

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

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S.C. SUPREME COURT

CHRISTOPHER POAGE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001998

APPENDIX

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1 story again. And if you leaf through this you will see
2 the way that this is written, it is not like in paragraph
3 form, this isn't written like some great story, it is
4 written almost just like he, she said. He would say
5 something, she would type it, he would say something, she
6 would type it. It is almost like from his mouth to her
7 keyboard. It is not like she developed a story and then
8 wrote it out in a narrative fashion, there aren't even
9 paragraphs. It is just one sentence after another. He is
10 talking and she is putting it down on paper, she prints it
11 out, he reads it and he said they only gave him two
12 minutes to review it. Nobody said that, that is not
13 anywhere. He could have sat there for an hour if he
14 wanted to. If he only took two minutes to read it that
15 was his choice. But nobody ever said, all right, you have
16 thirty seconds to review this document before you sign it.
17 There is no testimony to that. I don't know where that
18 came from. He was given as much time as he wanted to to
19 read that. I have read or had read to me the above
20 statement and received a copy of it. Signed Christopher
21 Poage. They read him his rights twice at the oral
22 interview and again before he signed that, never asked for
23 an attorney. And when you ask for an attorney it has to
24 be you ask for an attorney. For him to sit there and
25 speculate, well it makes me look guilty. Like Detective

1 Harveston said, that is not asking for an attorney.
2 Asking for an attorney is saying I would like to speak to
3 an attorney before I talk to you further. If he had said
4 that that would have ended it right then. I do not wish
5 to talk to you any further. I wish to invoke my right to
6 remain silent. That would have ended it right then. But
7 he didn't, he never said that. The only time he ever
8 mentioned an attorney is how he thought that that might
9 make him look but that has nothing to do with it, I want
10 an attorney. What is going on inside his head as to how
11 he perceives how that is going to make him look. When you
12 want an attorney ask for an attorney. They told him twice
13 right up front if you wish to have the advice, the
14 presence of a lawyer you can have one with you and if you
15 cannot afford one we will go get one for you. They told
16 him that two different times. And he said, no, I don't
17 want one. I waive my rights and I wish to talk to you.
18 So he gave the oral statement and the written statement.
19 And now as near as I can recall and it is your memory that
20 counts, not mine but as near as I can recall there was one
21 difference, one significant difference between the oral
22 statement that he gave to Dalton in Dalton's office. One
23 thing that is not in here that he told them that they
24 remembered he said. After they couldn't find the money
25 they waited in the house for Mr. Mitchell to come home.

1 They scratched a one into the refrigerator, Mr. Jackson
2 scratched a one into the refrigerator, something that they
3 didn't even know about. The part about we waited is not
4 in here but he testified to that is what he said. But he
5 just didn't say that again as he is giving the recitation
6 in Detective Harveston's office so she didn't type it down
7 and she didn't think to ask him again, hey, didn't you
8 tell me that you waited. And said, yes, and that would
9 have been in there but she didn't think to ask it, he
10 didn't think to say it so it is not in here. That is the
11 only significant difference. No threats or promises of
12 any kind, not even a hint, none. Didn't even have to, all
13 they had to do was ask him about it and he let go of it.
14 And the facts that he related, remember they said we
15 didn't release any of this stuff to the media, none of
16 this stuff, how Mr. Mitchell was killed, any details of he
17 crime scene. None of that was discussed in the media but
18 Mr. Poage knew that he carried groceries into the house
19 and he dropped them and low and behold, the crime scene
20 pictures, there is the groceries lying on the floor. You
21 think about it, it is like it dropped out of his hand.
22 The screwdriver he said. Low and behold there was a
23 screwdriver sitting on the couch. The bags were missing.
24 He said that Ernest Jackson put clothes, bloody clothes
25 they were wearing into the grocery store bags. And

1 interestingly enough there is no grocery bags anywhere to
2 be seen where food, the bread, the frozen banquet dinner.
3 The fact that there was a stick he hid beside the stereo.
4 And you can split hairs, beside, behind. If I am facing
5 the side of the stereo and I said behind the stereo, what
6 I mean is on the other side of the stereo from where I am
7 standing. When you look at the stereo you can see there
8 is really one spot that you can stand that would be
9 perfect for somebody coming in from the back of the house,
10 here is the kitchen, backdoor coming through here, walking
11 through here to the bedroom between the stereo and the
12 wall you look in the picture and I will show it to you in
13 a minute and you can see there is a perfect spot and the
14 stereo is pretty high. A big guy like Mr. Poage probably
15 has to hunker down just a little bit so his head wouldn't
16 pop up because if he did that somebody walking in from
17 here would never see him standing right there with that
18 stereo in the way. He knew about that. The police who
19 were on the scene that day didn't know. The doctor who
20 took the autopsy, the doctor, after they cleared
21 everything away and cleaned him up so they could see. And
22 another good indicator that a confession that he didn't
23 even know about it. What other information did we find
24 out, the burn pile behind Mr. Jackson's father's house.
25 The Investigator John George came in and testified that he

1 went through that and they found buttons, a piece of a
2 jean fabric like where a button goes. It is all in
3 evidence. State's exhibit 111 and 110. There are
4 pictures of it, shirt, buttons and rivets from a pair of
5 jeans and no one told there were clothes burning.
6 Detective Dalton, Mr. Dalton testified it is not unusual
7 for people to minimize their roles. Use your common
8 sense. If you are talking about something like this, you
9 participated in something horrible as this are you going
10 and get every single detail or are you going to get the
11 other guy, he was really the bad guy. I did some stuff
12 but I wasn't really the main guy, it was him, he was the
13 main guy. I am a pretty good guy, I didn't really want to
14 do any of this. That is what that whole statement reads
15 like. But the problem is is that he admitted to more than
16 enough to make him guilty as a hands on murderer. He put
17 his hands on Tommy Mitchell and held him. He admitted to
18 that and so by the time he comes to court he has got to
19 try to make that out to something that is not. Like I
20 didn't do that or I don't even know what he is saying. It
21 is right there, black and white on this piece of paper.
22 You told me to hold his arms, I held his arms. He did
23 leave out some important details though. No mention of
24 the shovel and I will get to that in a little bit. But no
25 mention at all, for some reason he didn't want to mention

1 that shovel. Why do you think that. No discussion. If
2 he had of said, some how when Mr. Mitchell made a run for
3 it, some how after they grabbed him, somehow they ended up
4 back in the bedroom, didn't want to talk about how they
5 got to the bedroom. But it is a straight up confession to
6 actual participation in a crime. Laying in wait for Tommy
7 to return home, after we tossed the house and couldn't
8 find the money they laid in wait. They carved a one on
9 the refrigerator. When they heard him pull up he told him
10 to hide behind the stereo. You are merely present and you
11 are not going to participate why are you going to hide,
12 why wouldn't you stand there. I mean, really, really.
13 Why wouldn't you go running out the back door and go,
14 Tommy, Tommy, run, run. Or even if he didn't want to do
15 that, if you just wanted nothing to do with Tommy
16 Mitchell's coming in the back door you should be going out
17 the front even if you don't have the decency to warn him.
18 He says he bumped into EJ, get him cuz, bumped into EJ.
19 Well when you see the picture, if he is here and he is
20 running here the only way that he could have bumped into
21 EJ was chasing Mitchell into the kitchen was if you moved
22 out from behind there. He had to have been in motion
23 chasing after Tommy Mitchell actively participating in the
24 crime. Admits that he held or grabbed his arms, I don't
25 care which one he wanted to do. Under either theory, it

1 doesn't matter, it was a big to do about well, did he say
2 held or grabbed. Who cares. Under either theory you are
3 guilty, you have no business laying hands on a man in his
4 own home while he is being beaten down and somebody has
5 gone to get a knife to stab him and then you get to say, I
6 didn't really have anything to do with it. After it is
7 all said and done he says, well, I just couldn't take it,
8 I couldn't sit there and watch him get stabbed. I just
9 had to leave like I am a good person, this was more than I
10 could bear. I could hold his arms down and stand there
11 and watch him get beat with a stick, beaten over every
12 part of his body. You can see what the scene looked like,
13 there is blood everywhere. I could take that but it was
14 too much when he went for that knife, I just had to go.
15 But where did he go. Again running out the front door,
16 running out the back door, screaming down the street,
17 help, help. Whatever, get away. No, he gets on the back
18 of the moped that belongs to somebody else who is now
19 lying in a pool of blood stabbed thirty times in his own
20 house and rides off on a stolen moped. He didn't actually
21 have anything to do, use your common sense. Burned his
22 clothes and sure enough burned his clothes in the burn
23 pile and then two and a half hours later or so at 4:00
24 o'clock in the afternoon he is still with Ernest Jackson
25 walking down the side of the road.

1 (Whereupon, a tape was played.)

2 MR. BRACKETT: That is EJ, he is standing there
3 laughing it up with a guy who two hours before he says was
4 taking this stick and beating Tommy Mitchell everywhere he
5 could. Blood is flying everywhere, it is pooling up on
6 the floor under his head. Spattering up under the chair,
7 under the chair where Tommy Mitchell was grabbing on to
8 where there was streaks of blood down the legs of the
9 chair, where he was trying to pull himself up in a pool of
10 blood, where he tried to grab the top of the chair to get
11 him back on his feet to try to defend himself. Two hours
12 before he is watching that and now here he is on the side
13 of the road. That is not me, you have a good day officer.

