upbringing led to his poor performance and frequent troubles with the law, which began with an arrest for stealing a car. She

concluded that these factors about Petitioner's upbringing affected his judgment and decision making. **{2nd R. 1128-1151}**. On cross, Oehler admitted she believed Petitioner had anti-social personality disorder and a problem with authority figures, and admitted Petitioner's extensive history of burglary and theft. **{2nd R. 1163-1167}**.

Applicant's paternal aunt Bernice his sister Melinda, and his niece Linda testified about Applicant's parents, his upbringing, and his family, and their relationship with Applicant. **{2nd R. 1168-1172; 1183-1188; 1194-1202; 1203-1204}**.

Ruth Griffith's sister-in-law Mary Wilson testified at the first trial, and her testimony was read into the record. She stated her daughter Michelle was living with Griffith at some point in the 90s and Applicant would visit her there. She also stated Applicant did some work for Griffith, and some times all of them would go out to a honky tonk. Supposedly, Griffith admitted drinking beer and smoking marijuana with Applicant. **{1st R. 622-30}**. On cross, Wilson admitted it was prior 1987 that this occurred. **{1st R. 634}**. Wilson's testimony from the first trial's sentencing phase was also read into the record, during which she described Wesley Miles's drinking problem. **{1st R. 635-37}**.

Psychopharmacologist Dr. Andrew Morton described the effects of Applicant's drinking on his brain, and on his judgment and decision making. **{2nd R. 1222-1246}**.

Former warden James Aiken stated that Applicant would easily adapt to prison, despite his commission of some infractions. The defense asked Mr. Aiken to describe what Petitioner's life in prison would be like, at which point he stated that Petitioner would in the company of many dangerous people, and that Petitioner was relatively old and vulnerable to violent and sexually aggressive inmates. Mr. Aiken also was allowed to testify that regardless of whether Petitioner was good in prison or bad in prison,

SCDC could safely contained "under the gun" for the rest of his life. **{2nd R. 1259-1273}**.

II. Allegations in Current Application

10(a): Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his capital trial.

11(a): Supporting Facts: For the reasons set forth below, trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984).

1) Counsel failed to object to the prosecutor's improper and prejudicial closing argument, in which the prosecutor repeatedly asserted that Applicant did not dispose of his gun prior to arrest so that he could kill more police officers. (Trial Tr. Vol. 4, 844-47, January 27, 1998). Counsel thus failed to preserve for appeal whether the improper arguments violated the Sixth, Eighth, and Fourteenth Amendments and the corresponding provisions of the South Carolina Constitution and South Carolina law.

2) Counsels' failure to secure the assistance of appropriate crime scene and other experts prevented the defense team from adequately corroborating applicant's statement regarding the nature of the homicide and from rebutting the prosecution's theory that applicant "ambushed" and "executed" the victim.

3) Counsel failed to object to the prosecution's racially discriminatory use of its peremptory challenges. See Batson v. Kentucky, 476 U.S. 79 (1986).

4) Counsel failed to object to the presence of numerous law enforcement officers present in the courtroom throughout applicant's trial.

5) Counsel failed to object to the use of shackles on applicant These shackles were visible when applicant was in the courtroom as well as when he was being transported from the jail to the courtroom. See Deck v. Missouri, 544 U.S. 622 (2005).

10(b): Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution - during the sentencing phase of his capital trial.

11 (b): Supporting facts: For the reasons set forth below, trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984).

1) Counsel failed to properly object to the victim's widow's testimony and thus preserve for appeal all available grounds on which such testimony violated the Sixth, Eighth, and Fourteenth Amendments and the corresponding provisions of the South Carolina Constitution and South Carolina law. During the resentencing proceeding, the victim's widow testified that she attempted to commit suicide upon learning that the South Carolina Supreme Court had reversed Applicant's original death sentence. (R. at 1090-92). See State v. Stone, 655 S.E.2d 487,488-89 (S.C. 2007).

2) Counsel failed to object to extensive victim impact testimony regarding the effect of the victim's death on law enforcement in Sumter County generally and on various law officers in particular. (R. at 835-41, 1095-1104.) This evidence included testimony alleging, inter alia, that the sheriffs office brings all of its law enforcement trainees to the victim's gravesite during their orientation. (R. at 840-41.) Such testimony was outside the scope of proper victim impact evidence, and counsel's failure to lodge an appropriate objection was unreasonable and prejudicial.

3) Counsel failed to present evidence during the resentencing proceedings of applicant's prior cooperation with law enforcement, including that applicant had previously provided information to law enforcement regarding certain other criminal activities.

4) Counsel failed to conduct a reasonable investigation into potentially mitigating evidence regarding applicant's impoverished childhood and the family dysfunction resulting from the essentially polygamous household in which he was raised, applicant's very low intellectual functioning, and neurological damage from exposure to dangerous neurotoxins and other chemicals as well as the maternal ingestion of alcohol during the developmental period. Counsel failed to gather relevant social history, educational and medical records which would have corroborated the mitigating evidence that was presented at applicant's trial. Counsel also failed to investigate, develop and present evidence of applicant's good character.

5) Counsel failed to object to the presence of numerous law entorcement officers in the courtroom throughout the resentencing trial.

6) Counsel failed to conduct an adequate voir dire, thus allowing the erroneous and prejudicial qualification of potential jurors who were predisposed to sentence the applicant to death or were otherwise legally unqualified to serve. Counsel also failed to ask adequate questions to determine whether many jurors were (or were not) qualified to serve on a capital jury.

7) Counsel failed to secure the assistance of appropriate crime scene and other experts. The failure to secure this necessary expert assistance prevented the defense team from adequately corroborating applicant's statement regarding the nature of the homicide and from rebutting the prosecution's theory that applicant "ambushed" and "executed" the victim.

10(c): Applicant was denied the right to effective assistance of appellate counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 4 of the South Carolina Constitution during the appellate proceedings.

11(c): Supporting Facts: For the reasons set forth below, appellate counsel's performance
during the sentencing phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984).

1) During the resentencing proceeding, the victim's widow testified that she attempted to commit suicide upon learning that the South Carolina Supreme Court had reversed Applicant's original death sentence. (R. at 1090-92). Counsel objected, and the trial court overruled the objection. (R at 1105-06). Appellate counsel failed to properly raise this claim on direct appeal. Rather than argue the issue consistent with the objection at trial, appellate counsel based the appellate claim on a different legal argument. The South Carolina Supreme Court held that the claim as formulated by appellate counsel was not preserved for review. See State v. Stone, 655 S.E.2d 487, 488-89 (S.C. 2007).

10(d): Applicant's conviction and sentence were obtained in violation of the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution.

11(d): Supporting Facts: Several errors at trial violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Those errors include, but are not necessarily limited to, the following:

1) The trial court erred by refusing to approve funding for a jury selection expert in violation of Applicant's right to expert assistance. See Ake v. Oklahoma, 470 U.S. 68 (1985).
2) The presence of numerous armed officers in the courtroom during both phases of the trial violated the applicant's right to a fair trial.

10(e): Applicant's conviction and death sentence were obtained in violation of the Fifth and Sixth Amendments to the United States Constitution and South Carolina law.

11(e): Supporting Facts: The state forced applicant to wear shackles when being transported to the courtroom and also once inside the courtroom. See Deck v. Missouri, 544 U.S. 622 (2005).

III. Standard of Review

Pursuant to the familiar doctrine in Strickland v. Washington, Applicant must first demonstrate that his trial counsel's performance fell below an objective standard of reasonableness. 466 U.S. 668 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000).

Competency is measured against what an objectively reasonable attorney would have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The court should "decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial." Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland:

> . . . the reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information . . . [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995); Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

Next, Applicant must also establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. 668, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. It is insufficient to show only that the errors had some conceivable effect on the outcome of the proceeding, because virtually every act or omission of counsel would meet that test. Id. at 693. Applicant bears the "highly demanding" and "heavy burden" in establishing actual prejudice. Williams v. Taylor, 120 S.Ct. 1495, 1513-14 (2000).

In Jones v. State, 332 S.C. 329, 504 S.E.2d.822 (1998), the South Carolina Supreme Court restated the "prejudice" prong in a capital sentencing proceeding as being established when "there is a reasonable probability that, absent [counsel's] errors, the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death" (citing Strickland). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824. Accord, Plath v. Moore, 130 F.3d 595 (4th Cir. 1997) ("given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the

mitigating circumstances and hence, the sentence imposed. Thus, in weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor.").

Finally, the Supreme Court of South Carolina has held that a hearing on an allegation is only required when factual allegations that lead to a Sixth Amendment deprivation are not conclusively refuted by the record. Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981).

As a general matter, Respondent submits that appointed counsel were not deficient in their performance nor was Applicant prejudiced in any way by their performance. To the contrary, the Record from each proceeding demonstrates that Applicant's attorneys were diligent in their representation of Applicant, performed well within the wide range of competence and reasonable professional assistance demanded of attorneys in criminal matters. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Butler v. State, 286 S.C. 441, 34 S.E.2d 813 (1985); Hill v. Lockhart, 474 U.S. 52 (1985).

Ground 10(a): Ineffective assistance of counsel during the guilt phase

Applicant asserts five claims of ineffective assistance of counsel during the guilt phase of Applicant's first trial.

Ground 10(a)(1): Failure to object to closing argument

Applicant contends his counsel should have objected to argument that Applicant did not dispose of his gun so he could kill more officers. Applicant is not entitled to relief upon this claim. Trial counsel's testimony at the PCR evidentiary hearing established

that counsel made a reasoned decision in not objecting to the solicitor's closing argument. Also, the argument made by the solicitor was proper response to the anticipated argument that Applicant accidentally fired the shots at the victim. Thus, Petitioner failed to establish that counsel was deficient in this regard. Further, Applicant cannot establish that he was prejudiced by counsel's decision not to object to the solicitor's closing argument.

During the solicitor's closing argument, he noted that Applicant's actions after the crime were inconsistent with those claims in his statement, inasmuch as Applicant fled the scene, ran through bushes and briars in the dark of night, and hid under a log for four hours. (1st R. 844). The solicitor also responded to the defense questioning of witnesses on the fact that Applicant never tried to get rid of the gun in all that time, which the defense asserted was supportive of his claim that he did not know he shot a deputy. The solicitor suggested an alternate proposition more consistent with the evidence – that Applicant knew he had already killed one officer, and he kept the gun because he was trying to escape the perimeter and might need to use it again. (1st R. 844-46). The solicitor further noted that once Applicant realized that he was caught, his actions belied any argument that he thought he did not shoot anybody; he tried to hide the gun and hoped no one would find it. (1st R. 846-7). No objection was raised to this argument at trial.

At the PCR evidentiary hearing, trial counsel indicated that he made a strategic decision in not objecting. Mr. Littlejohn noted that during the trial, the solicitor overplayed his hand at several points during the trial. Littlejohn believed this argument by the solicitor was just another example of the solicitor doing so.

> I really thought what he was trying to do was kind of be a little overbearing. And so when he came through with some of these things, not only did they kind of surprise me, but I -- I didn't feel like there was any evidence to support them. But from the standpoint of -- of letting him go with it because it was closing argument, I didn't know exactly what Judge Dennis would allow or not allow. He had been pretty lenient in that regard. So I didn't object, thinking that actually it might be to our benefit to -- to -- because it was just a further reflection of how overreaching and how hard the State was going at this thing and how they would do anything to get a conviction against -- against Bobby Wayne.

(2nd Tr. 17, ll 4-14).

Trial counsel was not deficient in his handling of the solicitor's closing argument in the guilt phase. First, as indicated above, counsel's decision not to object to the statement in question now was based upon a valid, strategic decision. Furthermore, the argument made by Solicitor Kolb in his closing was clearly permissible as a matter of law. Arguments must be confined to evidence in the record (and reasonable inferences therefrom), although failure to do so will not automatically result in reversal. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); State v. Cannon, 229 S.C. 614, 93 S.E.2d 889 (1956). A solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony. See State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976). A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990) (citing Donnelly v. DeChristoforo, 416 U.S. 637 (1974)).

Here, the solicitor's argument was proper, as he was clearly arguing the State's version of events and arguing against the claim of accident in Applicant's statement.

During the trial, the State introduced a statement given by Applicant after he was arrested. In that statement, Applicant asserted the gun went off accidently when he heard a man's voice behind him, and he never saw he had shot a deputy. (1st R. 695-96). It was clear from the cross-examination of the State's witnesses that Applicant's counsel was relying upon Applicant's version given in the statement. (1st R. 712). Further, the defense had implied through cross examination that Applicant did not attempt to grab the pistol to fire on the search party that arrested him. (1st R. 535-36). Meanwhile, several witnesses who were present when Applicant was arrested in the woods indicated that Applicant was not compliant when he was being arrested, and he was within reach of the pistol. (1st R. 520, 532-33, 535, 543-44, 549).

The solicitor was also responding to an obvious defense contention raised in their questioning as to the significance of the fact that Applicant retained the gun.[1] Since the argument was permissible, counsel could not have been deficient for failing to object nor could Applicant have been prejudiced. Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001) (ineffective assistance claims based on failure to object is tied to the admissibility of the underlying evidence; if evidence admitted without objection was admissible, then the complaint fails *both* prongs of the Strickland test, as it was neither deficient nor prejudicial).

Applicant also fails to show that he was prejudiced. First, as already noted, this solicitor's argument was not improper, especially when viewed in the context of the

[1] Respondent would note that in closing argument, trial counsel did contend that Applicant's retention of the weapon would not have made sense if Applicant intentionally shot Deputy Kubala. According to trial counsel, had Applicant known he shot the victim, he would have disposed of the gun in the woods before he was caught in the woods. (1st R. 865).

entire record. Second, the trial judge charged the jury that the statements by the attorneys were not evidence. (1st R. 874). Moreover, even if the solicitor's argument was improper, it cannot be said that the comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Given the overwhelming evidence, this one comment cannot meet that standard. See, e.g. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996) (one isolated event is not prejudicial); State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984) (momentary lapse of good taste will rarely be prejudicial). Since Applicant would not have been entitled to relief upon a claim that the closing argument deprived him of a fair trial, Applicant cannot show that he was prejudiced by the fact counsel did not object to the statements made in closing argument. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(a)(2): Failure to utilize crime scene and other experts to rebut State's theory

Applicant next contends his counsel was ineffective in the guilt phase for failing to hire "crime scene and other experts" who would have opined the evidence supported Applicant's statement in which he asserted the gun went off accidently when he heard a man's voice behind him, and he never knew or saw that he had shot a deputy.

Applicant is not entitled to relief upon this claim. First, Applicant fails to show that counsel was deficient in this regard. At the PCR evidentiary hearing, Applicant presented the testimony of Wayne Hill, who was qualified as an expert in homicide events reconstruction and firearms. Mr. Hill testified that he reviewed prior trial transcripts (including Applicant's testimony, Agent Parnell's testimony, and other law

enforcement officers' testimony regarding their actions at the scene), crime lab reports, crime scene photographs, autopsy photographs, and autopsy reports. (1st Tr. 198). Hill also testified that he went to the shooting scene. (1st Tr. 199). Hill indicated that he also examined the weapon used in the shooting. (1st Tr. 199). Hill concluded that the shooting could have occurred in the way outlined by Applicant in his statement to law enforcement. (1st Tr. 220, 222). Hill noted that SLED had determined the trigger pull to be 1.5 pounds, which he deemed to be unsafe under certain conditions. (1st Tr. 200, 202-03). Hill stated there was an increased likelihood of an unintentional discharge in a pistol with such a light trigger pull. (1st Tr. 204). He further indicated that the gun could fire if it rested upon three fingers the wrong way. (See 1st Tr. 205).

Hill opined that the locations of the bullet holes in the screen porch door were consistent with an unintentional firing of the gun. (1st Tr. 213). Hill further asserted that an intentional firing of the weapon would have resulted in the bullet holes in the screen porch door to be higher. (1st Tr. 221-22). Hill also claimed that the discrepancy between the number of shots fired and the number of shots Applicant recalled being fired could be explained by the fact he was intoxicated at the time the shooting occurred. (1st Tr. 223-24).

Hill did note, however, that it was possible that Applicant aimed the gun at the victim. (1st Tr. 242). Hill indicated that he did not think it was highly probable because of where the cartridge casings were located at the scene. (1st Tr. 242). However, Hill also testified that he had not actually fired the pistol used in this case as part of his review of the evidence. (1st Tr. 240). Nor did Hill consult with any members of the Sumter County Sheriff's Office or the State Law Enforcement Division (SLED) regarding

the investigation done in Applicant's case. (1st Tr. 230). Hill also agreed that it would take three trigger pulls to fire three shots from the pistol. (1st Tr. 240).

SLED Agent Ira Parnell, a firearms and toolmark examiner who examined the pistol in this case, testified that he fired the gun at least ten times during testing. (1st Tr. 358-60, 362). He recalled the trigger pull being fairly light. (1st Tr. 362). He also noted that one would have to pull the trigger three times to fire three shots. (1st Tr. 363). Parnell opined that the shots through the screen porch door could not have been fired by accident. (1st Tr. 366). He noted the pattern was too precise, too closely grouped, and close together to be done by accident. (1st Tr. 366-67). Parnell also noted that the pattern in the screen door was consistent with the shooter "not standing bolt upright but being at least slightly squatting anyway, if not completely squatted." (1st Tr. 367, ll 16-18).

Both Mr. Babb and Mr. Littlejohn testified that they consulted with a crime scene expert, Donald Girdnt, in preparing for trial. According to Mr. Babb,

> Don was essentially a crime scene investigator. He had an expertise particularly in I think gunshots, blood splatter, fingerprints. But he at that time -- he's a former SLED agent – was doing general services on looking at crime scenes and advising individuals about the crime scene.
>
> ....
>
> Well, I know he looked at the weapon that was used, the .22 high standard Supermatic pistol, and I know he looked at the shotgun. I recall being at the scene at least once with him. He reviewed evidence. He sat with us during the presentation of a lot of the State's evidence, and we would discuss that, you know, as he had input, any questions that we should ask.

(1st Tr. 293, ll 11-16, 19 – 294, l 1). Mr. Littlejohn indicated that Girndt could help in reconstructing events, explain the mechanism of the weapon involved, and trajectories.

(2nd Tr. 19-20). Littlejohn testified that in terms of corroborating the defense's theory, Girndt could not really say much one way or another. (2nd Tr. 20). Based off of the information that Girndt provided them, the shooting was not a cut and dry situation. Girndt could not definitely state that the shooting was an accident based off of his review of the evidence. (2nd Tr. 20). Littlejohn noted that they did consider calling Mr. Girndt as a witness at trial. Littlejohn believed that they did not call Girndt for that very reason. Other information that Girndt would have testified to had already come in through the testimony of SLED agent Parnell. (2nd Tr. 21).

Clearly, trial counsel's testimony establishes they consulted with a crime scene expert. Counsel also made a well-reasoned, strategic determination to not call their expert as a witness at the first trial. Here, counsel were not deficient in addressing this issue through examination, and there was no constitutional need for the crime scene and other experts. Counsel repeatedly elicited that it was dark, and that the murder weapon was a target pistol with an extremely light trigger pull. (1st R. 333; 372; 669; 713; 724-25). Counsel also elicited that the victim was only 5'8" and the wooden part of the walls of the screened porch would be over his head. (1st R. 427-28). Counsel argued the issue in closing. (1st R. 860-65). Further, based upon counsel's testimony, it appears that Mr. Girndt could not state that he had concluded that the shooting was accidental based off of his review of the evidence. Respondent submits that counsel cannot be found deficient for not presenting their expert at trial when the defense team's expert reached different conclusions from the expert presented at the PCR evidentiary hearing. See generally Ringo v. State, 120 S.W.3d 743 (Mo. 2003) (en banc) (no deficiency in investigation where counsel hired four experts; while one trial expert

merely noted a high score on the PTSD scale but did not diagnose it, and a PCR expert later actually diagnosed PTSD, counsel's hiring of four experts was sufficient and reasonable investigation, making this case different from Wiggins). Overall, trial counsel was not ineffective.

Applicant also fails to show that he was prejudiced. There is no reasonable probability a jury would have accepted Applicant's version of events, even with a crime scene expert and other experts, when Applicant asserted in his statement: (1) that he unintentionally only fired once, when in fact there were three casings on the porch, two bullets in the victim, and three holes in the screened porch (1st R. 662), and (2) that he did not know he shot a deputy and did not know what was going on for the four hours he was at large, even though he spent that time hiding under a log in a thick brush. (1st R. 695-96).

Moreover, Applicant was not entitled to a jury charge on involuntary manslaughter or accident anyway. Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others. State v. Cabrera-Pena, supra; State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). Applicant – a felon on probation and not entitled to have a weapon – admitted he was banging on the side door of a house from which he had already been sent away once, while holding a loaded pistol in his hand. Such conduct hardly can meet either test for involuntary manslaughter – as it involves a felon with no good reason to be in possession of a weapon, such that the possession is the proximate cause of the homicide. It also

involves trespass after notice; and burglary – given that the South Carolina Supreme Court found the screened porch itself was part of the dwelling. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002).

Similarly, Applicant cannot show entitlement to accident, as he must not only have been acting lawfully, but must also show that he used due care in the handling of the weapon. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999). Not only was Applicant behaving unlawfully many times over but by no stretch can invading an enclosed porch and banging on the back door with a loaded pistol in one's hand be considered due care. Since Applicant was not entitled to either an involuntary manslaughter or accident charge under any view of the evidence, then counsel could not have been deficient nor Applicant prejudiced from the failure to get an expert to support his statement. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006) (no ineffectiveness in failing to get homicide reconstructionist where counsel elicited the testimony through other means and the Applicant was not entitled to a voluntary manslaughter charge in any event).

Ground 10(a)(3): Failure to challenge Batson violation

Applicant next contends counsel was ineffective during the guilt phase by failing to make a Batson motion challenging the prosecution's alleged racially discriminatory use of its strikes.

Applicant is not entitled to relief upon this claim. First, counsel was not deficient in not moving for a review of the State's use of peremptory challenges under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Trial counsel's testimony indicated they made a reasonable strategic decision in not making such an objection.

The record reflects that the solicitor used three strikes on black females (Jurors #189, 6, and 109); one strike on a black male (Juror #25); one strike on a white female (Juror #90) during the selection of the jury; and two strikes on white males (Jurors #37, 64) during the selection of the alternate jurors. The jury consisted of one black male, three black females, five white males, and three white females. (1st R. 2102-05).

After jury selection, the State indicated it wished to make a Batson motion, but that if the defense did not have one it would withdraw its Batson motion. The State argued that if it had to explain its strikes the defense should have to explain them as well. The court responded that if the State had a Batson motion it would hear it, but that the State should proceed carefully as the court may just grant relief and the State could end up with a worse redraw. The State then agreed it was satisfied with the jury. The defense then took a fair amount of time – even being asked by the judge if they needed a recess – before deciding they did not want to make a Batson motion either. (1st R. 2095-97).

At the PCR evidentiary hearing, Mr. Littlejohn indicated the defense considered making a Batson motion. (2nd Tr. 22). He noted that in looking at the composition of the jury, the defense was satisfied with the jury that was selected. Id. The overarching reason they did not move for a review of the State's use of its peremptory strikes was the fact the defense was pleased with the jury that was selected, especially in light of the makeup of the jury pool. (2nd Tr. 22, 23). Littlejohn also indicated that it appeared the State could justify its use of peremptory strikes. (2nd Tr. 22-3). Mr. Babb's testimony also supported Mr. Littlejohn's determination that the defense was content with the jury that was selected. "To my memory, we were as satisfied as we could be.

In other words, any objections we had to a potential juror, we put on the record." (1st Tr. 302, ll 6-8).

Mr. Littlejohn also indicated that he did not believe that a Batson motion would have been successful if it had been raised at trial.

> We also looked at the reasons that the State had struck the five jurors that they struck and whether they could justify that in a racially neutral way and apparently the jurors that they struck, they were concerned about jurors that had had some sort of prior brush with the law or some relative that had been in trouble or something like that and that was pretty prevalent in the -- the jurors that they -- they struck and I can give you a rundown.
>
> You -- You provided me with a list of the -- of the jurors, but the first juror, who was a black male, his son had had some trouble and he was a minister and I know from my experience as a prosecutor I never wanted a minister on a jury, okay? The second was a black female and she indicated during the voir dire that she might not be able to stand up in court and sign off or endorse a death penalty order and she said generally she would choose life over death.
>
> The third juror that they struck, white female, she was convicted of shoplifting. The fourth juror they struck, who was a black female, her brother was in jail for crack possession, and then the fifth juror, who was a black female, had indicated that she felt that life imprisonment was better than the death penalty.

(2nd Tr. 22, l 16 - 23, l 12).

Wade Kolb, the solicitor who tried the first trial, also testified about his use of peremptory strikes in the selection of the jury in the first trial. Mr. Kolb noted that he knew Juror #25. (1st Tr. 249). Kolb also noted that his notes reflected that someone with the Georgetown County Sheriff's Department had reported that one if their deputies knew the juror, and that person considered the juror to be a "mental case." (1st Tr. 249). Kolb further testified that Juror #25 was assessed by the State as one of the five weakest in the pool in regards to likelihood to sentence someone to death. (1st Tr. 250).

Kolb did indicate that other notes reflected that Juror #25 "seems like he really wants to be on the jury," and that he may have been potentially struck by the defense. (1st Tr. 252). Ultimately, the prosecution struck Juror #25 because it was their feeling he would not sentence anyone to death. (1st Tr. 253).

In regards to Juror #189, Joann Walker, Kolb indicated the prosecution assessed her to be a juror in favor of a life sentence, and they exercised one of their strikes on her as a result. (1st Tr. 254). Kolb stated that Juror #189 had expressed reluctance about signing a death warrant, and at some point she indicated that she would always choose life. (1st Tr. 255, 256). Kolb testified that Juror #6, Mary Armstrong, was struck because she indicated that she could not impose the death penalty, and she would rather give life in prison. (1st Tr. 257). Kolb noted that he moved to strike her for cause because she indicated she would not consider a death sentence. (1st Tr. 257).

Solicitor Kolb testified that Juror #109, Eugenia Maybank, was struck because during her voir dire, she indicated life would be better than the death penalty. (1st Tr. 258). Kolb also noted that Juror #109 stated she had never previously discussed the death penalty. (1st Tr. 258). "It seems very unlikely to me that somebody who had never even thought about the possibility of doing it, never even discussed the death penalty even with her husband or best friend, that type person would be less likely to get in that position and be able to do it." (1st Tr. 258, ll 11-16). Kolb also testified that striking Juror #109 ensured that Juror #60, Tamika Gardner, was more likely to sit on the jury. (1st Tr. 259). Kolb did testify during cross-examination that the primary reason he struck Juror #109 was because she stated that in making the decision between life and death, she said life would be better than the death penalty. (1st Tr. 268).

This claim should be denied and dismissed. First, the record and the testimony at the evidentiary hearing clearly reflect that counsel made a strategic decision not to pursue a Batson motion after much deliberation. See Strickland, 466 U.S. at 689 (reasonable trial strategy is not basis for ineffective assistance); Sexton v. French, 163 F.3d 874, 887 (4th Cir. 1998) (tactical decision cannot be second-guessed by court reviewing a collateral attack); Fitzgerald v. Thompson, 943 F2d 463 (4th Cir. 1991) (tactical decision sustainable unless it is both incompetent and prejudicial); Bunch v. Thompson, 949 F.2d 1354 (4th Cir. 1991) (reviewing court should filter from its analysis the distorting effects of hindsight); See generally Bell v. Evatt, 72 F.3d 421 (4th Cir. 1995) (standing alone, unsuccessful trial tactics neither constitute prejudice nor definitively prove ineffective assistance of counsel). Counsel clearly testified that they did not make a Batson motion because they were pleased with the jury that was selected. In light of this reasonable strategic decision, Applicant is not entitled to relief.

Second, Applicant has failed to establish that he was prejudiced by counsel's decision not to challenge the prosecution's use of peremptory strikes under Batson v. Kentucky. As established by the testimony by both Solicitor Kolb and Mr. Littlejohn, such a motion would not have been successful. The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a venire person on the basis of race or gender. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). In a Batson hearing,

> [a]fter a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. This explanation is not required to be persuasive or even plausible. Once the proponent states a

> reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment.

State v. Rayfield, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006). "An explanation for a jury strike will be deemed race-neutral **unless a discriminatory intent is inherent**." Robinson v. Bon Secours St. Francis Health Sys., Inc., 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009)(citing Purkett v. Elem, 514 U.S. 765, 768, 115 S.Ct. 1769, 131 L.Ed.2d 834, (1995); State v. Adams, 322 S.C. 114, 123, 470 S.E.2d 366, 371 (1996)(emphasis in original). "Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike. Evins, 373 S.C. at 415, 645 S.E.2d at 909. The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Edwards, 384 S.C. at 509, 682 S.E.2d at 823.

> "Typically, the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed.... [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous."

Evins, 373 S.C. at 415-16, 645 S.E.2d at 909-10 (quoting State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct.App.2006)). See Hernandez v. New York, 500 U.S. 352, 365, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991); State v. Taylor, 396 S.C. 193, 720 S.E.2d 522, 525 (Ct.App.2011).

Here, Solicitor Kolb's explanations for his use of peremptory strikes were all race neutral. Applicant has not shown that those explanations were pretext. In fact, at the evidentiary hearing, the only attempt at showing the prosecution's use of peremptory strikes was pretext was not supported by the record. Applicant pointed to the fact the State did not object to seating Juror #157, Dan Riegle, noting that the juror had indicated he knew one of the defense witnesses. (See 1st Tr. 269-70). Solicitor Kolb testified that his notes reflected that Juror #157 "regarding the murder of the law enforcement officer that he said he would be more inclined to lean towards death but could consider both." (1st Tr. 270, ll 15-17). Kolb also noted that it appeared the relationship between the juror and the defense witness appeared to be a very casual relationship at best. (1st Tr. 271). Respondent would note that Juror #157 is not similarly situated to any of the jurors that were struck by the prosecution. At no point did Kolb indicate that he struck a juror because of their relationship with a defense witness. None of the jurors who were struck indicated they possibly knew one of the defense witnesses. In all, Applicant fails to show that counsel was ineffective not making a Batson motion in this case. In light of the explanations provided by Solicitor Kolb for his use of his peremptory strikes, and the lack of evidence establishing that those explanations were pretext, Applicant fails to show that counsel was deficient and that he was prejudiced as a result of any deficiency of counsel in this regard. As a result, Applicant fails to show that counsel was ineffective in not making a Batson motion.

Further, the solicitor here presented three black jurors, and struck one white one. While "a Batson violation can occur notwithstanding the fact that members of the defendant's racial group are seated on the jury," Matthews v. Evatt, 105 F.3d 907, 917

n.8 (4th Cir. 1997), a solicitor's acceptance of members of the struck juror's racial group is a valid consideration in the determination of whether there was discrimination in the jury selection process. See State v. Dyar, 317 S.C. 77, 79, 452 S.E.2d 603, 604 (1994) (citing State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)); Burks v. Borg, 27 F.3d 1424, 1429 (9th Cir. 1994), cert. denied, 513 U.S. 1160 (1995). The solicitor's presentation of black jurors and striking of a white juror here refutes any inference of racially discriminatory action. Finally, the evidence of guilt in this case was completely overwhelming, especially given, as argued before, that Applicant was not entitled to an accident or involuntary manslaughter instruction. As a matter of law, successful Batson motion would not have had a reasonable probability of a different result. See Reed v. Norris, 195 F.3d 1004 (8th Cir. 1999) (failure to raise Batson issue not prejudicial under Strickland given overwhelming evidence).

Altogether, Applicant is not entitled to post-conviction relief upon this claim. It should therefore be denied and dismissed with prejudice.

Ground 10(a)(4): Failure to object to presence of officers

Applicant next contends counsel was ineffective for failing to object to the presence of uniformed officers in the courtroom during trial.

This claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming into play.'" State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no

evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

Wade Kolb, the solicitor who tried the first trial, testified that the presence of uniformed law enforcement personnel in the courtroom was not much different from other criminal cases during the first trial. (Tr. 261).

> It was no more than normal, and it was not as I recall, the Judge took pains to balance security but also to balance that there wouldn't be just a bunch of police officers hovering around there.
>
> ....
>
> And if there were people there, it was no more than we were trying a DUI case as far as people in uniform. There might have been a few extra people in plain clothes around, but that wasn't really my focus.

(1st Tr. 261, l 23 - 262, l 2; 1st Tr. 262 ll 4-8). Mr. Kolb also testified that trial counsel would have been more attuned to the situation, and he was confident they would have objected if law enforcement presence was a concern. (1st Tr. 262). Mr. Kolb also noted that Judge Dennis also would have addressed any concerns about law enforcement presence in the courtroom, "because Judge Dennis was very zealous about making sure that nothing like that occurred." (1st Tr. 262, ll 14-15).

Initially, Jim Babb testified that there was at least twice the number of law enforcement personnel in the courtroom for the first trial as compared to a DUI case. (1st Tr. 284). He also initially indicated that he could not recall a strategic reason for not objecting to the law enforcement presence in the courtroom. (1st Tr. 285). He did note that they "had a conversation at some point during the first trial, and I don't recall if it was in Georgetown for jury selection or here, you know, concerned about the jury presence and seeing the security measures on bringing him and out of the courtroom."

(1st Tr. 285, ll 18-23). During cross-examination, he noted that there were more law enforcement personnel in the courtroom at the first trial than were present at the PCR hearing. (1st Tr. 302). However, he also indicated that there were only limited uniform personnel present outside of those involved in handling security in the courtroom. (1st Tr. 302-04). He indicated that he did not believe there was a reason to have anyone from law enforcement excluded from the first trial. (1st Tr. 327).