14 Let's go through the crime scene in more detail.
15 Everything in that confession is there at the crime scene.
16 This is the kitchen, the chair is knocked over, glass on
17 the floor, tables askew, there was a struggle in there.
18 Tommy Mitchell was fighting for his life, he was trying to
19 get out of the house, these two guys were much bigger than
20 him. They said he was 5', 330 pounds. Look at the
21 interview that Jeff Cornell did, look at the size of Chris
22 Poage and Ernest Jackson. 6', 6'1", 190, 200 pounds.
23 What chance did Tommy Mitchell have, he didn't have a
24 chance. He was making his best shot trying to get out of
25 the house. The one carved in the fridge, the police

1 didn't even know about it until Chris Poage told us about
2 it. That is why we don't have a nice clean picture of it
3 because they saw it but they didn't know that was to deal
4 with the crime, it might have been there for six months
5 for all they knew. Chris Poage knew about it because he
6 was there. He was standing right there. This green
7 handled screwdriver was used to make that mark. The
8 living room, the groceries just like he said, green
9 handled screwdriver. The view let's see, first I want to
10 point out, that is the spot and this is coming from the
11 kitchen. You can see it a little bit clearer, there is
12 less light hitting the screen. That is the spot where the
13 man who was merely present hid when he heard the homeowner
14 coming in. Why would you hide if you were merely present.
15 Why wouldn't you want the homeowner to see you. He is not
16 getting into the burglary, he didn't have anything to do
17 with this, he was merely present. But when he heard Mr.
18 Mitchell pull up what did Mr. Poage do. He hid and laid
19 in wait for Tommy Mitchell to come in and walk by him.
20 This picture shows you one other interesting thing, the
21 view from where Mr. Poage was hiding as you heard from
22 Investigator Barnwell. You would have seen maybe this
23 corner, it would have been blocked by the edge of the
24 fireplace there. You would have seen maybe this corner,
25 this area here. What does the statement say though. It

1 says in there, he has the grocery bags and he walked in
2 his room, walked into his room and EJ threw some liquid at
3 him and he dropped that stuff. Well we know that he
4 couldn't have seen EJ throwing any liquid at him from
5 where he was hiding so he must have moved up behind him as
6 he came into the house because he was moving up behind
7 him. And the groceries ended up here. We don't know for
8 sure where they were at the time of the assault but that
9 is where they ended up. That is certainly not his room.
10 But they could have still been in bags and picked the
11 stuff and just threw it into the living room. Perfect
12 spot, you can see how high that is, you can measure it
13 against the size of that chair and that doorframe. All he
14 had to do was hunker down a little bit and he could have
15 been invisible back there, Mr. Mitchell would have never
16 seen him. This, ladies and gentlemen, I submit to you
17 where he said he got in the kitchen, somehow he ended up
18 in the bedroom. He did not say how. The reason was I
19 submit that because Mr. Jackson and Mr. Poage were
20 manhandling him and dragging him back. There is no blood
21 from Mitchell anywhere in the house except starting here
22 in his bedroom except for the bloody footprints in the
23 living room and the kitchen. Those were tracked on the
24 shoes that the people who killed Mr. Mitchell but there is
25 no blood spatter there. So he wasn't bleeding in that

1 location, he was bleeding in the living room because there
2 is drops of blood they found. Right here is where they
3 started beating him. As Detective Barnwell told you, that
4 is not a little bit of blood, that is somebody who was
5 struck violently, very hard with a heavy object, that is a
6 large amount of blood and splashing on the floor. That is
7 not a few drops that you see in the bedroom, the pictures
8 on the wall and those other items. That right there is
9 where they started beating Tommy Mitchell. They dragged
10 him back into his bedroom. There is no forensic evidence
11 that convicts my client. Look how dirty this is, all of
12 the dust, all of the dirt, the disarray, the shoes, the
13 clothes, the filth, the messiness. You hardly know what
14 anybody touched and what they didn't. I don't think
15 anybody disputed that but listening to Investigator Mike
16 Williams testify from Barnwell, they swabbed everything
17 they could think of and we went through the list of
18 doorknobs and walls and blood spatter and chairs, broken
19 glass, the whiskey bottle, the shovel, the stick, the
20 edges of the doors, any place where somebody might have
21 touched, any place logically that they can expect. They
22 can't swab the entire house, they have got to just swab
23 where you would expect to find the suspect may have
24 touched like the shovel and the stick, the obvious areas.
25 They swabbed everywhere they could. It is hard when you

1 have a crime scene as messy as this. This is an important
2 picture. He was beaten severely here for some time.
3 These shovel marks, some of them there as Mr. Barnwell
4 testified were spearing motions with the shovel. The
5 shovel right here, it has got blood on it all the way up,
6 almost way up to the shovel, from stabbing while Mr.
7 Mitchell was laying on the ground. The marks left with
8 blood spatter, all on the chair, on the wall behind, all
9 over the bureau, even on top of the bureau, on items over
10 here, there is blood everywhere. And the blood is pooling
11 up on his body, it is literally like hitting a puddle with
12 a shovel, water splashing everywhere except it is blood.
13 It is going everywhere, underneath the chair, all over
14 this table. But that is not where they found Mr.
15 Mitchell, maybe he was face up here and they rolled him
16 over to check his back pockets after they worked on his
17 front. He is obviously beaten and beaten more than one
18 place and he came to rest there. All the circle marks,
19 the blood, all over the wall there, all over the back of
20 the chair. This was a sustained, prolonged beating. And
21 Mr. Poage was merely present. The blood stains from
22 perhaps Tommy Mitchell's last agonizing effort to get back
23 onto his feet to defend himself. Pictures of the
24 underside of the chair, the blood spatter there. Here is
25 where I submit to you, this picture tells you something

1 very important. First of all, as Detective Harveston
2 testified to late in the trial who uses a stick and then
3 goes and gets a knife. There is three weapons that was
4 literally used in this case, we know he was stabbed, 30
5 stab wounds all over his body, at least we can't know
6 where he was stabbed because his body decomposed. From
7 the pictures I showed you there is no skin there, the skin
8 is completely gone. The face, the front of his neck,
9 whether he was stabbed in the throat, we will never know.
10 His body decomposed to the point where a doctor had
11 nothing left to examine, there was nothing to tell whether
12 he had been stabbed in these places. But he was able to
13 find at least 30 stab wounds. Who does that, who goes and
14 gets three different weapons. Is that more likely or is
15 it more likely that one person had the shovel and the
16 other person had the stick. There is bloody footprints on
17 both sides of him. A picture that shows the right side
18 and the left side, bloody footprints on both sides. Two
19 different blunt instruments used. Ribs broken on both
20 sides of his body, his right and left, six ribs on one
21 side and two ribs on the other, multiple contusions to his
22 head. One break on his left arm. The other one is trauma
23 to the outside of his arm, broken. Doctors suggested to
24 ward off the blow and that arm was used for this because
25 it was a compound fracture. What else can you deduce from

1 this picture. Let's go back to his statement. He says I
2 saw Shortdog was on the bedroom floor, facedown. EJ was
3 beating him with a stick. Then Shortdog started breathing
4 like he was asleep. EJ threw the stick down and I grabbed
5 his arm and I said, he told me to get Shortdog's arms and
6 I did. He got a knife from somewhere and started stabbing
7 Shortdog. He threw the stick and got a knife from
8 somewhere. What is the problem, this is from the virgin
9 shot as Barnwell called it. The stick is under the
10 shovel, not on top of it. After stabbing the man thirty
11 times you wouldn't work him over with a stick, when in
12 particularly four or five of those stab wounds are to the
13 back. And I submit that is the last thing that happened.
14 Why didn't Mr. Poage mention the shovel, why didn't he
15 tell Detective Harveston about the shovel. What possible
16 reason could he have for wanting to avoid the subject of
17 the shovel. Because Mr. Poage had the shovel. He wanted
18 to stay as far away from that shovel as possible. He
19 didn't want to talk about any shovel. He didn't want to
20 mention shovel, he didn't want anybody to talk about a
21 shovel. Because the shovel was in Mr. Poage's hands. The
22 crime scene processing is very thorough, no DNA
23 fingerprints. One of the reasons for that possibly, what
24 possible reasons, maybe they were wearing gloves, we don't
25 know. But that is a lot of places to touch and not be any

1 DNA. What reasonable explanation could you have that
2 there would be no fingerprints of DNA, they were wearing
3 gloves. That is a possibility but we just don't know.
4 That is one possible explanation. He admits that he was
5 there. No forensic evidence linking my client. Well you
6 know what folks, there is no forensic evidence leading for
7 Mr. Jackson either. So what does that mean. Did Tommy
8 Mitchell kill himself? Somebody killed Tommy Mitchell.
9 There isn't always forensic evidence in every case. But
10 you do have a confession saying he was there. Even Mr.
11 Rawlinson says he was there. This isn't in dispute.
12 Finally what do we know that Christopher Poage didn't do.
13 What didn't Christopher Poage do. Well first of all, the
14 decent thing to do that any good citizen would have done,
15 help Tommy, warn Tommy, alert Tommy, at a bear minimum run
16 from the house. If you are not willing to help Tommy go
17 find somebody that is, run out the door to a neighbors
18 house and tell them to call the police, do the decent
19 thing, do the right thing. If you are still not willing
20 to do that how about later maybe you are scared of Mr.
21 Jackson, let's just make something up and say that is the
22 case. How about later on the same day the first chance
23 you call 911 and say, I know the guy who killed Tommy
24 Mitchell, he is over at his house and laying there, go try
25 to help him if you can and maybe he is still alive. There

1 is no call like that because that call was never placed,
2 not by Christopher Poage, not on Christopher Poage's
3 behalf, by his family or friends that he trusted to make
4 the call, on nobody's behalf, nobody called to tell the
5 police or EMS or anybody to go and look after Tommy to see
6 what kind of shape he was in. His friend had to find him
7 by chance, six days later because Chris Poage wouldn't
8 pick up the phone and call anybody himself. And why
9 wouldn't you want to call anybody. Of course you are not
10 going to call the police if you were involved in it. You
11 just want to tell them it didn't happen, go on about your
12 life, cross your fingers and hope that they never find
13 out. But at a bear minimum if you are merely present and
14 you didn't have anything to do with it but you were
15 standing there and you watched Ernest Jackson do this
16 horrible crime and beat this poor man to death and stab
17 him 30 times at least wouldn't you stop hanging out with
18 the guy. But what did they tell you at the beginning when
19 they found Christopher Poage, who was he with six months
20 later, still hanging out with Ernest Jackson, the monster
21 he says is responsible for this. What he didn't do was
22 dissipate himself from Ernest Jackson and why wouldn't he.
23 Because he was in on it too, why wouldn't he. He is just
24 as guilty as Ernest Jackson. In this country you are
25 innocent until you are proven guilty and in this country

1 when you are charged with a crime you have many
2 substantial and important rights. And I stand before you
3 today telling, every one of those rights is respected.
4 You have the right to an attorney, you have a right to
5 remain silent, you have a right to a jury trial by a jury
6 of your peers, you have the right to confront the
7 witnesses against you, cross-examine, you have the right
8 to call your own witnesses in your defense, subpoena them
9 and compel them to come to court to testify on your behalf
10 and say things you need to them to say to establish
11 whether you are innocent or guilty. You have all of these
12 rights, they are very important rights and I submit to you
13 every one of those rights has been respected in this
14 courtroom over the last three days. Mr. Poage has had his
15 fair trial, Mr. Poage has had his opportunity to confront
16 the witnesses against him, Mr. Poage has had the
17 opportunity to call his witnesses in his defense if he
18 chose to, not that he has to, but if he chose to he could
19 and he did. Mr. Poage has had the opportunity to strike a
20 fair and impartial jury who knows nothing about this case
21 who is sworn to do the right thing, the jury of his peers
22 chosen at random from across York County. He has had a
23 right to have those jurors sit and listen fairly and
24 impartially of the evidence, listen to questions of his
25 attorney and the arguments of his attorney and y'all have

1 paid very close attention. I have been watching you
2 through the trial and I appreciate that. Those are the
3 main substantial and important rights that this Mr. Poage
4 has. I want to remind you that Tommy Mitchell has one
5 right left. He has the right too, he has a right to
6 justice, he has a right to see to it that the people who
7 did this thing to him are held accountable after evidence
8 has been presented, credible, competent evidence has been
9 presented establishing that parties guilt beyond any
10 reasonable doubt and we have done it. Christopher Poage
11 is guilty, guilty of burglarizing Tommy Mitchell's house,
12 he went in there without Mr. Mitchell's permission, he hid
13 from Mr. Mitchell when he came home and he participated in
14 the brutal beating, kidnapping, robbery and murder of
15 Tommy Mitchell. He is guilty, he has had all of his
16 rights respected, he has had all of his rights protected
17 and now it is time to protect Tommy Mitchell's last
18 remaining right, his right to justice. Find Christopher
19 Poage guilty, find him guilty. Come back into this
20 courtroom and tell him that you know he is guilty of
21 murder, that he took Tommy Mitchell's life, he took that
22 good woman's son, find him guilty. Thank you.

23 MR. RAWLINSON: Your Honor, I have a few matters of
24 law.

25 THE COURT: It is a good time to take a break before

1 I do my charge. Don't start discussing the case because
2 we haven't reached that point yet, I haven't charged you
3 the law. We have some matters to take up outside of your
4 presence so we will take a break and when we come back I
5 will charge you the law but don't start deliberating yet.

6 (Whereupon, the jury was excused from open court for
7 a break.)

8 MR. RAWLINSON: Can we approach.

9 (Whereupon, a bench conference was held.)

10 THE COURT: Mr. Rawlinson has a couple of matters to
11 put on the record.

12 MR. RAWLINSON: First, Your Honor, I would request,
13 for both of these I would request to the Court for
14 curative jury charges. The first is that the Solicitor
15 related to the witness or related to the jury several
16 times in his closing argument that this statement was
17 indeed a confession which I believe is contrary to the
18 Court's earlier ruling, that the statement would be
19 referred to as such giving Counsel a proper opportunity to
20 refer to this statement as a statement that confesses
21 something. I believe that is against the Court's ruling
22 and I would request some type of curative instruction to
23 the jury on that charge.

24 THE COURT: Before we move on what do you suggest
25 that I tell them.

1 MR. RAWLINSON: Your Honor, I would simply ask that
2 the jury be instructed that this statement is not indeed a
3 confession, it is a statement as to what my client told
4 the police but it is not to be termed a confession. I
5 believe you are going to give an instruction on a
6 statement or confession.

7 THE COURT: I think my charge on the statement is
8 sufficient. My earlier ruling was that the witnesses
9 could not refer and maybe I should have been clearer but I
10 want to make it clear that the State could argue to the
11 jury in that statement he confessed. And I understand why
12 you want that but I am not going to give them a curative
13 instruction. I don't believe the Solicitor went outside
14 the bounds. I will note your exception at this point but
15 I am not going to charge anything about, I think it would
16 be compounding to bring the jury in and try to explain to
17 them that this is simply a statement and not a confession
18 but it is a statement which confesses. Anyway I am not
19 doing anything with that.

20 MR. RAWLINSON: The second request I have is for the
21 Court to instruct the jury on a good samaritan law. I
22 don't know if the Court has one and if the Court will
23 allow me a brief recess, I certainly could type up one. I
24 believe in South Carolina the case law is pretty clear
25 that a person has no affirmative duty to stop a crime from

1 happening. The State, a person has no affirmative duty to
2 prevent a crime from happening. Certainly if you were
3 ever involved in a crime at that point, with that
4 affirmative act you incur some duties but if you are
5 simply merely present or a witness you have absolutely no
6 duty in the State of South Carolina to stop anything or to
7 report anything. And unless the Solicitor's office can
8 tell the Court otherwise I think in light of the
9 Solicitor's office comments, during the closing arguments
10 I think that the jury needs to hear that because I think
11 it is ambiguous after that closing argument.

12 THE COURT: We will take a break because I know the
13 jurors will utilize the facilities while they are out. We
14 will take a break, I don't remember whether the word duty
15 was ever used by the Solicitor. You were keeping notes so
16 I don't know if you have that he said there was a duty. I
17 think he argued that there is some evidence of guilt that
18 he did not do these things, not that it was a duty for him
19 to stop it. I have my mere presence charge which I am
20 going to charge and while we take a break I will be glad
21 for you to take a look at anything you might find on that
22 issue. And we will revisit it again. Anything from the
23 Solicitor on those two issues?

24 MR. BRACKETT: I will point out to the Court, the
25 State versus Carson, 262 SE 2nd, 918 stands for the

1 proposition that South Carolina also recognizes the common
2 law misdemeanor of misprision of a felony which is
3 criminal neglect either to prevent a felony from being
4 committed or to bring the offender to justice after its
5 commission but without such previous concert with or
6 subsequent assistance of him as will make the concealer an
7 accessory before or after the facts.

8 THE COURT: We are going to take a break and see what
9 Mr. Rawlinson can find. We will take about a ten minute
10 break.

11 (Whereupon, a short break was taken.)

12 THE COURT: Mr. Poage is present and before we get
13 the jury in we want to followup on the request for the no
14 good samaritan law. Mr. Rawlinson.

15 MR. RAWLINSON: Your Honor, the State versus Carson,
16 262 SE 2nd, 918. I would request that mere silence or
17 failure to come forward is not enough to constitute a
18 crime to be added to the charge. I base this on the fact
19 that the Solicitor argued to the jury on several different
20 occasions that Christopher Poage should have, and he
21 repeated that several times. He should have come forward,
22 he should have done something. I think it is reasonable
23 for the jury to, the jury to draw an inference that should
24 have means he has some duty imposed on him by the State of
25 South Carolina. I think the general purpose of a jury

1 instruction is to instruct them on the law and to fill in
2 the gaps because they are lay people and I think this
3 curative instruction would help to insure that that
4 particular phrase which was repeated several times by the
5 prosecution does not come into play in jury deliberations
6 if it is in fact not something that my client has a duty
7 to do.

8 THE COURT: Mr. Brackett.

9 MR. BRACKETT: Your Honor, I believe the law entitles
10 me to argue the evidence and reasonable inferences from
11 the evidence and what I was doing was merely pointing out
12 to the jury that his failure to alert the authorities
13 about this incident after the fact was indicative of a
14 consciousness of guilt, that he was afraid to call their
15 attention to it because he had participated in it, not
16 that he would have violated any laws that he should be
17 convicted of some other. If I had thought that I could
18 have prepared an indictment for those charges, I did not.

19 THE COURT: I am not going to charge it. You are
20 requesting that but I think the mere present charge I have
21 is as far as I am going on that.

22 MR. RAWLINSON: Thank you, Your Honor.

23 THE COURT: Bring the jury.

24 (Whereupon, the jury came into open court at
25 approximately 10:45 a.m.)

1 THE COURT: Members of the jury, I am going to ask
2 you to give me your attention for a few more minutes while
3 I charge you the law which you are to apply to the facts
4 as you determine them to be in this case. Mr. Poage is
5 charged with burglary in the first degree, armed robbery,
6 kidnapping, criminal conspiracy, murder and possession of
7 a knife during the commission of a violent crime. I am
8 going to not go over these indictments in particularity
9 with you because I am going to give you in a moment the
10 elements of these charges which the State must prove
11 beyond a reasonable doubt before Mr. Poage could be
12 convicted of one or all of these charges. These
13 indictments though will be with you in the jury room but
14 they are not evidence. The indictments are simply the
15 charging paper by way of which this charge was brought
16 into court and brought before the jury and upon which the
17 case is tried and will ultimately have the jury's
18 unanimous verdict enrolled on it, the indictment. So it
19 is not to be considered as any evidence whatsoever. Now
20 the fact that there are a number of indictments is not
21 significant. The State has chosen to indict Mr. Poage on
22 these charges and the fact that there is more than one
23 does not mean that the charges have any more weight were
24 there simply one indictment. The State simply decided
25 that under the facts as they determine them to be these

1 were applicable charges but they are not, the fact that
2 there are several is of no weight. You are to decide each
3 of these charges, each of these indictments solely on the
4 evidence that relates to that charge as I go over it in
5 just a few minutes. Your verdicts on one does not
6 necessarily mean you have to find a similar verdict on the
7 other. You are to look at each independent and each
8 indictment rises or falls, that is the guilt or not guilty
9 verdict, it rises or falls on the law and the facts that
10 relate to that particular indictment. You are only to
11 consider these indictments against Mr. Poage. You must
12 not consider the fact that Mr. Ernest Jackson is not on
13 trial in this particular trial.

14 To the charges, to each Mr. Poage has plead not
15 guilty. His plea of not guilty places on the State the
16 burden of proving his guilt beyond a reasonable doubt. A
17 defendant in our system is never required to prove their
18 innocence. The fact that he was arrested, charged,
19 indicted and the fact that he is on trial is not evidence
20 that he committed these offenses. That is just the way
21 our system works. That occurs and then when we reach that
22 point it is up to the jury to determine whether or not the
23 State has carried its burden of proof, proving an
24 individual here, Mr. Poage, guilty beyond a reasonable
25 doubt.

1 This presumption of innocence that enures to Mr.
2 Poage's benefit is a substantial and an important right.
3 It is not just a mere legal theory or a mere legal phrase,
4 it is a substantial right. The presumption of innocence
5 attaches to an individual at the time they are arrested,
6 remains with them as their case is processed through our
7 court system. The presumption of innocence in Mr. Poage's
8 favor, remains and exist in his favor at this very moment.
9 The presumption of innocence in his favor is removed if
10 and when, only if and when you determine that the State
11 has proven his guilt beyond a reasonable doubt. Now the
12 State is not required to prove Mr. Poage's guilt as to a
13 charge beyond all or beyond every doubt but beyond a
14 reasonable doubt. Our courts have defined a reasonable
15 doubt is the kind of doubt that would cause a reasonable
16 person to hesitate to act. Proof beyond a reasonable
17 doubt is proof that leaves you firmly convinced of
18 someone's guilt. There are very few things in our world
19 that we can know without absolute certainty and our law
20 does not require that. If based on your consideration of
21 the evidence you are firmly convinced that Mr. Poage is
22 guilty of one or more of the offenses you would so find
23 him, that is you would find him guilty. On the other hand
24 if you think there is a real possibility as to one or more
25 of the charges that he is not guilty then you would give

1 him the benefit of that reasonable doubt and find him not
2 guilty. He is entitled to any reasonable doubt you have
3 as to any issue in this case.