Mr. Littlejohn testified that during the first trial,

> There were a number of deputy sheriffs in the courtroom, but they were not hovering over us or sitting right behind us. The courtroom was such that, like a lot of the older courtrooms, there's a – a petit jury box on one side and a grand jury box on the other side. Most of the deputies were sitting in the grand jury box and were removed in distance from us.
>
> There was usually one deputy that was on the row behind us, but he was kind of away from the table. Obviously, there were deputies coming in and out over on the solicitor's side just by virtue of -- of their witnesses coming in and out and -- and deputies that were, you know, friends of Deputy Kubala that were interested in the trial.
>
> I didn't feel like it was overbearing at the time. I think Judge Dennis, who was very attuned to things like that, would have -- would have said something or done something if he felt it was overbearing. So I didn't really -- I didn't perceive it as being something that -- that would have upset the jury or made them, you know, think less of -- of Mr. Stone.

(2nd Tr. 23, l 24 – 24, l 18).

Altogether, Applicant has not shown that the presence of law enforcement officers in the courtroom created an intimidating or prejudicial atmosphere that rose to the level of a due process violation. See, e.g. Holbrook v. Flynn, 475 U.S. 560 (1986) (finding no prejudice from presence of armed officers stationed as guards); Hill, 331 S.C. 94, 501 S.E.2d 122 (any prejudice from presence of officers is wholly speculative, and Hill failed to present any evidence the officers had an effect on the jury); Paige, 375

S.C. 643, 654 S.E.2d 300 (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

Indeed, with regard to officers present as spectators, the possibility of prejudice is even less, as trials are public and open to police officers as well, and there is no evidence or allegation that the officers behaved in an intimidating way to the jurors. See Hill v. Ozmint, 339 F.3d 187 (4th Cir. 1993) (nothing in record indicates courtroom was filled with an array of officers or that they were positioned to indicate Hill was dangerous; further, victim's fellow officers were impacted by his death and entitled to be present absent a Holbrook issue); Lambert v. McBride, 365 F.3d 557 (7th Cir. 2004) (finding no ineffectiveness from a failure to object to officers present as spectators where they were entitled to be there like any spectator and there was no evidence they sought to intimidate the jury). Further, it is simply impossible and not required that a courtroom be totally sanitized, as "jurors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance." Holbrook, 475 U.S. at 567. As a result, counsel cannot be found deficient in this regard.

Further, Applicant failed to establish he was prejudiced in any way. Applicant presented no evidence to show that the presence of law enforcement in the courtroom had any effect on the jury. In fact, Applicant has not presented any evidence to support a finding of inherent prejudice. In light of that failure, Respondent submits Applicant fails to show that he was prejudiced by counsel not objecting to the law enforcement presence in the courtroom during the guilt phase of Applicant's trial. See State v. Hill, 331 S.C. 94, 101-02, 501 S.E.2d 122, 126 (1998)(noting defendant must show

measures taken in the courtroom created actual or inherent prejudicial effect on jury). As a result, he has not shown that trial counsel was ineffective in this regard. This claim should therefore be denied and dismissed with prejudice.

Ground 10(a)(5): Failure to object to shackling of defendant

Applicant asserts trial counsel was ineffective for failing to object to the use of visible shackles during the guilt phase of Applicant's first trial. Applicant is not entitled to relief upon this claim. There is no evidence in the record to support this claim.

> Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes. Brewster v. Bordenkircher, 745 F.2d 913 (4th Cir.1984).

State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995).

There was no testimony or evidence presented at trial to support a finding that Applicant was visibly shackled during the guilt phase of his first trial. Wade Kolb, the solicitor who tried the first trial, testified that Applicant's restraints were never allowed to be visible in the jury's presence.

> It was very strict, and very strict that that would not happen, that it would never be visible to the jury either outside the courtroom when he was coming and going or in the courtroom. And that was very strictly observed by the Court and by the officers who had custody, and that never occurred.

(1st Tr. 259, ll 19-25).

> [I]n the courtroom, he had the kind of restraints that are under your clothes and you can't see them. It didn't mean he couldn't move. It just meant he'd be slowing moving if he tried to move. And so when you're sitting there, nobody even knows you had them on. It becomes visible

> when you get up to like walk out of the courtroom, go to the restroom or whatever.
>
> ....
>
> So what Judges always do is make sure that the jury is out of the courtroom before the defendant moves, even if he were to testify. When they come in, he's already in the chair, and they leave before he leaves the witness chair.

(1st Tr. 260, ll 5-13, 16-20).

Kolb was sure that Applicant was not visibly restrained in front of the jury. (1st Tr. 260-61).

Trial counsel also confirmed Applicant was not visibly shackled before the jury during the guilt phase of his trial. First, Mr. Babb indicated that Applicant was fitted with "kind of like a body brace that goes under the clothing. And if you move too quickly or extend your legs too much, it locks so you can't run." (1st Tr. 286, ll 1-4). Mr. Babb noted that Applicant would have been dressed at the jail, and he would have had the braces put on under his clothes then. Mr. Babb indicated that Applicant would have been transported and was ready for court. (1st Tr. 304-05). Mr. Littlejohn also agreed that Applicant was never visibly restrained in front of the jury. Littlejohn did not recall Applicant being shackled in Georgetown when they did the jury selection for the first trial. (2nd Tr. 24-5). Littlejohn indicated that he has always been very particular about visible shackling, and he would have made sure that Applicant would have come into the courtroom and the jurors would be unable to see anything indicating Applicant was restrained. (2nd Tr. 25). Mr. Littlejohn also specifically remembered when the case was tried in Sumter, Applicant was fitted "with this special shackle mechanism that came up under his pants and you couldn't see it at all, but it prevented him from walking fast or

running and so there really wasn't anything to see at that time." (2nd Tr. 25, ll 7-10). Littlejohn also indicated that Applicant was never moved in the jury's presence. (Tr. 25).

Director Simon Major of the Sumter Regional Detention Center testified that he was responsible for transporting Applicant during both trials. (1st Tr. 341-345). Director Major described how Applicant was outfitted with restraints both in Georgetown for the jury selection and in Sumter. Major noted that Applicant would be strapped into braces that went around Applicant's legs. The individuals transporting Applicant would show him how to walk in the braces. Major indicated those braces were not visible. (1st Tr. 343). Major indicated that Applicant was restrained the same way each day. (1st Tr. 342-43). Major also noted that his transportation team was tasked with getting Applicant to the courthouse before the jury arrived. (1st Tr. 342, 346). Major also indicated they would not leave until after the jury had left. Id.

> In other words, if the Judge was going to start court at ten, I tried to get him here, because we had specific instructions as to -- and we were trying to avoid basically people seeing him anyway. So we tried to get him here 30 minutes or whatever prior to it.
>
> If his attorney needed to see him, we tried to be sure that he was here in plenty enough time prior to the start of court. But we knew specifically what time that the jury was told to be back, so we made sure that we got him here way in advance.

(1st Tr. 346, ll 14-25). During cross-examination, Director Major testified that the only time they utilized handcuffs to restrain Applicant's hands was during the initial transport from the Sumter to the Georgetown jail. (1st Tr. 349, 350).

Altogether, all of the testimony and evidence presented at trial related to this issue indicates Applicant was never visibly restrained in the presence of the jury. Since Applicant was not visibly restrained in the presence of the jury, trial counsel could not be

deficient for not making an objection regarding the use of visible restraints because no such objection was necessary. See, e.g., Werts v. Vaughn, 228 F.3d 178, 203 (3rd Cir. 2000) ("counsel cannot be ineffective for failing to raise a meritless claim"); see also Thomas v. United States, 951 F.2d 902, 904 (8th Cir. 1991)(finding trial counsel not ineffective for not raising meritless objection); Almon v. U.S., 302 F.Supp.2d 575, 586 (D.S.C.2004) ("There can be no ineffective assistance of counsel for failing to raise a claim which is not legally viable."). Similarly, in light of the fact Applicant was not entitled to relief upon the motion, he fails to establish he was prejudiced. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b): Ineffective Assistance of Counsel During the Resentencing Trial

In Ground 10(b), Applicant raises seven claims of ineffective assistance of trial counsel during his resentencing trial.

Ground 10(b)(1): Ineffective Assistance of Counsel Regarding Objection to Victim's Widow's Testimony About Suicide Attempt

Applicant contends trial counsel was ineffective for failing to preserve an issue as to the admissibility of the widow's victim impact testimony that she attempted suicide upon finding out the South Carolina Supreme Court reversed the first sentencing proceeding. This issue is without merit.

At resentencing, widow Teresa Kubala described her relationship with the victim, the pain of finding out about his death, and the difficulties of moving on in her life without the victim. (2nd R. 1071-87). She specifically noted the counseling and help she needed to even start dating again, as she thinks of Sgt. Kubala every day and felt like she was cheating on the man she had married at age 19. (2nd R. 1089-90).

Near the end of her testimony, the solicitor asked if there was "anything significant" in her life she would like to tell the jury. (2nd R. 1090). She stated that after she and her new husband returned from a family trip to celebrate their first anniversary, she found a message on her machine that "they were going to retry this case over again, that the supreme court had overturned it." (2nd R. 1090). She went on to state that her new husband had gotten hurt working at UPS and was dealing with trying to get workers compensation, and they were trying to make two house payments until they could sell one. (2nd R. 1090-91). She said UPS would not take her husband back, so he lost his job and had to find another, "and everything just blew up." (2nd R. 1091).

At this point, the defense approached for an off the record conference, after which the solicitor asked Teresa to state what happened as a result of "the things you went through with Charlie and the things after." (2nd R. 1091). Teresa then described taking a bottle of Tylenol PMs before her husband woke, but then having second thoughts and telling him what she had done. (2nd R. 1091-92). She then described going to the hospital for treatment and then spending three days in a ward, which led her to realize she did not have as many problems as she thought. (2nd R. 1092). At this point the solicitor stopped the questioning and moved on. (2nd R. 1092).

After the State rested, the defense put its objection on the record. (2nd R. 1105-06). The defense argued that the causation factor for the suicide was not the crime but because the legal proceeding was about to occur again, and asserted that the time that had passed from the original crime and this resentencing proceeding "lessens the direct effect that she would otherwise be allowed to testify about." (2nd R. 1106). Thus, the defense contended the suicide attempt was extremely prejudicial. (2nd R. 1106). The

trial court responded that objection was timely, but Teresa's testimony was at least partially related to Sgt. Kubala's murder, even though that was not the only thing she mentioned. (2nd R. 1106-07).

Applicant raised an issue related to this event on direct appeal, but the South Carolina Supreme Court found it was not preserved. The Supreme Court noted that counsel at trial argued the issue as one of causation – that the suicide attempt was related more to financial difficulties rather than the victim's murder – but on appeal Applicant was asserting that the reference to direct review invited the jury to speculate on the finality of their decision, and the reference to suicide invited the jury to speculate on the effect of their decision on the widow's health. On direct appeal, the Court found the latter issues were distinct from that raised at trial and not preserved..

At the PCR evidentiary hearing, Mr. Littlejohn testified that

> Well, first off, it caught us completely off guard. We had no idea that, you know, she had gone through that or was going to testify to that and so I tried to object as quickly as possible. Judge King allowed us to put it on the record later so obviously he was letting it in. So later on, we approached the sidebar and objected on the grounds of relevancy and -- and due to the fact that it was so far removed from the initial impact of what had happened to Deputy Kubala and also that it – it was just prejudicial as it could be and, of course, Judge King overruled that and the record reflects that, you know, what we -- what language we used for the objection.
>
> ...
>
> Well, obviously, if I recall, we -- we objected that it was prejudicial also.
>
> ...
>
> If I remember correctly, it caught us so far off guard, I No, I didn't really have time to research it and go find cases or anything on this.

(2nd Tr. 29, ll 2-13, 19-21). Mr. Littlejohn later noted that he objected to what he thought of at the time. (2nd Tr. 40).

Applicant fails to show that counsel was deficient in his objection to the testimony. That is primarily because the disputed testimony was properly admitted by the trial court. Victim impact evidence is admissible in the sentencing phase to demonstrate the "uniqueness" of the victim and the specific harm committed by the defendant. State v. Rocheville, 310 S.C. 20, 27, 425 S.E.2d 32, 36 (1993). In Payne v. Tennessee, 501 U.S. 808 (1991), the United States Supreme Court held that victim impact evidence is relevant for a jury to meaningfully assess the defendant's moral culpability and blameworthiness and is only inadmissible where it is so unduly prejudicial that it renders the trial fundamentally unfair. See State v. Hughey, 339 S.C. 439, 457, 529 S.E.2d 721,730 - 731 (2000) (setting forth the above discussion).

Victim impact evidence is not just to provide a glimpse of the victim's life, but also to show the impact of the victim's death on those left behind. See Hughey, supra (noting the admissibility of testimony that the survivors would miss the victim's cooking and mothering, and citing: "State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997) (admitting testimony from victim's mother concerning the impact of her son's death); Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) (admitting testimony of victim's stepdaughter concerning the victim's standing in the community, the victim's grandchildren, and the impact the crime had on her); State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations)"). See also State v. Byram 326

S.C. 107, 485 S.E.2d 360 (1997) ("victim impact evidence which was introduced showed the specific harm committed by appellant in murdering the victim").

Along these lines, undoubtedly a surviving member's suicide attempt or suicidal feelings due to the murder of the loved one is a relevant and admissible part of victim impact evidence in a sentencing phase. See U.S. v. McVeigh, 153 F.3d 1166 (10th Cir. 1998) (evidence concerning impact of federal building bombing on families of victims, such as fear and hatred suffered by victims' children and suicidal feelings of surviving spouse, was admissible during capital trial's penalty phase); Moreno v. State, 38 S.W.2d 774 (Tex. Ct. App. 2001) (testimony from victim's grandmother about the suicide of his uncle following the murder was admissible as showing the psychological impact of the crime, and citing other cases admitting psychological effects on survivors following commission of a crime). Indeed, other decisions show that suicidal feelings or depression are often admitted without question in presentencing reports for the judge in the non-capital context. See, e.g. People v. Stidham, 533 N.E.2d 957 (Ill. Ct. App. 1989) (presentence report contained father's observations of his son's depression, loss of sleep and weight, suicidal statements and attempt, and psychiatric hospitalization).

The trial court was correct in ruling in this case that Teresa's testimony about the event sufficiently tied it in with Applicant's crime. First, like most issues we humans deal with in our lives, there are often multiple and interrelated factors at work, and simply because other problems leaked into Teresa's heartbreak from this crime does not give Applicant the windfall of making the event inadmissible, since at a minimum it was at least in part based on the chronic loss she faces from losing her first husband. State v.

Gill, 167 S.W.3d 184, 196 (Mo. 2005) ("It is not necessary that every piece of victim impact evidence relate to the direct impact of the victim's death on the witness.").

Second, though, part of losing the loved one is not just losing his or her company, it also losing the help, comfort, and aid that the murdered family member provided to the daily life of a household. Cf., e.g. State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations). Having one's personal and financial life thrown into complete turmoil may not be as important as losing the loved one itself, but it is still an important and relevant impact of the crime on the survivors. Teresa had just finished testifying as to how she thought of Sgt. Kubala every day and how she needed counseling to even begin considering a new relationship. Obviously it would be very hard to nurture a new relationship when, as Teresa testified, her mind goes every day to the man to whom she was married at age 19, and for whom she bore two children. Her life had changed greatly in the negative due to Applicant's crime, and none of the present demons she mentioned – new husband, the new husband's job situation, the difficulty of two house payments, and feelings she was "cheating on" Sgt. Kubala with her new relationship – would have existed had Applicant not taken the victim's life. The fact that Teresa's life had changed in many respects was a consequence of the crime, and thus was admissible victim impact.

Moreover, when one reads Teresa's testimony in its entirety, it is clear that while the reversal might have been a trigger point, it was the daily anguish of living without Sgt. Kubala that was ultimately part of Teresa's fateful decision – not the mere possibility of resentencing in a vacuum. For example, she had testified that she moved

away from Sumter to stop going to the victim's gravesite every day, which was negatively affected her children. (2nd R. 1089-1090). Given that this sentencing phase was tried so far removed from the original crime, it was relevant for the State to show that this murder had a continuing impact on the survivors that had not eased with the passage of time. Altogether, the trial judge was correct that the evidence was sufficiently tied to the impact of this crime on the survivors for it to be admissible.

To the extent Applicant may argue that trial counsel should have preserved an objection contending that the mention of supreme court review lessened the jury's sense of responsibility for sentencing,[2] State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979) and Caldwell v. Mississippi, 472 U.S. 320 (1985), his claim is without merit. This is simply not a Caldwell issue, where there was extensive argument that the responsibility for determining the appropriateness of the sentence rested with someone other than the jurors. Caldwell, 472 U.S. 320. Likewise, in Tyner there was an extensive explanation of everyone from the trial judge to the United States Supreme Court who would "determine whether your recommendation was right or not." Tyner, 273 S.C. at 659, 258 S.E.2d at 566. No such argument was made in the present case; there was merely a matter-of-fact mention of a retrial that was a necessary predicate fact to otherwise admissible victim impact evidence of the suicide attempt. There was no harping on this predicate fact, and no implication that the jury was not completely responsible for sentencing. Indeed, the trial court expressly charged them that they

[2] Respondent would note that based upon the Application and what was presented at the evidentiary hearing, it is unclear how Applicant believes trial counsel should have objected differently.

were completely responsible for the "final decision," and unlike those cases, no one told them different. (2nd R.623).

Second, to the extent Applicant asserts trial counsel should have argued that the mention of prior reversal impermissibly maximized the jury's sense of responsibility inasmuch as it implied a life sentence would trigger another attempt, his claim is also without merit. Such an argument would present a logical problem in that Applicant asserts in the same sentence that the mention of the reversal both minimized and maximized the jury's responsibility. Regardless, no one said that at all – there was no argument along those lines, simply a brief matter-of-fact mention of a predicate fact. Indeed, as noted before, suicides are generally admissible victim impact evidence, and any suicide attempt might carry the inference that any sort of subsequent victory for the defense might trigger another attempt. The same could be said for other psychological problems suffered by a survivor, but that concern does not mean the defendant gets to escape having the jury learn about the actual impact of what he has done on those who have suffered.

Neither of Applicant's concerns are sufficient to mandate reversal given the circumstances of this case. As such, counsel was not deficient nor Applicant prejudiced by the failure to preserve the issue in this regard. See Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001) (ineffective assistance claims based on failure to object is tied to the admissibility of the underlying evidence; if evidence admitted without objection was admissible, then the complaint fails *both* prongs of the Strickland test, as it was neither deficient nor prejudicial).

Finally, there was no error under Strickland. Applicant committed an extremely aggravated crime in ambushing a police officer, and he has an extensive criminal history – including an then-active parole that provided ample evidence of motive. The victim impact evidence was especially moving without regard to Teresa's testimony as to the suicide attempt, from the close friends of Sgt. Kubala's responding to the scene, or helping with the family after the crime, to the discussion of one officer taking Sgt. Kubala's young son to the scene to explain to him why his brave daddy was gone. As repeatedly noted before, the mention of reversal was made briefly and matter-of-factly and then no further mention was made again in either argument or testimony. Under these circumstance, these two lines of text in this more than 700-page sentencing hearing could not have been prejudicial. See, e.g. Havard v. State, 928 So.2d 771, 792 -793 (Miss. 2006) (Payne recognizes it is unlikely a brief statement in victim impact testimony could inflame the jury beyond the facts of the case so as to make the proceeding fundamentally unfair); State v. Young, 196 S.W.3d 85, 111 (Tenn. 2006) (no prejudice from improper victim impact testimony where trial court instructed jury how to consider the evidence, and the prosecution did not rely on or stress the offending testimony in closing argument). See also State v. Gill 167 S.W.3d 184, 196 (Mo. 2005) (defendant did not show that the emotion displayed by the witnesses was unduly prejudicial). Any error did not affect this sentencing result. It simply cannot be said that there is a reasonable probability that, absent this one little brief exchange in one witness's testimony, that "the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones, 504 S.E.2d at

823-824 (citing Strickland). As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(2): Ineffective Assistance of Counsel Regarding Lack of Objection to Victim Impact Testimony

In this ground, Applicant contends trial counsel was ineffective for not objecting to certain victim impact testimony during his resentencing trial. Specifically, Applicant complains that testimony regarding the effect of Deputy Kubala's death on law enforcement in Sumter County generally and on individual officers in particular. Respondent submits Applicant's claim is without merit. Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony that was presented at trial. Counsel articulated valid, strategic reasons for not objecting to the testimony. Also, any objection that counsel would have possibly made would have been meritless as the testimony that was presented was proper. Further, Applicant fails to show that he was prejudiced, especially in light of the fact the victim impact testimony that was presented was admissible.

Victim impact evidence is admissible in the sentencing phase to demonstrate the "uniqueness" of the victim and the specific harm committed by the defendant. State v. Rocheville, 310 S.C. 20, 27, 425 S.E.2d 32, 36 (1993). In Payne v. Tennessee, 501 U.S. 808 (1991), the United States Supreme Court held that victim impact evidence is relevant for a jury to meaningfully assess the defendant's moral culpability and blameworthiness and is only inadmissible where it is so unduly prejudicial that it renders the trial fundamentally unfair. See State v. Hughey, 339 S.C. 439, 457, 529 S.E.2d 721,730 - 731 (2000) (setting forth the above discussion).

Victim impact evidence is not just to provide a glimpse of the victim's life, but also to show the impact of the victim's death on those left behind. See Hughey, supra (noting the admissibility of testimony that the survivors would miss the victim's cooking and mothering, and citing: "State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997) (admitting testimony from victim's mother concerning the impact of her son's death); Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) (admitting testimony of victim's stepdaughter concerning the victim's standing in the community, the victim's grandchildren, and the impact the crime had on her); State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations)"). See also State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) ("victim impact evidence which was introduced showed the specific harm committed by appellant in murdering the victim").

The challenged evidence in the present case was admissible as a matter of law; thus, counsel could not have been deficient nor Applicant prejudiced. At issue here is part of the testimony of Captain Hobbs and Major Metts, both of the Sumter County Sheriff's Office. Captain Hobbs testified that he and Deputy Kubala started in law enforcement at the same time. (2nd R. 835). As a result of their closeness in beginning their law enforcement careers, they became close friends. (2nd R. 835-36). Hobbs testified that he loved Kubala like a brother, and the two and their families were close. (2nd R. 836). Hobbs noted they stayed in contact after Kubala left law enforcement to pursue another job. (2nd R. 836). Hobbs also described Kubala returning to duty at the Sheriff's Office a few years later, including how they lobbied to work together again once Kubala became a sergeant. (2nd R. 837). Hobbs also testified about how he was

the one who told Kubala's wife that he was killed on the night of the shooting. (2nd R. 838-39). Hobbs also testified about the impact Kubala's murder had on the sheriff's office. He noted that during orientation, new trainees are taken to the scene of the shooting, and they are informed about the case. (2nd R. 840). The trainees are then taken to Kubala's grave site, and they are advised that if they are not able to give that sacrifice, then it may not be the right job for them. (2nd R. 840-41).

Major Metts testified that he met Deputy Kubala as both volunteered with the Explorer program. (2nd R. 1095-96). Metts stated that Kubala was like his brother, and Kubala was his best friend. (2nd R. 1096). Metts testified about the night of the shooting, and how he responded to the news. (2nd R. 1097-98). He discussed how he and others, like Hobbs, tried to help his widow in the weeks after the shooting. (2nd R. 1099). Metts indicated that she asked him to serve as a pallbearer in Kubala's funeral, and she further requested that he get his police uniform ready for the burial. (2nd R. 1099-1100). Metts went on to describe how Kubala's death impacted him personally, and how he was unable to maintain the Explorer program because of the memories he had of working with Kubala on the program. (2nd R. 1100-01). Metts also discussed a golf tournament that was started in Kubala's memory, and described visiting the scene of the murder with Kubala's widow and children. (2nd R. 1102-04).

At the PCR evidentiary hearing, Mr. Littlejohn testified that he considered objecting to some of the testimony presented by Captain Hobbs, and he ultimately decided against it.

> I considered objecting to a lot of this, but Judge King was being very liberal in what he was allowing in from the standpoint of victim's testimony. I mean I felt if he allowed in what Ms. Kubala said about her reaction to

> the appeal that he was probably going to allow this in. I didn't want to be perceived by the jury as -- as jumping up and objecting to everything like I was trying to hide something.
>
> So yes, I did consider it. I didn't consider my chances of winning that objection very well -- to be very good and I mean there's a lot of leeway that the courts have allowed in -- in this kind of testimony. So I considered it; I didn't object to it obviously.

(2nd Tr. 30, l 18 – Tr. 31, l 5). Similarly, Littlejohn testified that he made a similar strategic decision in not objecting to portions of Major Metts' testimony,

> Well, like I said earlier and I reviewed this yesterday, I considered objecting to a lot of this, but I did not feel that the objection would be sustained. I didn't want to be perceived as -- as trying to hide things and, you know, a lot of this is contemporaneously with what happened and, you know, I just think Judge King would have – would have let it in.

(2nd Tr. 31, ll 16-21). Clearly counsel expressed a valid strategic reason for not objecting to the testimony. First, counsel did not want to appear as if he was hiding something from the jury. Second, counsel reasoned that the objection likely would have been overruled by Judge King. In light of counsel's reasoning in not objecting to the disputed victim impact testimony, Applicant fails to show that counsel was ineffective in not raising an objection. See generally Devier v. Zant, 3 F.3d 1445, 1454 (11th Cir. 1993) ("The decision not to object was based on a reasonable strategic choice. The fact that such a stratagem, viewed from hindsight, may have been imprudent does not . . . provide the basis for a claim of ineffective assistance of counsel."); Strickland, 466 U.S. at 689 (reasonable trial strategy is not a basis for ineffective assistance); Sexton v. French, 163 F.3d 874, 887 (4th Cir. 1998) (tactical decision cannot be second-guessed by court reviewing a collateral attack); Fitzgerald v. Thompson, 943 F.2d 463 (4th Cir. 1991) (tactical decision sustainable unless it is both incompetent and prejudicial).

Counsel's determination that his objection likely would have been overruled was well founded. The testimony Applicant now challenges was admissible. First, as to the specific officers, they were not merely coworkers, but friends who ate together, spent off duty time together with each other and their families, and did community projects together. Moreover, the loss of the victim affected the way they perceived and went about their jobs. This evidence involved their specific personal relationships with the victim and was undoubtedly admissible under Payne.

The greater issue to Applicant is apparently the admissibility of the lasting effect of the killing on the Sumter County law enforcement community in general. However, this larger effect on the community is admissible as well. As noted in Payne:

> [Defendant] Payne echoes the concern voiced in Booth's [Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440] case that the admission of victim impact evidence permits a jury to find that defendants whose victims are assets to their community are more deserving of punishment than those whose victims are perceived to be less worthy. (citation omitted). As a general matter, however, victim impact evidence is not offered to encourage comparative judgments of this kind-for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but the murderer of a reprobate does not. It is designed to show instead each victim's "uniqueness as an individual human being," whatever the jury might think the loss resulting to the community might be.

Payne, 501 U.S. at 823-824 (emphasis added) (quoted in Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)). Other passages in Payne support the idea that evidence on the crime's impact of the larger community is admissible:

> In Justice O'Connor's concurrence, she explains her view that "[a] State may decide that the jury, before determining whether a convicted murderer should receive the death penalty, should know the full extent of the harm caused by the crime, including its impact on the victim's family and community." Payne, 501 U.S. at 829, 111 S.Ct. 2597 (O'Connor J., concurring) (emphasis added). Although obviously relevant to the Government's argument, this of course is not part of the holding of Payne,

> but rather dicta from the concurrence. Second, the Payne majority opinion cites a statement of Justice White from the dissenting opinion of Booth v. Maryland, one of the cases that Payne overruled: "'The State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.'" Payne, 501 U.S. at 826, 111 S.Ct. 2597 (quoting Booth, 482 U.S. at 517, 107 S.Ct. 2529 (White J., dissenting) (citation in original omitted) (emphasis added)).

United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006).

And, a number of courts have upheld admission of the effect of a law enforcement officer's murder on the law enforcement community. See United States v. Battle, 173 F.3d 1373 (11th Cir. 1999) (permissible to show how murder of corrections officer emboldened inmates and made the prison more dangerous, but how a death sentence would send a message to those emboldened inmates); United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006) (permissible to show murder of undercover officer had chilling effect on other undercover officers); People v. Brown, 93 P.3d 244 (Cal. 2004) (permissible to show officer was a good police officer and to admit testimony brother saluted his grave because officer gave life for the community); United States v. Whitten, 610 F.3d 168, 189 (2d Cir. 2010)(noting that no prohibition of testimony regarding generalized community harm as victim impact evidence is generally recognized); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010)(finding admission of law enforcement officer's funeral was proper victim impact evidence demonstrating the general loss suffered by society). Altogether, Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony presented at trial.

Applicant also fails to show that he was prejudiced by counsel's decision not to object to the testimony. As noted before, under Payne victim impact evidence could be excluded if it was so unduly prejudicial that it renders the trial fundamentally unfair. Moreover, in the ineffective assistance context, our state supreme court has held that prejudice in the sentencing phase of a capital trial only occurs when "the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones, 504 S.E.2d at 823-824 (citing Strickland).

However, Applicant cannot meet these relatively stringent standards for showing harmful error, whether in the direct appeal context or the Strickland context for PCR.

In any event, in view of the other victim impact evidence, it cannot be said that the one description of taking rookie officers to the crime scene is such that, absent this one little brief exchange in one witness's testimony, "the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones, 504 S.E.2d at 823-824 (citing Strickland). The testimony in dispute was but eleven pages in the course of an over 700 page sentencing phase – and the portion specifically addressed to the effect the crime had on the police department was only thirty lines of transcript. There was nothing particularly gruesome or heartwrenching about his testimony; it was pretty much what someone would expect and delivered in a professional and matter-of-fact manner. Thus, given the limited nature of the testimony during the course of a large proceeding and the lack of any undue prejudice, it cannot be said it rendered Applicant's trial fundamentally unfair or its absence alone would

create a reasonable probability of a different result given the extremely egregious nature of this crime. See, e.g. Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (improper argument not reversible where it was but 10 lines in transcript); Ketterman v. South Carolina Farm Bureau Mut. Ins. Co., 302 S.C. 276, 395 S.E.2d 187 (Ct. App.1990) (impermissible argument covering less than a page in the entire transcript was not sufficiently prejudicial for reversal).

Altogether, Applicant has failed to establish counsel was ineffective in not objecting to the victim impact testimony presented through Captain Hobbs and Major Metts. This claim for relief should therefore be denied and dismissed with prejudice.

Ground 10(b)(3): Lack of Presentation of Evidence of Applicant's Prior Cooperation with Law Enforcement

Applicant next asserts that trial counsel was ineffective for not presenting evidence that he had cooperated with law enforcement prior to the shooting. This claim is without merit. Trial counsel's testimony establishes that the decision not to present such evidence was the result of reasonable trial strategy.

At the evidentiary hearing, Mr. Littlejohn testified that he considered presenting evidence that Applicant cooperated with law enforcement.

> There were two aspects of that. Bobby had cooperated in helping them out with a few things that were – were -- I mean they – They were helpful to law enforcement, but they weren't really substantial things. I felt like if it came out that he was cooperating working with law enforcement, then bam, turned around and shot a police officer, that that made him, you know, look in a much worse light.
>
> The other thing that I had to consider was a lot of the law enforcement officers that could have helped him maybe watered down what they were going to say or didn't really, you know, want to support him because of the pressure they were feeling from the rest of the law enforcement community down there. So there wasn't any other way to

> bring it out other than to call Bobby and Bobby didn't want to testify, which I don't -- I don't blame him with that decision, but that would have been the only way to bring it out.

(2nd Tr. 32, ll 10-25).

Applicant fails to show that he is entitled to relief upon this claim. First, as reflected in Mr. Littlejohn's testimony, trial counsel did consider presenting evidence of Applicant's cooperation with law enforcement, and they made a strategic decision not to present such evidence. As a result, Applicant is not entitled to relief upon this claim. Strickland, 466 U.S. at 689 (reasonable trial strategy is not a basis for ineffective assistance); Sexton v. French, 163 F.3d 874, 887 (4th Cir. 1998) (tactical decision cannot be second-guessed by court reviewing a collateral attack); Fitzgerald v. Thompson, 943 F.2d 463 (4th Cir. 1991) (tactical decision sustainable unless it is both incompetent and prejudicial); Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (if counsel articulates valid reason for employing certain trial strategy, such tactics will not be deemed ineffective assistance of counsel).

Furthermore, Applicant cannot establish that he was prejudiced by any alleged deficiency of counsel in this regard. Applicant did not present any testimony or evidence establishing prior cooperation with law enforcement at the evidentiary hearing. Thus, it would be speculative to find that the presentation of any such cooperation would have led to a different result at Applicant's trial. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (noting mere speculation and conjecture on the part of Applicant is insufficient to substantiate allegation that counsel's deficient performance was prejudicial to respondent); Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by

counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."); see also Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."). Since Applicant has not shown that he was prejudiced, he fails to establish counsel was ineffective in this regard. As a result, this ground for relief should be denied and dismissed with prejudice.

Ground 10(b)(4): Reasonableness of Investigation In Mitigation Evidence

Applicant next asserts that trial counsel was ineffective for not properly investigating into several areas of possible mitigation evidence. Specifically, Applicant asserts that counsel should have investigated more into Applicant's impoverished background and family dysfunction resulting from the equivalent to a polygamous household; Applicant's low intellectual functioning; neurological damage that Applicant allegedly suffered from exposure to dangerous neurotoxins and other chemicals; and neurological damage that Applicant allegedly suffered from maternal ingestion of alcohol during his developmental period. Applicant further contends trial counsel failed to gather relevant records to corroborate mitigation evidence that was presented at trial. Finally, Applicant argues counsel failed to investigate, develop, and present evidence of Applicant's good character. All of these claims are without merit.

Mitigation Case presented at trial

Applicant first called social worker TeAnne Oehler, who described Applicant's upbringing – in particular the poverty and his mother's affair with the allegedly abusive and drunk Wesley Miles. Oehler theorized this upbringing led to his poor performance

and frequent troubles with the law, which began with an arrest for stealing a car. She concluded that these factors about Petitioner's upbringing affected his judgment and decision making. (2nd R. 1128-1151). On cross, Oehler admitted she believed Petitioner had anti-social personality disorder and a problem with authority figures, and admitted Petitioner's extensive history of burglary and theft. (2nd R. 1163-1167).