4 I remind you that the jury and myself have certain
5 duties. Mine is to charge you the law, yours is to take,
6 accept and apply the law as I charge it. You must do this
7 even if you think I charge the law in error or even if you
8 think the law should be different. Your oath requires you
9 to take and accept and apply the law as I charge it. You
10 are not to infer from anything that I have said or done or
11 anything that I now say or do as indicating an opinion of
12 mine on the facts. Our laws does not allow a trial Judge
13 to formulate or to express to a jury any opinion on the
14 facts. It is solely your job, solely your job to examine
15 the evidence and to the evidence, the effect, the value,
16 the weight and the truth you believe it should have.
17 During this you may believe one witness as opposed to
18 several, several witnesses as opposed to one. You may
19 believe all, part or none of a witnesses testimony. Use
20 your common sense, your sense of logic, your sense of
21 reason, use your experiences in life as you analyze the
22 evidence. As judges of the facts you as necessity must
23 judge the credibility, that is the believability of the
24 witnesses who have testified. In accepting credibility
25 use those things that I have just talked about, use those

1 things that you find in your life, in your daily life as
2 being indicative of truthfulness in individuals. And you
3 can use certain evaluators, a witnesses demeanor, how they
4 act on the stand, were they hesitant or straightforward in
5 answering questions. Look at the consistencies or
6 inconsistencies in their testimony. Examine the
7 opportunity a witness had to know those things about which
8 the witness testified. And you can consider whether a
9 witness has any biased or prejudice, that is any reason to
10 help or hurt one side or the other.

11 I told you when we started this trial that ordinarily
12 individuals can only testify as to something they sense
13 with one of their five senses, it is usually something
14 that they have seen or heard. However, I told you then
15 and I will remind you that where individuals have certain
16 knowledge, experience, training and skill those persons
17 can be qualified by the Court to render an opinion. Now
18 the experts opinions are allowed in evidence to assist
19 you, they are not binding on you. You are to judge their
20 testimony using all the criteria that I have already
21 outlined for other witnesses. In addition as to the
22 expert you analyze and use whether or not to, or what
23 weight to give their testimony if any. You also look at
24 their qualifications to do, the qualifications to render
25 the opinion they rendered and you also look at the reasons

1 they used to come up with their opinion. As I said,
2 expert witnesses testimony is allowed into evidence to
3 assist you, it is not binding on you, you may accept it or
4 reject it in whole or in part.

5 I instruct you and emphasize to you the fact that Mr.
6 Poage exercises his constitutional right to remain silent
7 cannot and must not and will not be used against him in
8 any way whatsoever. He has, as I have already talked to
9 you about, an absolute presumption of innocence, he does
10 not have to prove his innocence. The State must, as I
11 have told you, prove his guilt beyond a reasonable doubt.
12 The fact that he exercised his constitutional right to
13 remain silent leads you to no conclusion. You are not to
14 discuss the fact that he exercised his right to remain
15 silent, you are not to factor it into your own
16 deliberation. You are not to use it and mitigate against
17 Mr. Poage in any fashion whatsoever. I remind you he is
18 presumed innocent, the State must prove his guilt beyond a
19 reasonable doubt.

20 In cases such as this there are usually two types of
21 evidence presented, direct and circumstantial evidence.
22 Direct evidence is the testimony of a person who claims to
23 have actual knowledge of facts such as eyewitnesses.
24 Direct evidence is evidence which immediately establishes
25 the main facts sought to be proved. Circumstantial

1 evidence is proof of a chain of facts and circumstances
2 which indicate the existence of a fact. Circumstantial
3 evidence is evidence which immediately establishes
4 collateral facts in which the main fact may be inferred.
5 Circumstantial evidence is based on inference and not on
6 personal knowledge or observation. Our law makes
7 absolutely no distinction between the weight of value to
8 be given, either direct or circumstantial evidence. Our
9 law does not require a greater degree of certainty for
10 circumstantial as opposed to direct evidence. What you
11 should do in this case is weigh all of the evidence. If
12 after doing that you are not convinced that Mr. Poage's
13 guilt as to one or more of the charges you would find him
14 not guilty.

15 In evidence there is a statement alleged to have been
16 made by Mr. Poage and as I told you I admitted it into
17 evidence. While I have done that I instruct you that the
18 ultimate decision of whether or not he in fact made the
19 statement and if he made it whether it was made by him
20 freely, voluntarily, knowingly and of his own free will is
21 up to you. This means that you must determine whether or
22 not, first whether he made the statement and if he did you
23 must consider whether the statement was caused by
24 pressure, force, fear, threats, coercion or intimidation
25 or by hope or promise of leniency or reward of any kind.

1 In determining whether or not the statement, if you
2 determine he made it, was voluntary you should consider
3 the characteristics of Mr. Poage and the details of the
4 questioning. Some of the factors you may consider in
5 addition to others you deem appropriate are his age, his
6 education or lack of education, his mental ability or
7 capacity, his intelligence, his background and
8 environment, place and length of detention, the nature of
9 any questioning and the advice or lack of advice regarding
10 his constitutional rights. That is whether or not he was
11 advised that he had the right to remain silent, that any
12 statement could be used against him in a court of law,
13 that he had a right to have an attorney present and if he
14 could not afford one one would be afforded to represent
15 him without cost to him. And further that he was advised
16 that he could stop making his statement, a statement at
17 any time. You must carefully consider all of the
18 surrounding circumstances before you give any weight to
19 any alleged statement. The State has the burden of
20 proving beyond a reasonable doubt that the alleged
21 statement was voluntary. If you determine it was you may
22 give it any further consideration you deem appropriate.
23 You must decide what weight if any should be given to the
24 alleged statement. If you determine the alleged statement
25 was not his free and voluntary act you should not consider

1 it at all.

2 We do have a theory in this state called the hand of
3 one is the hand of all. When a crime is committed by two
4 or more people who are acting together and committing a
5 crime the act of one is the act of all. A person who
6 joins with another to commit an unlawful act is criminally
7 responsible for everything done by the other person which
8 happens as a probable or natural consequence of the acts
9 done in carrying out the common plan and purpose. If two
10 or more people are together acting together, assisting
11 each other in committing the offense the act of one is the
12 act of all or as it is sometimes said, the hand of one is
13 the hand of all. Prior knowledge that a crime is going to
14 be committed without more is not sufficient to make a
15 person guilty of that crime. Mere knowledge that another
16 person is going to commit a crime, even if the defendant
17 is present when the crime is committed is not sufficient
18 to convict him, a defendant as a principle. Guilt as a
19 principle, that is under the hand of one is the hand of
20 all, is shown by actual, constructive possession, I am
21 sorry, shown by actual or constructive presence at the
22 scene. The State must prove beyond a reasonable doubt by
23 competent evidence this theory, that is the theory of the
24 hand of one is the hand of all. A principle in a crime is
25 one who either actually commits the crime or one who is

1 present, aiding, abetting or assisting in the commission
2 of the crime. When a person does an act in the presence
3 of and with the assistance of another that act is done by
4 both. Where two or more are acting of a common plan or
5 intent are present at the commission of the crime it does
6 not matter who actually commits the crime, all are guilty.
7 The hand of one is the hand of all present at the
8 commission of the crime means that the person to be
9 sufficiently near to aid and abet and assist in the
10 commission of the crime. However, mere presence at the
11 scene of a crime is not sufficient to convict one as a
12 principle on the theory of aiding and abetting.

13 Intent is also a necessary element for there must
14 have been a common design or intent to commit the crime
15 and the crime must have been committed pursuant thereto
16 with the person aiding and abetting by some overt act to
17 make them guilty under this principle. Intent means
18 intending the result which actually occurs, not accidental
19 or involuntary. Intent may be shown by acts in conducts
20 of a defendant and other circumstances from which you may
21 naturally and reasonably infer intent. The State must
22 prove the hand of one doctrine beyond a reasonable doubt.
23 As I said mere presence at the scene is not sufficient to
24 prove someone guilty of a crime. A defendant's presence
25 where a crime is being committed or mere association with

1 a person who commits a crime does not make that person an
2 accomplice or an aider and abettor of the person
3 committing the crime. The burden is on the State to prove
4 every element of a crime as charged. If you find after
5 reviewing all of the evidence that the State has proven
6 the defendant was only present at the scene and they have
7 not proven beyond a reasonable doubt any other
8 participation in the crime then you would find Mr. Poage
9 not guilty. The law is that proof of being at the scene
10 of the crime is not sufficient alone to find someone
11 guilty.

12 During my charge I will several times use the term,
13 deadly weapon. Each time I use it it means the same
14 thing. Under our law a deadly weapon is any article,
15 instrument or substance which is likely to cause death or
16 great bodily harm. Whether an instrument has been used as
17 a deadly weapon depends on the facts and circumstances of
18 the case. The following are examples of instruments which
19 may be deadly weapons, a dirk, a dagger or a knife.
20 Ordinary objects may become deadly weapons when the facts
21 show that they have been used to inflict serious bodily
22 harm or death. The term knife means an instrument with a
23 sharp cutting blade whether or not it has a handle or not
24 which can be used to inflict or slash, inflict, I am
25 sorry, inflict a cut, slash or a wound to an individual.

1 The first charge I am going to go over with you is
2 murder. Mr. Poage is charged with murder. The State must
3 prove beyond a reasonable doubt that Mr. Poage killed
4 another person with malice aforethought. Malice is
5 hatred, ill will or hostility towards another person. It
6 is the intentional doing of a wrongful act without just
7 cause or excuse and with an intent to inflict an injury or
8 under circumstances, or under circumstances that the law
9 would infer an evil intent. Malice aforethought does not
10 require that malice exist for any particular time before
11 the act is committed but malice must exist in the mind of
12 the defendant just before and at the time the act is
13 committed. Therefore there must be a combination of the
14 previous evil intent and the act. Malice aforethought may
15 be expressed or inferred. These terms, expressed and
16 inferred do not mean different kinds of malice but merely
17 the manner in which malice may be shown to exist. That is
18 by either direct evidence or by inference from the facts
19 and circumstances which to prove. Expressed malice is
20 shown when a person speaks words which express hatred or
21 ill will for another or when the person prepared
22 beforehand to do the act which was later accomplished.
23 For example, lying in wait for a person or any other act
24 or preparation going to show that the deed was within the
25 defendant's mind would be expressed malice. Malice may be

1 inferred from conduct showing a total disregard for human
2 life. Inferred malice may also arise when a deed was done
3 with a deadly weapon and I have already defined that for
4 you. Malice may be inferred from brutal conduct on the
5 part of a defendant. A specific intent to kill is not
6 required to commit murder. In this State we also have a
7 felony murder doctrine. If one intentionally kills
8 another during the commission of a felony the inference of
9 malice may arise. If facts are proven beyond a reasonable
10 doubt sufficient to raise an inference of malice to your
11 satisfaction this inference would simply be an evidentiary
12 fact to be taken into consideration by you along with the
13 other evidence in the case and you may give it the weight
14 you decide it should receive. Felonies would include
15 armed robbery, first degree burglary, kidnapping and
16 criminal conspiracy.

17 The defendant is also charged under the murder
18 indictment with a second count called possession of a
19 weapon during the commission or attempt to commit a
20 violent crime. This is a statutory offense enacted by our
21 legislature. The State here must prove beyond a
22 reasonable doubt that Mr. Poage visibly displayed a knife
23 during the commission of a violent crime. I have
24 explained what the definition of a knife is. In order to
25 find Mr. Poage guilty of possession of a weapon during the

1 commission of a violent crime you must find him guilty of
2 either committing a violent crime or attempting to commit
3 a violent crime. In South Carolina our legislature has
4 designated the following as violent crimes, murder,
5 kidnapping, armed robbery and first degree burglary.

6 Next Mr. Poage is charged with armed robbery. In
7 order to prove this offense the State must prove beyond a
8 reasonable doubt that Mr. Poage took personal property
9 from the person or presence of another. Property is in
10 the presence of a person if it is within that person's
11 reach, inspection, observation or control so that the
12 person could not overcome with violence or prevented by
13 fear retain or keep possession of that property. The
14 State must prove beyond a reasonable doubt that the
15 defendant carried the property away intending to
16 permanently deprive the owner of the property and to keep
17 the property for their own use. The slightest removal of
18 the property or the complete possession of the property,
19 even for an instant, is sufficient to show a taking and
20 carrying away of the property. The taking and carrying
21 away of the property must have been done with violence or
22 by putting the owner of the property in fear of violence.
23 Finally the State must prove beyond a reasonable doubt
24 that the defendant was armed with a deadly weapon during
25 the robbery. Again I have already defined for you the

1 term deadly weapon. As with the other offenses the State
2 must prove armed robbery beyond a reasonable doubt.

3 The defendant is charged with kidnapping. The State
4 here must prove beyond a reasonable doubt that Mr. Poage
5 knowingly and unlawfully seized or confined another person
6 without the authority of law. To do a thing unlawfully is
7 to do it willfully against the law. Knowingly means with
8 knowledge consciously, not accidentally. Seize means to
9 take hold of suddenly or forcibly. Confine means to
10 limit, restrict or enclose within bounds. Imprison, to
11 shut in or to keep in. The State does not have to prove
12 the defendant did both of those things. Instead if you
13 find beyond a reasonable doubt that he did either of those
14 you could find him guilty and would find him guilty of
15 kidnapping. Something done without the authority of law
16 is something which our law does not sanction, permit,
17 allow, condone or provide justification for. Kidnapping
18 does not have to be for any personal or monetary gain. It
19 may be for any reason whatsoever.

20 Finally the State has charged Mr. Poage with
21 conspiracy. Here the State must prove beyond a reasonable
22 doubt that he, Mr. Poage, combined with one or more
23 persons for the purpose of committing an unlawful act or
24 committing a lawful act by unlawful means. There must be
25 a mutual understanding, agreement or common intention in

1 plan. Mere passive knowledge of or consent to the
2 criminal conduct of another is not enough to make a person
3 a conspirator. There must be guilty knowledge and
4 participation. It is not necessary that the agreement be
5 a formal one or that it be in writing or that they, the
6 person is holding a meeting and expressly state the terms
7 of their common plan or agreement. The agreement of a
8 criminal conspiracy may come into being through an implied
9 mutual understanding. The willful intentional and knowing
10 adoption by two or more persons of a common plan is
11 sufficient. No overt acts need to be shown to establish a
12 conspiracy. A conspiracy may be shown by circumstantial
13 evidence and the conduct of the parties. In order to
14 convict Mr. Poage of conspiracy the State must prove
15 beyond a reasonable doubt not only that he knew of the
16 unlawful conduct but that he agreed to combine with other
17 persons for the purpose of accomplishing the unlawful
18 conduct.

19 I said finally, actually I had not gotten to
20 burglary. The defendant is also charged with first degree
21 burglary. The State must prove beyond a reasonable doubt
22 that Mr. Poage entered a dwelling without consent. Our
23 law defines dwelling as any building or portion of a
24 building in which a person ordinarily sleeps. The State
25 does not have to prove that any force was used to gain

1 entry. The State must prove beyond a reasonable doubt
2 that the defendant intended to commit a crime, either a
3 felony or a misdemeanor at the time of the entry. Mere
4 entry into a dwelling without consent is not burglary. If
5 the intent to commit a crime is formed after the entry it
6 is not burglary. On the other hand if the defendant
7 intended to commit a crime at the time of the entry it is
8 burglary even if the intent was abandoned after the entry.
9 It does not matter that the intended crime was not
10 completed. Intent may be shown by acts and conducts of a
11 defendant and other circumstances from which you may
12 naturally and reasonably infer intent. Finally to prove
13 burglary in the first degree the State must prove beyond a
14 reasonable doubt that when entering, while in the dwelling
15 or when fleeing the defendant or an accomplice was armed
16 with a deadly weapon. Again I have defined deadly weapon
17 for you. Or the State must prove that when entering while
18 in the dwelling or when fleeing the defendant or an
19 accomplice caused physical injury to anyone not
20 participating in the crime or the State must prove that
21 when entering while in the dwelling or when fleeing the
22 defendant or an accomplice displayed what was or appeared
23 to be a knife. And I have defined a knife for you.

24 Now as to each of those charges the State must prove
25 each element beyond a reasonable doubt before you can

1 convict Mr. Poage as to a particular charge. I remind you
2 that you are not to consider the statements of counsel as
3 evidence, they are not witnesses, they are simply arguing
4 their case, articulating their positions and the
5 contentions of their clients. This has to do with
6 statements, opening, closing and any during the trial.
7 Your verdict must be unanimous, all twelve jurors must
8 agree. Once you have all twelve agreed on your verdict
9 the Foreman is authorized to enroll a verdict on your
10 behalf and I will tell you a little bit more about that in
11 just a moment. You will of course will preside over the
12 jury's deliberation. You are not to be influenced by
13 passion, prejudice, sympathy, public opinion or matters
14 outside of the record. If you have questions while you
15 are deliberating please write them down and knock on the
16 door, give them to the bailiff, the bailiff will bring
17 them to me and I will consult with the attorneys and it
18 may be that I can write an answer to your question on the
19 note itself. If I can't I will send it back in with the
20 bailiff. And if you get a note back please keep it and
21 turn it in with the evidence, Mr. Foreman, because it has
22 to be part of the record. If I cannot answer it that way
23 I will bring you back here in open court and respond to
24 your question. We can have testimony reread or replayed
25 for you if you wish to rehear any testimony. In South

1 Carolina we do not send in a written charge on the law but
2 if you want me to go over any part or all of the law
3 please let me know and I will bring you back and charge
4 you, recharge any part or all of the law that you wish to
5 hear. When you have reached a verdict knock on the door
6 and tell the bailiff and the bailiff will come and get me
7 and we will send for you as promptly as possible. We are
8 suppose to start another trial in about an hour. But
9 during that trial we will break as promptly as we can to
10 accommodate whatever concerns you may have. We have lunch
11 ordered, you can break while you are eating lunch or you
12 can work through lunch. But obviously this has to be a
13 unanimous verdict, all twelve of you are either on break
14 or working. When you first go into the jury room do not
15 start deliberating and do not get too comfortable and do
16 not start on your lunch because I may have to bring you
17 back in if I have made an error. If I have made an error
18 I will bring you back in and correct it because it is my
19 duty to charge you the law correctly and it is your duty
20 to accept and apply the law as I charge you. If I have
21 not made any error in my charge or need to make any
22 amendments or additions I will send in the indictments and
23 the bailiff will tell you to start deliberating. Now, Mr.
24 Tucker and Ms. Burns, if you will stay in here when the
25 jury goes out since we will not need your services any

1 further. But we thank you for your assistance. On four
2 of the indictments, Mr. Foreman, you can enroll the
3 verdict of the jury on the backside of the indictment.
4 You will see on the bottom sort of right-hand corner the
5 work verdict. There is four lines I believe, yes, four
6 lines beneath there. The bottom line is for your
7 signature and then a place for the date, today's date,
8 today is the 10th. As to these indictments you will
9 enroll on one of those lines the jury's verdict. If the
10 State and the jury's unanimous opinion failed to prove Mr.
11 Poage guilty of a charge set forth in the indictment you
12 will write on that indictment two words, not guilty. If
13 on the other hand you are convinced beyond a reasonable
14 doubt and have found Mr. Poage guilty of an offense as to
15 that indictment you would simply write the word above
16 where you signed, write the word guilty. Now there are
17 two counts on the murder indictment so I have a separate
18 form for you to use on that. There are two verdict forms
19 and they say we find the defendant guilty of murder, we
20 find the defendant not guilty of murder. That has to do
21 with count one of murder. The others say we find the
22 defendant guilty of possession of a knife during the
23 commission of a violent crime or we find the defendant not
24 guilty of possession of a knife during the commission of a
25 violent crime. That is as to count two. Whatever the

1 jury's unanimous verdict is you will put an X or a check
2 in front of that verdict. Now the order these are in, the
3 order those two, four, two on each are in is no
4 importance. I have to put them in some order and I always
5 put them in that order. So don't give any credence or
6 weight to the fact that one verdict may be above the
7 other. I simply have to do it some way and I do that.
8 Now with the exception of the arguments I am going to let
9 you go into the jury room while I take up my charge with
10 the attorneys.

11 (Whereupon, the jury is excused from open court at
12 approximately 1:05 p.m.)