Applicant's paternal aunt Bernice his sister Melinda, and his niece Linda testified about Applicant's parents, his upbringing, and his family, and their relationship with Applicant. (2nd R. 1168-1172; 1183-1188; 1194-1202; 1203-1204).

Ruth Griffith's sister-in-law Mary Wilson testified at the first trial, and her testimony was read into the record. She stated her daughter Michelle was living with Griffith at some point in the 90s and Applicant would visit her there. She also stated Applicant did some work for Griffith, and some times all of them would go out to a honky tonk. Supposedly, Griffith admitted drinking beer and smoking marijuana with Applicant. (1st R. 622-30). On cross, Wilson admitted it was prior 1987 that this occurred. (1st R. 634). Wilson's testimony from the first trial's sentencing phase was also read into the record, during which she described Wesley Miles's drinking problem. (1st R. 635-37).

Psychopharmacologist Dr. Andrew Morton described the effects of Applicant's drinking on his brain, and on his judgment and decision making. (2nd R. 1222-1246).

Former warden James Aiken stated that Applicant would easily adapt to prison, despite his commission of some infractions. The defense asked Mr. Aiken to describe what Petitioner's life in prison would be like, at which point he stated that Petitioner would in the company of many dangerous people, and that Petitioner was relatively old and vulnerable to violent and sexually aggressive inmates. Mr. Aiken also was allowed

to testify that regardless of whether Petitioner was good in prison or bad in prison, SCDC could safely contained "under the gun" for the rest of his life. (2nd R. 1259-1273).

Ground 10(b)(4)(A): Failure to investigate polygamous family background and how it led to impoverished family background and family dysfunction

To the extent Applicant contends trial counsel was ineffective in not investigating and presenting evidence of the Applicant's polygamous family background as a contributor to his impoverished family background and family dysfunction, Petitioner's claim is without merit. Counsel did investigate this aspect of Applicant's background and presented evidence of Applicant's mother's relationship with Wesley Miles and of the family's impoverished background at trial.

At trial, the defense presented substantial evidence regarding Applicant's mother's relationship with Wesley Miles, her boyfriend, while she was married to Applicant's father. Te Anne Oehler testified that Applicant's mother began the relationship while the family was still living in Poston, and that Mr. Miles moved his family to Sumter when the Stone family moved. (2nd R. 1134). In fact, Mr. Miles moved his family next door to the Stone family. (2nd R. 1134). Oehler noted that there was conflict between Stone's father and Miles because of the relationship between Stone's mother and Miles. (2nd R. 1135). Oehler stated,

> It's significant because instead of having the role model of his father as an example for him, he had two different strong male figures in his life, but Mr. Miles was the stronger male role figure. Mr. Miles was abusive to his own wife. By all accounts not physically abusive to Mr. Stone's mother, but he was physically abusive to Mr. Stone when he was a child, once beating him so badly that he was taken to the emergency room, and the police were called, and there was a charge for his abusing Mr. Stone. He was about eight or nine years old at the time. But later, Mr. Stone's mother dropped the charges and didn't pursue that charge.

(2nd R. 1135, ll 11-23). Oehler further indicated that Miles had an alcohol problem, and he was frequently in and out of the Stone home. Oehler testified that a family member indicated they feared Miles when he came around. "He was an authority figure, but a negative influence on the children because of his abusing Mr. Stone and also his alcoholism and his intimidating behavior and attempting to make sexually harassing moves towards Mr. Stone's sisters." (2nd R. 1135, ll 16-20).

Oehler testified that Miles was involved in the household frequently when the children were growing up in Sumter. (2nd R. 1138). She noted that the children recounted when Miles would come over and he would be drinking, he would take a gun and fire into the woods. (2nd R. 1139). The children would climb out of the windows and would hide in a ditch all night or would run and hide in the woods when he would do that. (2nd Tr. 1139).

Melinda Parrott, one of Applicant's sisters, testified that Miles lived in the Stone home off and on throughout their lives in Sumter. (2nd R. 1170). She noted that Miles was her mother's boyfriend, and he attempted to molest her and the other girls in the family. (2nd R. 1170). Parrott also testified that Miles and Applicant got into a couple of fights over Miles' attempts to mess with them or pushing them around. (2nd R. 1171). Parrott recalled that on one occasion, Miles beat Applicant so bad with a belt that he had to go to the emergency room. (2nd R. 1171). She also stated that Miles was a bad influence, and a violent person. (2nd R. 1188).

Applicant did not present much in terms of substantive information that was not presented at the PCR evidentiary hearing. Arlene Andrews, Applicant's social worker who testified at the PCR evidentiary hearing, also testified that Stone's mother

developed a relationship with Miles, and that he moved his family right next door to Applicant's to Sumter when Applicant's family moved. (1st Tr. 144-45). Andrews also testified that Miles played a prominent role in Stone's life. (1st Tr. 145). She indicated that Miles had a drinking problem and that he could be violent. (1st Tr. 145). When drunk, he would yell, curse, and sometimes fire his gun. (1st Tr. 145). Miles shot one of Stone's cousins and threatened his sister, Melina, with the gun. (1st Tr. 145). Andrews noted that Applicant and the other kids were terrified of Miles, and they would sometimes hide in the woods near their house when he was in an alcoholic rage. (1st Tr. 146). Before Applicant turned 9, Miles beat him badly. (1st Tr. 146). Applicant witnessed Miles beating his own wife and children. (1st Tr. 146-47). Miles never beat Applicant because Applicant's mother threatened to leave him. (1st Tr. 147). Stone developed anticipatory anxiety from being consumed with worry about Miles' unpredictable behavior. (1st Tr. 147). She did note that Miles was arrested for food stamp fraud. (1st Tr. 151).

Altogether, Applicant has not shown that counsel was deficient in this regard. Applicant has not presented any substantive evidence regarding the nature of the relationship between Applicant's mother and Miles that was not discovered and/or presented by counsel in Applicant's sentencing trial. The information that was presented by Applicant at the evidentiary hearing mirrored the information presented at Applicant's sentencing trial. Thus, Respondent submits Applicant has failed to meet his burden of showing that counsel was deficient in this regard. See Jones v. State, 332 S.C. 329, 504 S.E.2d.822 (1998).

Applicant also fails to show that he was prejudiced. In light of the fact that most, if not all, of the information regarding Applicant's upbringing in his mother's household with both his father and Miles interceding as male figures, Applicant did not show that the result at trial would have been different had additional investigation been conducted by counsel. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(4)(B): Evidence of Applicant's low intellectual functioning

Applicant next contends that trial counsel failed to adequately investigate into Applicant's low intellectual functioning. Respondent submits that Applicant failed to show that he is entitled to relief upon this claim.

In support of this claim, Applicant presented the testimony of Arlene Andrews, and to a certain extent, Dr. Marikangas. Andrews testified that Applicant's readiness tests indicated that he was bottom tenth percentile. (1st Tr. 140). Andrews indicated that the school records showed that he failed the first grade, and tests indicated he had problems with learning at school. (1st Tr. 140). She later testified that school was hard for Applicant. (1st Tr. 152). He was referred to special education because of a learning disability; an examiner noted that his eyes did not work together. (1st Tr. 152). Andrews went on to testify that Applicant's IQ scores went from a full scale IQ score of 86 in the third grade to a full scale IQ score of between 69 and 75 when he was 14. (1st Tr. 152-54). She noted that he was concluded to be educable mentally handicapped. (1st Tr. 155).

Dr. Marikangas testified that the school records showed that Applicant was always mentally deficient. (1st Tr. 31). He noted that the neuropsychological testing

indicated there was a twenty point difference between his performance IQ and his verbal IQ, which Marikangas concluded was evidence of brain damage. (1st Tr. 31). Marikangas ultimately found that Stone suffered from brain damage at birth.

A review of the trial transcripts indicate that counsel did conduct a reasonable investigation into Applicant's low intellectual functioning. While Mr. Bab indicated that he did not recall reviewing school records and psychological reports for trial, (1st Tr. 289). Te Anne Oehler's testimony from the first trial indicated that trial counsel did have access to such records. In the sentencing phase of the first trial, Oehler testified that Applicant's school records indicated that he did not have a high IQ. (1st R. 1137). She noted that she found it significant that Applicant's IQ slowly dropped between the ages of 11 and 14. (1st R. 1137-38). She also indicated that Applicant was diagnosed with a learning disability in the area of verbal expression and language comprehension. (1st Tr. 1158).

Also, Mr. Babb acknowledged that he had notes reflecting that Applicant had a low IQ. (1st Tr. 323, Respondent's Exhibits 2 and 3). Babb also indicated that he believed that the defense presented evidence of Applicant's intellectual functioning and falling IQ at some point during the trial. (1st Tr. 318-19). Altogether, it appears that counsel did conduct a reasonable investigation into Applicant's low intellectual functioning. Thus, Respondent submits Applicant has not met its burden of showing that counsel's investigation was not reasonable.

Applicant also fails to show that he was prejudiced. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(4)(C)(1): Trial Counsel Ineffective for not Investigating Evidence of Applicant suffering neurological damage from exposure to dangerous neurotoxins and other chemicals

Applicant further contends that trial counsel failed to investigate and present evidence that Applicant was exposed to dangerous neurotoxins and other chemicals as a child. Applicant's claim here is without merit. First, counsel was not deficient in not investigating whether Applicant was exposed to chemicals and neurotoxins from swimming in Turkey Creek. Second, Applicant fails to show that he was prejudiced.

At issue is whether counsel should have investigated into whether Applicant was exposed to toxins and chemicals as a child as a result of Applicant swimming in Turkey Creek. At the PCR evidentiary hearing, Arlene Andrews testified that she was informed that Applicant and his cousin swam in Turkey Creek almost every day in the summer and after school for several years. (1st Tr. 148-49). Andrews also stated that she had reviewed documents that indicated Turkey Creek had a history of being polluted. (1st Tr. 149). Dr. Merikangas also testified that he was made aware of a study done on Turkey Creek indicating that it was an outlet for industrial waste for companies, and the waste included lead, copper, zinc, and other metals toxic to developing brains. (1st Tr. 24-5). Merikangas indicated that he relied upon a report provided by a Dr. Shine, a lecturer in applied chemistry at Harvard. (1st Tr. 25). Merikangas noted that those chemicals are damaging to the brain of children, particularly when they are developing. (1st Tr. 25). He further noted that the only information he examined regarding Turkey Creek was Dr. Shine's report. (1st Tr. 73). He could not say how often or when Applicant was in Turkey Creek. (1st Tr. 73). Dr. Shine's affidavit was submitted as

Applicant's Exhibit 1, and the records obtained by Applicant's PCR counsel were submitted as Applicant's Exhibit 18.

Mr. Babb testified that he did not recall obtaining any records from DHEC or the EPA regarding contamination around Turkey Creek. (1st Tr. 287). He noted that the defense hired two mitigation specialists leading into the second trial. (1st Tr. 315-16). He further testified that they relied upon those specialists to go out and find mitigation evidence and information in preparation for trial. (1st Tr. 316). Babb indicated that he never received any information that indicated Applicant would have played in Turkey Creek as a child. (1st Tr. 317). Similarly, Mr. Littlejohn testified that they relied upon their mitigation experts to assist in the finding information and evidence to be presented at the resentencing trial. (2nd Tr. 33). Mr. Littlejohn further stated that he did not remember anything about Applicant spending any time in Turkey Creek. (2nd Tr. 33-4).

Respondent submits that Applicant has failed to establish counsel was ineffective in not investigating his alleged exposure to toxic chemicals in Turkey Creek. Under Strickland, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Here, Applicant has failed to show that counsel was deficient. First, as noted by counsel's testimony, Applicant never informed anyone on the defense team that he spent time in Turkey Creek. He never advised counsel that he spent time in Turkey Creek as a child, and counsel indicated that they were not informed by either their mitigation investigators or their social worker that Applicant spent time in Turkey Creek. Counsel cannot be found deficient when Applicant did not provide them with the information that would have led to this further investigation. See

Collins v. Francis, 728 F.2d 1322 (11th Cir. 1984) (counsel was not ineffective for failing to investigate witnesses about whom defendant did not tell him); Primeaux v. Leapley, 502 N.W.2d 265, 268 (S.D. 1993) ("Where [defendant] did not give information to counsel, counsel could neither investigate it or pass it on to the expert."). Furthermore, the fact that the mitigation investigators and social worker did not uncover that Applicant spent time in Turkey Creek further support a finding that counsel was not deficient. Counsel is allowed to rely upon the expertise of the experts they hired to assist in developing the mitigation case. See Poyner v. Murray, 964 F.2d 1404, 1419 (4th Cir. 1992) (counsel entitled to rely on experts, and the fact that the testifying expert did not identify "every possible malady or argument" is not a basis for relief). Ringo v. State, 120 S.W.3d 743 (Mo. 2003) (en banc) (no deficiency in investigation where counsel hired four experts; while one trial expert merely noted a high score on the PTSD scale but did not diagnose it, and a PCR expert later actually diagnosed PTSD, counsel's hiring of four experts was sufficient and reasonable investigation, making this case different from Wiggins); See, e.g. Hendricks v. Calderon, 70 F.3d 1032 (9th Cir. 1995) (to impose a duty on the attorney to gather background information for an expert independent of any request from that expert would defeat the whole purpose of hiring the expert, as understanding what information is needed is an integral part of the expert's skill, and requiring an attorney to review the trustworthiness of the expert's conclusions would make the expert superfluous). Byram v. Ozmint, 339 F.3d 203 (4th Cir. 2003) (where counsel hired a psychologist, psychiatrist, social worker, and investigator for mitigation, and prepared extensively, investigation was reasonable despite claim counsel failed to present evidence of background, fetal alcohol syndrome,

and brain damage; moreover, case was different from Wiggins on the prejudice prong in that here the jury did hear testimony about the background, and this was not a case where the jury was "completely in the dark as to the defendant's alleged mental problems).

Second, Respondent submits Applicant fails to show that he was prejudiced by any alleged deficiency of counsel in their investigation in this regard. Applicant did not meet his burden of showing there was a reasonable probability that the result at trial would have been different but for the alleged problems with counsel's investigation into any harm he may have suffered from swimming in Turkey Creek. Applicant's problems in establishing prejudice are multifaceted. First, Applicant fails to establish what, if any, brain damage he may have suffered as a result from swimming in Turkey Creek. In fact, Respondent would submit that Applicant fails to present credible testimony establishing how much exposure to Turkey Creek Applicant may have had. While Andrews indicated that Applicant and his sister told her that he spent substantial time swimming in the creek, it is hard to fathom that Applicant spent every day in the summer and after school in the creek, especially in light of some of the descriptions and information contained in the Department of Natural Resources records regarding the pollution in the creek. Second, Applicant fails to establish the level of toxicity of the area in which he swam in Turkey Creek. In fact, Applicant did not actually specify where in Turkey Creek he swam, other than it was near a Confederate memorial marker. The reports regarding the testing done by DHEC, the Department of Natural Resources, and the EPA all indicate that different areas along Turkey Creek and the Pocotaligo River Basin contained different levels of certain metals. Those studies indicate that some

areas were not as polluted as others. Based upon the evidence presented at the PCR hearing, it is unclear if Applicant swam in one of the areas with lower levels of heavy metals. Finally, Applicant did not establish that exposure did, in fact, damage Applicant. While Merikangas indicated that exposure to certain metals may affect brain development, there was no credible evidence that related any exposure that Applicant may have received to any alleged brain damage.

Altogether, Respondent submits Applicant has failed to prove that counsel was ineffective in this regard. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(4)(C)(2): Evidence of Applicant suffering neurological damage from maternal ingestion of alcohol during the developmental period

In this Ground, Applicant asserts trial counsel fails to investigate and present evidence that Applicant suffered neurological damage that resulted from his mother ingesting alcohol while she was pregnant. Applicant's claim here is without merit. Counsel did not investigate whether Applicant suffered from neurological damage as a result of his mother drinking because there was no credible evidence to support such an investigation.

At the evidentiary hearing, Mr. Babb testified that the defense team for the first trial included at least three investigators: Tommy Davis, Leslie Sapp, and Scott Parker. (1st Tr. 295-96). At no point in time did he recall there being any evidence found by his investigators for the first trial that indicated Applicant's mother drank while she was pregnant with Applicant. (1st Tr. 313). Similarly, Babb indicated that he never received any information from any member of Applicant's family or from any other source during

the investigation that indicated Applicant's mother drank alcohol while she was pregnant with Applicant. (1st Tr. 315). To the contrary, trial counsel had records that indicated Applicant's mother was intolerant of drinking in her household. (1st Tr. 325; Respondent's Ex. 4). Mr. Littlejohn also indicated that he did not recall ever coming across information that Applicant's mother drank alcohol while she was pregnant with Applicant. (2nd Tr. 34).

Applicant presented no credible evidence that Applicant's mother drank alcohol while she was pregnant with him. Arlene Andrews, Applicant's social worker at the PCR evidentiary hearing, testified that Applicant had alcoholics on both sides of his family. (1st Tr. 135). She further indicated that Applicant was the "child of alcoholics." (1st Tr. 167, l 17). On cross-examination, however, Andrews testified that she found no information from Te Anne Oehler's notes that indicated Applicant's mother drank alcohol. (1st Tr. 169). Andrews could not recall whether she reviewed information that Applicant's mother was intolerant of her husband's drinking. (1st Tr. 170). Andrews did recall that on the reports from her tuberculosis hospitalization, Applicant's mother did indicate she did not use alcohol. (1st Tr. 170). Andrews also noted that there was nothing in her diagnoses while at the sanatorium to indicate she was suffering from an alcohol-related problem. (1st Tr. 170). Andrews further testified that Applicant told her that his mother did not drink alcohol. (1st Tr. 175). Ultimately, Andrews conceded that when she indicated Applicant was the son of alcoholic parents, she was referring to Applicant's father, Bobby Ozine Stone, and Eugene Miles. (1st Tr. 176). Further, Andrews admitted that she did not know if Applicant's mother was an alcoholic. (1st Tr. 176).

Dr. Merikangas, Applicant's expert in neurology and psychiatry at the PCR evidentiary hearing, concluded that Applicant "suffers from congenital brain damage, with fetal alcohol spectrum effects." (1st Tr. 22, ll 17-8). During his cross-examination, Dr. Merikangas admitted that he had no direct information that Applicant's mother was drinking alcohol at the time Applicant was born. (1st Tr. 50-1). Instead, he relied upon affidavits (from whom he did not specify)[3] and the fact that she was treated with Librium while at the sanatorium for tuberculosis. (1st Tr. 51). Merikangas noted that "Librium is chlordiazepoxide, which is a minor tranquilizer. It's used for the treatment for anxiety, and it is specifically used when treating alcohol withdrawal to prevent delirium tremens and other consequences of withdrawing from alcohol." (1st Tr. 75, ll 8-13). Merikangas admitted that he did not look at the records regarding Applicant's mother's treatment at the sanatorium. (1st Tr. 51-2). Merikangas also admitted that he did not have records that were more contemporaneous to Applicant's birth. (1st Tr. 52).

Altogether, Applicant fails to show by a preponderance of the evidence that his mother ingested alcohol while she was pregnant with him. In light of Applicant's failure to establish that fact, Applicant failed to show that counsel was deficient in not investigating and presenting evidence to support an allegation that Applicant suffered from fetal alcohol effects.

Other aspects of Dr. Marikangas' diagnosis also indicate counsel was not ineffective in investigating whether Applicant suffered brain damage from his mother's alleged ingestion of alcohol while she was pregnant. First, Marikangas testified that he

[3] Merikangas went on to state that he did not know what affidavits he reviewed, but acknowledged that none of those affidavits specifically stated Applicant's mother was drinking during the prenatal period. (1st Tr. 74).

relied upon a report presented by Dr. Fred Bookstein. (1st Tr. 28-9). However, as Marikangas later acknowledged during cross-examination, he did not know the testing that was done by Bookstein was not generally accepted by the scientific community until around 2006.[4] (1st Tr. 63-4). Further, Maikangas testified that he relied upon a report that was issued by Dr. Reuben Gur in which Gurr concluded that Applicant's ventricles were too large and his frontal lobes were too small. Respondent would note that the reliability of Dr. Gur's methodology in volumetric structural analysis as a means of diagnosing dysfunction has been found unreliable by at least one other case, United States v. Lisa M. Montgomery, PACER available, C/A 05-6002-01-CR-SJ-GAF, Motion of the United States, Document 273 at pp. 1-2 (referencing September 5, 2007 notice from the Court of the Court's intention to exclude the testimony). Altogether, Marikangas' diagnosis of fetal alcohol effects, to the extent it relied upon those two reports, would not have been valid at the time of Applicant's trial. Finally, Respondent would note that Marikangas' diagnosis that Applicant suffers from fetal alcohol effects is undermined by the fact that his determinations are not consistent with generally accepted practices within his fields. For example, Marikangas testified that he would not use the definition of mental retardation outlined in the DSM-IV, even though its definition is generally accepted as proper definition. (See 1st Tr. 65). It begs the question as to what other aspects of his determination regarding fetal alcohol effects does he abide by some different set of diagnostic criteria.

[4] Bookstein acknowledged as much in an article titled "My Unexpected Journey in Applied Biomathematics," published in the journal Biological Theory in 2006.

Altogether, Applicant has not met his burden of establishing counsel was ineffective in this regard. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(4)(D): Evidence of Applicant's Good Character

Applicant fails to show that trial counsel was ineffective for not investigating and presenting evidence of Applicant's good character. This claim is without merit.

First, Applicant fails to show that counsel was deficient in investigating evidence of Applicant's good character. At the first trial, the defense presented evidence that Applicant assisted in organizing a pool tournament to raise money for a Sumter County Correctional Center employee whose niece was diagnosed with cancer. (1st R. 1165-66). Further, counsel presented testimony that Applicant was a model inmate. (1st R. 1163-65). At the resentencing hearing, Te Anne Oehler testified that Applicant eschewed an opportunity to move to Poston for a new job because he felt like he needed to stay in Sumter to protect his sisters from Mr. Miles. (2nd R. 1147). The defense also presented testimony that Applicant had minimal infractions while incarcerated. (2nd R. 1269).

At the evidentiary hearing, the only testimony of good character presented by Applicant reflected that Applicant was helpful, a model inmate with only one disciplinary infraction, he always tried to work (citing to examples of him working as a mechanic with Miles and doing yard work), and he helped around the house. (1st Tr. 164, 166, 167). Respondent submits this is no more than the testimony of good character that was presented by counsel in the resentencing trial. Applicant has not presented any testimony of good character that the trial transcripts do not reflect were available to

counsel. Thus, Respondent submits Applicant has failed to show that counsel was deficient in either investigating or presenting such evidence.

Furthermore, Applicant has not shown that he was prejudiced by any deficiency of counsel in this regard. In light of the very limited testimony of good character presented by Applicant at the PCR evidentiary hearing, Respondent submits he fails to show there is a reasonable probability the result at the resentencing trial would have been different had defense counsel presented any additional testimony of good character. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(b)(5): Ineffective Assistance of Counsel in Sentencing Phase for not Objecting to Presence of Law Enforcement Officers in Courtroom during Resentencing Trial

Applicant next asserts trial counsel was ineffective for not objecting to the presence of law enforcement officers during Applicant's resentencing trial. As was the case with a similar claim raised in regards to the guilt phase of Applicant's first trial, this claim is without merit.

This claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming into play.'" State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

There is no evidence in the record that there was an abundance of uniformed officers in the courtroom to the point that had counsel objected, there would have been a reasonable probability of a different result.

C. Kelly Jackson, the solicitor who tried the second trial, testified that while there may have been a few more law enforcement officers in the courtroom during the resentencing trial as opposed to a typical trial, there was not an unreasonable number of uniformed law enforcement personnel in the courtroom. (1st Tr. 352).

> There were a few more people in that particular case than in normal cases. How many more, I don't recollect. I do know that with the jury itself, there's an addition of three to four SLED agents, all of which are plainclothes.
>
> They're not in uniform, not showing guns. They're assigned to the jury, so they're in here. The law enforcement folks that are in uniform normally in the courtroom on a typical trial is probably one or two. They might have been doubled. Maybe there was four.
>
> There were a few more, but nothing unreasonable. There may have been more officers in and out because the officers -- it was an officer that was a victim. Most of them would have been plainclothes. The SLED agents who came were plainclothes. There would have been a few more, but nothing unreasonable.

(1st Tr. 352 ll 1-7). Jackson also indicated that it was his understanding that there were fewer spectators in general to the second trial as compared to the first trial. (1st Tr. 357).

Mr. Babb indicated there were fewer law enforcement personnel in the courtroom for the second trial. (1st Tr. 325). He noted that he did not feel intimidated by the presence of law enforcement in the courtroom during the second trial. (1st Tr. 326). Babb further stated that had he felt the presence of law enforcement personnel was unreasonable, he would have objected. (1st Tr. 327). Mr. Littlejohn recalled that the law

enforcement presence during the second trial was similar to the presence of the first trial. (2nd Tr. 35). Littlejohn described the law enforcement presence as routine.[5] Id.

Altogether, Applicant has not shown that the presence of law enforcement officers in the courtroom created an intimidating or prejudicial atmosphere that rose to the level of a due process violation. See, e.g. Holbrook v. Flynn, 475 U.S. 560 (1986) (finding no prejudice from presence of armed officers stationed as guards); Hill, 331 S.C. 94, 501 S.E.2d 122 (any prejudice from presence of officers is wholly speculative, and Hill failed to present any evidence the officers had an effect on the jury); Paige, 375 S.C. 643, 654 S.E.2d 300 (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

Indeed, with regard to officers present as spectators, the possibility of prejudice is even less, as trials are public and open to police officers as well, and there is no evidence or allegation that the officers behaved in an intimidating way to the jurors. See Hill v. Ozmint, 339 F.3d 187 (4th Cir. 1993) (nothing in record indicates courtroom was filled with an array of officers or that they were positioned to indicate Hill was dangerous; further, victim's fellow officers were impacted by his death and entitled to be present absent a Holbrook issue); Lambert v. McBride, 365 F.3d 557 (7th Cir. 2004) (finding no ineffectiveness from a failure to object to officers present as spectators where they were entitled to be there like any spectator and there was no evidence they sought to intimidate the jury). Further, it is simply impossible and not required that a

[5] In reference to the first trial, Mr. Littlejohn had indicated the law enforcement presence was not overbearing. (2nd Tr. 24).

courtroom be totally sanitized, as "jurors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance." Holbrook, 475 U.S. at 567. As a result, counsel cannot be found deficient in this regard.

Applicant also failed to establish he was prejudiced in any way. Applicant presented no evidence to show that the presence of law enforcement in the courtroom had any effect on the jury. In fact, Applicant has not presented any evidence to support a finding of inherent prejudice. In light of that failure, Respondent submits Applicant fails to show that he was prejudiced by counsel not objecting to the law enforcement presence in the courtroom during the guilt phase of Applicant's trial. See State v. Hill, 331 S.C. 94, 101-02, 501 S.E.2d 122, 126 (1998)(noting defendant must show measures taken in the courtroom created actual or inherent prejudicial effect on jury). As a result, he has not shown that trial counsel was ineffective in this regard. This claim should therefore be denied and dismissed with prejudice.

Ground 10(b)(6): Failure to conduct adequate voir dire.

Applicant contends his counsel were ineffective in conducting capital voir dire.

This claim should be dismissed or denied as a matter of law. Respondents deny that counsel were deficient or Applicant prejudiced. First, Applicant's claim is insufficient. He did not set forth with particularity in the Application or at the hearing exactly what questions counsel failed to ask and which jurors would have been excluded or included but for counsel's deficient questioning. As such, this assertion lacks sufficient specificity on which to respond because it fails to set forth any facts to support the claim. This matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion.

Moreover, the record supports denial as a matter of law. Given that the conducting of *voir dire* and other issues surrounding jury selection are particularly within the control of counsel and voir dire techniques are vastly different, review is "highly deferential" and any voir dire error must be egregious and obvious. See, e.g. Yeatts v. Angelone, 166 F.3d 255, 265 (4th Cir. 1999) (citing Strickland, 466 U.S. at 689); DeLong v. Thompson, 790 F. Supp. 594, 603 (E.D. Va. 1991), aff'd, 985 F.2d 553 (4th Cir. 1993) (unpublished); Beintema v. State, 936 P.2d 1221, 1227 (Wyo. 1997); Arner v. State, 872 P.2d 100 (Wyo. 1994).

Here, as noted before, Applicant what questions counsel failed to ask and what jurors would have been excluded or included but for counsel's deficient questioning. The record reflects that counsel's questions in *voir dire* were appropriate and relevant, and again – the question is not whether counsel conducted *voir dire* exactly how collateral attack counsel would have conducted it, but whether counsel met the absolute minimum standard of competence. There are no "magic" questions, of which the failure to ask is *per se* deficient. Both attorneys noted that they were attempting to find fair jurors during the voir dire process. Mr. Littlejohn stated, "we were trying to determine if any of the jurors were predisposed to hand down the death penalty. Despite what the circumstances were, we were trying to find open-minded jurors without staking them out, which is prohibited." (2nd Tr. 35, ll 20-5). Mr. Babb gave a similar assessment for how they approached *voir dire* in the re-sentencing trial. (1st Tr. 282). Respondent submits that nothing in the record of the juror voir dire indicate that counsel failed to ask appropriate questions, or that they allowed inappropriate questions to be asked during the *voir dire* process. Applicant has not shown that counsel was deficient in this regard,

nor has he established he was prejudiced in any way by counsel's handling of the *voir dire*. As a result, Applicant's claim should be denied and dismissed.

Ground 10(b)(7): Failure to secure crime scene and other experts

Next, Applicant asserts trial counsel was ineffective in not securing crime scene and other experts for Applicant's resentencing trial. As was the case with the similar claim raised in regards to the guilt phase of Applicant's trial, Applicant is not entitled to relief upon this claim. First, Applicant fails to show that counsel was deficient in this regard. At the PCR evidentiary hearing, Applicant presented the testimony of Wayne Hill, who was qualified as an expert in homicide events reconstruction and firearms. Mr. Hill testified that he reviewed prior trial transcripts (including Applicant's testimony, Agent Parnell's testimony, and other law enforcement officers' testimony regarding their actions at the scene), crime lab reports, crime scene photographs, autopsy photographs, and autopsy reports. (1st Tr. 198). Hill also testified that he went to the shooting scene. (1st Tr. 199). Hill indicated that he also examined the weapon used in the shooting. (1st Tr. 199). Hill concluded that the shooting could have occurred in the way outlined by Applicant in his statement to law enforcement. (1st Tr. 220, 222). Hill noted that SLED had determined the trigger pull to be 1.5 pounds, which he deemed to be unsafe under certain conditions. (1st Tr. 200, 202-03). Hill stated there was an increased likelihood of an unintentional discharge in a pistol with such a light trigger pull. (1st Tr. 204). He further indicated that the gun could fire if it rested upon three fingers the wrong way. (See 1st Tr. 205).

Hill opined that the locations of the bullet holes in the screen porch door were consistent with an unintentional firing of the gun. (1st Tr. 213). Hill further asserted that

an intentional firing of the weapon would have resulted in the bullet holes in the screen porch door to be higher. (1st Tr. 221-22). Hill also claimed that the discrepancy between the number of shots fired and the number of shots Applicant recalled being fired could be explained by the fact he was intoxicated at the time the shooting occurred. (1st Tr. 223-24).

Hill did note, however, that it was possible that Applicant aimed the gun at the victim. (1st Tr. 242). Hill indicated that he did not think it was highly probable because of where the cartridge casings were located at the scene. (1st Tr. 242). However, Hill also testified that he had not actually fired the pistol used in this case as part of his review of the evidence. (1st Tr. 240). Nor did Hill consult with any members of the Sumter County Sheriff's Office or the State Law Enforcement Division (SLED) regarding the investigation done in Applicant's case. (1st Tr. 230). Hill also agreed that it would take three trigger pulls to fire three shots from the pistol. (1st Tr. 240).

SLED Agent Ira Parnell, a firearms and toolmark examiner who examined the pistol in this case, testified that he fired the gun at least ten times during testing. (1st Tr. 358-60, 362). He recalled the trigger pull being fairly light. (1st Tr. 362). He also noted that one would have to pull the trigger three times to fire three shots. (1st Tr. 363). Parnell opined that the shots through the screen porch door could not have been fired by accident. (1st Tr. 366). He noted the pattern was too precise, too closely grouped, and close together to be done by accident. (1st Tr. 366-67). Parnell also noted that the pattern in the screen door was consistent with the shooter "not standing bolt upright but being at least slightly squatting anyway, if not completely squatted." (1st Tr. 367, ll 16-18).

Mr. Babb indicated that they again retained Donald Girndt for the resentencing trial.[6] (1st Tr. 306). Littlejohn did note that the same issues in presenting expert testimony in the first trial existed in the second trial.

> Well, I'd have to just say the same thing I say to when that issue was brought up as to the first trial that we consulted with an expert. We didn't feel like there was anything that we could prove or disprove as to what Bobby's position or what his attitude was or whether he was lying in wait or whether the gun went off accidently. There just wasn't a whole lot that the expert could have helped us with. And I might add -- I mean the State had a theory that it was an ambush, but I don't know of any evidence they had that it was an ambush.

(2nd Tr. 36, l 19 – 37, l 3).

Clearly, trial counsel's testimony establishes they consulted with a crime scene expert. Counsel also made a well-reasoned, strategic determination to not call their expert as a witness at the first trial. Here, counsel were not deficient in addressing this issue through examination, and there was no constitutional need for the crime scene and other experts. It was established through testimony that the shooting occurred when it was dark, and that the murder weapon was a target pistol with an extremely light trigger pull. (2nd R. 705; 1035-36; 1338). Dr. Sexton had testified that the victim was only 5'8". (2nd R. 926). Much of what defense counsel had to elicit regarding the dimensions of the screened in porch in the first trial were presented by the State during resentencing. (2nd R. 954-59). Counsel argued the issue in closing. (2nd R. 1326-29, 1330-32). Further, based upon counsel's testimony, it appears that Mr. Girndt could not state that he had concluded that the shooting was accidental based off of his review of the evidence. Respondent submits that counsel cannot be found deficient for not

[6] Mr. Littlejohn could not recall if they hired Girndt for the second trial. (2nd Tr. 26-7).

presenting their expert at trial when the defense team's expert reached different conclusions from the expert presented at the PCR evidentiary hearing. Overall, trial counsel was not ineffective.