13 THE COURT: Anything from the State?

14 MR. BRACKETT: No exceptions or additions from the
15 State, Your Honor.

16 MR. RAWLINSON: No exceptions or additions except of
17 preserving--

18 THE COURT: Other than what you have already put on
19 the record?

20 MR. RAWLINSON: Correct, Your Honor.

21 THE COURT: Well, if you will check the indictments,
22 the verdict form and the exhibits and once you are
23 satisfied and everything is in order we will send them
24 back with the bailiff. Mr. Tucker, Ms. Burns, we have got
25 some lunch ordered and you can certainly stay and have

1 pizza if you would like or you can leave. You are to call
2 back tonight after 7:00. And I don't know if we will
3 start a trial on Thursday but just to be on the safe side
4 I ask you to call back tonight after 7:00 and find out
5 what your instructions are. Thank you so much for your
6 help.

7 (Whereupon, the alternates were excused from the
8 trial of the case.)

9 (Whereupon, the attorneys and court reporter go over
10 the exhibits.)

11 (Whereupon, the jury starts deliberations at
12 approximately 1:15 p.m.)

13 THE COURT: We have received two notes, one they want
14 a marker and we have taken care of that. And the other
15 one is the question of whether or not the hand of one is
16 the hand of all is a law or a theory. And I am going to
17 bring them in, first I will hear from both sides but I
18 think the best thing I can do is recharge them what I
19 charged them before. Nobody objected to that and I don't
20 believe that I can elaborate on anything beyond on what I
21 have already charged them. I think that is really all I
22 can because I can't change, I can't give them additional
23 legal principles during the middle of the deliberation, at
24 least I don't think I can. So I am going to recharge
25 them. The State's position?

1 MR. BRACKETT: That is fine, Your Honor.

2 MR. RAWLINSON: That is fine, Your Honor.

3 THE COURT: Bring the jury in.

4 (Whereupon, the jury came into open court at
5 approximately 2:00 p.m.)

6 THE COURT: Members of the jury panel, I have
7 received your notes and we have sent you a marker. The
8 best way, in fact I think the only way I can respond to
9 your question about whether the hand of one is the hand of
10 all is a law or a theory is to recharge you what I charged
11 you earlier. What I am going to charge you is, my charge
12 is along with the case and you have to apply the law as I
13 charge it. The law regarding the hand of one is the hand
14 of all says, if a crime is committed by two or more people
15 who are acting together and committing a crime the act of
16 one is the act of all. A person who joins with another to
17 commit an unlawful act is criminally responsible for
18 everything done by the other person which happens as a
19 probable or natural consequence of the acts done in
20 carrying out the common plan and purpose. If two or more
21 people are together acting together, assisting each other
22 in committing the offense the act of one is the act of all
23 or it is as sometimes said, the hand of one is the hand of
24 all. Prior knowledge that a crime is going to be
25 committed without more is not sufficient to make a person

1 guilty of that crime. Mere knowledge that another person
2 is going to commit a crime, even if the defendant is
3 present when the crime is committed is not sufficient to
4 convict the defendant as a principle. Guilt as a
5 principle is shown by actual or constructive presence at
6 the scene. The State must prove beyond a reasonable doubt
7 by competent evidence the theory of the hand of one is the
8 hand of all. A principle in a crime is one who either
9 actually commits the crime or who is present, aiding,
10 abetting or assisting in committing the crime. When a
11 person does an act in the presence of and with the
12 assistance of another the act is done by both. Where two
13 or more are acting with a common plan or intent are
14 present at the commission of a crime it does not matter
15 who actually commits the crime, all are guilty. The hand
16 of one is the hand of all present at the commission of a
17 crime, this means to be sufficiently near to aid and abet
18 and assist in the commission of the crime. However I
19 remind you mere presence at the scene of a crime is not
20 sufficient to convict one as a principle on the theory of
21 aiding and abetting.

22 Intent is also a necessary element for there must
23 have been a common design or intent to commit the crime
24 and the crime must have been committed pursuant thereto
25 with the person aiding and abetting the other by some

1 overt act. Intent means intending the result which
2 actually occurs, not accidentally or involuntary. Intent
3 may be shown by acts in conducts of a defendant and other
4 circumstances from which you may naturally and reasonably
5 infer intent. The State must prove this beyond a
6 reasonable doubt. I hope that is of some help. I will
7 send you back to continue your deliberations.

8 (Whereupon, the jury continues deliberations at
9 approximately 2:05 p.m.)

10 THE COURT: Anything from the State?

11 MR. BRACKETT: No sir, nothing from the State.

12 THE COURT: Defense?

13 MR. RAWLINSON: Nothing from the defense.

14 (Whereupon, a break was taken while the jury
15 deliberates.)

16 THE COURT: Another note from the jury, please give
17 the difference between burglary in the first and armed
18 robbery and would like to hear the difference, the
19 differentiation it looks like of a knife and a shovel.
20 All I can do is recharge them for armed robbery, robbery
21 and what constitutes a dangerous weapon.

22 MR. BRACKETT: Armed robbery and burglary.

23 THE COURT: Yes. Burglary in the first and armed
24 robbery. Bring the jury in.

25 (Whereupon, the jury came into open court at

1 approximately 3:13 p.m.)

2 THE COURT: Members of the jury panel, I have
3 received your note and I am going to, the best I can do as
4 to the difference in the armed robbery and burglary is
5 recharge you what I charged you and maybe I will go a
6 little slower. And then as to the question of a knife or
7 a shovel I also can only charge you the law, again
8 recharge you what the law says about what constitutes a
9 deadly weapon.

10 First as to armed robbery. Here the State must prove
11 beyond a reasonable doubt that Mr. Poage took personal
12 property from the person or presence of another person.
13 Property is in the presence of a person if it is within
14 that person's reach, inspection, observation or control so
15 that the person could if not overcome with violence or
16 prevented by fear keep possession of that property. The
17 State must also prove beyond a reasonable doubt that the
18 defendant carried the property away intending to
19 permanently deprive the owner of the property and to keep
20 the property for the defendant's own use. The slightest
21 removal of the property or the complete possession of the
22 property, even for an instance by the defendant is
23 sufficient to show a taking and carrying away of the
24 property. The taking and carrying away of the property
25 must have been done with violence or by putting the owner

1 of the property in fear of violence. Finally the State
2 must prove beyond a reasonable doubt that the defendant
3 was armed with a deadly weapon during the robbery. And
4 again I am going to charge you about deadly weapon in a
5 moment. That is armed robbery. The State has to prove
6 that beyond a reasonable doubt before you could convict
7 Mr. Poage of armed robbery.

8 He is also charged with first degree burglary. Here
9 the State must prove beyond a reasonable doubt that he
10 entered a dwelling without consent. A dwelling is any
11 building or portion of a building in which a person
12 ordinarily sleeps. The State does not have to prove that
13 force was used to gain entry. The State must prove beyond
14 a reasonable doubt that the defendant intended to commit a
15 crime, either a felony or a misdemeanor at the time of the
16 entry. Mere entry into a dwelling without consent is not
17 burglary. If the intent to commit a crime is formed after
18 the entry it is not burglary. On the other hand if the
19 defendant intended to commit a crime at the time of the
20 entry it is a burglary even if the intent was abandoned
21 after the entry. It does not matter that the intended
22 crime was not completed. Intent may be shown by acts and
23 conduct of the defendant and from other circumstances
24 which you may naturally and reasonably infer intent.
25 Finally the State must prove beyond a reasonable doubt one

1 of the following. First, when entering or while in the
2 dwelling or when fleeing the defendant or an accomplice
3 was armed with a deadly weapon. Again I would define that
4 for you in a moment. Or when entering while in the
5 dwelling or when fleeing the defendant or an accomplice
6 caused physical injury to anyone not a participant in the
7 crime or when entering while in the dwelling or when
8 fleeing the defendant or an accomplice displayed what was
9 or appeared to be a knife. That is burglary.

10 As to the term deadly weapon and I will include the
11 definition of a knife in that. A deadly weapon is any
12 article, instrument. Let me start over. A deadly weapon
13 is any article, instrument or substance which is likely to
14 cause death or great bodily harm. Whether an instrument
15 has been used as a deadly weapon depends on the facts and
16 circumstances of each case. The following are examples of
17 instruments which may be deadly weapons, a dirk, a dagger,
18 a knife. Additionally ordinary objects may become deadly
19 weapons when the facts show that they have been used to
20 inflict serious bodily harm or death. A knife means an
21 instrument or tool with a sharp cutting blade whether or
22 not fastened to a handle that can be used to inflict a
23 cut, slash or wound. That is a recharge on the three
24 things that you asked. I will let you return to your
25 deliberations. Thank you. Let me know if you have any

1 further questions.

2 (Whereupon, the jury continues deliberations at
3 approximately 3:22 p.m.)

4 THE COURT: Any exceptions or additions or comments?

5 MR. BRACKETT: No sir, your Honor.

6 THE COURT: Mr. Rawlinson?

7 MR. RAWLINSON: No, Your Honor.

8 THE COURT: We will be at ease.

9 (Whereupon, there is a break in the case waiting on
10 the jury verdict.)

11 THE COURT: I have a message from the jury that says
12 we would like to hear the law charge on murder and
13 possession of a knife during the commission of a violent
14 crime. Restate the law of armed robbery and restate the
15 oath of the jurors. I told them they could take a smoke
16 break, they also ask for that. I don't know if they are
17 back yet or not. As soon as they are back we will bring
18 them in. Any comments, I plan on recharging them what
19 they ask and remind them of what their oath is. Bring the
20 jury in.

21 (Whereupon, the jury came into open court at
22 approximately 5:30 p.m.)

23 THE COURT: Members of the jury, I am a little
24 confused, when you want the oath of the jurors do you want
25 the oath that the clerk gave you when you first came in or

1 is that what you want to hear?

2 FOREMAN: Yes, sir.

3 THE COURT: We will do that. Why don't you go ahead
4 and do that. I will let the clerk do it. I am going to
5 ask her to go real slow.

6 CLERK OF COURT: You shall well and truly try and in
7 true deliverance make between the State of South Carolina
8 and the defendant at the bar whom you shall have in charge
9 and a true verdict give according to the evidence and the
10 law so help you God.

11 THE COURT: That is the oath that you took. Now I am
12 going to recharge you. You ask for three recharges and I
13 am going to do that at this time. I will start in the
14 order that you have given me which is murder.

15 Here Mr. Poage is charged with murder and as to this
16 charge the State must prove beyond a reasonable doubt that
17 the defendant killed another person with malice
18 aforethought. Malice is hatred, ill will or hostility
19 towards another person. Malice is the intentional doing
20 of a wrongful act without just cause or excuse and with an
21 intent to inflict an injury or under circumstances from
22 which the law would infer an evil intent. Malice
23 aforethought does not require that malice exist for any
24 particular time before the act is committed but malice
25 must exist in the mind of the defendant just before and at

1 the time the act is committed. Therefore there must be a
2 combination of the previous evil intent and the act
3 itself. Malice aforethought may be expressed or inferred.
4 These terms, expressed and inferred do not mean different
5 types of malice but merely the manner in which malice may
6 be shown to exist. That is either by direct evidence or
7 by inference from the facts and circumstances which have
8 been proven. Expressed malice is shown when a person
9 speaks words which express hatred or ill will toward
10 another or when a person prepared beforehand to do the act
11 which was later accomplished. For example, lying in wait
12 for a person or any other acts of preparation going to
13 show that the deed was within the defendant's mind would
14 be expressed malice. Malice may be inferred from conduct
15 showing a total disregard for human life. Inferred malice
16 may also arise when the deed is done with a deadly weapon
17 and I have defined for you a deadly weapon. Malice may be
18 inferred from brutal conduct on the part of a defendant.
19 A specific intent to kill is not required to commit
20 murder. I charge you that if one intentionally kills
21 another during the commission of a felony the inference of
22 malice may arise. If facts are proven beyond a reasonable
23 doubt sufficient to raise an inference of malice to your
24 satisfaction this inference would simply be an evidentiary
25 fact to be taken into consideration by you along with all

1 of the other evidence in the case and may be given such
2 weight as you decide it should receive. Felonies include
3 armed robbery, first degree burglary, kidnapping and
4 criminal conspiracy.

5 Mr. Poage is also charged with possession of a weapon
6 during the commission of a violent crime. Here the State
7 must prove beyond a reasonable doubt that Mr. Poage
8 visibly displayed a knife during the commission of a
9 violent crime. I defined a knife for you earlier. In
10 order to find the defendant guilty of possession of a
11 weapon during the commission of a violent crime you must
12 first find the defendant guilty of either committing a
13 violent crime or attempting to commit a violent crime.
14 Our legislature has included as violent crimes, murder,
15 armed robbery, kidnapping and first degree burglary.

16 Mr. Poage is also charged with armed robbery. In
17 order to prove this offense the State must first prove
18 beyond a reasonable doubt that he took personal property
19 from the person or presence of another person. Property
20 is in the presence of a person if it is within that
21 person's reach, inspection, observation or control so that
22 the person could if not overcome with violence or
23 prevented by fear retain or keep possession of the
24 property. The State must also prove beyond a reasonable
25 doubt that the defendant carried the property away

1 intending to permanently deprive the owner of the property
2 and to keep the property for the defendant's own use. The
3 slightest removal of the property or the complete
4 possession of the property, even for an instant, by a
5 defendant is sufficient to show a taking and carrying away
6 of the property. The taking and carrying away of the
7 property must have been done with violence or putting the
8 owner of the property in fear of violence. Finally the
9 State must prove beyond a reasonable doubt that the
10 defendant was armed with a deadly weapon during the
11 robbery. Those are the elements, the charges that you
12 asked me to recharge keeping in mind as to each offense
13 the State must prove those elements beyond a reasonable
14 doubt. I am going to let you return to your
15 deliberations.

16 (Whereupon, the jury continued deliberations at
17 approximately 5:35 p.m.)

18 THE COURT: Anything from the State following the
19 recharge?

20 MR. BRACKETT: No sir, Your Honor.

21 THE COURT: Mr. Rawlinson?

22 MR. RAWLINSON: No, Your Honor.

23 THE COURT: We will remain at ease, thank you.

24 (Whereupon, a break in the case waiting for the
25 jury's verdict.)

1 THE COURT: The jury indicates that they have
2 apparently resolved some charges and are stalemate on
3 others and I want to bring them in and talk with them.

4 (Whereupon, the jury came into open court at
5 approximately 6:20 p.m.)

6 THE COURT: Members of the jury panel, I have
7 received your note that you have reached a stalemate on
8 some of the charges which indicates to me that you have
9 resolved some charges. I am not going to ask you to tell
10 me whether that is correct, that is my assumption. And
11 also certainly not tell me which charges, if any, you have
12 already resolved. I am going to ask you that as to the
13 ones that you have not resolved to continue to try to
14 resolve them. It is hard to get two or three people to
15 agree let alone twelve so I certainly understand that.
16 However and I know this case has a lot of legal issues and
17 a lot of facts that took two long days to try. So I know
18 it is not an easy job. But if you are unable to reach a
19 verdict then we would simply have to try the case again,
20 the same lawyers will appear, it might be a different
21 Judge, we would have a different jury and they would be
22 wrestling with the same facts and the same law as are you.
23 I have no reason to believe they would be in any better
24 position or any more capable of resolving the issues than
25 you twelve are. So I am going to ask you to continue to

1 deliberate but what I want to stress to you is, I am not
2 asking anyone to give up any firmly held, strong
3 convictions. What I am asking you to do is not give into
4 the others but to listen, each listen, takes going around
5 the room and each contributing what they wish to
6 contribute. But I am going to ask you to listen to each
7 other and share your concerns and continue to deliberate
8 and see if you can reach a verdict. So I am going to let
9 you go back and deliberate further.

10 (Whereupon, the jury continues to deliberate at
11 approximately 6:23 p.m.)

12 THE COURT: Anything from the State?

13 MR. BRACKETT: Nothing from the State.

14 THE COURT: From the defense?

15 MR. RAWLINSON: Nothing from the defense, Your Honor.

16 (Whereupon, a break was taken until the jury reaches
17 a verdict.)

18 (Whereupon, a jury note was sent to the Court asking
19 to order a meal and to call family members.)

20 THE COURT: We are back on the record, we have
21 received a note from the jury indicating that they are
22 still stalemated on some indictments but they have reached
23 verdicts on some. I am going to bring them in and accept
24 those on which they have reached verdicts and declare a
25 mistrial on the others. Those of you who are present I am

1 going to ask you to please reframe from any emotions. I
2 don't know what the verdict will be but whatever they are
3 we need to have quiet in the courtroom and calm. And if
4 any reason that you think that you might not be able to
5 maintain your emotions I suggest you leave the courtroom
6 now because if there are any outbursts regardless of what
7 the verdict is, if there are any outbursts I will have to
8 hold that person or persons in contempt of court and put
9 them in jail for a period of time. So if you don't think
10 you can handle what the verdicts are you need not to be in
11 here. Bring in the jury. Tell them to go ahead and bring
12 in the exhibits and for the Foreman to give you the
13 exhibits and bring them in and for the Foreman to come in
14 and bring with him the indictments.

15 (Whereupon, the jury came into open court at
16 approximately 8:45 with a partial verdict.)

17 THE COURT: For those of you who came in late if you
18 don't think you can emotionally handle whatever the
19 verdicts may be you should leave the courtroom. Just hand
20 the indictments up to the bailiff and he will hand them to
21 me.

22 FOREMAN: Do you want me to sign those?

23 THE COURT: At this point if you will just hand them
24 to me and then, have you not signed the ones that y'all
25 have reached verdicts on?

1 FOREMAN: I didn't.

2 THE COURT: Go ahead and sign them now.

3 (Whereupon, the Foreman signed the verdict forms.)

4 THE COURT: Thank you. The jury has reached verdicts
5 on burglary first degree, kidnapping and criminal
6 conspiracy and have not reached unanimous verdicts on the
7 others, murder, possession of a knife during the
8 commission of a violent crime and armed robbery. So I am
9 going to hand the three on which verdicts have been
10 reached to the Clerk at this time and ask her to publish
11 them.

12 CLERK OF COURT: Indictment 2011-GS-46-2267, the
13 State versus Christopher Poage, indictment for burglary
14 first degree. The verdict guilty signed by the Foreperson
15 and dated today's date.

16 Indictment 2011-GS-46-2265, the State versus
17 Christopher Poage, indictment for kidnapping. The verdict
18 guilty signed by the Foreperson and dated today's date.

19 Indictment 2011-GS-46-2264, the State versus
20 Christopher Poage, indictment for criminal conspiracy.
21 The verdict guilty and signed by the Foreperson and dated
22 today's date.

23 Ladies and gentlemen of the jury, if this be your
24 verdicts so say you all by raising your right hand.

25 (Whereupon, the jurors raised their hands.)

1 CLERK OF COURT: Let the record show all jurors
2 confirmed this verdict.

3 THE COURT: Anything from the State before the jury
4 is dismissed?

5 MR. BRACKETT: Nothing from the State, Your Honor.

6 THE COURT: Mr. Rawlinson, anything?

7 MR. RAWLINSON: Your Honor, I would ask to poll the
8 jury.

9 THE COURT: Members of the jury panel, the Clerk is
10 going to go through some questions with each of you
11 confirming your verdict. So if you will just follow her
12 instructions.

13 CLERK OF COURT: If everyone will please stand.
14 Juror 102, Arthur Harris. Is this your verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Is this still your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Please be seated. Juror 153, Carrie
19 Messer. Is this your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Is it still your verdict?

22 JUROR: Yes.

23 CLERK OF COURT: Please have a seat. Number 151,
24 Debbie Meeks. Is this your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Is it still your verdict?
2 JUROR: Yes.
3 CLERK OF COURT: Please have a seat. Number 167,
4 Stephanie Nichols. Is this your verdict?
5 JUROR: Yes.
6 CLERK OF COURT: Is it still your verdict?
7 JUROR: Yes.
8 CLERK OF COURT: Please have a seat. Number 8, Susie
9 Anderson. Is this your verdict?
10 JUROR: Yes.
11 CLERK OF COURT: Is it still your verdict?
12 JUROR: Yes.
13 CLERK OF COURT: Please have a seat. Juror 163,
14 Floyd Neal. Is this your verdict?
15 Juror: Yes.
16 CLERK OF COURT: Is it still your verdict?
17 JUROR: Yes.
18 CLERK OF COURT: Please have a seat. Juror number 9,
19 Carl Andrews. Is this your verdict?
20 JUROR: Yes.
21 CLERK OF COURT: Is it still your verdict?
22 JUROR: Yes.
23 CLERK OF COURT: Please have a seat. Juror 188,
24 Lori Ray. Is this your verdict?
25 JUROR: Yes.

1 CLERK OF COURT: Is it still your verdict?

2 JUROR: Yes.

3 CLERK OF COURT: Please have a seat. Juror 221,
4 Alycia Trapp. Is this your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Is it still your verdict?