Applicant also fails to show that he was prejudiced. There is no reasonable probability a jury would have accepted Applicant's version of events, even with a crime scene expert and other experts, when Applicant asserted in his statement: (1) that he unintentionally only fired once, when in fact there were three casings on the porch, two bullets in the victim, and three holes in the screened porch, and (2) that he did not know he shot a deputy and did not know what was going on for the four hours he was at large, even though he spent that time hiding under a log in a thick brush. In light of that, Applicant has not shown that the result at his resentencing trial would have been different had counsel presented their crime scene expert. As a result, this claim for relief should be denied and dismissed with prejudice.

Ground 10(c): Ineffective Assistance of Appellate Counsel

Applicant next asserts that appellate counsel was ineffective for not raising the issue raised at trial in the appeal. Applicant's claim is without merit.

As already noted in response to Ground 10(b)(1), at the resentencing trial, the victim's widow, Teresa Kubala, described her relationship with the victim, the pain of finding out about his death, and the difficulties of moving on in her life without the victim. She specifically noted the counseling and help she needed to even start dating again, as she thinks of Sgt. Kubala every day and felt like she was cheating on the man she had married at age 19.

Near the end of her testimony, the solicitor asked if there was "anything significant" in her life she would like to tell the jury. She stated that after she and her new husband returned from a family trip to celebrate their first anniversary, she found a message on her machine that "they were going to retry this case over again, that the supreme court had overturned it." She went on to state that her new husband had gotten hurt working at UPS and was dealing with trying to get workers compensation, and they were trying to make two house payments until they could sell one. She said UPS would not take her husband back, so he lost his job and had to find another, "and everything just blew up."

At this point, the defense approached for an off the record conference, after which the solicitor asked Teresa to state what happened as a result of "the things you went through with Charlie and the things after." Teresa then described taking a bottle of Tylenol PMs before her husband woke, but then having second thoughts and telling him what she had done. She then described going to the hospital for treatment and then spending three days in a ward, which led her to realize she did not have as many problems as she thought. At this point the solicitor stopped the questioning and moved on. (2nd R. 1090-1092).

After the State rested, the defense put its objection on the record. The defense argued that the causation factor for the suicide was not the crime but because the legal proceeding was about to occur again, and asserted that the time that had passed from the original crime and this resentencing proceeding "lessens the direct effect that she would otherwise be allowed to testify about." Thus, the defense contended the suicide attempt was extremely prejudicial. The trial court responded that objection was timely,

but Teresa's testimony was at least partially related to Sgt. Kubala's murder, even though that was not the only thing she mentioned. (2nd R. 1105-1107).

On appeal, appellate counsel raised a single issue on appeal. Specifically, he asserted the trial judge committed reversible error by permitting the victim's widow to testify that she had attempted suicide when she learned - from a message left on her answering machine - that the Supreme Court had reversed Stone's death sentence and "they were going to retry this case over again," as this testimony introduced an arbitrary factor into Stone's resentencing, in violation of S.C. Code Section 16-3-25(C)(1). In affirming Applicant's conviction on appeal, the South Carolina Supreme Court found the issue raised in the appeal was not preserved for appellate review.

> Appellant's argument is not preserved for review. At trial, Appellant objected as the victim's widow began to describe her suicide attempt. The record reveals that Appellant based his objection on causation grounds, arguing that the testimony implied that the cause of the suicide attempt was not the victim's murder, but the financial pressures the victim's widow was experiencing and the fact that Appellant would have another sentencing proceeding. In allowing the testimony, the trial court held that the victim's widow had attributed the facts relayed in the testimony to her relationship with the victim, and that the testimony was therefore relevant and admissible.
>
> Appellant's argument before this Court goes along quite different lines. Appellant now argues that the victim's widow's testimony improperly invited the jury to speculate about the finality of its decision on the appropriate punishment and improperly invited the jury to consider how its decision might impact the victim's widow's future health. Thus, while Appellant's argument below focused on what caused the victim's widow to attempt suicide-meaning, what caused the testimony to be relevant-Appellant's argument on appeal abandons the issue of relevance and addresses only the effect this testimony may have had on the jury. Because Appellant did not argue these grounds in support of his objection at trial, Appellant's argument is not preserved for review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court).

> Appellant alleges that his argument on appeal is simply an augmentation of his objection at trial, but a thoughtful examination reveals that this is not so. Primarily, Appellant's objection at trial was based on relevance, and that issue has been abandoned here. Second, whether the suicide attempt by the victim's spouse minimized the jury's sense of responsibility (by suggesting that the jury's ultimate decision would be subject to review by a higher court) or maximized the jury's sense of responsibility (by implying that imposing a life sentence might lead the victim's widow to attempt suicide again), these considerations are wholly independent of the relevance argument presented below. If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.

State v. Stone, 376 S.C. 32, 35-36, 655 S.E.2d 487, 488-89 (2007).

At the PCR evidentiary hearing, appellate counsel testified that he did not have a strategic reason for raising a procedurally barred issue in the direct appeal. (1st Tr. 183). However, counsel also noted that he believed at the time that his argument was an expansion of the argument raised at trial. Mr. Savitz contended that he argued that not only was the argument not admissible for the reasons asserted by trial counsel, the evidence was not admissible at all. (1st Tr. 184-85).

Applicant cannot establish that appellate counsel was ineffective in this regard. Respondent submits Applicant fails to establish that he was prejudiced by appellate counsel's failure to raise the issue as raised by trial counsel. Even if the issue was raised in the appeal as it was raised at trial, Applicant would not have been prevailed in his appeal.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). A PCR applicant has the burden of proving appellate counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). Appellate counsel is not required to raise every non-

frivolous issue that is presented by the record, Tisdale v. State, 357 S.C. 474, 594 S.E.2d 166 (2004), as "[t]here can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review." Jones v. Barnes, 463 U.S. 745, 752 (1983). Rather, appellate counsel has a professional duty to choose among potential issues according to their merit. Id.

To obtain relief a PCR applicant must show that appellate counsel's performance was (1) deficient; and (2) prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 615-16, 524 S.E.2d 833, 836 (1999). In other words, the applicant is required to demonstrate "that his counsel was objectively unreasonable in failing" to identify and argue present significant and obvious issues on appeal, and "a reasonable probability that, but for his counsel's unreasonable failure ..., he would have prevailed on his appeal." Smith v. Robbins, 528 U.S. 259, 285 (2000) (citation omitted). Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that counsel was incompetent." Robbins, 528 U.S. at 288. "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). See also Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir.2000) (en banc).

Victim impact evidence is admissible in the sentencing phase to demonstrate the "uniqueness" of the victim and the specific harm committed by the defendant. State v. Rocheville, 310 S.C. 20, 27, 425 S.E.2d 32, 36 (1993). In Payne v. Tennessee, 501

U.S. 808 (1991), the United States Supreme Court held that victim impact evidence is relevant for a jury to meaningfully assess the defendant's moral culpability and blameworthiness and is only inadmissible where it is so unduly prejudicial that it renders the trial fundamentally unfair. See State v. Hughey, 339 S.C. 439, 457, 529 S.E.2d 721,730 - 731 (2000) (setting forth the above discussion).

Victim impact evidence is not just to provide a glimpse of the victim's life, but also to show the impact of the victim's death on those left behind. See Hughey, supra (noting the admissibility of testimony that the survivors would miss the victim's cooking and mothering, and citing: "State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997) (admitting testimony from victim's mother concerning the impact of her son's death); Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) (admitting testimony of victim's stepdaughter concerning the victim's standing in the community, the victim's grandchildren, and the impact the crime had on her); State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations)"). See also State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) ("victim impact evidence which was introduced showed the specific harm committed by appellant in murdering the victim").

Along these lines, undoubtedly a surviving member's suicide attempt or suicidal feelings due to the murder of the loved one is a relevant and admissible part of victim impact evidence in a sentencing phase. See U.S. v. McVeigh, 153 F.3d 1166 (10th Cir. 1998) (evidence concerning impact of federal building bombing on families of victims, such as fear and hatred suffered by victims' children and suicidal feelings of surviving spouse, was admissible during capital trial's penalty phase); Moreno v. State, 38

S.W.2d 774 (Tex. Ct. App. 2001) (testimony from victim's grandmother about the suicide of his uncle following the murder was admissible as showing the psychological impact of the crime, and citing other cases admitting psychological effects on survivors following commission of a crime). Indeed, other decisions show that suicidal feelings or depression are often admitted without question in presentencing reports for the judge in the non-capital context. See, e.g. People v. Stidham, 533 N.E.2d 957 (Ill. Ct. App. 1989) (presentence report contained father's observations of his son's depression, loss of sleep and weight, suicidal statements and attempt, and psychiatric hospitalization).

The remaining question is whether the suicide attempt was not admissible based on, as defense counsel phrased it, "causation" – since Teresa mentioned other issues she faced in relation to her decision to take her own life. The trial court was correct in ruling in this case that Teresa's testimony about the event sufficiently tied it in with Applicant's crime.

First, like most issues people deal with in our lives, there are often multiple and interrelated factors at work, and simply because other problems leaked into Teresa's heartbreak from this crime does not give Applicant the windfall of making the event inadmissible, since at a minimum it was at least in part based on the chronic loss she faces from losing her first husband. State v. Gill, 167 S.W.3d 184, 196 (Mo. 2005) ("It is not necessary that every piece of victim impact evidence relate to the direct impact of the victim's death on the witness."). Second, part of losing the loved one is not just losing his or her company, it also losing the help, comfort, and aid that the murdered family member provided to the daily life of a household. Cf., e.g. State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified

about their families' reliance on their son's dreams and aspirations). Having one's personal and financial life thrown into complete turmoil may not be as important as losing the loved one itself, but it is still an important and relevant impact of the crime on the survivors. Indeed, Teresa had just finished testifying as to how she thought of Sgt. Kubala every day and how she needed counseling to even begin considering a new relationship. Obviously it would be very hard to nurture a new relationship when, as Teresa testified, her mind goes every day to the man to whom she was married at age 19, and for whom she bore two children. The fact is her life had changed greatly in the negative due to Applicant's crime, and *none* of the present demons she mentioned – new husband, the new husband's job situation, the difficulty of two house payments, and feelings she was "cheating on" Sgt. Kubala with her new relationship – would have existed had Applicant not taken the victim's life. The fact that Teresa's life had changed in many respects was a consequence of the crime, and thus was admissible victim impact.

Moreover, when one reads Teresa's testimony in its entirety, it is clear that while the reversal might have been a trigger point, it was the daily anguish of living without Sgt. Kubala that was ultimately part of Teresa's fateful decision – not the mere possibility of resentencing in a vacuum. For example, she had testified that she moved away from Sumter to stop going to the victim's grave site every day, which was negatively affecting her children. (2nd R. 1089-1090). Indeed, given that this sentencing phase was tried so far removed from the original crime, it was relevant for the State to show that this murder had a continuing impact on the survivors that had not eased with the passage of time. Overall, the trial judge was correct that the evidence was

sufficiently tied to the impact of this crime on the survivors for it to be admissible. Since the trial court did not err in admitting the testimony, Applicant would not have been successful on appeal had the issue been raised as it was raised at trial.

Even if the trial court erred in admitting this testimony, any such error was harmless. It did not have a substantial and injurious effector or influence in determining the jury's recommended death sentence. The testimony regarding the suicide attempt was not referenced by the solicitor at any other point in time during the resentencing trial, nor was it referenced by any other witness. It also was not referenced by any other witness presented at the sentencing hearing. Altogether, the testimony at issue was very limited, and Applicant cannot show that the result at trial would have been different had the testimony not been presented. Cf. State v. Johnson, 306 S.C. 119, 126, 410 S.E.2d 547, 552 (1991). Since any error in admitting the testimony would have been harmless, Applicant would not have been entitled to relief in his direct appeal had appellate counsel raised the claim in the same manner it was raised at trial.

Altogether, Applicant is not entitled to relief upon this claim. He was not prejudiced by any deficiency of counsel. Ground 10(c) should therefore be denied and dismissed with prejudice.

Ground 10(d)(1): Due Process Violation, Failure to Approve Funding for a Jury Selection Expert

Applicant next asserts a due process violation from the refusal to fund a jury selection expert. This freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application

absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). This claim is one that could have been raised at trial, and further could have been raised by Applicant in his direct appeal. Since the issue could have been raised then, it cannot be raised now in this application. As a result, this claim should be denied and dismissed.

Even if this claim could be raised in PCR, the issue should still be dismissed as a matter of law. As noted by the Fifth Circuit in Moore v. Johnson, 225 F.3d 495, 503 (5th Cir.2000), which addressed an indigent defendant's asserted right to a jury selection expert pursuant to Ake v. Oklahoma, 470 U.S. 68 (1985),

> [A] defendant cannot expect the state to provide him a most-sophisticated defense; rather, he is entitled to 'access the raw materials integral to the building of an effective defense. . . . Most of those raw materials come to the defendant in the form of his court-appointed lawyer-in his expert knowledge about how to negotiate the rules of court, how to mount an effective defense, and so forth. . . . [J]ury selection is not a mysterious process to be undertaken by those learned in the law only with the assistance of outside professionals. All competent lawyers are endowed with the 'raw materials' required to pick a jury fairly disposed toward doing substantive justice. . . . [A] defendant does not lack 'an adequate opportunity to present [his] claims fairly' because he has been denied a jury consultant.

See also Ford v. Schofield, 488 F. Supp. 2d 1258 (N.D. Ga. 2007) (noting the constitution does not require an indigent defendant to get all the assistance his wealthier counterpart might buy, and finding no prejudice shown from the denial of a jury selection expert).

Here, at both proceedings Petitioner had the assistance of James Babb and Cameron Littlejohn, both who have extensive experience in jury trials in the Midlands.

Babb, in particular, has been trying major criminal cases in Sumter and Clarendon counties for years. Certainly they had the "basic tools" to conduct jury selection such that no expert was needed. Since there was no constitutional violation or resulting prejudice from the denial of any such request, the claim should be denied as a matter of law.

Ground 10(d)(2): Due Process Violation; Presence of Law Enforcement Personnel during both Guilt and Sentencing Phases of Applicant's Trial

Applicant next contends he was denied due process based on the alleged presence of uniformed officers in the courtroom during both the trial and the resentencing proceeding.

First, as was the case with Applicant's claim in Ground 10(d)(1), this freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). These claims could have been asserted at trial. These are not claims that are cognizable for post-conviction relief. As a result, these claims should be denied and dismissed with prejudice.

Moreover, this claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming into play.'" State v. Hill, 331 S.C. 94,

501 S.E.2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

As noted in response to Grounds 10(a)(4) and 10(b)(5), there is no evidence in the record that there was an abundance of uniformed officers in the courtroom such that prejudice can be shown. At the evidentiary hearing, Applicant did not identify or present any such evidence that an intimidating or prejudicial atmosphere was created to the point where due process was violated. See, e.g. Holbrook v. Flynn, 475 U.S. 560 (1986) (finding no prejudice from presence of armed officers stationed as guards); Hill, 331 S.C. 94, 501 S.E.2d 122 (any prejudice from presence of officers is wholly speculative, and Hill failed to present any evidence the officers had an effect on the jury); Paige, 375 S.C. 643, 654 S.E.2d 300 (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim). Altogether, Applicant failed to establish he was entitled to relief upon this claim. As a result, this claim should be denied and dismissed with prejudice.

Ground 10(e): Fifth and Sixth Amendment violations due to shackling during transport to courtroom and once inside courtroom

In this Ground, Applicant asserts his constitutional rights were violated by the alleged shackling of Applicant when he was transported to the courtroom and when he was inside the courtroom. Specifically, it appears that Applicant is asserting that he was

visibly restrained before the jury at some point in time during either the jury selection process or guilt phase in his first trial.

First, this freestanding claim is one that can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel).

> Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes. Brewster v. Bordenkircher, 745 F.2d 913 (4th Cir.1984).

State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). In Deck v. Missouri, 544 U.S. 622, 626-29, 125 S. Ct. 2007, 2010-12 (2005), the United States Supreme Court noted that it has been long established that the routine use of visible shackles was not permitted, and that a special need would have to be present for visible shackling to be used during the guilt phase of a trial. Thus, to the extent Applicant is asserting that he was improperly shackled during the guilt phase of the first trial, Applicant's claim was clearly available at trial and for his direct appeal. As a result, this claim for relief must be denied and dismissed with prejudice.

Second, as outlined in the response to Applicant's claim in Ground 10(a)(5), the testimony and evidence presented at the evidentiary hearing clearly indicates that Applicant was not visibly restrained in the jury's presence. Instead, those involved in transporting Applicant and providing security during the first trial utilized restraints that fit

underneath Applicant's clothing. The testimony at the evidentiary hearing also established that efforts were made to ensure Applicant was not moved in the jury's presence: he was brought into the courthouse and courtroom before the jury arrived, and he would not leave the courtroom until after the jury left. Altogether, Applicant did not establish a factual basis to support this claim. As a result, this claim for relief must be denied and dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: _____
ATTORNEYS FOR RESPONDENT

March 13, 2013.

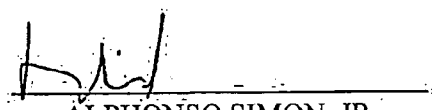
STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF SUMTER	)
	)
Bobby Wayne Stone,	) C/A No. 2008-CP-43-00905
	)
Applicant,	)
	) **CERTIFICATE OF SERVICE**
v.	)
	) (Capital Case)
The State of South Carolina,	)
	)
	)
Respondent.	)
	)

I, Alphonso Simon, Jr., do hereby certify that on this date, I served the Respondent's Post-Hearing Brief in the foregoing action on the attorneys for the Applicant, by depositing one copy of the same in the United States mail, first-class postage prepaid, and addressed as follows:

John H. Blume, Esq.
Blume, Norris,& Franklin-Best, LLC
900 Elmwood Ave., Ste. #101
Columbia, SC 29201

Emily C. Paavola, Esq.
Death Penalty Resource & Defense Ctr.
900 Elmwood Ave., Ste. #101
Columbia, SC 29201

This 13th day of March, 2013.



ALPHONSO SIMON, JR.
ATTORNEYS FOR RESPONDENT

RECORDED
2012 MAY -2
JAMES S.
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER) CASE NUMBER: 2008-CP-43-00905

Bobby Wayne Stone, # 5051,

Applicant,

vs.

State of South Carolina,

Respondent.

ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

INTRODUCTION

Applicant, Bobby Wayne Stone, was convicted and sentenced to death on January 28, 1997, for the shooting death of a sheriff's deputy in Sumter, South Carolina. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for a new sentencing proceeding. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (S.C. 2002). On February 27, 2005, a second jury also imposed a death sentence. Cameron B. Littlejohn, Jr., and James H. Babb were appointed to represent Stone at his original trial in 1997 and for the resentencing proceeding in 2005. The South Carolina Supreme Court affirmed Stone's second death sentence on direct appeal. State v. Stone, 376 S.C. 32, 655 S.E.2d 487 (2007). Stone timely filed an application for post-conviction relief ("PCR"), and subsequently amended the application on two occasions prior to the evidentiary hearing. This Court held a PCR hearing on April 23-25, 2012, in Sumter, South Carolina, and on August 10, 2012, in Florence, South Carolina. At the hearings, Applicant was present and was represented by John Blume, Esquire, and Robert Lominack, Esquire. The Respondent was represented by Senior Assistant Deputy Attorney General Donald Zelenka and Assistant Attorney General Alphonso Simon Jr. At the conclusion of the evidentiary hearing, and with the consent of

Applicant, Emily Paavola, Esquire, was substituted as counsel for Robert Lominack, Esquire.

RELEVANT FACTS

On February 26th, 1996 applicant shot and killed Sumter County Deputy Charlie Kubala. The events that led to this tragic death are as follows. During the evening hours, May Ruth McLeod was visiting her mother, Ruth Griffith, at her Sumter home. During this visit, they heard Bobby Stone knocking at the back door. McLeod went outside and told Stone to go home. Applicant ultimately left the premises entering the woods behind the home. As Stone entered the woods, McLeod noticed that applicant had something under the back of his jacket. Shortly thereafter, McLeod noticed that Stone had stopped, was facing the house and was holding a shotgun across his arms. McLeod once again demanded that applicant go home and that she was going to call law enforcement. McLeod noted that Stone appeared to be intoxicated and was holding a beer can. In response to her call, Sergeant Charlie Kubala responded to Griffith's home at approximately 6:06 p.m. Kubala received the details of the incident, ensured that Stone was not on the premises, and directed that McLeod and Griffith call him if there was any more trouble.

McLeod left the home to go visit her daughter. At 6:47 p.m. Griffith heard gunshots and called her neighbor Landrow Taylor. Taylor came to Griffith's home and called 911 at 7:00 p.m. They then heard someone jiggle the door handle to Griffith's car and made a subsequent call to 911 at 7:02 p.m. Moments later, they heard someone banging on the rarely used side door, which led from the washroom onto a small screened-in porch used to store wood. The light on the porch was off. Taylor hollered "what are you trying to do back there?" There was a moment of silence but the knocking resumed.

Meanwhile, Sergeant Kubala returned to the home. Taylor met Kubala on the front porch directing him to Stone who was at the side door.

Suddenly, Taylor and Griffith heard someone shout, "Halt!" or Hold!" followed by three or

four gunshots. As Taylor ran back out onto the front porch, Deputy John Prince arrived in his patrol car. Taylor saw a flashlight and radio on the ground and yelled at Prince informing him that Kubala was around the side of the house. Deputy Prince shined a flashlight, saw Kubala and ran to his aide. Kubala was lying face up and bleeding profusely from his mouth and neck. His gun and radio lay near the fingertips of his right hand. His flashlight lay between his body and his right hand. As Deputy Prince rolled Kubala over to clear an airway, he heard another gunshot prompting him to take cover by the corner of the home.

Other officers and EMS arrived shortly thereafter. The officers cleared the nearby shed and surrounding area. EMS found Kubala not breathing and without a pulse. Although Kubala was wearing a protective vest he died at the scene as a result of a gunshot wound that entered his right ear and another that entered his neck.

Officers then began to set up a perimeter to snare the assailant. SLED bloodhounds and SWAT teams were called, and off-duty officers from various jurisdictions volunteered to assist. A SLED helicopter equipped with forward-looking infrared radar and an extremely powerful spotlight called "midnight sun" began searching the woods nearby Griffith's house. After searching for a while, the SLED helicopter located a subject lying prone underneath two fallen trees. The helicopter used the midnight sun to light up the spot.

Meanwhile, police ground teams directed by the helicopter moved in on the suspect. As officers approached, Stone laid perfectly still on his back. The officers repeatedly ordered the suspect to raise his hands, but he would not comply. Finally, one of the agents put his foot on the suspect's chest while the other officers attempted to take control of the suspect's hands. A .22 pistol was found near suspects left hip. Stone resisted being handcuffed, and officers had to carry him out of the dense woods.

Applicant was taken to the law enforcement center where he gave a statement. In his

statement, Applicant said that he woke up the morning of February 26th and smoked some marijuana. He went to the store and bought some beer, and met a man named David who offered to sell Applicant three guns. Thereafter, they agreed to meet on a nearby dirt road.

According to Applicant, David arrived at the meeting place with a .22 pistol and a .410 shotgun. The two men walked around in the woods, drinking beer and target shooting. They agreed on a price of $100 for both guns. As they walked around, Applicant decided to stop by and say hi to Griffith, whom he described as "an old drinking buddy." David stayed in the woods with the guns.

Applicant claimed that as soon as he entered Griffith's backyard, a woman he did not know came of the house "raising cane" at him and telling him to get off the property. Applicant returned to the woods, and found and paid David $100 for the weapons. David then left. Applicant then walked around the woods shooting the guns and finishing off the beer. Around dark, he decided to return to Griffith's home.

Applicant walked up the steps to the little screen porch, set down the shotgun, but kept the .22 in his right hand. He admitted he started beating on the inside door, which broke because he hit it too hard. Applicant then heard a man's voice yelling outside the house, and as he turned, the gun went off. Applicant ran into the woods. In his statement, Applicant claimed the gun only went off once, and he never saw the deputy or his patrol car.

Applicant denied ever firing the gun again after he ran off the porch. He also claimed he did not know what was going on even though he hid in the woods for hours surrounded by police officers with a helicopter overhead.

Police processed the scene and collected various items of evidence confirming facts set forth above. The pistol recovered from under Applicant at the time of his arrest was a target pistol which fired .22 "long rifle" ammunition. The weapon was found with five rounds in its clip and a shell

casing lodged in the ejection port. SLED conclusively matched this gun to two bullet fragments and one bullet taken from Sgt. Kubala's body. The .22 pistol also matched the three spent .22 cartridge cases found on the side porch as well as other casings found in the nearby woods. Kubala's 9mm service pistol, on the other hand, was found fully loaded and had not been fired.

A .410 shotgun was found leaning up against the wall of the side porch with a live shell inside and its hammer cocked back in firing position. This shotgun was conclusively matched to a spent .410 shell casing found in the woods near Griffith's house.

The screen door to that side porch had three holes which appeared to be from bullets. The screen around these holes not only tested positive for lead, but also was microscopically consistent with holes made from bullets SLED test fired through the screen door with Applicant's .22 pistol. Ruth had nailed a board to cover a broken window pane on the door inside the screen porch that leads into the main house itself. After the incident, this board was knocked out and was hanging loosely from only one nail.

A knife was found in Applicant's coat pocket. Tests taken shortly after arrest indicated gunshot residue on the palm and back of Applicant's right hand, as well as, the presence of lead on Applicant's left palm and sleeve. The victim had lead on his right palm which is consistent with the handling of a weapon. The victim's shirt did not have any gunshot residue, which indicates Kubala was not hit by a close range shot.

10(A): INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE GUILT PHASE

Applicant asserts five claims of ineffective assistance of counsel during the guilt phase of Applicant's first trial.

10(A)(1): FAILURE TO OBJECT TO CLOSING ARGUMENT

Applicant contends his counsel should have objected to argument that Applicant did not dispose of his gun so he could kill more officers. Applicant is not entitled to relief upon this claim.

Trial counsel's testimony at the PCR evidentiary hearing established that counsel made a reasoned decision in not objecting to the solicitor's closing argument. Also, the argument made by the solicitor was proper response to the anticipated argument that Applicant accidentally fired the shots at the victim. Thus, Petitioner failed to establish that counsel was deficient in this regard. Further, Applicant cannot establish that he was prejudiced by counsels' decision not to object to the solicitor's closing argument.

During the solicitor's closing argument, he noted that Applicant's actions after the crime were inconsistent with those claims in his statement, inasmuch as Applicant fled the scene, ran through bushes and briars in the dark of night, and hid under a log for four hours. The solicitor also responded to the defense questioning of witnesses on the fact that Applicant never tried to get rid of the gun in all that time, which the defense asserted was supportive of his claim that he did not know he shot a deputy. The solicitor suggested an alternate proposition, that Applicant knew he had already killed on officer, and he kept the gun because he was trying to escape the perimeter and might need to use it again. The solicitor further noted that once Applicant realized that he was caught, his actions belied any argument that he thought he did not shoot anybody; he tried to hide the gun and hoped no one would find it. No objection was raised to his argument at trial.

At the PCR evidentiary hearing, trial counsel indicated that he made a strategic decision in not objecting. Mr. Littlejohn noted that during the trial, the solicitor overplayed his hand at several points during the trial. Littlejohn believed this argument by the solicitor was just another example of the solicitor doing so.

> I really thought what he was trying to do was kind of be a little overbearing. And so when he came through with some of these things, not only did they kind of surprise me, but I -- I didn't feel like there was any evidence to support them. But from the standpoint of -- of letting him go with it because it was closing argument, I didn't know exactly what Judge Dennis would allow or not allow. He had been pretty lenient in that regard. So I didn't object, thinking that actually it might be to our benefit to -- to -- because it was just a further reflection of how overreaching and how hard the State was going at this thing and how they would do anything to get a

conviction against -- against Bobby Wayne.

(2nd Tr. 17, II 4-14).

Trial counsel was not deficient in his handling of the solicitor's closing argument in the guilt phase. First, as indicated above, counsel's decision not to object to the statement in question now was based upon a valid, strategic decision. Furthermore, the argument made by Solicitor Kolb in his closing was clearly permissible as a matter of law.

Here, the solicitor's argument was proper, as he was clearly arguing the State's version of events and arguing against the claim of accident in Applicant's statement. During the trial, the State introduced a statement given by Applicant after he was arrested. In that statement, Applicant asserted the gun went off accidently when he heard a man's voice behind him, and he never saw he had shot a deputy. It was clear from the cross-examination of the State's witnesses that Applicant's counsel was relying upon Applicant's version given in the statement. Further, the defense had implied through cross examination that Applicant did not attempt to grab the pistol to fire on the search party that arrested him. Meanwhile, several witnesses who were present when Applicant was arrested in the woods indicated that Applicant was not compliant when he was being arrested, and he was within reach of the pistol.

The solicitor was also responding to an obvious defense contention raised in their questioning as to the significance of the fact that Applicant retained the gun. Since the argument was permissible, counsel could not have been deficient for failing to object nor could Applicant have been prejudiced.

Applicant also fails to show that he was prejudiced. First, as already noted, this solicitor's argument was not improper, especially when viewed in the context of the record. Second, the trial judge charged the jury that the statements by the attorneys were not evidence. Moreover, even if the solicitor's argument was improper, it cannot be said that the comments "so infected the trial with

unfairness as to make the resulting conviction a denial of due process." Given the overwhelming evidence, this one comment cannot meet that standard. Since Applicant would not have been entitled to relief upon a claim that the closing argument deprived him of a fair trial, Applicant cannot show that he was prejudiced by the fact counsel did not object to the statements made in closing argument. As a result, this claim for relief is denied and dismissed.

10(A)(2): FAILURE TO UTILIZE CRIME SCENE AND OTHER EXPERTS TO REBUT STATE'S THEORY

Applicant next contends his counsel was ineffective in the guilt phase for failing to hire "crime scene and other experts" who would have opined the evidence supported Applicant's statement in which he asserted the gun went off accidently when he heard a man's voice behind him, and he never knew or saw that he had shot a deputy.

Applicant is not entitled to relief upon this claim. First, Applicant fails to show that counsel was deficient in this regard. At the PCR evidentiary hearing, Applicant presented the testimony of Wayne Hill, who was qualified as an expert in homicide events reconstruction and firearms. Mr. Hill testified that he reviewed prior trial transcripts (including Applicant's testimony, Agent Parnell's testimony, and other law enforcement officers' testimony regarding their actions at the scene), crime lab reports, crime scene photographs, autopsy photographs, and autopsy reports. Hill also testified that he went to the shooting scene. Hill indicated that he also examined the weapon used in the shooting.

Hill made a number of conclusions:

1. The shooting could have occurred in the way outlined by Applicant in his statement to law enforcement.
2. The trigger pull was 1.5 pounds which he deemed to be unsafe under certain conditions.

3. A light trigger pull increased the likelihood of an unintentional discharge.
4. The gun could fire if rested upon three fingers the wrong way.
5. The patterns in the screen door were consistent with an unintentional firing of the gun.
6. If the firing were intentional, the bullet holes would have been higher on the screen.
7. The discrepancy between the number of shots fired and the number of shots recalled could be explained by Stones' state of intoxication.

To the contrary, Hill also made the following inculpatory conclusions:

1. It was within the realm of possibility that Stone intentionally aimed and fired the gun.
2. It would take three trigger pulls to discharge three bullets from the weapon.

It is important to note that without an eyewitness or video, it is impossible for a firearms expert to re-create all the events of the night of the shooting. There are so many variables such as: the posture and position of Stone; the posture and position of the victim; and, the position of the weapon. Additionally, it is beyond the scope of the expertise of a firearms examiner to testify as to the volition of the Applicant. No expert can render an opinion as to the intent of the defendant. With or without expert testimony, it is ultimately a question of fact for the jury. Also, it is beyond the expertise of a firearms examiner to testify as to the effects of alcohol on human behavior.

If Hill would have testified at trial, the very same factual issues would have been submitted to the jury.

The legitimate factual disputes were established by the State's witness, agent Ira Parnell. SLED agent Ira Parnell did testify at trial and concluded as follows:

1. The trigger pull was fairly light.
2. One would have to pull the trigger three times to discharge three bullets.
3. The shots could have been fired by accident.

4. The bullet patterns were consistent with the Applicant not standing fully erect.

Defense counsel did retain Donald Girndt (a former SLED agent) who had expertise in gunshots, blood splatter, and fingerprints. Girndt made the conclusion that based on the evidence in this case, it is impossible to state that the shooting was accidental or intentional. All of the facts favorable to the defense were established through the testimony of agent Ira Parnell.

Clearly, trial counsels' testimony establishes they consulted with a crime scene expert. Counsel also made a well-reasoned, strategic determination to not call their expert as a witness at the first trial. Counsel repeatedly elicited that it was dark, and that the murder weapon was a target pistol with an extremely light trigger pull. Counsel also elicited that the victim was only 5'8" and the wooden partition of the walls of the screened porch would be over his head. Counsel argued the issue in closing. Further, based upon counsel's testimony, it appears that Mr. Girndt could not state that he had concluded that the shooting was accidental based on his review of the evidence. Respondent submits that counsel cannot be found deficient for not presenting their expert at trial when the defense team's expert reached different conclusions from the expert presented at the PCR evidentiary hearing. Overall, trial counsel was not ineffective.

Applicant also fails to show that he was prejudiced. There is no reasonable probability a jury would have accepted Applicant's version of events, even with a crime scene expert and other experts, when Applicant asserted in his statement: 1) that he unintentionally only fired once, when in fact there were three casings on the porch, two bullets in the victim, and three holes in the screened porch; 2) that he did not know he shot a deputy and did not know what was going on for the four hours he was at large, even though he spent that time hiding under a log in a thick brush.

Moreover, Applicant was not entitled to a jury charge on involuntary manslaughter or accident anyway. Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: 1) an unlawful act not amounting to a felony and not

naturally tending to cause death or great bodily harm; or 2) a lawful act with reckless disregard for the safety of others. Applicant, a felon on probation and not entitled to have a weapon, admitted he was banging on the side door of a house from which he had already been sent away once, while holding a loaded pistol in his hand. Such conduct hardly can meet either test for involuntary manslaughter as it involves a felon with no good reason to be in possession of a weapon, such that the possession is the proximate cause of the homicide. It also involves trespass after notice and burglary.

Similarly, Applicant cannot show entitlement to accident as he must not only have been acting lawfully, but must also show that he used due care in the handling of the weapon. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999). Not only was Applicant behaving unlawfully many times over but, by no stretch, can invading an enclosed porch and banging on the back door with a loaded pistol in one's hand be considered due care. Since Applicant was not entitled to either an involuntary manslaughter or accident charge under any view of the evidence, then counsel could not have been deficient nor Applicant prejudiced from the failure to get an expert to support his statement.

10(A)(3): FAILURE TO CHALLENGE BATSON VIOLATION

Applicant next contends counsel was ineffective during the guilt phase by failing to make a Batson motion challenging the prosecution's alleged racially discriminatory use of its strikes.

Applicant is not entitled to relief upon this claim. First, counsel was not deficient in not moving for a review of the State's use of peremptory challenges under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Trial counsel's testimony indicated they made a reasonable strategic decision in not making such an objection.

The record reflects that the solicitor used three strikes on black females (Jurors # 189, 6, and 109); one strike on a black male (Juror # 25); one strike on a white female (Juror # 90) during the

selection of the alternate jurors. The jury consisted of one black male, three black females, five white males, and three white females.

This claim is denied and dismissed. First, the record and the testimony at the evidentiary hearing clearly reflect that counsel made a strategic decision not to pursue a Batson motion after much deliberation. Counsel testified, and I find, that they did not make a Batson motion because they were pleased with the jury that was selected. In light of this reasonable strategic decision, Applicant is not entitled to relief.

Second, Applicant has failed to establish that he was prejudiced by counsels' decision not to challenge the prosecution's use of peremptory strikes under Batson v. Kentucky. As established by the testimony by both Solicitor Kolb and Mr. Littlejohn, such a motion would not have been successful.

The evidence of guilt in this case was completely overwhelming, especially given that Applicant was not entitled to an accident or involuntary manslaughter instruction. As a matter of law, a successful Batson motion would not have had a reasonable probability of a different result.

Altogether, Applicant is not entitled to post-conviction relief upon this claim. It is, therefore, dismissed and denied.

10(A)(4): FAILURE TO OBJECT TO PRESENCE OF OFFICERS

Applicant next contends counsel was ineffective for failing to object to the presence of uniformed officers in the courtroom during trial.

This claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming into play.'" State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where

there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

I find that the presence of uniformed law enforcement officers was not much different from other criminal trials. This finding is based upon the testimony of Wade Kolb, Jim Babb, and Cameron B. Littlejohn, Jr.

Applicant failed to establish he was prejudiced in any way. Applicant presented no evidence to show that the presence of law enforcement in the courtroom had any effect on the jury. In fact, Applicant has not presented any evidence to support a finding of inherent prejudice. In light of that failure, Applicant failed to show that he was prejudiced by counsel not objecting to the law enforcement presence in the courtroom during the guilt phase of Applicant's trial. As a result, he has not shown that trial counsel was ineffective in this regard. This claim is, therefore, denied and dismissed.

10(A)(5): FAILURE TO OBJECT TO SHACKLING OF DEFENDANT

Applicant asserts trial counsel was ineffective for failing to object to the use of visible shackles during the guilt phase of Applicant's first trial. Applicant is not entitled to relief upon this claim. There is no evidence in the record to support this claim.

Based upon the testimony of Wade Kolb, James H. Babb, Cameron B. Littlejohn, Jr., and Director Simon Major of the Sumter Regional Detention Center, I find that:

1. Applicant was not shackled during the jury selection in Georgetown County or any of the trial procedures that transpired in Sumter County.
2. The kind of restraints that were used on Applicant were placed under his clothing. Applicant was dressed for court at the detention center and it would be impossible for the jurors or anyone in the courthouse to see the concealed restraints.
3. The trial judge was vigilant about not allowing Stone to move in the presence of the jury.

Since Applicant was not visibly restrained in the presence of the jury, trial counsel could not be deficient for not making an objection regarding the use of visible restraints because no such objection was necessary.

In light of the fact Applicant was not entitled to relief upon the motion, he fails to establish that he was prejudiced. As a result, this claim for relief is, therefore, denied and dismissed.

10(B)(1): INEFFECTIVE ASSISTANCE OF COUNSEL REGARDING OBJECTION TO VICTIM'S WIDOW'S TESTIMONY ABOUT SUICIDE ATTEMPT

Applicant contends trial counsel was ineffective for failing to preserve an issue as to the admissibility of the widow's victim impact testimony that she attempted suicide upon finding out the South Carolina Supreme Court reversed the first sentencing proceeding. This issue is without merit.

At resentencing, widow Teresa Kubala described her relationship with the victim, the pain of finding out about his death, and the difficulties of moving on in her life without the victim. She specifically noted the counseling and help she needed to even start dating again, as she thinks of Sgt. Kubala every day and felt like she was cheating on the man she had married at age 19.

Near the end of her testimony, the solicitor asked if there was "anything significant" in her life she would like to tell the jury. She stated that after she and her new husband returned from a family trip to celebrate their first anniversary, she found a message on her machine that "they were going to retry this case that the supreme court had overturned it. She went on to state that her new husband had gotten hurt working at UPS and was dealing with trying to get workers compensation, and they were trying to make two house payments until they could sell one. She said UPS would not take her husband back, so he lost his job and had to find another, "and everything just blew up."

At this point, the defense approached for an off the record conference, after which the solicitor asked Teresa to state what happened as a result of "the things you went through with Charlie and the things after." Teresa then described taking a bottle of Tylenol PMs before her husband woke, but then having second thoughts and telling him what she had done. She then

described going to the hospital for treatment and then spending three days in a ward, which led her to realize she did not have as many problems as she thought. At this point, the solicitor stopped the questioning and moved on.

After the State rested, the defense put its objection on the record. The defense argued that the causation factor for the suicide was not the crime, but because the legal proceeding was about to occur again, and asserted that the time that had passed from the original crime and this resentencing proceeding "lessens the direct effect that she would otherwise be allowed to testify about." Thus, the defense contended the suicide attempt was extremely prejudicial. The trial court responded that objection was timely, but Teresa's testimony was at least partially related to Sgt. Kubala's murder, even though that was not the only thing she mentioned. Applicant raised an issue related to this event on direct appeal, but the South Carolina Supreme Court found it was not preserved. The Supreme Court noted that counsel at trial argued the issue as one of causation – that the suicide attempt was related more to financial difficulties rather than the victim's murder – but on appeal Applicant was asserting that the reference to direct review invited the jury to speculate on the finality of their decision, and the reference to suicide invited the jury to speculate on the effect of their decision on the widow's health. On direct appeal, the Court found the latter issues distinct from that raised at trial and not preserved.

Applicant was not deficient in his objection to the testimony primarily because it was admissible, relevant and not unduly prejudicial. This testimony is proper victim impact evidence in that it demonstrates the uniqueness of the victim and the specific harm committed by defendant. It was made clear to the jury that Teresa Kubala's attempted suicide was precipitated by a multitude of factors, one of which was the murder of her husband. Additionally, the trial judge properly ruled that this suicide attempt was sufficiently tied to the impact of this crime on the victim's family.

The failure of trial counsel to object to this evidence on the grounds that it lessened the

jury's responsibility for sentencing is without merit. There was neither argument nor implication the responsibility for determining the appropriateness of the sentence rested with someone other than the jury.

To the extent Applicant asserts trial counsel should have argued that the mention of prior reversal impermissibly maximized the jury's sense of responsibility inasmuch as it implied a life sentence would trigger another attempt, his claim is also without merit. Such an argument would present a logical problem in that Applicant asserts in the same sentence that the mention of the reversal both minimized and maximized the jury's responsibility. Regardless, no one said that at all. There was no argument along those lines, simply a brief matter-of-fact mention of a predicate fact. Indeed, as noted before, suicides are generally admissible victim impact evidence, and any suicide attempt might carry the inference that any sort of subsequent victory for the defense might trigger another attempt. The same could be said for other psychological problems suffered by a survivor, but that concern does not mean the defendant gets to escape having the jury learn about the actual impact of what he has done on those who have suffered.

This evidence was admissible and, therefore, the complaint fails both prongs of the Strickland test. As a result, this claim for relief is denied and dismissed.

10(B)(2): INEFFECTIVE ASSISTANCE OF COUNSEL REGARDING LACK OF OBJECTION TO VICTIM IMPACT TESTIMONY

Applicant contends trial counsel was ineffective for not objecting to certain victim impact testimony during his resentencing trial. Specifically, Applicant complains that testimony regarding the effect of Deputy Kubala's death on law enforcement in Sumter County generally and on individual officers in particular. Respondent submits Applicant's claim is without merit. Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony that was presented at trial. Counsel articulated valid, strategic reasons for not objecting to the testimony. Further, Applicant fails to show that he was prejudiced, especially in light of the fact that victim

impact testimony that was presented was admissible.

Victim impact evidence is admissible in the sentencing phase to demonstrate the uniqueness of the victim and the specific harm committed by the defendant.

The challenged evidence in the present case was admissible as a matter of law; thus, counsel could not have been deficient nor Applicant prejudiced. At issue here is part of the testimony of Captain Hobbs and Major Metts, both of the Sumter County Sheriff's Office. Captain Hobbs testified that he and Deputy Kubala started in law enforcement at the same time. As a result of their closeness in beginning their law enforcement careers, they became close friends. Hobbs testified that he loved Kubala like a brother, and the two and their families were close. Hobbs noted they stayed in contact after Kubala left law enforcement to pursue another job. Hobbs also described Kubala returning to duty at the Sheriff's Office a few years later, including how they lobbied to work together again once Kubala became a sergeant. Hobbs also testified about how he was the one who told Kubala's wife that he was killed on the night of the shooting. Hobbs also testified about the impact Kubala's murder had on the sheriff's office. He noted that during orientation, new trainees are taken to the scene of the shooting, and they are informed about the case. The trainees are then taken to Kubala's grave site, and they are advised that if they are not able to give that sacrifice, then it may not be the right job for them.

Major Metts testified that he met Deputy Kubala as both volunteered with the Explorer program. Metts stated that Kubala was like his brother, and Kubala was his best friend. Metts testified about the night of the shooting, and how he responded to the news. He discussed how he and others, like Hobbs, tried to help his widow in the weeks after the shooting. Metts indicated that she asked him to serve as a pallbearer in Kubala's funeral, and she further requested that he get his police uniform ready for the burial. Metts went on to describe how Kubala's death impacted him personally, and how he was unable to maintain the Explorer program because of the memories he

had of working with Kubala on the program. Metts also discussed a golf tournament that was started in Kubala's memory, and described visiting the scene of the murder with Kubala's widow and children.

At the PCR evidentiary hearing, Mr. Littlejohn testified that he considered objecting to some the testimony presented by Captain Hobbs, and he ultimately decided against it.

> I considered objecting to a lot of this, but Judge King was being very liberal in what he was allowing in from the standpoint of victim's testimony. I mean I felt if he allowed in what Ms. Kubala said about her reaction to the appeal that he was probably going to allow this in. I didn't want to be perceived by the jury as -- as jumping up and objecting to everything like I was trying to hide something.
>
> So yes, I did consider it. I didn't consider my chances of winning that objection very well -- to be very good and I mean there's a lot of leeway that the courts have allowed in -- in this kind of testimony. So I considered it; I didn't object to it obviously.

Similarly, Littlejohn testified that he made a similar strategic decision in not objecting to portions of Major Metts' testimony.

> Well, like I said earlier and I reviewed this yesterday, I considered objecting to a lot of this, but I did not feel that the objection would be sustained. I didn't want to be perceived as -- as trying to hide things and, you know, a lot of this is contemporaneously with that happened and, you know, I just think Judge King would have -- would have let it in.

Clearly, counsel expressed a valid strategic reason for not objecting to the testimony. First, counsel did not want to appear as if he was hiding something from the jury. Second, counsel reasoned that the objection likely would have been overruled by Judge King. In light of counsels' reasoning in not objecting to the disputed victim impact testimony, Applicant fails to show that counsel was ineffective in not raising an objection.

Counsels' determination that his objection likely would have been overruled was well founded. The testimony Applicant now challenges is admissible. First, as to the specific officers, they were not merely coworkers, but friends who ate together, spend off duty time together with each other and their families, and did community projects together. Moreover, the loss of the victim

affected the way they perceived and went about their jobs. This evidence involved their specific personal relationships with the victim and was undoubtedly admissible.

The greater issue to Applicant is apparently the admissibility of the lasting effect of the killing on the Sumter County law enforcement community in general. However, this larger effect on the community is admissible as well. As noted in Payne:

> [Defendant] Payne echoes the concern voiced in Booth's [Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440] case that the admission of victim impact evidence permits a jury to find that defendants whose victims are assets to their community are more deserving of punishment that those whose victims are perceived to be less worthy. (citation omitted). As a general matter, however, victim impact evidence is not offered to encourage comparative judgments of this kind-for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but the murderer of a reprobate does not. It is designed to show instead each victim's "uniqueness as an individual human being," whatever the jury might think the loss resulting to the community might be.

Payne, 501 U.S. at 823-824 (emphasis added) (quoted in Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)). Other passages in Payne support the idea that evidence on the crime's impact of the larger community is admissible:

> In Justice O'Connor's concurrence, she explains her view that "[a] State may decide that the jury, before determining whether a convicted murderer should receive the death penalty, should know the full extent of the harm caused by the crime, including its impact on the victim's family and community." Payne, 501 U.S. at 829, 111 S.Ct. 2597 (O'Connor J., concurring) (emphasis added). Although obviously relevant to the Government's argument, this of course is not part of the holding of Payne, but rather dicta from the concurrence. Second, the Payne majority opinion cites a statement of Justice White from the dissenting opinion of Booth v. Maryland, one of the cases that Payne overruled: "'The State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.'" Payne, 501 U.S. at 826, 111 S.Ct. 2597 (quoting Booth, 482 U.S. at 517, 107 S.Ct. 2529 (White J., dissenting) (citation in original omitted) (emphasis added)).

United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006).

And, a number of courts have upheld admission of the effect of a law enforcement officer's murder on the law enforcement community. See United States v. Battle, 173 F.3d 1373 (11th Cir.

1999) (permissible to show how murder of corrections officer emboldened inmates and made the prison more dangerous, but how a death sentence would send a message to those emboldened inmates); United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006) (permissible to show murder of undercover officer had chilling effect on other undercover officers); People v. Brown, 93 P.3d 244 (Cal. 2004) (permissible to show officer was a good police officer and to admit testimony brother saluted his grave because officer gave life for the community); United States v. Whitten, 610 F.3d 168, 189 (2d Cir. 2010)(noting that no prohibition of testimony regarding generalized community harm as victim impact evidence is generally recognized); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010)(finding admission of law enforcement officer's funeral was proper victim impact evidence demonstrating the general loss suffered by society). Altogether, Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony presented at trial.

Altogether, Applicant has failed to establish counsel was ineffective in not objecting to the victim impact testimony presented through Captain Hobbs and Major Metts. This claim for relief is, therefore, denied and dismissed.

10(B)(3): LACK OF PRESENTATION OF EVIDENCE OF APPLICANT'S PRIOR COOPERATON WITH LAW ENFORCEMENT

Applicant asserts that trial counsel was ineffective for not presenting evidence that he had cooperated with law enforcement prior to the shooting. This claim is without merit. Trial counsel's testimony establishes that the decision not to present such evidence was the result of reasonable trial strategy.

At the evidentiary hearing, Mr. Littlejohn testified that he considered presenting evidence that Applicant cooperated with law enforcement.

> There were two aspects of that. Bobby had cooperated in helping them out with a few things that were -- were -- I mean they -- They were helpful to law enforcement, but they weren't really substantial things. I felt like it came out that he was

> cooperating working with law enforcement, then bam, turned around and shot a police officer, that that made him, you know, look in a much worse light.
>
> The other thing that I had to consider was a lot of the law enforcement officers could have helped him maybe watered down what they were going to say or didn't really, you know, want to support him because of the pressure they were feeling from the rest of the law enforcement community down there. So there wasn't any other way to bring it out other than to call Bobby and Bobby didn't want to testify, which I don't -- I don't blame him with that decision, but that would have been the only way to bring it out.

(2nd Tr. 32, II 10-25).

Applicant fails to show that he is entitled to relief upon this claim. First, as reflected in Mr. Littlejohn's testimony, trial counsel did consider presenting evidence of Applicant's cooperation with law enforcement, and they made a strategic decision not to present such evidence. As a result, Applicant is not entitled to relief upon this claim.

Furthermore, Applicant cannot establish that he was prejudiced by any alleged deficiency of counsel in this regard. Applicant did not present any testimony or evidence establishing prior cooperation with law enforcement at the evidentiary hearing. Thus, it would be speculative to find that the presentation of any such cooperation would have led to a different result at Applicant's trial.

10(B)(4): REASONABLENESS OF INVESTIGATION IN MITIGATION EVIDENCE

Applicant next asserts that trial counsel was ineffective for not properly investigating several areas of possible mitigation evidence. Specifically, Applicant asserts that counsel should have investigated more into Applicant's impoverished background and family dysfunction resulting from the equivalent to a polygamous household; Applicant's low intellectual functioning; neurological damage that Applicant allegedly suffered from exposure to dangerous neurotoxins and other chemicals; and neurological damage that Applicant allegedly suffered from maternal ingestion of alcohol during his developmental period. Applicant further contends trial counsel failed to gather relevant records to corroborate mitigation evidence that was presented at trial. Finally, Applicant argues counsel failed to investigate, develop, and present evidence of Applicant's good character.

All of these claims are without merit.

Based upon the testimony at the trial, I find that:

1. Applicant's background was adequately investigated and presented to the jury in an effective way.
2. The gathering of mitigating evidence was thorough and presented to the jury in an effective way.
3. The issue of Applicant's adaptability to prison was investigated and presented to the jury in an effective way.

Therefore, this claim is hereby denied and dismissed.

10(B)(4)(A): FAILURE TO INVESTIGATE POLYGAMOUS FAMILY BACKGROUND AND HOW IT LED TO IMPOVERISHED FAMILY BACKGROUND AND FAMILY DYSFUNCTION

The allegations that defense counsel did not investigate the Applicant's polygamous family background and how it led to impoverished family background and dysfunction is without merit.

A review of the record as a whole and particularly the testimony of Te Anne Oehler, Melinda Parrott and Arlene Anderson, I find that:

1) The issues of polygamy, poverty and family dysfunction were exhaustively investigated and effectively presented to the jury,
2) Applicant has failed to present any meaningful evidence that trial counsel was ineffective in investigating and presenting the issues of poverty, polygamy and family dysfunction

This claim is denied and dismissed.

10(B)(4)(B): EVIDENCE OF APPLICANT'S LOW INTELLECTUAL FUNCTIONING

Applicant next contends that trial counsel failed to adequately investigate Applicant's low intellectual functioning. Respondent submits that Applicant failed to show that he is entitled to relief upon this claim.

Based upon the view of the trial transcripts and the testimony of James Babb and Te Anne Oehler, I find that:

1) The issue of low intellectual functioning was investigated and presented to the jury,

2) Defense counsel had access to Applicant's school records,

3) Defense was aware of the low IQ, and the fact that Applicant's IQ dropped between the ages of 11 and 14.

4) Defense was aware that Applicant was diagnosed with a learning disability in the area of verbal expression and language comprehension.

Applicant fails in meeting its burden with regard to showing that counsel's investigation was not reasonable. Further Applicant has failed to show that he was prejudiced. As a result, this claim for relief is denied and dismissed.

10(B)(4)(C)(1): TRIAL COUNSEL INEFFECTIVE FOR NOT INVESTIGATING EVIDENCE OF APPLICANT SUFFERING NEUROLOGICAL DAMAGE FROM EXPOSURE TO DANGEROUS NEUROTOXINS AND OTHER CHEMICALS

Applicant further contends that trial counsel failed to investigate and present evidence that Applicant was exposed to dangerous neurotoxins and other chemicals as a child. Applicant's claim here is without merit. First, counsel was not deficient in not investigating whether Applicant was exposed to chemicals and neurotoxins from swimming in Turkey Creek. Second, Applicant fails to show that he was prejudiced.

Based upon the testimony at the PCR hearing, I find that:

1. Defense counsel hired mitigating experts who investigated Applicant's background in a thorough manner.
2. Defense experts did not report to trial counsel anything concerning exposure to contamination in and around Turkey Creek.
3. Applicant never informed mitigation experts as to any concerns about Turkey Creek.

4. Applicant relied upon the expert testimony of Dr. Merikangas who has an impressive educational background; however, this court does not find his testimony persuasive. Although he presented his uncontradicted expert opinion this court does not believe his opinion is supported by the facts and, therefore, not credible. The facts are lacking in that:

    a. There was insufficient testimony to support the allegation that Applicant had significant exposure to Turkey Creek;

    b. There was insufficient evidence as to when and where Applicant was exposed to Turkey Creek; and,

    c. It is impossible to know the levels of toxicity of the water at the particular time and place that Applicant was exposed to Turkey Creek.

Applicant has failed to prove that trial counsel was ineffective or that there is a reasonable probability that the results at trial would have been different. Therefore, this claim for relief is denied and dismissed.

10(B)(4)(C)(2): EVIDENCE OF APPLICANT SUFFERING NEUROLOGICAL DAMAGE FROM MATERNAL INGESTION OF ALCOHOL DURING THE DEVELOPMENTAL PERIOD

Applicant asserts trial counsel failed to investigate and present evidence that Applicant suffered neurological damage that resulted from his mother ingesting alcohol while she was pregnant. Applicant's claim here is without merit. Counsel did not investigate whether Applicant suffered from neurological damage as a result of his mother drinking because there was no credible evidence to support such an investigation.

Based upon the testimony at the PCR hearing, I find:

1. There was no credible evidence that Applicant's mother drinks alcohol. The overwhelming evidence is that she abstained from the use of alcohol.

2. More specifically there is no evidence that Applicant's mother drank alcohol while she was pregnant with Stone.

3. The methodology employed by Dr. Merikangas is questionable. The conclusions reached by Dr. Merikangas were not supported by the facts and, therefore, are not believable.

Therefore, the relief requested is denied and dismissed.

10(B)(4)(D): EVIDENCE OF APPLICANT'S GOOD CHARACTER

The allegation that trial counsel was ineffective in failing to investigate and present evidence of Applicant's good character is without merit. Te Anne Oehler did a superlative job in investigating the mitigation phase of this case. I specifically find that all aspects of his life were adequately investigated and effectively presented to the jury. Applicant has further failed to show that there is a reasonable probability the results at the resentencing trial would have been different.

The relief requested is, therefore, denied and dismissed.

10(B)(5): INEFFECTIVE ASSISTANCE OF COUNSEL IN SENTENCING PHASE FOR NOT OBJECTING TO PRESENCE OF LAW ENFORCEMENT OFFICERS IN COURTROOM DURING RESENTENCING TRIAL

The allegation that trial counsel was ineffective for not objecting to the presence of law enforcement officers in courtroom during the resentencing trial is without merit.

Based upon the record I find that:

1. The presence of officers at the resentencing trial did not create either an actual or inherent prejudicial effect on the jury.

2. There was not an abundance of uniformed officers in the courtroom.

3. There were even fewer spectators at the second trial than the first trial.

4. Applicant failed to show that he was prejudiced in any way by the presence of law enforcement in the courtroom.

As a result, this claim is denied and dismissed.

10 B(6): Failure to Conduct Adequate Voire Dire

Based upon the review of the record, I find that:

1. Trial counsel conducted voire dire in such a fashion that far exceeded the minimum standard of competence.
2. The voire dire questions posed to potential jurors were appropriate and clearly calculated to aid them in selecting open-minded jurors, who were not predisposed to hand down the death penalty.
3. The application nor the PCR record set forth with any particularity how the voire dire could have been conducted in a better fashion.
4. Applicant has not set forth any substantial allegations of prejudice.

Therefore, this claim is denied and dismissed.

10(B)7: Failure to Secure Crime Scene Experts

Based upon the trial transcript and the PCR transcript, I find that:

1. Trial counsel hired an expert, Wayne Hill, who was qualified as an expert in homicide events, reconstruction and firearms.
2. Trial counsel made a well-reasoned strategic decision not to call this witness.
3. Trial counsel were not ineffective in their investigation of this case. They were not ineffective in their decision not to hire additional experts.
4. Applicant also failed to show that he was prejudiced.
5. Applicant failed to show that the result of the resentencing would have been any different had additional experts been hired or, if they had elected to call Wayne Hill as a witness.

Therefore, this claim is denied and dismissed.

10(C): Ineffective Assistance of Appellant Counsel

1. On appeal, appellate counsel raised a single issue on appeal. Specifically, he asserted the trial judge committed reversible error by permitting the victim's widow to testify that she had attempted suicide when she learned from a message left on her answering machine that the Supreme Court had reversed Stone's death sentence and "they were going to retry this case over again", as this testimony introduced an arbitrary factor into Stone's resentencing, in violation of S.C. Code Section 16-3-25(C)(1). In affirming Applicant's conviction on appeal, the South Carolina Supreme Court found the issue raised in the appeal was not preserved for appellant review.

> Appellant's argument is not preserved for review. At trial, Appellant objected as the victim's widow began to describe her suicide attempt. The record reveals that Appellant based his objection on causation grounds, arguing that the testimony implied that the cause of the suicide attempt was not the victim's murder, but the financial pressures the victim's widow was experiencing and the fact that Appellant would have another sentencing proceeding. In allowing the testimony, the trial court held that the victim's widow had attributed the facts relayed in the testimony to her relationship with the victim, and that the testimony was, therefore, relevant and admissible.
>
> Appellant's argument before this Court goes along quite different lines. Appellant now argues that the victim's widow's testimony improperly invited the jury to speculate about the finality of its decision on the appropriate punishment and improperly invited the jury to consider how its decision might impact the victim's widow's future health. Thus, while Appellant's argument below focused on what caused the victim's widow to attempt suicide-meaning, what caused the testimony to be relevant-Appellant's argument on appeal abandons the issue of relevance and addresses only the effect this testimony may have had on the jury. Because Appellant did not argue these grounds in support of his objection at trial, Appellant's argument is not preserved for review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E. 2d 6912, 693 (2003) (providing that in order for an issue to be preserved for appellant review, it must have been raised to and ruled upon by the trial court.)
>
> Appellant alleges that his argument on appeal is simply an augmentation of his objection at trial., but a thoughtful examination reveals that this is not so. Primarily, Appellant's objection at trial was based on relevance and that issue has been abandoned here. Second, whether the suicide attempt by the victim's spouse minimized the jury's sense of responsibility (by suggesting that the jury's ultimate decision would be subject to review by a higher court) or maximized the jury's sense of responsibility (by implying that imposing a life sentence might lead the victim's

widow to attempt suicide again), these considerations are wholly independent of the relevance argument presented below. If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.

2. Based upon the trial transcript, PCR transcript and the South Carolina Supreme Court opinion State v. Stone, 376 S.C. 32, 655 S.E.2d 487 (2007, I find that:

   a. Applicant has not established that appellant counsel was ineffective in failing to raise the issue as it was raised at trial.

   b. Applicant would not have prevailed in his appeal even if the issue was properly put before the Supreme Court.

   c. The testimony in question was admissible in the sentencing phase to demonstrate the uniqueness of the victims and the specific harm committed by the defendant.

   d. Applicant failed to show prejudice by any deficiency of counsel.

Therefore, this claim is denied and dismissed.

10(d)(1): Due Process Violation; Failure to Approve Funding for a Jury Selection Expert

Applicant next asserts a due process violation from the refusal to find a jury selection expert. This freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993)(issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). This claim is one that could have been raised at trial, and further, could have been raised by Applicant in his direct appeal. Since the issue could have been raised then, it cannot be raised now in this application. As a result, this claim is denied and dismissed.

Even if this claim could be raised in PCR, the issue should still be dismissed as a matter of law. As noted by the Fifth Circuit in Moore v. Johnson, 225 F.3d 495, 503 (5th Cir. 2000), which

addressed an indigent defendant's asserted right to a jury selection expert pursuant to Ake v. Oklahoma, 470 U.S. 68 (1985),

> [A] defendant cannot expect the state to provide him a most-sophisticated defense; rather, he is entitled to 'access the raw materials integral to the building of an effective defense....Most of those raw materials come to the defendant in the form of his court-appointed lawyer in his expert knowledge about how to negotiate the rules of court, how to mount an effective defense, and so forth.... [J]ury selection is not a mysterious process to be undertaken by those learned in the law only with the assistance of outside professionals. All competent lawyers are endowed with the 'raw materials' required to pick a jury fairly disposed toward doing substantive justice....[A] defendant does not lack 'an adequate opportunity' to present [his] claims fairly' because he has been denied a jury consultant.

See also Ford v. Schofield, 488 F. Supp. 2d 1258 (N.D. Ga. 2007) (noting the constitution does not require an indigent defendant to get all the assistance his wealthier counterpart might buy, and finding no prejudice shown from the denial of a jury selection expert).

Here, at both proceedings Petitioner had the assistance of James Babb and Cameron Littlejohn, both who have extensive experience in jury trials in the midlands. Babb, in particular, has been trying major criminal cases in Sumter and Clarendon counties for years. Certainly, they had the "basic tools" to conduct jury selection such that no expert was needed. Since there was no constitutional violation or resulting prejudice from the denial of any such request, the claim is denied as a matter of law.

10(d)(2): Due Process Violation, Presence of Law Enforcement Personnel during both the Guilt and Sentencing Phases of Applicant's Trial

Applicant next contends he was denied due process based on the alleged presence of uniformed officers in the courtroom during both the trial and the resentencing proceeding.

First, as was the case with Applicant's claim in ground 10(d)(1), this freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417,

423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). These claims could have been asserted at trial. These are not claims that are cognizable for post-conviction relief. As a result, these claims are denied and dismissed with prejudice.

Moreover, this claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming in to play." State v. Hill, 331 S.C. 94, 501 S.E2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing buttons of victim, and no evidence that if they did see it they could tell the picture was of the victim).

As noted in response to grounds 10(a)(4) and 10(b)(5), there is no evidence in the record that there was an abundance of uniformed officers in the courtroom such that prejudice can be shown. At the evidentiary hearing, Applicant did not identify or present any such evidence that an intimidating atmosphere was created to the point where due process was violated. See, e.g. Holbrook v. Flynn, 475 U.S. 560 (1986) (finding no prejudice from presence of armed officers stationed as guards); Hill, 331 S.C. 94, 501 S.E.2d 122 (any prejudice from presence of officers is wholly speculative, and Hill failed to present any evidence the officers had an effect on the jury); Paige, 375 S.C. 643, 654 S.E.2d 300 (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it, they could tell the picture was of the victim). Altogether, Applicant failed to establish he was entitled to relief upon this claim. As a result, this claim is denied with prejudice.

10(e): Fifth and Sixth Amendment violations due to shackling during transport to courtroom and once inside courtroom

Applicant asserts his constitutional rights were violated by the alleged shackling of Applicant when he was transported to the courtroom and when he was inside the courtroom. Specifically, it appears that Applicant is asserting that he was visibly restrained before the jury at some point in time, during either the jury selection process or guilt phase in his first trial.

First, this freestanding claim is one that can be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal that cannot be raised in a PCR application absent a claim of ineffective assistance of counsel).

> Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security. Illinois v. Allen, U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). The trial judge is the best equipped to decide the extent to which security measures should be adopted to present disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes. Brewster v. Bordenkircher, 745 F.2d 913 (4th Cir.1984).

State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). In Deck v. Missouri, 544 U.S. 622, 626-29, 125 S. Ct. 2007, 2010-12 (2005), the United States Supreme Court noted that it had been long established that the routine use of visible shackles was not permitted, and that a special need would have to be present for visible shackling to be used during the guilt phase of a trial. Thus, to the extent Applicant is asserting that he was improperly shackled during the guilt phase of the first trial, Applicant's claim was clearly available at trial and for his direct appeal. As a result, this claim for relief must be denied and dismissed with prejudice.

Second, as outlined in the response to Applicant's claim on ground 10(a)(5), the testimony and evidence presented at the evidentiary hearing clearly indicates that Applicant was not visibly restrained in the jury's presence. Instead, those involved in transporting Applicant and providing security during the first trial, utilized restraints that fit underneath Applicant's clothing. The testimony at the evidentiary hearing also established that efforts were made to ensure Applicant was

not moved in the jury's presence. He was brought into the courthouse and courtroom before the jury arrived, and he would not leave the courtroom until after the jury left. Altogether, Applicant did not establish a factual basis to support this claim. As a result, this claim for relief is denied and dismissed.

IT IS, THEREFORE, ORDERED that Applicant's Post-Conviction Relief is hereby DENIED as set forth hereinabove.

Michael Nettles
Presiding Judge

Florence, South Carolina

April 30, 2013

RECORDED
2013 MAY 10 PM 1:55
JAMES C. CASTELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
County of Sumter)	Case No. 08-CP-43-905
)	
Bobby Wayne Stone, #5051,)	**MOTION TO ALTER OR AMEND**
Applicant,)	**THE JUDGMENT**
)	
vs.)	
)	
State of South Carolina,)	
Respondent.)	
)	

Pursuant to Rule 59, S.C. R. Civ. P., Applicant, Bobby Wayne Stone, respectfully moves this Court to alter or amend the judgment contained in the Court's Order Denying Post-Conviction Relief [hereafter, "The Order"], dated May 2, 2013. The Order contains a number of factual and legal errors and fails to address several arguments that Applicant advanced in support of his claims.

First, there is no support in the record for the Court's finding that Applicant's low intellectual functioning was thoroughly investigated and presented to the sentencing jury at trial. Order p.23. On the contrary, Ms. TeAnne Oehler erroneously testified at trial that Applicant "didn't have too much difficulty in school until about sixth grade" and stated that his academic record included no suggestion of possible mental retardation. 2005 ROA pp. 560, 579. Applicant's sentencing jury was not informed that he was repeatedly evaluated in school and found to have an IQ score as low as 69-75, which is in the mental retardation range, that he was determined by the school system to be educably mentally handicapped (i.e., mentally retarded) or that his academic achievement scores consistently indicated low intellectual functioning. *See* Applicant's Post-Hearing Brief at pp. 26-42.

Second, the Court's Order fails to adequately address Applicant's claim that his trial counsel were ineffective for failing to investigate and present evidence of brain damage. At the PCR hearing, Applicant presented *undisputed* evidence of brain damage, which included:

- The results of neuropsychological testing conducted by Dr. Jim Evans showing brain damage, including extremely low functioning in the left frontal lobe. Dr. Evans also ordered a Quantitative EEG, which likewise revealed damage to the frontal, left temporal, parietal and central areas of the brain.

- A report by Dr. Ruben Gur, admitted without objection from respondent, describing both structural and functional brain damage, as revealed by Dr. Gur's visual and quantitative analysis of an MRI and a PET scan of Applicant's brain.

- A report by Dr. Fred Bookstein, also admitted with respondent's consent, documenting damage to Applicant's corpus callosum – an area of the brain that regulates executive functions such as impulse control, judgment, moral reasoning and assessing the intentions of others.

- Applicant's school and medical records containing psychological evaluations, academic testing scores, and a history of head injury – which are all consistent with low intellectual functioning and brain dysfunction.

- Testimony from Dr. James Merikangas noting that a physical, neurological evaluation of Applicant revealed a number of findings consistent with brain damage.

Thus, every measure typically used to assess brain damage indicates that Applicant suffers from neurological damage. Respondent does not dispute this essential fact, nor can it be disputed on this record.

The cause or etiology of Applicant's brain damage, i.e., exposure to neurotoxins, maternal ingestion of alcohol, or something else, does not matter. The Supreme Court of the United States has noted as much. *See, e.g., Sears v. Upton*, 130 S.Ct. 3259, 3262 (2010) ("*Regardless of the cause of his brain damage*, [Sears'] scores on at least two standardized assessment tests placed him at or below the first percentile in several categories of cognitive function.") (emphasis added); *Porter v. McCollum*, 130 S.Ct. 447, 454-55 (2009) ("[T]he Constitution requires that 'the sentencer in capital cases must be permitted to consider any

relevant mitigating factor.'") (internal quotation omitted). Applicant's trial counsel had a duty to investigate the possibility of brain damage in general[1] and, particularly here, where they knew, or should have known, about multiple "red flags" pointing to the likelihood of brain damage.[2] Trial counsel presented no evidence of Applicant's low intellectual functioning and brain damage at trial. This error was clearly prejudicial.[3]

---

[1] *See, e.g.*, ABA Guidelines for the Appointment and Performance of Defense Council in Death Penalty Cases (2003) [hereafter "ABA Guidelines"], Commentary to Guideline 10.7 ("[c]ounsel's duty to investigate and present mitigating evidence is now well established" and includes an obligation to investigate, among other things: (1) "Medical history, including . . . **neurological damage**"; (2) "Family and social history, including . . . **cognitive impairments**"; and, (3) "Education history, including . . . special education, **cognitive limitations** and learning disabilities."); *see also, id.* (instructing counsel to carefully collect and review social history records because they "can contain a wealth of mitigating evidence, documenting or providing clues to childhood abuse, retardation, **brain damage**, and/or mental illness.") (emphasis added).

[2] Applicant's school records contained multiple references to academic failure, impaired intellectual functioning and indicators of brain damage. The school records of Applicant's siblings likewise indicated academic failure and intellectual deficits. Applicant's medical records documented a history of head injury. And, other social history information indicated that Applicant had a history of family chaos, violence, and trauma, as well as difficulty remembering dates and sequencing. Trial counsel's failure to investigate brain damage was deficient performance. *See, e.g., Sears,* 130 S.Ct. at 3263 ("Sears' history is replete with multiple head trauma, substance abuse and traumatic experiences of the type expected to lead to [brain damage and cognitive] impairments."); *Hooks v. Workman*, 689 F.3d 1148, 1205 (10th Cir. 2012) (holding trial counsel was ineffective for failing to investigate further even though defendant's history of head injury was a "clear marker[] for organic brain damage"); *Simmons v. State*, ___ So.3d ___, 2012 WL 4936109 at *25 (Fla. 2012) (finding deficient performance where trial counsel failed to investigate brain damage and stating "[b]ecause trial counsel were aware of the low IQ, special education, Simmons' limited oral, reading, and writing abilities, and his serious alcohol abuse, it appears they did not perform an adequate mitigation investigation into possible mental mitigation based on those circumstances").

[3] *See, e.g., Sears*, 130 S.Ct. at 3261 (2010) (holding evidence of frontal lobe damage was "significant mitigating evidence a constitutionally adequate investigation would have uncovered"); *Porter*, 130 S.Ct. at 454 (finding evidence of brain damage and cognitive deficits in reading, writing and memory were part of "'the kind of troubled history we have declared relevant to assessing a defendant's moral culpability.'") (quoting *Wiggins*, 539 U.S. at 535); *Rompilla v. Beard*, 545 U.S. 374, 392 (2005) (holding trial counsel was ineffective for failing to discover and present evidence of organic brain damage and significant impairments in several cognitive functions); *Tennard v. Dretke*, 542 U.S. 274, 287 (2004) (holding evidence of impaired intellectual functioning is inherently mitigating in the penalty phase of a capital case); *Wiggins*,

Third, the Court errs in finding that trial counsel was not deficient for failing to investigate Applicant's exposure to environmental neurotoxins because "defense experts did not report to trial counsel anything concerning exposure to contamination in and around Turkey Creek" and because Applicant himself never informed anyone as to these concerns. Order p.23. Neither Applicant himself, nor any of the experts trial counsel retained, are experts on issues of environmental toxin exposure. Additionally, contrary to this Court's findings, Applicant did offer specific testimony regarding when, where and how often he was exposed to Turkey Creek, along with evidence regarding specific levels of toxicity in the water at that particular time. *See, e.g.*, April 2012 PCR Tr. pp.23-25; *id.* at p.149; and Report of Dr. Shine. The Court's assertion that this evidence was "insufficient" unreasonably discounts "the effect that [this] testimony might have had on the [sentencing] jury." *Porter*, 130 S.Ct. at 455. It simply is not this Court's role when conducting the *Strickland* prejudice inquiry to speculate as to whether or not a jury would have credited available mitigating evidence that trial counsel unreasonably failed to present. *Id.*

Fourth, the Order misconstrues Applicant's claims regarding improper victim impact evidence. Applicant alleges that Ms. Kubala-Hanvey's testimony regarding her suicide attempt was improper because it: (a) served as the functional equivalent of her personal opinion about the crime, the defendant, or the appropriate sentence, in violation of *Booth v. Maryland*, 482 U.S. 496 (1987); (b) improperly went to the ultimate issue, which must be reserved for the jury. *See State v. Wise*, 359 S.C. 14, 27, 596 S.E.2d 475, 481 (2004); (c) inflamed the passions of the jury

---

539 U.S. at 535 (stating that a competent attorney, aware of the defendant's history of diminished mental capacities, among other things, would have introduced it in the capital sentencing proceeding); *Williams*, 529 U.S. at 398 (holding evidence of Williams' borderline mental retardation "might well have influenced the jury's appraisal of his moral culpability" and could have suggested that "his violent behavior was a compulsive reaction rather than the product of cold-blooded premediation").

and injected an arbitrary factor in violation of S.C. Code § 16-3-25(C)(1); (d) served as emotional blackmail and impermissibly portrayed the consequences of a potential life sentence as "additional victimization of the murder victim's family." *Sapp v. State*, 2006-CP-08-2204 (2009); (e) injected issues of appellate review into the jury's deliberations. *See, e.g., Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *State v. Tyner*, 273 S.C. 646, 659 (1979); and, (f) was so unduly prejudicial that it rendered the trial fundamentally unfair in violation of due process under the Fourteenth Amendment. These arguments are not "illogical," as the Court's Order asserts. Order p.16. On the contrary, the suicide attempt testimony was improper for multiple reasons, any one of which rendered its admission prejudicial. Appellate counsel, Joseph Savitz, described the problem this way:

> There are several problems with it. And, you know, I thought it was some of the worst possible testimony that I could imagine, that I certainly encountered in the time that I was at Appellate Defense. . . . I can't imagine anything more prejudicial than that or inadmissible. . . . [I]f I were on that jury, the option would only be to sentence him to death, knowing that you would probably prevent a victim's widow from killing herself and that the Supreme Court would review it to make sure that you had done the right thing. It gave the jury really only one choice to make, and that's why I thought it was so bad.

April 2012 PCR Tr. pp.186-188. The Court's Order does not squarely address these arguments. Instead, the Court merely asserts that the testimony was proper because "suicides are generally admissible victim impact evidence." Order p.16. However, there is no legal basis to support this conclusion. Neither the United States Supreme Court nor any court in South Carolina has ever held that suicides or suicide attempts are relevant, admissible victim impact evidence. For the same reasons, there is no legal support for this Court's determination that Applicant would not have prevailed in his appeal even if the issue was properly preserved. Order p.28. The South

Carolina Supreme Court certainly made no such ruling, even though the Court has often chosen to do so with other unpreserved issues on appeal.

The Court also erroneously relies on trial counsel's claim that he considered objecting to victim impact testimony presented by Captain Hobbs, but ultimately decided against it because "Judge King was being very liberal. . . . I mean I felt if he allowed in what Ms. Kubala said about her reaction to the appeal that he was probably going to allow this in." Order p.18. Trial counsel's asserted "strategic thinking" here is a classic example of "*post hoc* rationalization." *Wiggins v. Smith*, 539 U.S. 510, 526-27 (2003). Captain Hobbs served as the State's tenth witness and testified at the sentencing proceeding on the morning of February 23, 2005. 2005 ROA p.240. Ms. Kubala-Hanvey did not testify until the following day, when she served as the State's twenty-second, and nearly final, witness. 2005 ROA p.488.

Trial counsel's claim that he did not want to be perceived by the jury as "jumping up and objecting to everything" is likewise not credible. Trial counsel could have easily filed a motion *in limine*, as he did for other issues, to address objectionable material outside of the jury's presence. *See* 2005 ROA p.31; *see also*, *Dawkins v. State*, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001) (holding "the PCR court erred by finding counsel had valid strategy reasons for not objecting. . . . Counsel's failure to object because he did not want to confuse or upset the jury does not constitute sound trial strategy. To eliminate the possibility of confusing or upsetting the jury, counsel could have sought a determination . . . out of the hearing of the jury as he had previously done."); *Gallman v. State*, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992) (holding counsel's claim that "objections would give the jury the idea that something was being hidden" was not a valid strategic decision").

Fifth, on multiple occasions, the Order misapplies *Strickland v. Washington*, 466 U.S. 668 (1984), and other applicable legal standards. For example, the Order finds that trial counsel made several valid, strategic decisions not to raise certain objections because he did not think that the trial judge would sustain his objection. This is not a correct application of *Strickland. See, e.g., Matthews v. State*, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002) ("counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial."); *Jolly v. State*, 314 S.C. 17, 19, 443 S.E.2d 566, 568 (1994) (finding trial counsel ineffective for failing to object where trial counsel claimed he did not object because the trial judge previously had admitted the same testimony); ABA Guidelines, Commentary to Guideline 10.8 ("One of the most fundamental duties of an attorney defending a capital case is the preservation of any and all conceivable errors for each stage of appellate and post-conviction review."). Similarly, throughout the Order, the Court incorrectly states the *Strickland* prejudice standard as requiring Applicant to show that the result of the trial would have been different. *See, e.g.*, Order p.26.

Similarly, the Order mistakenly concludes that Applicant was not prejudiced by trial counsel's failure to raise a *Batson* challenge because "[t]he evidence of guilt in this case was completely overwhelming, especially given that Applicant was not entitled to an accident or involuntary manslaughter instruction. As a matter of law, a successful *Batson* motion would not have had a reasonable probability of a different result." Order p.12. This is not a correct statement of *Batson* and its progeny. *See, e.g., Batson v. Kentucky*, 476 U.S. 79 (1986); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Snyder v. Louisiana*, 552 U.S. 472 (2008). If the prosecution struck jurors because of their race, gender or ethnicity, then a new trial is required regardless of the strength of the evidence. Moreover, the Order dismisses Ground 10(A)(4) on the basis that

"Applicant presented no evidence to show that the presence of law enforcement in the courtroom had any effect on the jury." This cannot be the correct prejudice standard since any evidence Applicant sought to offer through jury testimony would have been inadmissible. *See* S.C. Rule of Evid. 606(b) (jurors cannot testify as to their internal deliberations).

Finally, the Order contains a variety of other factual findings and legal conclusions that are not supported by the record. For example:

- Mary Ruth McLeod did not testify at trial that she told Applicant that she was going to call law enforcement. *See* Order p.2.

- There is no support for the Court's conclusion that it was beyond Mr. Hill's expertise for him to testify that there is a greater chance of unintentional discharge when a person handling a gun is intoxicated. *See* Order p.9. At the PCR hearing, Mr. Hill was qualified as an expert in both firearms and crime scene investigation. He described his personal experience being around intoxicated firearms users, his work on policies for law enforcement, and his involvement with the NRA and knowledge of its alcohol policies. He testified regarding the effects of alcohol without objection from respondent. April 2012 PCR Tr. pp. 210-214. Moreover, respondent's own witness, Ira Parnell, also offered testimony on this same issue without objection. *Id.* at p. 369. It is an abuse of discretion for this Court to now find this testimony improper without objection or argument from either party.

- Contrary to this Court's assertions, Ira Parnell did not testify at trial that "the shots could have been fired by accident." Order p.9. Similarly, the Court's conclusion that "[a]ll of the facts favorable to the defense were established [at trial] through the testimony of agent Ira Parnell," Order p.10, is not supported by the record. *See* 1997 ROA pp.643-77; 2005 ROA pp.431-56; April 2012 PCR Tr. pp.189-245.

- The Court errs in denying Applicant's claims on the basis that a crime scene expert could not conclusively testify that the shooting was accidental. Order p.10. The Order misconstrues Applicant's claim. Applicant has not argued that trial counsel should have called an expert witness to decisively claim that the shooting was an accident. Rather, Applicant argues that trial counsel was ineffective for failing to "reasonably investigate, implement and support their chosen trial strategy." Applicant's Post-Hearing Brief at p.14. Trial counsel chose to argue an accident theory at trial, but did nothing to implement this strategy other than cross-examination of the State's witnesses. Trial counsel was not required to conclusively prove accident, and expert testimony that the evidence was consistent with Applicant's version of the events would have significantly strengthened the defense theory. Moreover, the Court's description of the events of the crime draws heavily from respondent's brief and represents an exaggerated and highly one-sided, state-favorable view of the evidence. Order p.10. If the jury had heard expert

testimony like that presented at the PCR hearing, combined with a closing argument that connected the known facts to the defense theory, there is a reasonable probability that the jury's answer to the "ambush v. accident" question would have been different.

- The Order further finds that Applicant was not prejudiced by trial counsel's failure to support their accident theory since "Applicant was not entitled to a jury charge on involuntary manslaughter or accident." Order p.10. However, even if this is true, an accident theory was also relevant to the sentencing phase and the jury's acceptance of such a theory would have been far more mitigating than the State's alleged "ambush" theory of the crime.

- Next, the Court errs in relying on testimony from Jim Babb to support its conclusion that "the presence of uniformed law enforcement officers [at Applicant's trial] was not much different from other criminal trials." Order p.13. At the PCR hearing, Mr. Babb testified that "[t]he security was heavier than usual. In other words, there were more officers physically present in the courtroom. And then, of course you had many witnesses who would be law enforcement officers. . . . But there were more than normal. . . . So we had more than normal. . . . At least double.". April 2012 PCR Tr. pp.283-284.

- The Court likewise errs in finding that "Te Anne Oehler did a superlative job in investigating the mitigation phase of this case," Order p.25, since Ms. Oehler did not serve as an investigator at either of Applicant's trials and relied on materials that were given to her by the defense team.

For all of the reasons discussed above, Applicant respectfully requests that the Court vacate its May 2, 2013 Order, re-examine the issues in light of the totality of the record evidence and governing law, and prepare a new order addressing the merits of Applicant's claims, and granting post-conviction relief.

Respectfully submitted,

JOHN H. BLUME
Blume, Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
john@blumelaw.com
(803) 765-1044

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
emily@deathpenaltyresource.org
(803) 765-1044

By: Emily C. Paavola
Counsel for Applicant

May 9, 2013

RECORDED
2013MAY 10 PM 1:55
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	CA No. 08-CP-43-905
BOBBY WAYNE STONE, SK 5051)	
Applicant,)	
)	
)	CERTIFICATE OF SERVICE
v.)	
)	
THE STATE OF SOUTH CAROLINA.)	
Respondent.)	

The undersigned hereby certifies that a copy of Applicant's Motion to Alter or Amend the Judgment was served by first class United States mail, postage prepaid, this 9th day of May, 2013, upon the following:

Alphonso Simon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

Jill A. Rider

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF SUMTER	)	
Bobby W. Stone	)	C/A No. 2008-CP-43-00905
Applicant,	)	**RESPONDENT'S MOTION TO ALTER OR**
v.	)	**AMEND JUDGMENT PURSUANT TO RULE**
	)	**59(e), SCRCP**
The State of South Carolina,	)	
	)	
	)	**(Capital Case)**
Respondent.	)	

Comes now Respondent, above named, by and through the Office of the South Carolina Attorney General, and pursuant to Rule 59(e), SCRCP, hereby moves to alter or amend this Court's Order denying post-conviction in this case filed on May 2, 2013. Counsel for Respondent received written notice of entry of the judgment from the Sumter County Clerk of Court on May 6, 2013. Respondent would respectfully request this Court amend the Order as follows:

1. On page 9-10 of the Order, this Court states as follows:

> The legitimate factual disputes were established by the State's witness, agent Ira Parnell. SLED agent Ira Parnell did testify at trial and concluded as follows:
>
> 1. The trigger pull was fairly light.
> 2. One would have to pull the trigger three times to discharge three bullets.
> 3. The shots could have been fired by accident.
> 4. The bullet patterns were consistent with the Applicant not standing fully erect.

Respondent submits this section of the Order should be amended in one of two ways. If this Court is referring to Agent Parnell's testimony at the PCR evidentiary hearing, Respondent submits that the third numbered sentence should be amended to

state "The shots could not have been fired by accident." At the PCR evidentiary hearing, Agent Parnell maintained that the shots could not have been fired accidentally. (1st Tr. 366). He noted the pattern was too precise, too closely grouped, and close together to be done by accident. (1st Tr. 366-67). If the Court is referring to Agent Parnell's testimony during the guilt phase of Applicant's first trial, Respondent submits the Order should be amended by striking numbered sentences 3 and 4.

2. On page 26 of the Order, in addressing Applicant's claim 10(b)(7), in paragraphs numbered 1 and 5, the order indicates that trial counsel retained Wayne Hill. Respondent respectfully requests the Order be amended to reflect that trial counsel retained and elected not to call Donald Girndt. As was noted by this Court on page 10 of the Order, Mr. Girndt was the expert with whom trial counsel consulted and decided not to call as a witness.

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court Alter or Amend the Order.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
(Counsel of Record)

ALPHONSO SIMON, JR.
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: _____
ALPHONSO SIMON JR.
(Bar No. 74713)

May 16, 2013.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)
Bobby Wayne Stone,	) C/A No. 2008-CP-43-00905
Applicant,	)
v.	) **CERTIFICATE OF SERVICE**
The State of South Carolina,	) (Capital Case)
Respondent.	)

I, Alphonso Simon, Jr., do hereby certify that on this date, I served the Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP in the foregoing action on the attorneys for the Applicant, by depositing one copy of the same in the United States mail, first-class postage prepaid, and addressed as follows:

John H. Blume, Esq.
Blume, Norris,& Franklin-Best, LLC
900 Elmwood Ave., Ste. #101
Columbia, SC 29201

Emily C. Paavola, Esq.
Death Penalty Resource & Defense Ctr.
900 Elmwood Ave., Ste. #101
Columbia, SC 29201

This 16th day of May, 2013.

ALPHONSO SIMON, JR.
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2008-CP-43-905
	)	
BOBBY WAYNE STONE,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

August 2, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge

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

JOHN H. BLUME III, Esquire
EMILY C. PAAVOLA, Esquire
Attorneys for the Plaintiff

DONALD ZELENKA, Esquire
ALPHONSO SIMON, JR., Esquire
Attorneys for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Motion to Alter or Amend Order	3
Court Reporter Certification	33

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
(No Exhibits Presented)			

AUGUST 2, 2013

(WHEREAS this matter was scheduled for a motion hearing, the plaintiff appeared along with his counsel of record. The defendant appeared through counsel of record. The hearing began at 2:14 p.m.)

THE COURT: All right. Mr. Blume, you're recognized. It's good to have you down. I think probably the better way to do it would be to -- for us to look at your motion and to take them as sequentially as we can and rather than going through and doing -- doing it in a summary fashion, let's just do it one at a time and we'll hear from the attorney general on each. Does that sound all right?

MR. BLUME: However Your Honor -- however Your Honor would like to proceed.

THE COURT: All right. Mr. Blume, you're recognized.

MR. BLUME: Yes, Your Honor. We're here today as you just indicated in connection with our motion to alter or amend the judgment which was filed after you entered the order denying post-conviction relief in this case. In the motion, we set out several reasons which we think -- or a number of reasons which we think, you know, the opinion should be at least amended and, obviously, we ask the Court to reconsider its decision and to grant post-conviction relief.

So going in order, which I think is what you indicated you wanted to do from working from the front of the motion to

the back, our first I guess quibble with the Court's order is in the finding that Mr. Stone's low intellectual functioning was thoroughly presented to the sentencing jury at trial and that we submit is not accurate. That Ms. Ayler, who was the primary witness who testified to this, in fact, didn't have Mr. Stone's school records and I have a complete set of his school records and she didn't have the critical record which indicated that he had an IQ in the mental retardation range and he had been found by the school system in Sumter County to be what was called educable mentally handicapped or what we would now today call intellectually disabled or mentally retarded.

And so that evidence actually did not get to the jury and so we suggest also that if it had been presented to the jury that it would have made or could have made a reasonable probability that the outcome would have been different. So that is really the first point in our motion.

THE COURT: All right. I'll be glad to hear from the State at this time.

MR. SIMON: Your Honor, our response to that -- I guess when we looked at that claim, we viewed it as being both an investigation and a presentation claim. To the extent that they would have argued that the investigation was not complete or was not reasonable by counsel, we submit that the counsel and the -- Ms. Ayler did have the -- the evidence regarding

the ID [sic.] testing. You can -- we know that from looking at the trial transcript from the first trial and the first sentencing phase.

In that, she testified about there -- how his IQ score went down when eleven to fourteen. She talked about how he always had low IQ scores and she indicated that he had been diagnosed with learning disability in the area of verbal expression and language comprehension.

In terms of the presentation, now it is true that counsel did not present as much information regarding the low intellectual functioning in the second trial as they had done in the first trial. Ms. Ayler did testify that the applicant was in resource classes and that he had difficulties concentrating in school. She didn't get into the -- I guess the -- his IQ scores, but the State submits that in light of what trial counsel's general theme of their case and in light of the fact that they did have the information that their presentation was reasonable.

THE COURT: Very good. All right. Well, I'll take that under consideration and, Mr. Blume, you're recognized.

MR. BLUME: Yes, Your Honor. The second major point in the motion to alter or amend the judgment has to do with evidence or the failure to present evidence of Mr. Stone's neurological impairments and in that capacity we submit at least on the issue of whether he has a neurological

impairment, whether he has brain damage, that the evidence on that is undisputed and it came from a variety of sources. While the order deals primarily with Dr. Merikangas's testimony, who was the live witness who was called at the hearing, there are a number of other either opinions or evidence of neurological impairment.

There is Jim Evans' neuropsychological test data, which was admitted without objection. There was the report of Dr. Ruben Gur detailing various neuro-imaging studies, an MRI and a PET scan, which was admitted into evidence without objection. There is the report of Dr. Bookstein indicating damage to the corpus callosum, which was admitted without objection. And then are a number of indicia of this going back into his youth and childhood from his school records, including impairments on the -- on various Bender-Gestalts and other tests which look for brain damage. And then, of course, that was Dr. Merikangas's testimony.

So, you know, at -- at the hearing there was some dispute about the accuracy or the etiology at the hearing. In other words, what caused it? Was it caused by maternal ingested alcohol in which there was disputed evidence about whether his mother drank or not. There was really I think undisputed evidence that he lived and grew up in an area which was polluted by neurotoxins or whether it was some other cause.

But I think that misses the point in some ways. That

it's not the cause of the brain damage that matters, but the fact that he has it. And the Supreme Court of the United States has recognized this in Porter v. McCollum and other decisions which says regardless of the cause, it is the fact. And so we submit that the fact is really undisputed in this case and that is a reason that -- and it wasn't presented to the jury and that's a reason relief should be granted.

THE COURT: All right. Mr. Simon?

MR. SIMON: Your Honor, in response to that part of their motion, the State notes that -- that the problem in looking at the claim as they have outlined it just that counsel is ineffective for not finding brain damage is counsel -- based off the information that they had, they didn't have a reason to go so far as to do the testing that was done in preparation for the PCR to find any evidence of brain damage.

As was noted by the Court in dealing with some of the other issues, first with the environmental toxins issue, at no point in time did any of the investigators that counsel hired or did counsel ever receive any information to reflect the applicant had -- had any contact with Turkey Creek or that he swam in Turkey Creek. So they didn't have any -- I mean without having that, they didn't have any reason to look for any kind of brain damage based off of there being environmental toxins.

Further, in looking at the -- I guess at the hearing the

evidence that was presented regarding fetal alcohol syndrome or fetal alcohol spectrum disorder, again there was affirmative evidence that counsel had that indicated that the applicant's mother did not drink and they didn't have any evidence that would support them looking into whether or not he suffered from fetal alcohol syndrome which would have led them to do more investigation into looking for brain damage. They didn't have that and so they didn't have any reason to look for brain damage based off of that. In looking back ---

THE COURT: What do you think about his point that it really doesn't make any difference what caused it, but the fact that he has brain damage? What do you think about that?

MR. SIMON: Your Honor, I would submit that for counsel to look for brain damage, it has to have a -- counsel needs to have a reason to think that there is brain damage.

THE COURT: I think what Mr. Blume is saying is that -- is that he's got brain damage and it doesn't make any difference what it came from or whether or not it was presented in the first trial. The fact of the matter is has it. How do you deal with that?

MR. SIMON: Your Honor, the State submits that for counsel to go so far as to -- to look for brain damage, it needs to have something to lead it to look for brain damage.

THE COURT: Okay.

MR. SIMON: And based off of the information that counsel

had and based off of the information that they had received from the expert that they had retained from -- in both cases and counsel testified that none indicated that they should do any further investigation into that. Basically, counsel needs to have a reason to look for the brain damage and that wasn't set forth in this case. They didn't have that information.

THE COURT: You can see that he's got brain damage?

MR. SIMON: We would say that some of the information that the -- I guess information that was relied on in establishing that -- the claim that he has brain damage, some of that we would believe is questionable. First, if you look at Dr. Bookstein's report, even Dr. Merikangas acknowledged that for 2006 that wasn't -- his science -- well, what he does was not something that was recognized as being reliable. There have been questions raised about Dr. Gur's work in other cases.

And also as this Court found, Dr. Merikangas -- his methodology in making his assessments was questionable to some extent. So we believe that it's still questionable whether they met the burden of establishing that he does suffer from brain damage.

THE COURT: Very good. All right. Mr. Blume?

MR. BLUME: Yes. I would just say two quick things in response and then move on to the next claim. One is, is we set out in footnote 2 of the motion and in our brief there are

multiple indications in the school records and elsewhere that Mr. Stone has brain damage. And second, we -- I would just observe that again the evidence is undisputed. It is what was presented to this Court that he, in fact, has brain damage and no contrary evidence was presented.

So the next point in the -- in the motion to alter or amend the judgment has to do with the testimony from Mr. Kubala's widow that she -- after learning of the South Carolina Supreme Court's appellate reversal of Mr. Stone's first death sentence that she attempted suicide. And really this goes to two different claims that we made. One was ineffective assistance of trial counsel for failure to adequately object and the second was ineffective assistance of appellate counsel for failure to adequately brief and raise the claim.

As the Court I'm sure recalls, but just to put it in context is there was an objection at trial by Mr. Littlejohn. The objection was overruled and then the issue was briefed on appeal by Mr. Savitz and the South Carolina Supreme Court found that the objection which was made did not correspond to the appellate argument and thus found the claim to be procedurally defaulted or not preserved for appellate review. And so given that, we felt like we had to plead it on both ends in order to, you know, avoid somehow being, you know, whip-sawed for not raising the right claims and it's hard to

know how to do these things.

So -- but that's the underlying legal error we submit is -- is that. And on that point, the order finds that suicide or attempt -- suicide attempts is relevant and admissible victim impact testimony. And that's really I think the crux of the ruling is that there was no deficient performance and particularly no prejudice because this would have been admissible even had there been a proper objection and there would have been no appellate reversal had there been the correct argument made.

And on that, I mean we would just simply note that, number one, there are no South Carolina Supreme Court cases and there is no Supreme Court of the United States decision saying that suicide or suicide attempt is relevant and admissible victim impact evidence. There are no cases saying that and, in fact ---

THE COURT: This might be one.

MR. BLUME: Pardon me?

THE COURT: This might be the first.

MR. BLUME: It's -- I mean it's possible I mean, but then we would also say there are only a small smattering, a few cases that are cited by the Attorney General's Office. Those are the only ones we could find, too, that say that suicide can be victim impact evidence or suicide attempts.

And, number one, they're all old. I think that the most

recent one is from 2000 as I recall. So it's at least thirteen years old. And, two, they're in very different sort of context. I mean one of them had to do with Timothy McVeigh and Oklahoma City, which we submit is an event of different magnitude.

But I think the most important legal point is that none of those cases had to do with a suicide attempt which was triggered by an appellate reversal. You know, it had to do with some -- it's -- it's an artifact of the incident itself. And in this case, I think the -- the testimony was clear that it was sparked by the State Supreme Court's reversal of Mr. Stone's sentence and the idea that there would have to be a new sentencing proceeding. And that I think is what makes this extraordinarily prejudicial and I think Mr. Savitz actually very succinctly laid this out in his testimony as to why he felt it was so prejudicial.

So I think the gravamen of our point here is that the suicide evidence -- attempt evidence in this case is not relevant and admissible victim impact evidence and it's not as if people weren't trying to object to it. They were. They just didn't make, quote, the right objection the appellate argument was.

And so, you know, if this is not admissible victim impact evidence, and we submit it is, it has to be an error on one lawyer or the other. It can't be that Mr. Stone's claim falls

into some type of legal purgatory and that's the -- the gravamen of the position.

THE COURT: Very good. Very well put. All right. Mr. Simon?

MR. SIMON: Your Honor, we believe that the -- the way that the Court addressed the issue in the order was the proper way to address it. First, we agree with the Court that the admission of the -- that statement -- I guess that testimony regarding the suicide attempt was admissible as victim impact testimony.

If you look at the testimony in the context of the widow's full statement at that time, her full testimony, basically she is saying that when she learned -- and basically when it comes back to her hearing about the case again, at that moment when -- it took her back to the murder and in the context of looking at like -- at I guess the suicide attempt arrived from looking at all the things that she had -- kind of had going at that time, but it's the memory of losing her husband is what brought to -- led to that attempt and the focus of it was not on the fact that the first trial had been -- I guess it stems from the fact that the first trial had been reversed. I mean that's -- in a sense, it's the fact that, you know, she hears -- she hears a recording and it takes her back to that feeling and that, as the Court found, is proper testimony.

We believe that in light of the fact that it was proper testimony as the Court did find, that trial counsel couldn't be found ineffective because the -- any objection that they would have made regarding the admissibility of the testimony, that would have been -- would have been denied by the trial court. And appellate counsel also couldn't have been found ineffective because while he did not brief the argument that was raised -- well, if he would have briefed the argument that has been presented in PCR, it would have been unsuccessful on appeal.

In looking at some of the specific arguments they made in the motion, we would just submit that the -- there's no indication from her testimony of what she believed an appropriate sentence would be and it couldn't be extrapolated what she believed the appropriate sentence should be from that very limited testimony. If you remember, the discussion about the suicide attempt only covers about two or three lines in the full transcript. It's never mentioned again by the State or by the defense. It's something that -- it's mentioned that one time and it never comes up again.

The State didn't attempt to make any arguments based off of her -- her talking about the suicide attempt and didn't attempt to try to use it as an example of what would happen if they -- if the jury sentenced the applicant to life. And quite simply, it didn't inject appellate review into the

jury's deliberations.

This is not a Caldwell issue. It's just a discussion about a simple statement and we believe the way that the Court handled it in the order was proper and to that the extent that they moved to amend on that, we request that the Court deny.

THE COURT: All right. Mr. Blume?

MR. BLUME: Yes, Your Honor. So the -- the next point is -- in the motion is related to but distinct from the point that we just discussed and it -- because it has to do with victim impact evidence but a different type of victim impact evidence. And the Court I think is aware from the briefing and the petition that we alleged that the victim impact evidence in this case, especially the effect on law enforcement, exceeded that which is permitted by the Eighth Amendment, the due process clause in the Supreme Court's decision in Payne v. Tennessee.

And on this point, the Court found that counsel was not deficient in failing to object for two reasons and that's really I think the essence of the -- of at least the Rule 59(e) motion this morning. The first reason was -- and Mr. Littlejohn testified to this, not that the Court didn't accurately reflect what he said. He said, well, I didn't want to, you know, appear to be objecting and up and down in front of the jury. I didn't want the jury ----

THE COURT: He thought it wouldn't be effective if he

were to object and it might -- the jury might adversely draw an adverse inference that he was trying to hide something ---

MR. BLUME: Correct.

THE COURT: --- and being difficult.

MR. BLUME: Right. That -- that was his testimony.

THE COURT: Right.

MR. BLUME: And it's clear that was the testimony. And then second, you know, he said, well, you know, truthfully the other reason I didn't object was, you know, after he allowed the widow's testimony, I felt like he was being pretty liberal. So I just didn't think he would sustain the objection if I had made it.

So -- and so what we would -- our argument here in the motion or that we make again today is -- well, the first point, yes, I can understand why he wouldn't want to object, unnecessarily be jumping up and down in front of the jury. I mean I can understand that. I've tried cases. You know, I know that you don't want to give that impression.

But the other side of it is that's how it's handled by -- that's why you do a motion in limine, you know, and that's how many things like this are handled. I mean he had another avenue to test the admissibility of this evidence available to him which would not have brought into play the fear he was concerned about. He could have filed a motion in limine and had this, you know, resolved outside the presence of the jury,

which is how things like this are handled. I'm sure it happens in Your Honor's courtroom lots of times that lawyers involved, you know, do a motion in limine to preclude something. So we submit that that's not a legitimate strategic reason.

And the second one, whether the judge would have allowed it or not, again I don't think that is necessarily a legitimate strategic reason, you know, either. Counsel has an obligation to preserve the record for appeal and, as you know, the South Carolina Supreme Court takes the contemporaneous objection rule very seriously and they find claims defaulted or waived all the time because there was not the proper objection made at the right time.

And so under the ABA guidelines and other -- and even the South Carolina Supreme Courts recognize counsel has an obligation to preserve the record. We submit it could have been done in this case in a manner that would not have brought into play the fears and concerns expressed by Mr. Littlejohn and that's the reason we submit that the motion should be -- the order should be altered or amended on that basis.

THE COURT: That is sort of a difficult position to be in because obviously trial counsel is trying to win it outright before the jury and the more objections and the more -- as trial counsel mentioned, the more jumping up and down you do, it kind of takes away from the ability to win. Wouldn't you

agree?

MR. BLUME: No. I mean I think that you -- clearly, I mean I think any lawyer is trying to win, you know, the case at trial. I mean it would be foolish to say that, you know, you're not trying to win. And in a capital case, I mean the best way to make sure a client stays off death row is not to let him get there in the first place, Your Honor, rather than trying to work it backwards through the appellate system. So I mean I understand the concern. I think our point is, yes, but that's -- that was not the only option available to him.

THE COURT: You're saying it should have been done in the motion in limine and that would ---

MR. BLUME: It could have been done in limine. His concerns would have been allayed. There would have been no -- you know, he wouldn't have been objecting in front of the jury and, number two, the issue would have been preserved for appeal. And that's really the long and short of it.

THE COURT: All right. Mr. Simon?

MR. SIMON: Your Honor, the State submits that, again, the Court's order in dealing with this claim -- we submit that the dismissal of this claim was proper. First, I guess in looking at how the Court addressed the first issue, you talked about how the counsel gave a strategic reason in not wanting to look like they were hiding the ball or anything and then further went on to find that the testimony that the applicant

is now saying should have been objected to was admissible testimony and we believe that that stands true.

And the fact the testimony that was given by Captain Hobbs was admissible, I mean we're talking about someone who was Kubala's dear friend. He was the one to break the news to the widow and he was talking about how the I guess impact of the -- the death of his friend, what impact that had on him and also to a small extent what kind of impact it had on the Sheriff's Department. In light of the fact that it was admissible, counsel cannot be deficient for not objecting to it because the -- any objection that counsel would have made would have been denied and even if it was preserved for appeal, it wouldn't have been -- it wouldn't have been meritorious on appeal.

Now, there is -- and I guess I don't know how the Court would like to address it. I know that there is some concern about the -- that was raised in the motion about the timing of when the witnesses testified, I guess Captain Hobbs as opposed to the widow and counsel's explanation for that, but we believe that the counsel's explanation that he didn't want to appear that he was trying to hide anything from the jury still stands, but we further believe that the motion to that extent should be denied.

THE COURT: Very good. Mr. Blume?

MR. BLUME: Yes. What Mr. -- just to briefly tie it up,

it was a little vague I think in Mr. Simon's reply. What he's referring to is that Mr. Littlejohn testified that, well, based upon the fact that the judge allowed the widow to testify and what he thought was sort of more -- was more harmful than what Mr. Hobbs is going to testify to, that that was a reason he didn't object. And the problem with that is the reason that that's not the order in which it happened. In fact, Mr. Hobbs testified before and so that couldn't have been the basis of it.

The next claim or issue on the -- in the motion to alter or amend the judgment has to do with the contention that counsel unreasonably failed to raise a Batson objection at the time of the trial and the order finds -- rules against this claim on multiple grounds, but one of which is that the -- it wasn't prejudicial to do so because the evidence against Mr. Stone was so strong he would have been convicted anyway regardless of the -- the jury -- characteristics of the jury. And on that, we submit that that is legally incorrect in that a Batson claim is a -- has been deemed by the Supreme Court to be a structural error not subject to harmless error review and so we would just offer that as a motion to -- a basis to amend the order.

MR. SIMON: Your Honor, to the extent that they want to strike that language about the overwhelming evidence of guilt in dealing with the Batson claim, we would agree that that

should probably be done.

THE COURT: All right. Where is -- where is that in the order?

MR. SIMON: That is ---

MR. BLUME: Page 12, Your Honor. Your Honor, it's the paragraph that's right above where it says 10(a)(4), failure to object to presence of officers. It's the second paragraph above that.

THE COURT: Yeah.

MR. BLUME: It's the language that we're talking about.

(Whereupon, there is a pause in the proceedings.)

THE COURT: All right.

MR. SIMON: Your Honor, just to -- to add just a little bit to that, we just want to note for the record that even in striking out that -- that paragraph, that the Court still denies relief on the claim because the Court did find that counsel gave a valid strategic reason for not making the motion and also that any such motion would not have been successful based off of the testimony that was presented at the PCR hearing and -- and those determinations were -- were proper Sixth Amendment determinations.

THE COURT: Very good. Mr. Blume?

MR. BLUME: Yes, Your Honor. So I think finally for the final issue in here is that there -- in the -- on page 8 and 9 of the motion to alter or amend, we raise a number of small

points about the -- the -- the Court's rejection of Mr. Stone's claim that trial counsel was ineffective for failing to present the testimony of a homicide reconstructionist, a person along the lines of Mr. Hill. And I think it probably would be easier rather than sort of going through each one to talk about it a little more globally in that because I think that some of this turns on -- I don't know exactly how to phrase it. I mean whether we didn't put the claim right or, you know, the Court misconstrued the essence of our claim.

But it had to do with the fact that the Court rejected the claim primarily on the basis that, well, Mr. Hill nor any other expert could say conclusively that what happened because there were -- you know, there were no eyewitnesses as to the incident and so there was only -- there was circumstantial evidence about this.

And -- and at trials, the Court knows there were really two competing theories of what happened I mean and they were in stark contrast to one another. The prosecution's theory was that Mr. Stone ambushed Mr. Kubala as he came around the house and killed him, and the defense theory was no, that Mr. Stone was drunk, he had a gun with a light trigger pull, and he turned toward the sound when Officer Kubala said halt.

And so the testimony at the PCR hearing from Mr. Hill really was to the effect -- and he admitted in court and he said no, he couldn't say definitively what happened, no one

can, but what he testified to and what we think would have been very persuasive to a jury at the trial was that Mr. Stone's version of what happened was more consistent with the physical evidence than was the ambush theory.

And what Mr. Hill testified to and he put together was the fact that, look, this was a dangerous gun with an extraordinarily light trigger pull and there's really -- and it could fire very easily. As the Court remembers, you not only asked that, but we asked the Court to see the gun and to actually feel the trigger pull because it's so easy to fire. And that in the hands of an intoxicated person not skilled with this type of weapon who was in the dark, which this happened in the dark, and is startled, that people get shot that way and that it can happen.

And so it wasn't really that -- you know, we agreed that he couldn't testify it was more likely than not, but that's not the essence of the claim and we think that that would have been very powerful in supporting the defense theory of the case. The defense had a theory that he tried to -- to achieve it through cross examination and so it's not -- we're not quibbling that they chose the wrong theory; we think they chose the right one. We think they chose what happened, but it wasn't adequately supported by readily available expert testimony.

And we think that when you look at it all, you take Mr.

Hill's testimony as a whole, it would have supported Mr. Stone's consistent story that he didn't mean -- he didn't intentionally shoot somebody. We think that is consistent with the evidence because as Mr. Hill pointed out not only things about the gun, but the testimony itself at trial was there was beating on the door, beating on the door constantly right up until the moment that Officer Kubala said halt and then immediately shots were fired and that's not consistent with somebody sitting there waiting for someone to come. It's more consistent with Mr. Stone's version that he turned toward the sound and the gun went off.

And so there -- you know, several -- several of the findings we -- we point out in the motion really go to that, but I think that's the essence of the claim that we submit, and we don't think that we had to show or call expert testimony that -- you know, that Mr. Stone's version of it is the only way it could have happened, but just that it was not contradicted by the overall weight of the physical evidence with the exception of the number of shots fired, and that Mr. Hill's testimony was that his version of an accident was more consistent than an ambush. And I think that's the essence of the claim.

THE COURT: Very good. Mr. Simon?

MR. SIMON: First in response to that, we would note that in dealing with the issue in the order, Your Honor notes that

counsel did retain a crime scene expert. Their crime scene expert did not give -- he provided -- based off what counsel testified to, the information he provided was different from what Mr. Hill provided at the hearing. Based off the information that counsel received from their expert, Donald Gerndt, they determined that he could not testify to saying that it would be more likely than not or give any -- basically, that his testimony would not be of any more assistance in showing their version of what occurred as opposed to just doing what they did at trial, which was to cross examine the State's witnesses to establish their theory of the case.

And the fact that Mr. Hill gave different testimony from the information that they were receiving from their expert, that doesn't mean that they are entitled to relief upon the claim. They had their expert. He is a good expert and he is one that they have relied on before. At least if I recall correctly, they indicated that he was somebody that they had relied on before. He was someone who also had experience with working at SLED and he just basically did not support -- if I recall correctly the way counsel testified, he did not believe that his testimony would have -- would have helped them moving forward the defense theory on that. And in light of that, we believe that the Court's denial of relief upon the claim was proper.

Furthermore, in the motion they point out that the Court in dealing with the issue of the crime scene experts that they point out -- that the order points out that Mr. Hill -- that basically that they challenged the fact that the Court finds that Mr. Hill's testimony regarding the use of a firearm by someone who is intoxicated and also the -- Mr. Hill's testimony regarding whether or not you can tell if a shot was accidental, they found that the Court has -- basically, in finding that his -- his -- giving his expert opinion, he goes beyond his -- the area of his expertise, that that was improper.

We would just submit that in -- in post-conviction relief, the Court is serving both as the -- it's also serving at the fact finder and it was completely within the Court's or Your Honor's realm in deciding what evidence to -- to accept or reject in whole or in part just because you are serving as the fact finder and that those findings were proper in light of that.

THE COURT: All right.

MR. SIMON: And -- and for those reasons we believe that the -- the motion should be denied to that extent.

THE COURT: Mr. Blume?

MR. BLUME: Yes. I just have a few quick things in reply on this. I think this was the final point in the motion.

Number one, I don't know that -- I don't construe the

testimony as being that Mr. Hill's testimony was somehow inconsistent with that of Mr. Gerndt. They testified Mr. Gerndt said yes, you know, either way it could have happened.

But I think that the -- the more relevant point is Mr. Gerndt is not a homicide reconstruction expert and that's really what was needed I think in this case. He does have -- he did work for SLED. He does have some expertise in some particular disciplines, fingerprints, trace evidence, and that sort of thing, but he's not a homicide reconstruction expert.

On the point that Mr. Simon raised about our objection to the Court finding that Mr. Hill couldn't testify to the effects of intoxication on someone with a gun, we submit that was wrong for two reasons, the first of which is there was no objection to this at the time of the hearing. Mr. Hill testified without objection by the attorney general about the effects of that.

But more fundamentally, we also submit that that's proper testimony. He testified about his experience in dealing with people who were intoxicated. As a police officer, he has experience in dealing with people who are intoxicated and discharge a weapon, his review of the studies of the incidents of people who are intoxicated and how they discharge weapons. So we think he had a legitimate basis as an expert to opine on that and any objection that would have been made would have been improperly sustained.

And I believe that really sort of -- or those are the contentions which are in the motion and which are now before the Court on the motion to alter or amend the judgment.

THE COURT: Very good. Would you like to say anything, Mr. Simon?

MR. SIMON: Yes, Your Honor. There were a few other matters that were addressed in the -- the motion that we just want to make -- I guess just set forth like the State's position on those on the record.

THE COURT: All right.

MR. SIMON: First, there was -- I believe it's on ---

THE COURT: Was it set forth in your motion to amend the order what you're talking about?

MR. SIMON: Well, there are -- there are a few issues that they also raised as I guess bullet points in their motion.

THE COURT: Right.

MR. SIMON: And also in addressing one of those, it was -- I guess goes to the motion that the State filed. One of the issues was in regards to the -- the Court's use of -- I guess in determining prejudice on a couple of the issues, the applicant had asserted that the Court in giving the standard had stated that the -- in -- in making the finding, the Court said the applicant did not show that the result at trial would not have been different and we would just want to note for the

record that in looking at -- at those claims, we believe that it's -- I guess it's unclear if in -- in saying that if the Court is saying that -- I guess applying as outlined in Strickland that the -- in making those findings that it was you're finding it to a reasonable probability or -- yeah, a reasonable probability that the result at trial would have been different or if you were holding or saying to a higher standard just saying that the result at trial would not have been different. But we just believe that that can just be -- that if Your Honor could clarify that in the order, that that would address that issue.

Also, they have raised an issue regarding Art Parnell's testimony in the order on page 9 of where the Court indicates that the shots could have been fired by accident. In the State's motion, we set forth the -- we agree that that statement was not reflective of Art Parnell's testimony, but in the State's motion, we had made a couple of suggestions of how the Court may want to handle that issue.

THE COURT: Very good. And I -- I've noted that. Very good.

MR. SIMON: And also, I guess just -- just to kind of stay on the State's motion, there was a reference on page 26 in addressing claim 10(b)(7). It indicates that trial counsel had retained Wayne Hill and as the Court had noted earlier in the order that trial counsel had retained Donald Gerndt.

THE COURT: Right.

MR. SIMON: And we just request that that be ---

THE COURT: Yes.

MR. SIMON: --- that be amended.

THE COURT: All right.

MR. SIMON: And if I could just beg the Court's indulgence for just a minute.

MR. BLUME: The Court's indulgence.

(Whereupon, there is a pause in the proceedings as counsel confer.)

MR. SIMON: Oh, okay. Okay. I apologize for that, Your Honor. I guess on page 8 of their motion to alter or amend, they indicate -- it's the first bullet point that they assert that the order was incorrect in stating that Mary Ruth McLeod -- basically, they assert that Mary Ruth McLeod did not testify at trial that she told the applicant that she was going to call law enforcement. That we believe is actually -- that claim by the applicant is not supported by the record and if you look at the trial testimony of Mary Ruth McLeod -- I believe her name had changed by the second trial. She indicated -- and this is on page 687 in the second record on lines 20 to 25. She specifically states in talking about her interaction with Mr. Stone, he didn't say anything to me, but I told him that he better get home, but I used a cuss word, and I told him he'd better get home now where he belonged

because I was going to call the police and I turned around and walked away and went to the house and called the police.

Further, if you look at the -- the record of the first trial, I believe it was on page 200 and I did not write down the exact line points on that, but she again indicates that she had talked with the applicant. She says I told him that we had had trouble with him before at my mother's house and that my mother didn't live alone anymore. That I would be there and he wasn't coming back up there no more because I'd have him locked up, indicating she warned him that she would call law enforcement.

And I think that covers most of the -- the other issues and so with that, I am finished.

THE COURT: All right. Does anybody else want to say anything? Would you like to say anything?

MS. PAAVOLA: No, thank you, Your Honor.

THE COURT: Okay. Very good. How about you? Would you like to say something?

MR. ZELENKA: No, thank you. Mr. Simon is handling our case.

THE COURT: Very good. All right. Well, thank y'all for coming and I appreciate that and I'm going to give these matters some more consideration and I'll be -- I know at least there will be some amendments to it and I will forward those to you when I'm -- when I get those. I'm going to be in York

next week so I don't anticipate it will be next week. It will be shortly thereafter though.

MR. BLUME: Thank you.

THE COURT: Very good. Have a good trip. Good to see y'all.

MR. SIMON: Thank you, Your Honor.

(Whereupon, the proceedings end at 2:56 p.m.)

--- END REQUESTED TRANSCRIPT ---

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, held in Florence, South Carolina, on the 2nd day of August, 2013.

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

Krystal J. Smith

Court Reporter

Florence, South Carolina

January 11, 2014

BOBBY WAYNE STONE V. STATE OF SOUTH CAROLINA

CASE NUMBER 2008-CP-43-905

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
CASE NUMBER: 2008-CP-43-00905

RECORDED
2013 AUG 14 PM 2:19
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Bobby Wayne Stone, # 5051,

Applicant,

vs.

State of South Carolina,

Respondent.

AMENDED ORDER

INTRODUCTION

Applicant, Bobby Wayne Stone, was convicted and sentenced to death on January 28, 1997, for the shooting death of a sheriff's deputy in Sumter, South Carolina. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for a new sentencing proceeding. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (S.C. 2002). On February 27, 2005, a second jury also imposed a death sentence. Cameron B. Littlejohn, Jr., and James H. Babb were appointed to represent Stone at his original trial in 1997 and for the resentencing proceeding in 2005. The South Carolina Supreme Court affirmed Stone's second death sentence on direct appeal. State v. Stone, 376 S.C. 32, 655 S.E.2d 487 (2007). Stone timely filed an application for post-conviction relief ("PCR"), and subsequently amended the application on two occasions prior to the evidentiary hearing. This Court held a PCR hearing on April 23-25, 2012, in Sumter, South Carolina, and on August 10, 2012, in Florence, South Carolina. At the hearings, Applicant was present and was represented by John Blume, Esquire, and Robert Lominack, Esquire. The Respondent was represented by Senior Assistant Deputy Attorney General Donald Zelenka and Assistant Attorney General Alphonso Simon Jr. At the conclusion of the evidentiary hearing, and with the consent of

Applicant, Emily Paavola, Esquire, was substituted as counsel for Robert Lominack, Esquire.

RELEVANT FACTS

On February 26th, 1996 applicant shot and killed Sumter County Deputy Charlie Kubala. The events that led to this tragic death are as follows. During the evening hours, May Ruth McLeod was visiting her mother, Ruth Griffith, at her Sumter home. During this visit, they heard Bobby Stone knocking at the back door. McLeod went outside and told Stone to go home. Applicant ultimately left the premises entering the woods behind the home. As Stone entered the woods, McLeod noticed that applicant had something under the back of his jacket. Shortly thereafter, McLeod noticed that Stone had stopped, was facing the house and was holding a shotgun across his arms. McLeod once again demanded that applicant go home and that she was going to call law enforcement. McLeod noted that Stone appeared to be intoxicated and was holding a beer can. In response to her call, Sergeant Charlie Kubala responded to Griffith's home at approximately 6:06 p.m. Kubala received the details of the incident, ensured that Stone was not on the premises, and directed that McLeod and Griffith call him if there was any more trouble.

McLeod left the home to go visit her daughter. At 6:47 p.m. Griffith heard gunshots and called her neighbor Landrow Taylor. Taylor came to Griffith's home and called 911 at 7:00 p.m. They then heard someone jiggle the door handle to Griffith's car and made a subsequent call to 911 at 7:02 p.m. Moments later, they heard someone banging on the rarely used side door, which led from the washroom onto a small screened-in porch used to store wood. The light on the porch was off. Taylor hollered "what are you trying to do back there?" There was a moment of silence but the knocking resumed.

Meanwhile, Sergeant Kubala returned to the home. Taylor met Kubala on the front porch directing him to Stone who was at the side door.

Suddenly, Taylor and Griffith heard someone shout, "Halt!" or Hold!" followed by three or

four gunshots. As Taylor ran back out onto the front porch, Deputy John Prince arrived in his patrol car. Taylor saw a flashlight and radio on the ground and yelled at Prince informing him that Kubala was around the side of the house. Deputy Prince shined a flashlight, saw Kubala and ran to his aide. Kubala was lying face up and bleeding profusely from his mouth and neck. His gun and radio lay near the fingertips of his right hand. His flashlight lay between his body and his right hand. As Deputy Prince rolled Kubala over to clear an airway, he heard another gunshot prompting him to take cover by the corner of the home.

Other officers and EMS arrived shortly thereafter. The officers cleared the nearby shed and surrounding area. EMS found Kubala not breathing and without a pulse. Although Kubala was wearing a protective vest he died at the scene as a result of a gunshot wound that entered his right ear and another that entered his neck.

Officers then began to set up a perimeter to snare the assailant. SLED bloodhounds and SWAT teams were called, and off-duty officers from various jurisdictions volunteered to assist. A SLED helicopter equipped with forward-looking infrared radar and an extremely powerful spotlight called "midnight sun" began searching the woods nearby Griffith's house. After searching for a while, the SLED helicopter located a subject lying prone underneath two fallen trees. The helicopter used the midnight sun to light up the spot.

Meanwhile, police ground teams directed by the helicopter moved in on the suspect. As officers approached, Stone laid perfectly still on his back. The officers repeatedly ordered the suspect to raise his hands, but he would not comply. Finally, one of the agents put his foot on the suspect's chest while the other officers attempted to take control of the suspect's hands. A .22 pistol was found near suspects left hip. Stone resisted being handcuffed, and officers had to carry him out of the dense woods.

Applicant was taken to the law enforcement center where he gave a statement. In his

statement, Applicant said that he woke up the morning of February 26th and smoked some marijuana. He went to the store and bought some beer, and met a man named David who offered to sell Applicant three guns. Thereafter, they agreed to meet on a nearby dirt road.

According to Applicant, David arrived at the meeting place with a .22 pistol and a .410 shotgun. The two men walked around in the woods, drinking beer and target shooting. They agreed on a price of $100 for both guns. As they walked around, Applicant decided to stop by and say hi to Griffith, whom he described as "an old drinking buddy." David stayed in the woods with the guns.

Applicant claimed that as soon as he entered Griffith's backyard, a woman he did not know came of the house "raising cane" at him and telling him to get off the property. Applicant returned to the woods, and found and paid David $100 for the weapons. David then left. Applicant then walked around the woods shooting the guns and finishing off the beer. Around dark, he decided to return to Griffith's home.

Applicant walked up the steps to the little screen porch, set down the shotgun, but kept the .22 in his right hand. He admitted he started beating on the inside door, which broke because he hit it too hard. Applicant then heard a man's voice yelling outside the house, and as he turned, the gun went off. Applicant ran into the woods. In his statement, Applicant claimed the gun only went off once, and he never saw the deputy or his patrol car.

Applicant denied ever firing the gun again after he ran off the porch. He also claimed he did not know what was going on even though he hid in the woods for hours surrounded by police officers with a helicopter overhead.

Police processed the scene and collected various items of evidence confirming facts set forth above. The pistol recovered from under Applicant at the time of his arrest was a target pistol which fired .22 "long rifle" ammunition. The weapon was found with five rounds in its clip and a shell

casing lodged in the ejection port. SLED conclusively matched this gun to two bullet fragments and one bullet taken from Sgt. Kubala's body. The .22 pistol also matched the three spent .22 cartridge cases found on the side porch as well as other casings found in the nearby woods. Kubala's 9mm service pistol, on the other hand, was found fully loaded and had not been fired.

A .410 shotgun was found leaning up against the wall of the side porch with a live shell inside and its hammer cocked back in firing position. This shotgun was conclusively matched to a spent .410 shell casing found in the woods near Griffith's house.

The screen door to that side porch had three holes which appeared to be from bullets. The screen around these holes not only tested positive for lead, but also was microscopically consistent with holes made from bullets SLED test fired through the screen door with Applicant's .22 pistol. Ruth had nailed a board to cover a broken window pane on the door inside the screen porch that leads into the main house itself. After the incident, this board was knocked out and was hanging loosely from only one nail.

A knife was found in Applicant's coat pocket. Tests taken shortly after arrest indicated gunshot residue on the palm and back of Applicant's right hand, as well as, the presence of lead on Applicant's left palm and sleeve. The victim had lead on his right palm which is consistent with the handling of a weapon. The victim's shirt did not have any gunshot residue, which indicates Kubala was not hit by a close range shot.

10(A): INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE GUILT PHASE

Applicant asserts five claims of ineffective assistance of counsel during the guilt phase of Applicant's first trial.

10(A)(1): FAILURE TO OBJECT TO CLOSING ARGUMENT

Applicant contends his counsel should have objected to argument that Applicant did not dispose of his gun so he could kill more officers. Applicant is not entitled to relief upon this claim.

Trial counsel's testimony at the PCR evidentiary hearing established that counsel made a reasoned decision in not objecting to the solicitor's closing argument. Also, the argument made by the solicitor was proper response to the anticipated argument that Applicant accidentally fired the shots at the victim. Thus, Petitioner failed to establish that counsel was deficient in this regard. Further, Applicant cannot establish that he was prejudiced by counsels' decision not to object to the solicitor's closing argument.

During the solicitor's closing argument, he noted that Applicant's actions after the crime were inconsistent with those claims in his statement, inasmuch as Applicant fled the scene, ran through bushes and briars in the dark of night, and hid under a log for four hours. The solicitor also responded to the defense questioning of witnesses on the fact that Applicant never tried to get rid of the gun in all that time, which the defense asserted was supportive of his claim that he did not know he shot a deputy. The solicitor suggested an alternate proposition, that Applicant knew he had already killed on officer, and he kept the gun because he was trying to escape the perimeter and might need to use it again. The solicitor further noted that once Applicant realized that he was caught, his actions belied any argument that he thought he did not shoot anybody; he tried to hide the gun and hoped no one would find it. No objection was raised to his argument at trial.

At the PCR evidentiary hearing, trial counsel indicated that he made a strategic decision in not objecting. Mr. Littlejohn noted that during the trial, the solicitor overplayed his hand at several points during the trial. Littlejohn believed this argument by the solicitor was just another example of the solicitor doing so.

> I really thought what he was trying to do was kind of be a little overbearing. And so when he came through with some of these things, not only did they kind of surprise me, but I -- I didn't feel like there was any evidence to support them. But from the standpoint of -- of letting him go with it because it was closing argument, I didn't know exactly what Judge Dennis would allow or not allow. He had been pretty lenient in that regard. So I didn't object, thinking that actually it might be to our benefit to -- to -- because it was just a further reflection of how overreaching and how hard the State was going at this thing and how they would do anything to get a

conviction against -- against Bobby Wayne.

(2nd Tr. 17, II 4-14).

Trial counsel was not deficient in his handling of the solicitor's closing argument in the guilt phase. First, as indicated above, counsel's decision not to object to the statement in question now was based upon a valid, strategic decision. Furthermore, the argument made by Solicitor Kolb in his closing was clearly permissible as a matter of law.

Here, the solicitor's argument was proper, as he was clearly arguing the State's version of events and arguing against the claim of accident in Applicant's statement. During the trial, the State introduced a statement given by Applicant after he was arrested. In that statement, Applicant asserted the gun went off accidently when he heard a man's voice behind him, and he never saw he had shot a deputy. It was clear from the cross-examination of the State's witnesses that Applicant's counsel was relying upon Applicant's version given in the statement. Further, the defense had implied through cross examination that Applicant did not attempt to grab the pistol to fire on the search party that arrested him. Meanwhile, several witnesses who were present when Applicant was arrested in the woods indicated that Applicant was not compliant when he was being arrested, and he was within reach of the pistol.

The solicitor was also responding to an obvious defense contention raised in their questioning as to the significance of the fact that Applicant retained the gun. Since the argument was permissible, counsel could not have been deficient for failing to object nor could Applicant have been prejudiced.

Applicant also fails to show that he was prejudiced. First, as already noted, this solicitor's argument was not improper, especially when viewed in the context of the record. Second, the trial judge charged the jury that the statements by the attorneys were not evidence. Moreover, even if the solicitor's argument was improper, it cannot be said that the comments "so infected the trial with

unfairness as to make the resulting conviction a denial of due process." Given the overwhelming evidence, this one comment cannot meet that standard. Since Applicant would not have been entitled to relief upon a claim that the closing argument deprived him of a fair trial, Applicant cannot show that he was prejudiced by the fact counsel did not object to the statements made in closing argument. As a result, this claim for relief is denied and dismissed.

10(A)(2): FAILURE TO UTILIZE CRIME SCENE AND OTHER EXPERTS TO REBUT STATE'S THEORY

Applicant next contends his counsel was ineffective in the guilt phase for failing to hire "crime scene and other experts" who would have opined the evidence supported Applicant's statement in which he asserted the gun went off accidently when he heard a man's voice behind him, and he never knew or saw that he had shot a deputy.

Applicant is not entitled to relief upon this claim. First, Applicant fails to show that counsel was deficient in this regard. At the PCR evidentiary hearing, Applicant presented the testimony of Wayne Hill, who was qualified as an expert in homicide events reconstruction and firearms. Mr. Hill testified that he reviewed prior trial transcripts (including Applicant's testimony, Agent Parnell's testimony, and other law enforcement officers' testimony regarding their actions at the scene), crime lab reports, crime scene photographs, autopsy photographs, and autopsy reports. Hill also testified that he went to the shooting scene. Hill indicated that he also examined the weapon used in the shooting.

Hill made a number of conclusions:

1. The shooting could have occurred in the way outlined by Applicant in his statement to law enforcement.
2. The trigger pull was 1.5 pounds which he deemed to be unsafe under certain conditions.

3. A light trigger pull increased the likelihood of an unintentional discharge.
4. The gun could fire if rested upon three fingers the wrong way.
5. The patterns in the screen door were consistent with an unintentional firing of the gun.
6. If the firing were intentional, the bullet holes would have been higher on the screen.
7. The discrepancy between the number of shots fired and the number of shots recalled could be explained by Stones' state of intoxication.

To the contrary, Hill also made the following inculpatory conclusions:

1. It was within the realm of possibility that Stone intentionally aimed and fired the gun.
2. It would take three trigger pulls to discharge three bullets from the weapon.

It is important to note that without an eyewitness or video, it is impossible for a firearms expert to re-create all the events of the night of the shooting. There are so many variables such as: the posture and position of Stone; the posture and position of the victim; and; the position of the weapon. Additionally, it is beyond the scope of the expertise of a firearms examiner to testify as to the volition of the Applicant. No expert can render an opinion as to the intent of the defendant. With or without expert testimony, it is ultimately a question of fact for the jury. Also, it is beyond the expertise of a firearms examiner to testify as to the effects of alcohol on human behavior.

If Hill would have testified at trial, the very same factual issues would have been submitted to the jury.

The legitimate factual disputes were established by the State's witness, agent Ira Parnell. SLED agent Ira Parnell did testify at trial and concluded as follows:

1. The trigger pull was fairly light.
2. One would have to pull the trigger three times to discharge three bullets.

Defense counsel did retain Donald Girndt (a former SLED agent) who had expertise in gunshots, blood splatter, and fingerprints. Girndt made the conclusion that based on the evidence in this case, it is impossible to state that the shooting was accidental or intentional. All of the facts favorable to the defense were established through the testimony of agent Ira Parnell.

Clearly, trial counsels' testimony establishes they consulted with a crime scene expert. Counsel also made a well-reasoned, strategic determination to not call their expert as a witness at the first trial. Counsel repeatedly elicited that it was dark, and that the murder weapon was a target pistol with an extremely light trigger pull. Counsel also elicited that the victim was only 5'8" and the wooden partition of the walls of the screened porch would be over his head. Counsel argued the issue in closing. Further, based upon counsel's testimony, it appears that Mr. Girndt could not state that he had concluded that the shooting was accidental based on his review of the evidence. Respondent submits that counsel cannot be found deficient for not presenting their expert at trial when the defense team's expert reached different conclusions from the expert presented at the PCR evidentiary hearing. Overall, trial counsel was not ineffective.

Applicant also fails to show that he was prejudiced. There is no reasonable probability a jury would have accepted Applicant's version of events, even with a crime scene expert and other experts, when Applicant asserted in his statement: 1) that he unintentionally only fired once, when in fact there were three casings on the porch, two bullets in the victim, and three holes in the screened porch; 2) that he did not know he shot a deputy and did not know what was going on for the four hours he was at large, even though he spent that time hiding under a log in a thick brush.

Moreover, Applicant was not entitled to a jury charge on involuntary manslaughter or accident anyway. Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: 1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or 2) a lawful act with reckless disregard for

the safety of others. Applicant, a felon on probation and not entitled to have a weapon, admitted he was banging on the side door of a house from which he had already been sent away once, while holding a loaded pistol in his hand. Such conduct hardly can meet either test for involuntary manslaughter as it involves a felon with no good reason to be in possession of a weapon, such that the possession is the proximate cause of the homicide. It also involves trespass after notice and burglary.

Similarly, Applicant cannot show entitlement to accident as he must not only have been acting lawfully, but must also show that he used due care in the handling of the weapon. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999). Not only was Applicant behaving unlawfully many times over but, by no stretch, can invading an enclosed porch and banging on the back door with a loaded pistol in one's hand be considered due care. Since Applicant was not entitled to either an involuntary manslaughter or accident charge under any view of the evidence, then counsel could not have been deficient nor Applicant prejudiced from the failure to get an expert to support his statement.

10(A)(3): FAILURE TO CHALLENGE BATSON VIOLATION

Applicant next contends counsel was ineffective during the guilt phase by failing to make a Batson motion challenging the prosecution's alleged racially discriminatory use of its strikes.

Applicant is not entitled to relief upon this claim. First, counsel was not deficient in not moving for a review of the State's use of peremptory challenges under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Trial counsel's testimony indicated they made a reasonable strategic decision in not making such an objection.

The record reflects that the solicitor used three strikes on black females (Jurors # 189, 6, and 109); one strike on a black male (Juror #25); one strike on a white female (Juror # 90) during the selection of the alternate jurors. The jury consisted of one black male, three black females, five

white males, and three white females.

This claim is denied and dismissed. First, the record and the testimony at the evidentiary hearing clearly reflect that counsel made a strategic decision not to pursue a Batson motion after much deliberation. Counsel testified, and I find, that they did not make a Batson motion because they were pleased with the jury that was selected. In light of this reasonable strategic decision, Applicant is not entitled to relief.

Second, Applicant has failed to establish that he was prejudiced by counsels' decision not to challenge the prosecution's use of peremptory strikes under Batson v. Kentucky. As established by the testimony by both Solicitor Kolb and Mr. Littlejohn, such a motion would not have been successful.

Altogether, Applicant is not entitled to post-conviction relief upon this claim. It is, therefore, dismissed and denied.

10(A)(4): FAILURE TO OBJECT TO PRESENCE OF OFFICERS

Applicant next contends counsel was ineffective for failing to object to the presence of uniformed officers in the courtroom during trial.

This claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming into play.'" State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it they could tell the picture was of the victim).

I find that the presence of uniformed law enforcement officers was not much different from other criminal trials. This finding is based upon the testimony of Wade Kolb, Jim Babb, and

Applicant failed to establish he was prejudiced in any way. Applicant presented no evidence to show that the presence of law enforcement in the courtroom had any effect on the jury. In fact, Applicant has not presented any evidence to support a finding of inherent prejudice. In light of that failure, Applicant failed to show that he was prejudiced by counsel not objecting to the law enforcement presence in the courtroom during the guilt phase of Applicant's trial. As a result, he has not shown that trial counsel was ineffective in this regard. This claim is, therefore, denied and dismissed.

10(A)(5): FAILURE TO OBJECT TO SHACKLING OF DEFENDANT

Applicant asserts trial counsel was ineffective for failing to object to the use of visible shackles during the guilt phase of Applicant's first trial. Applicant is not entitled to relief upon this claim. There is no evidence in the record to support this claim.

Based upon the testimony of Wade Kolb, James H. Babb, Cameron B. Littlejohn, Jr., and Director Simon Major of the Sumter Regional Detention Center, I find that:

1. Applicant was not shackled during the jury selection in Georgetown County or any of the trial procedures that transpired in Sumter County.
2. The kind of restraints that were used on Applicant were placed under his clothing. Applicant was dressed for court at the detention center and it would be impossible for the jurors or anyone in the courthouse to see the concealed restraints.
3. The trial judge was vigilant about not allowing Stone to move in the presence of the jury.

Since Applicant was not visibly restrained in the presence of the jury, trial counsel could not be deficient for not making an objection regarding the use of visible restraints because no such objection was necessary.

In light of the fact Applicant was not entitled to relief upon the motion, he fails to establish

that he was prejudiced. As a result, this claim for relief is, therefore, denied and dismissed.

10(B)(1): INEFFECTIVE ASSISTANCE OF COUNSEL REGARDING OBJECTION TO VICTIM'S WIDOW'S TESTIMONY ABOUT SUICIDE ATTEMPT

Applicant contends trial counsel was ineffective for failing to preserve an issue as to the admissibility of the widow's victim impact testimony that she attempted suicide upon finding out the South Carolina Supreme Court reversed the first sentencing proceeding. This issue is without merit.

At resentencing, widow Teresa Kubala described her relationship with the victim, the pain of finding out about his death, and the difficulties of moving on in her life without the victim. She specifically noted the counseling and help she needed to even start dating again, as she thinks of Sgt. Kubala every day and felt like she was cheating on the man she had married at age 19.

Near the end of her testimony, the solicitor asked if there was "anything significant" in her life she would like to tell the jury. She stated that after she and her new husband returned from a family trip to celebrate their first anniversary, she found a message on her machine that "they were going to retry this case that the supreme court had overturned it. She went on to state that her new husband had gotten hurt working at UPS and was dealing with trying to get workers compensation, and they were trying to make two house payments until they could sell one. She said UPS would not take her husband back, so he lost his job and had to find another, "and everything just blew up."

At this point, the defense approached for an off the record conference, after which the solicitor asked Teresa to state what happened as a result of "the things you went through with Charlie and the things after." Teresa then described taking a bottle of Tylenol PMs before her husband woke, but then having second thoughts and telling him what she had done. She then described going to the hospital for treatment and then spending three days in a ward, which led her to realize she did not have as many problems as she thought. At this point, the solicitor stopped the questioning and moved on.

After the State rested, the defense put its objection on the record. The defense argued that

the causation factor for the suicide was not the crime, but because the legal proceeding was about to occur again, and asserted that the time that had passed from the original crime and this resentencing proceeding "lessens the direct effect that she would otherwise be allowed to testify about." Thus, the defense contended the suicide attempt was extremely prejudicial. The trial court responded that objection was timely, but Teresa's testimony was at least partially related to Sgt. Kubala's murder, even though that was not the only thing she mentioned. Applicant raised an issue related to this event on direct appeal, but the South Carolina Supreme Court found it was not preserved. The Supreme Court noted that counsel at trial argued the issue as one of causation – that the suicide attempt was related more to financial difficulties rather than the victim's murder – but on appeal Applicant was asserting that the reference to direct review invited the jury to speculate on the finality of their decision, and the reference to suicide invited the jury to speculate on the effect of their decision on the widow's health. On direct appeal, the Court found the latter issues distinct from that raised at trial and not preserved.

Applicant was not deficient in his objection to the testimony primarily because it was admissible, relevant and not unduly prejudicial. This testimony is proper victim impact evidence in that it demonstrates the uniqueness of the victim and the specific harm committed by defendant. It was made clear to the jury that Teresa Kubala's attempted suicide was precipitated by a multitude of factors, one of which was the murder of her husband. Additionally, the trial judge properly ruled that this suicide attempt was sufficiently tied to the impact of this crime on the victim's family.

The failure of trial counsel to object to this evidence on the grounds that it lessened the jury's responsibility for sentencing is without merit. There was neither argument nor implication the responsibility for determining the appropriateness of the sentence rested with someone other than the jury.

To the extent Applicant asserts trial counsel should have argued that the mention of prior

reversal impermissibly maximized the jury's sense of responsibility inasmuch as it implied a life sentence would trigger another attempt, his claim is also without merit. Such an argument would present a logical problem in that Applicant asserts in the same sentence that the mention of the reversal both minimized and maximized the jury's responsibility. Regardless, no one said that at all. There was no argument along those lines, simply a brief matter-of-fact mention of a predicate fact. Indeed, as noted before, suicides are generally admissible victim impact evidence, and any suicide attempt might carry the inference that any sort of subsequent victory for the defense might trigger another attempt. The same could be said for other psychological problems suffered by a survivor, but that concern does not mean the defendant gets to escape having the jury learn about the actual impact of what he has done on those who have suffered.

This evidence was admissible and, therefore, the complaint fails both prongs of the Strickland test. As a result, this claim for relief is denied and dismissed.

10(B)(2): INEFFECTIVE ASSISTANCE OF COUNSEL REGARDING LACK OF OBJECTION TO VICTIM IMPACT TESTIMONY

Applicant contends trial counsel was ineffective for not objecting to certain victim impact testimony during his resentencing trial. Specifically, Applicant complains that testimony regarding the effect of Deputy Kubala's death on law enforcement in Sumter County generally and on individual officers in particular. Respondent submits Applicant's claim is without merit. Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony that was presented at trial. Counsel articulated valid, strategic reasons for not objecting to the testimony. Further, Applicant fails to show that he was prejudiced, especially in light of the fact that victim impact testimony that was presented was admissible.

Victim impact evidence is admissible in the sentencing phase to demonstrate the uniqueness of the victim and the specific harm committed by the defendant.

The challenged evidence in the present case was admissible as a matter of law; thus, counsel

could not have been deficient nor Applicant prejudiced. At issue here is part of the testimony of Captain Hobbs and Major Metts, both of the Sumter County Sheriff's Office. Captain Hobbs testified that he and Deputy Kubala started in law enforcement at the same time. As a result of their closeness in beginning their law enforcement careers, they became close friends. Hobbs testified that he loved Kubala like a brother, and the two and their families were close. Hobbs noted they stayed in contact after Kubala left law enforcement to pursue another job. Hobbs also described Kubala returning to duty at the Sheriff's Office a few years later, including how they lobbied to work together again once Kubala became a sergeant. Hobbs also testified about how he was the one who told Kubala's wife that he was killed on the night of the shooting. Hobbs also testified about the impact Kubala's murder had on the sheriff's office. He noted that during orientation, new trainees are taken to the scene of the shooting, and they are informed about the case. The trainees are then taken to Kubala's grave site, and they are advised that if they are not able to give that sacrifice, then it may not be the right job for them.

Major Metts testified that he met Deputy Kubala as both volunteered with the Explorer program. Metts stated that Kubala was like his brother, and Kubala was his best friend. Metts testified about the night of the shooting, and how he responded to the news. He discussed how he and others, like Hobbs, tried to help his widow in the weeks after the shooting. Metts indicated that she asked him to serve as a pallbearer in Kubala's funeral, and she further requested that he get his police uniform ready for the burial. Metts went on to describe how Kubala's death impacted him personally, and how he was unable to maintain the Explorer program because of the memories he had of working with Kubala on the program. Metts also discussed a golf tournament that was started in Kubala's memory, and described visiting the scene of the murder with Kubala's widow and children.

At the PCR evidentiary hearing, Mr. Littlejohn testified that he considered objecting to some

the testimony presented by Captain Hobbs, and he ultimately decided against it.

> I considered objecting to a lot of this, but Judge King was being very liberal in what he was allowing in from the standpoint of victim's testimony. I mean I felt if he allowed in what Ms. Kubala said about her reaction to the appeal that he was probably going to allow this in. I didn't want to be perceived by the jury as -- as jumping up and objecting to everything like I was trying to hide something.
>
> So yes, I did consider it. I didn't consider my chances of winning that objection very well -- to be very good and I mean there's a lot of leeway that the courts have allowed in -- in this kind of testimony. So I considered it; I didn't object to it obviously.

Similarly, Littlejohn testified that he made a similar strategic decision in not objecting to portions of Major Metts' testimony.

> Well, like I said earlier and I reviewed this yesterday, I considered objecting to a lot of this, but I did not feel that the objection would be sustained. I didn't want to be perceived as -- as trying to hide things and, you know, a lot of this is contemporaneously with that happened and, you know, I just think Judge King would have -- would have let it in.

Clearly, counsel expressed a valid strategic reason for not objecting to the testimony. First, counsel did not want to appear as if he was hiding something from the jury. Second, counsel reasoned that the objection likely would have been overruled by Judge King. In light of counsels' reasoning in not objecting to the disputed victim impact testimony, Applicant fails to show that counsel was ineffective in not raising an objection.

Counsels' determination that his objection likely would have been overruled was well founded. The testimony Applicant now challenges is admissible. First, as to the specific officers, they were not merely coworkers, but friends who ate together, spend off duty time together with each other and their families, and did community projects together. Moreover, the loss of the victim affected the way they perceived and went about their jobs. This evidence involved their specific personal relationships with the victim and was undoubtedly admissible.

The greater issue to Applicant is apparently the admissibility of the lasting effect of the killing on the Sumter County law enforcement community in general. However, this larger effect on

the community is admissible as well. As noted in Payne:

> [Defendant] Payne echoes the concern voiced in Booth's [Booth v. Maryland, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440] case that the admission of victim impact evidence permits a jury to find that defendants whose victims are assets to their community are more deserving of punishment that those whose victims are perceived to be less worthy. (citation omitted). As a general matter, however, victim impact evidence is not offered to encourage comparative judgments of this kind-for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but the murderer of a reprobate does not. It is designed to show instead each victim's "uniqueness as an individual human being," whatever the jury might think the loss resulting to the community might be.

Payne, 501 U.S. at 823-824 (emphasis added) (quoted in Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002)). Other passages in Payne support the idea that evidence on the crime's impact of the larger community is admissible:

> In Justice O'Connor's concurrence, she explains her view that "[a] State may decide that the jury, before determining whether a convicted murderer should receive the death penalty, should know the full extent of the harm caused by the crime, including its impact on the victim's family and community." Payne, 501 U.S. at 829, 111 S.Ct. 2597 (O'Connor J., concurring) (emphasis added). Although obviously relevant to the Government's argument, this of course is not part of the holding of Payne, but rather dicta from the concurrence. Second, the Payne majority opinion cites a statement of Justice White from the dissenting opinion of Booth v. Maryland, one of the cases that Payne overruled: "'The State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.'" Payne, 501 U.S. at 826, 111 S.Ct. 2597 (quoting Booth, 482 U.S. at 517, 107 S.Ct. 2529 (White J., dissenting) (citation in original omitted) (emphasis added)).

United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006).

And, a number of courts have upheld admission of the effect of a law enforcement officer's murder on the law enforcement community. See United States v. Battle, 173 F.3d 1373 (11th Cir. 1999) (permissible to show how murder of corrections officer emboldened inmates and made the prison more dangerous, but how a death sentence would send a message to those emboldened inmates); United States v. Wilson, 493 F. Supp. 2d 364 (E.D.N.Y. 2006) (permissible to show murder of undercover officer had chilling effect on other undercover officers); People v. Brown, 93

P.3d 244 (Cal. 2004) (permissible to show officer was a good police officer and to admit testimony brother saluted his grave because officer gave life for the community); United States v. Whitten, 610 F.3d 168, 189 (2d Cir. 2010)(noting that no prohibition of testimony regarding generalized community harm as victim impact evidence is generally recognized); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010)(finding admission of law enforcement officer's funeral was proper victim impact evidence demonstrating the general loss suffered by society). Altogether, Applicant fails to show that counsel was deficient in not objecting to the victim impact testimony presented at trial.

Altogether, Applicant has failed to establish counsel was ineffective in not objecting to the victim impact testimony presented through Captain Hobbs and Major Metts. This claim for relief is, therefore, denied and dismissed.

10(B)(3): LACK OF PRESENTATION OF EVIDENCE OF APPLICANT'S PRIOR COOPERATON WITH LAW ENFORCEMENT

Applicant asserts that trial counsel was ineffective for not presenting evidence that he had cooperated with law enforcement prior to the shooting. This claim is without merit. Trial counsel's testimony establishes that the decision not to present such evidence was the result of reasonable trial strategy.

At the evidentiary hearing, Mr. Littlejohn testified that he considered presenting evidence that Applicant cooperated with law enforcement.

> There were two aspects of that. Bobby had cooperated in helping them out with a few things that were -- were -- I mean they -- They were helpful to law enforcement, but they weren't really substantial things. I felt like it came out that he was cooperating working with law enforcement, then bam, turned around and shot a police officer, that that made him, you know, look in a much worse light.
>
> The other thing that I had to consider was a lot of the law enforcement officers could have helped him maybe watered down what they were going to say or didn't really, you know, want to support him because of the pressure they were feeling from the rest of the law enforcement community down there. So there wasn't any other way to bring it out other than to call Bobby and Bobby didn't want to testify,

which I don't -- I don't blame him with that decision, but that would have been the only way to bring it out.

(2nd Tr. 32, II 10-25).

Applicant fails to show that he is entitled to relief upon this claim. First, as reflected in Mr. Littlejohn's testimony, trial counsel did consider presenting evidence of Applicant's cooperation with law enforcement, and they made a strategic decision not to present such evidence. As a result, Applicant is not entitled to relief upon this claim.

Furthermore, Applicant cannot establish that he was prejudiced by any alleged deficiency of counsel in this regard. Applicant did not present any testimony or evidence establishing prior cooperation with law enforcement at the evidentiary hearing. Thus, it would be speculative to find that the presentation of any such cooperation would have led to a different result at Applicant's trial.

10(B)(4): REASONABLENESS OF INVESTIGATION IN MITIGATION EVIDENCE

Applicant next asserts that trial counsel was ineffective for not properly investigating several areas of possible mitigation evidence. Specifically, Applicant asserts that counsel should have investigated more into Applicant's impoverished background and family dysfunction resulting from the equivalent to a polygamous household; Applicant's low intellectual functioning; neurological damage that Applicant allegedly suffered from exposure to dangerous neurotoxins and other chemicals; and neurological damage that Applicant allegedly suffered from maternal ingestion of alcohol during his developmental period. Applicant further contends trial counsel failed to gather relevant records to corroborate mitigation evidence that was presented at trial. Finally, Applicant argues counsel failed to investigate, develop, and present evidence of Applicant's good character. All of these claims are without merit.

Based upon the testimony at the trial, I find that:

1. Applicant's background was adequately investigated and presented to the jury in an effective way.

2. The gathering of mitigating evidence was thorough and presented to the jury in an effective way.

3. The issue of Applicant's adaptability to prison was investigated and presented to the jury in an effective way.

Therefore, this claim is hereby denied and dismissed.

10(B)(4)(A): FAILURE TO INVESTIGATE POLYGAMOUS FAMILY BACKGROUND AND HOW IT LED TO IMPOVERISHED FAMILY BACKGROUND AND FAMILY DYSFUNCTION

The allegations that defense counsel did not investigate the Applicant's polygamous family background and how it led to impoverished family background and dysfunction is without merit.

A review of the record as a whole and particularly the testimony of Te Anne Oehler, Melinda Parrott and Arlene Anderson, I find that:

1) The issues of polygamy, poverty and family dysfunction were exhaustively investigated and effectively presented to the jury,

2) Applicant has failed to present any meaningful evidence that trial counsel was ineffective in investigating and presenting the issues of poverty, polygamy and family dysfunction

This claim is denied and dismissed.

10(B)(4)(B): EVIDENCE OF APPLICANT'S LOW INTELLECTUAL FUNCTIONING

Applicant next contends that trial counsel failed to adequately investigate Applicant's low intellectual functioning. Respondent submits that Applicant failed to show that he is entitled to relief upon this claim.

Based upon the view of the trial transcripts and the testimony of James Babb and Te Anne Oehler, I find that:

1) The issue of low intellectual functioning was investigated and presented to the jury,

2) Defense counsel had access to Applicant's school records,

3) Defense was aware of the low IQ, and the fact that Applicant's IQ dropped between the ages of 11 and 14.

4) Defense was aware that Applicant was diagnosed with a learning disability in the area of verbal expression and language comprehension.

Applicant fails in meeting its burden with regard to showing that counsel's investigation was not reasonable. Further Applicant has failed to show that he was prejudiced. As a result, this claim for relief is denied and dismissed.

10(B)(4)(C)(1): TRIAL COUNSEL INEFFECTIVE FOR NOT INVESTIGATING EVIDENCE OF APPLICANT SUFFERING NEUROLOGICAL DAMAGE FROM EXPOSURE TO DANGEROUS NEUROTOXINS AND OTHER CHEMICALS

Applicant further contends that trial counsel failed to investigate and present evidence that Applicant was exposed to dangerous neurotoxins and other chemicals as a child. Applicant's claim here is without merit. First, counsel was not deficient in not investigating whether Applicant was exposed to chemicals and neurotoxins from swimming in Turkey Creek. Second, Applicant fails to show that he was prejudiced.

Based upon the testimony at the PCR hearing, I find that:

1. Defense counsel hired mitigating experts who investigated Applicant's background in a thorough manner.
2. Defense experts did not report to trial counsel anything concerning exposure to contamination in and around Turkey Creek.
3. Applicant never informed mitigation experts as to any concerns about Turkey Creek.
4. Applicant relied upon the expert testimony of Dr. Merikangas who has an impressive educational background; however, this court does not find his testimony persuasive. Although he presented his uncontradicted expert opinion this court does not believe his opinion is supported by the facts and, therefore, not credible. The facts are lacking in

that:

a. There was insufficient testimony to support the allegation that Applicant had significant exposure to Turkey Creek;

b. There was insufficient evidence as to when and where Applicant was exposed to Turkey Creek; and,

c. It is impossible to know the levels of toxicity of the water at the particular time and place that Applicant was exposed to Turkey Creek.

Applicant has failed to prove that trial counsel was ineffective or that there is a reasonable probability that the results at trial would have been different. Therefore, this claim for relief is denied and dismissed.

10(B)(4)(C)(2): EVIDENCE OF APPLICANT SUFFERING NEUROLOGICAL DAMAGE FROM MATERNAL INGESTION OF ALCOHOL DURING THE DEVELOPMENTAL PERIOD

Applicant asserts trial counsel failed to investigate and present evidence that Applicant suffered neurological damage that resulted from his mother ingesting alcohol while she was pregnant. Applicant's claim here is without merit. Counsel did not investigate whether Applicant suffered from neurological damage as a result of his mother drinking because there was no credible evidence to support such an investigation.

Based upon the testimony at the PCR hearing, I find:

1. There was no credible evidence that Applicant's mother drinks alcohol. The overwhelming evidence is that she abstained from the use of alcohol.
2. More specifically there is no evidence that Applicant's mother drank alcohol while she was pregnant with Stone.
3. The methodology employed by Dr. Merikangas is questionable. The conclusions reached by Dr. Merikangas were not supported by the facts and, therefore, are not

believable.

Therefore, the relief requested is denied and dismissed.

10(B)(4)(D): EVIDENCE OF APPLICANT'S GOOD CHARACTER

The allegation that trial counsel was ineffective in failing to investigate and present evidence of Applicant's good character is without merit. Te Anne Oehler did a superlative job in investigating the mitigation phase of this case. I specifically find that all aspects of his life were adequately investigated and effectively presented to the jury. Applicant has further failed to show that there is a reasonable probability the results at the resentencing trial would have been different.

The relief requested is, therefore, denied and dismissed.

10(B)(5): INEFFECTIVE ASSISTANCE OF COUNSEL IN SENTENCING PHASE FOR NOT OBJECTING TO PRESENCE OF LAW ENFORCEMENT OFFICERS IN COURTROOM DURING RESENTENCING TRIAL

The allegation that trial counsel was ineffective for not objecting to the presence of law enforcement officers in courtroom during the resentencing trial is without merit.

Based upon the record I find that:

1. The presence of officers at the resentencing trial did not create either an actual or inherent prejudicial effect on the jury.
2. There was not an abundance of uniformed officers in the courtroom.
3. There were even fewer spectators at the second trial than the first trial.
4. Applicant failed to show that he was prejudiced in any way by the presence of law enforcement in the courtroom.

As a result, this claim is denied and dismissed.

10 B(6): Failure to Conduct Adequate Voire Dire

Based upon the review of the record, I find that:

1. Trial counsel conducted voire dire in such a fashion that far exceeded the minimum standard of competence.
2. The voire dire questions posed to potential jurors were appropriate and clearly calculated to aid them in selecting open-minded jurors, who were not predisposed to hand down the death penalty.
3. The application nor the PCR record set forth with any particularity how the voire dire could have been conducted in a better fashion.
4. Applicant has not set forth any substantial allegations of prejudice.

Therefore, this claim is denied and dismissed.

10(B)7: Failure to Secure Crime Scene Experts

Based upon the trial transcript and the PCR transcript, I find that:

1. Trial counsel hired an expert, Donald Girndt, but elected not to call him.
2. Trial counsel made a well-reasoned strategic decision not to call this witness.
3. Trial counsel were not ineffective in their investigation of this case. They were not ineffective in their decision not to hire additional experts.
4. Applicant also failed to show that he was prejudiced.
5. Applicant failed to show that the result of the resentencing would have been any different had additional experts been hired or, if they had elected to call Donald Girndt as a witness.

Therefore, this claim is denied and dismissed.

10(C): Ineffective Assistance of Appellant Counsel

1. On appeal, appellate counsel raised a single issue on appeal. Specifically, he asserted the trial judge committed reversible error by permitting the victim's widow to testify that she had attempted suicide when she learned from a message left on her answering machine

that the Supreme Court had reversed Stone's death sentence and "they were going to retry this case over again", as this testimony introduced an arbitrary factor into Stone's resentencing, in violation of S.C. Code Section 16-3-25(C)(1). In affirming Applicant's conviction on appeal, the South Carolina Supreme Court found the issue raised in the appeal was not preserved for appellant review.

> Appellant's argument is not preserved for review. At trial, Appellant objected as the victim's widow began to describe her suicide attempt. The record reveals that Appellant based his objection on causation grounds, arguing that the testimony implied that the cause of the suicide attempt was not the victim's murder, but the financial pressures the victim's widow was experiencing and the fact that Appellant would have another sentencing proceeding. In allowing the testimony, the trial court held that the victim's widow had attributed the facts relayed in the testimony to her relationship with the victim, and that the testimony was, therefore, relevant and admissible.
>
> Appellant's argument before this Court goes along quite different lines. Appellant now argues that the victim's widow's testimony improperly invited the jury to speculate about the finality of its decision on the appropriate punishment and improperly invited the jury to consider how its decision might impact the victim's widow's future health. Thus, while Appellant's argument below focused on what caused the victim's widow to attempt suicide-meaning, what caused the testimony to be relevant-Appellant's argument on appeal abandons the issue of relevance and addresses only the effect this testimony may have had on the jury. Because Appellant did not argue these grounds in support of his objection at trial, Appellant's argument is not preserved for review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E. 2d 6912, 693 (2003) (providing that in order for an issue to be preserved for appellant review, it must have been raised to and ruled upon by the trial court.)
>
> Appellant alleges that his argument on appeal is simply an augmentation of his objection at trial. , but a thoughtful examination reveals that this is not so. Primarily, Appellant's objection at trial was based on relevance and that issue has been abandoned here. Second, whether the suicide attempt by the victim's spouse minimized the jury's sense of responsibility (by suggesting that the jury's ultimate decision would be subject to review by a higher court) or maximized the jury's sense of responsibility (by implying that imposing a life sentence might lead the victim's widow to attempt suicide again), these considerations are wholly independent of the relevance argument presented below. If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.

2. Based upon the trial transcript, PCR transcript and the South Carolina Supreme Court opinion State v. Stone, 376 S.C. 32, 655 S.E.2d 487 (2007, I find that:

a. Applicant has not established that appellant counsel was ineffective in failing to raise the issue as it was raised at trial.

b. Applicant would not have prevailed in his appeal even if the issue was properly put before the Supreme Court.

c. The testimony in question was admissible in the sentencing phase to demonstrate the uniqueness of the victims and the specific harm committed by the defendant.

d. Applicant failed to show prejudice by any deficiency of counsel.

Therefore, this claim is denied and dismissed.

10(d)(1): Due Process Violation, Failure to Approve Funding for a Jury Selection Expert

Applicant next asserts a due process violation from the refusal to find a jury selection expert. This freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993)(issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). This claim is one that could have been raised at trial, and further, could have been raised by Applicant in his direct appeal. Since the issue could have been raised then, it cannot be raised now in this application. As a result, this claim is denied and dismissed.

Even if this claim could be raised in PCR, the issue should still be dismissed as a matter of law. As noted by the Fifth Circuit in Moore v. Johnson, 225 F.3d 495, 503 (5th Cir. 2000), which addressed an indigent defendant's asserted right to a jury selection expert pursuant to Ake v. Oklahoma, 470 U.S. 68 (1985),

> [A] defendant cannot expect the state to provide him a most-sophisticated defense; rather, he is entitled to 'access the raw materials integral to the building of an effective defense....Most of those raw materials come to the defendant in the form of his court-appointed lawyer in his expert knowledge about how to negotiate the rules of court, how to

> mount an effective defense, and so forth.... []]ury selection is not a mysterious process to be undertaken by those learned in the law only with the assistance of outside professionals. All competent lawyers are endowed with the 'raw materials' required to pick a jury fairly disposed toward doing substantive justice....[A] defendant does not lack 'an adequate opportunity to present [his] claims fairly' because he has been denied a jury consultant.

See also Ford v. Schofield, 488 F. Supp. 2d 1258 (N.D. Ga. 2007) (noting the constitution does not require an indigent defendant to get all the assistance his wealthier counterpart might buy, and finding no prejudice shown from the denial of a jury selection expert).

Here, at both proceedings Petitioner had the assistance of James Babb and Cameron Littlejohn, both who have extensive experience in jury trials in the midlands. Babb, in particular, has been trying major criminal cases in Sumter and Clarendon counties for years. Certainly, they had the "basic tools" to conduct jury selection such that no expert was needed. Since there was no constitutional violation or resulting prejudice from the denial of any such request, the claim is denied as a matter of law.

10(d)(2): Due Process Violation, Presence of Law Enforcement Personnel during both the Guilt and Sentencing Phases of Applicant's Trial

Applicant next contends he was denied due process based on the alleged presence of uniformed officers in the courtroom during both the trial and the resentencing proceeding.

First, as was the case with Applicant's claim in ground 10(d)(1), this freestanding claim can only be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (an application for post-conviction relief is not a substitute for an appeal). These claims could have been asserted at trial. These are not claims that are cognizable for post-conviction relief. As a result, these claims are denied and dismissed with prejudice.

Moreover, this claim fails as a matter of law. In order to prevail on such a claim, Applicant must show that measures taken in the courtroom created either an actual or inherent prejudicial effect on the jury. "Inherent prejudice occurs when 'an unacceptable risk is presented of impermissible factors coming in to play." State v. Hill, 331 S.C. 94, 501 S.E2d 122 (1998) (quoting Flynn). See also State v. Paige, 375 S.C. 643, 654 S.E.2d 300 Ct. App. 2007). (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing buttons of victim, and no evidence that if they did see it they could tell the picture was of the victim).

As noted in response to grounds 10(a)(4) and 10(b)(5), there is no evidence in the record that there was an abundance of uniformed officers in the courtroom such that prejudice can be shown. At the evidentiary hearing, Applicant did not identify or present any such evidence that an intimidating atmosphere was created to the point where due process was violated. See, e.g. Holbrook v. Flynn, 475 U.S. 560 (1986) (finding no prejudice from presence of armed officers stationed as guards); Hill, 331 S.C. 94, 501 S.E.2d 122 (any prejudice from presence of officers is wholly speculative, and Hill failed to present any evidence the officers had an effect on the jury); Paige, 375 S.C. 643, 654 S.E.2d 300 (finding no actual or inherent prejudice, where there was no evidence that jurors were exposed to spectators wearing button of victim, and no evidence that if they did see it, they could tell the picture was of the victim). Altogether, Applicant failed to establish he was entitled to relief upon this claim. As a result, this claim is denied with prejudice.

10(c): Fifth and Sixth Amendment violations due to shackling during transport to courtroom and once inside courtroom

Applicant asserts his constitutional rights were violated by the alleged shackling of Applicant when he was transported to the courtroom and when he was inside the courtroom. Specifically, it

appears that Applicant is asserting that he was visibly restrained before the jury at some point in time, during either the jury selection process or guilt phase in his first trial.

First, this freestanding claim is one that can be raised on direct appeal and is inappropriate in PCR. Drayton v. Evatt 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal that cannot be raised in a PCR application absent a claim of ineffective assistance of counsel).

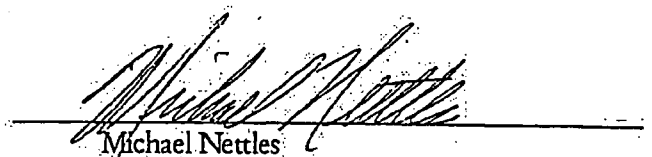
> Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security. Illinois v. Allen, U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). The trial judge is the best equipped to decide the extent to which security measures should be adopted to present disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes. Brewster v. Bordenkircher, 745 F.2d 913 (4th Cir.1984).

State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). In Deck v. Missouri, 544 U.S. 622, 626-29, 125 S. Ct. 2007, 2010-12 (2005), the United States Supreme Court noted that it had been long established that the routine use of visible shackles was not permitted, and that a special need would have to be present for visible shackling to be used during the guilt phase of a trial. Thus, to the extent Applicant is asserting that he was improperly shackled during the guilt phase of the first trial, Applicant's claim was clearly available at trial and for his direct appeal. As a result, this claim for relief must be denied and dismissed with prejudice.

Second, as outlined in the response to Applicant's claim on ground 10(a)(5), the testimony and evidence presented at the evidentiary hearing clearly indicates that Applicant was not visibly restrained in the jury's presence. Instead, those involved in transporting Applicant and providing security during the first trial, utilized restraints that fit underneath Applicant's clothing. The testimony at the evidentiary hearing also established that efforts were made to ensure Applicant was not moved in the jury's presence. He was brought into the courthouse and courtroom before the jury arrived, and he would not leave the courtroom until after the jury left. Altogether, Applicant

did not establish a factual basis to support this claim. As a result, this claim for relief is denied and dismissed.

IT IS, THEREFORE, ORDERED that Applicant's Post-Conviction Relief is hereby **DENIED** as set forth hereinabove.



Michael Nettles
Presiding Judge

Florence, South Carolina

August 12, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Honorable Judge Michael Nettles, Circuit Judge

CA No. 08-CP-43-00905

BOBBY WAYNE STONE, SK 5051, ... *Appellant*

v.

STATE OF SOUTH CAROLINA, ... *Respondent*

NOTICE OF APPEAL

Bobby Wayne Stone appeals the amended order of the Honorable Judge Michael Nettles, filed August 14, 2013, denying his application for post-conviction relief. Appellant received written notification of entry of this order on August 19, 2013.

Emily C. Paavola

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, South Carolina 29201
(803)765-1044

JOHN H. BLUME
Cornell Law School
Myron Taylor Hall
Ithaca, New York 14853
(607)255-1030

September 17, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Honorable Judge Michael Nettles, Circuit Judge

CA No. 08-CP-43-00905

BOBBY WAYNE STONE, SK 5051, ... *Appellant*

v.

STATE OF SOUTH CAROLINA, ... *Respondent*

PROOF OF SERVICE

I, Jill Rider, hereby certify that I have served upon the attorney for the respondent one (1) copy petitioner's Notice of Appeal in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Alphonso Simon, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

This the 17th day of September, 2013, in Columbia, South Carolina.

Jill A. Rider
JILL RIDER