7 JUROR: Yes.

8 CLERK OF COURT: Please have a seat. Juror 162,
9 Johnnie Murdock. Is this your verdict?

10 JUROR: Yes.

11 CLERK OF COURT: Is it still your verdict?

12 JUROR: Yes.

13 CLERK OF COURT: Please have a seat. Number 37,
14 Carolyn Burris. Is this your verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Is it still your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Please have a seat. Juror number
19 66, Mary Dereef. Is this your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Is it still your verdict?

22 JUROR: Yes.

23 CLERK OF COURT: Please have a seat.

24 THE COURT: Anything further from the State?

25 MR. BRACKETT: Nothing, Your Honor.

1 THE COURT: From the defense, before we release the
2 jury.

3 MR. RAWLINSON: Nothing, Your Honor.

4 THE COURT: Members of the jury panel, you worked
5 hard and I appreciate it. We do have your food if you
6 will get it and take it with you and you will be mailed a
7 check. I am not going to ask you to stay around. You
8 have been working hard for the last few days and
9 especially today. So if you want to stay here you
10 certainly could but I think you would rather take it with
11 you but that is your choice. You do not have to call
12 back. We are finished for the week. I have started
13 another trial so we are not going to start any more trials
14 this week. And I appreciate your help. Everyone remain
15 seated while the jury exits.

16 (Whereupon, the jury is excused from the trial of the
17 case at approximately 8:51 p.m.)

18 THE COURT: The jury has been dismissed. Anything
19 from the State before we move further?

20 MR. BRACKETT: No, sir.

21 THE COURT: Mr. Rawlinson?

22 MR. RAWLINSON: Your Honor, I would respectfully
23 renew all of my motions and objections from this trial and
24 additionally reserve all posttrial motions including the
25 motion for a new trial.

1 THE COURT: Well I deny the motions. I have heard
2 them, I heard the evidence. The jury worked extremely
3 hard and I think the verdicts are supported by the
4 evidence. So I deny all motions, all posttrial motions on
5 behalf of the defendant. Do we have sentencing sheets?

6 MR. BRACKETT: Yes, Your Honor.

7 THE COURT: Bring the defendant around for
8 sentencing. I will hear from the State first.

9 MR. BRACKETT: Yes sir, Your Honor. As to the
10 defendant's prior record, he has previously been convicted
11 of a possession of alcohol purchased by a person under 21,
12 disturbing schools and he forfeited bond on a possession
13 of marijuana charge that he was arrested on the day he was
14 taken into custody and interviewed with regard to this
15 offense. He has a pending charge which has no
16 disposition. From what I heard, Ms. Linda Mitchell
17 Feaster, the sister of Tommy Mitchell would like to
18 address the Court.

19 THE COURT: I will be glad to hear from her at this
20 time.

21 MS. FEASTER: I just would like to say that I wish
22 the Judge would take full responsibility what time he gets
23 for this crime because that was my only brother that I
24 had. My mom has been deeply saddened by this plus she has
25 been, she has had a heart attack since this happened. And

1 it has taken a great toll on her life. I just think that
2 justice needs to be served. I really do because this crime
3 is nonsense.

4 THE COURT: I understand and thank you. Anything
5 else from the State?

6 MR. BRACKETT: Yes sir, Your Honor. I am not going
7 to belabor the facts, Your Honor, you are aware of them
8 having presided over the trial. However I would echo the
9 victim's call for a severe sentence in this case, this was
10 a horrible crime. What happened to Tommy Mitchell is an
11 absolute tragedy. It is outraged to be mistreated and
12 beaten down in his own home like that over what amounts to
13 a pittance in terms of money and Mr. Poage is fully
14 responsible. The evidence is absolutely clear, his role
15 in this. He is just as culpable as Mr. Jackson. Given
16 the nature of this crime and in many of the crimes over
17 the course of my career of how people should be treated
18 and sentenced I think this calls for the maximum sentence
19 the Court can impose for these offenses.

20 THE COURT: Mr. Rawlinson, I will be glad to hear you
21 and anybody on behalf of Mr. Poage and then Mr. Poage
22 himself. How long has he been in jail. You can give me
23 the date of the arrest.

24 MR. BRACKETT: He was out on bond for a brief period
25 of time. He spent about 10 months in jail and usually

1 they get out on bond and then placed back in jail when he
2 was arraigned the day after. 306 days plus from July 22nd
3 until today, 325 days.

4 THE COURT: Mr. Rawlinson.

5 MR. RAWLINSON: Your Honor, before I make my
6 statement I know there are several family members who
7 would like to speak.

8 THE COURT: Yes sir, I will be glad to hear from
9 whoever wants to speak. Just have them come up and
10 identify themselves for me.

11 FAMILY MEMBER: If I can speak on his behalf. I was
12 part of him being raised. And I know this is not
13 something that he would do. I know it is not something
14 that he would do. He was at the wrong place at the wrong
15 time. He didn't know what was going to happen, I can see
16 that. Something was planned with his involvement, I don't
17 believe that, I know better. But from the time he was
18 born he was actually in my house and I can't believe he
19 would plan something like this. I don't believe that. I
20 do believe he went not knowing and things happened and as
21 stated, he did leave the house and did try to get a friend
22 of his out of the house, an associate, an acquaintance.
23 But for someone to say he planned this with Mr. Jackson, I
24 don't believe that, that is not his character. Yeah, he
25 smoked, he smoked cigarettes, most teenagers do. He may

1 have hung out with the wrong people but plan an incident
2 like this, going in and knowing that something like this
3 was going to happen. I don't believe it. And I ask you
4 to have mercy on him.

5 THE COURT: Can you give us your name.

6 MR. SPARKS: My name is Carlson Sparks. This is my
7 nephew.

8 THE COURT: Thank you, Mr. Sparks.

9 MS. ANDERSON: My name is Jessica Anderson and Chris
10 is my baby brother. Ever since he was little I have been
11 kind of looking out for him. I am sorry for what happened
12 because he was in a situation but I do not think he was a
13 part of that he planned to do and I don't think he knew
14 any of that. And I can say that ever since we did get him
15 out of on bond and he got home he enrolled back in school,
16 he got his GED and he is half way through his Associates
17 Degree. I can't say the same for EJ, he got out on bond
18 and two months later he was back in. He was actually out
19 on bond for almost two years with no mess ups, any of
20 that. And I really did see a big change in him and I do
21 think peer pressure and just being around the wrong crowd
22 influences people when they are young. I think experience
23 does matter but when you are young you don't know the top
24 from the bottom some times and you can get influenced by
25 people to do things that you do not normally do or be

1 involved or just at the wrong place at the wrong time. So
2 I do ask for leniency in his case because, you know, he
3 did a big one-eighty after the bond. I don't think it was
4 because of the situation, I think the situation was just
5 one of the facts that changed him. So, that is what I
6 ask.

7 THE COURT: Thank you.

8 FAMILY MEMBER: I am Christopher Poage's oldest
9 brother. I share my sister's and my uncle's sentiments.
10 This is my younger brother, I have known him since birth,
11 that is not his character at all, it is not. At 17 years
12 old, yeah he got mixed in with the wrong crowd regretfully
13 so. But these things that he is charged with, Your Honor,
14 I don't feel like he had in the heart of that, Your Honor.
15 Yes, he was in the wrong place at the wrong time. But the
16 things that he has been charged with, he didn't do that.
17 And I would like to offer my condolences to the family. I
18 share your pain. A life was lost and I understand how you
19 feel. And, Your Honor, I ask that you have mercy on my
20 younger brother.

21 THE COURT: What is your name?

22 MR. CAROTHERS: C-A-R-O-T-H-E-R-S.

23 DEBRA CAROTHERS: Good evening, Judge. I am sorry
24 for the family, we are sorry about what happened. That
25 was her child, just like Chris is my child. And I

1 understand her pain, believe me. I have gone through so
2 much these past three weeks. I just can't explain to you,
3 okay, but I have a peace with God that I know the truth
4 will be correct. It may not have came out right now but
5 it will come out and I just know that there is nothing
6 anybody can tell me about Jesus, I know what Jesus can do.
7 I know what he can do. And again, Ms. Mitchell, I am so
8 sorry, I am so sorry for what happened to Tommy. But I
9 know my son did not do this. There is a lot of people
10 know that Chris didn't do this, they know that. But we
11 have to be careful out here because we all have children,
12 we all have children. We have to be careful, just to play
13 with peoples lives the way, you know, we have to be
14 careful out here. I love my child just as much as anybody
15 loves their child. But that is not Chris' character,
16 Chris wasn't raised that way and I know that. Chris was
17 not raised that way, Your Honor. He got with the wrong
18 crowd as my daughter said. And Chris got with the wrong
19 crowd, he was in the wrong place at the wrong time. But I
20 just ask you to please, he was doing so good, he was doing
21 very good out there. I just ask you today to please think
22 about all of this when you consider sentencing him. Thank
23 you, Judge.

24 THE COURT: Thank you.

25 MR. RAWLINSON: Your Honor, you can see my client has

1 a very strong family who have been incredibly supportive
2 of him throughout this ordeal. And I would respectfully
3 disagree with what the Solicitor said. The evidence is
4 not clear in this case as evidence of three charges that
5 the jury could not reach a verdict on. I also think the
6 Court should consider that the three violent charges,
7 murder, armed robbery and possession of a deadly weapon in
8 the commission of a violent crime, they could not reach a
9 verdict on. Violence is not in Christopher Poage's
10 character. He has no previous violent record and in fact
11 he has no record at all. While he was on bond he was
12 making a man out of himself, he was becoming a productive
13 member of society. When he was out on bond and I wish I
14 could say this about every person that I come into contact
15 with in this profession. But while he was out on bond he
16 was not continuing the same behavior. He was going to
17 York Tech and getting his GED, he obtained his GED. And
18 then he went, continued in school to get an HVAC degree
19 and he stands here today as somebody I can honestly say
20 and I think it was demonstrated again from the support of
21 family and I think this is demonstrated from his previous
22 record, I think it is demonstrated by his action while he
23 was out on bond that Christopher Poage can be a productive
24 member of society. And I think he has demonstrated that.
25 Now something that is not in evidence I have a report on

1 the, if the Court wishes to, the Court can consider. I
2 know that the Solicitor is not aware of this but
3 Christopher Poage was examined by a phycologist, that
4 report said that he was not inherently, an inherently
5 violent person. The psychologist said that he is a
6 follower, not a leader. I would respectfully request that
7 the Court delay sentencing and allow a presentence
8 investigation to be done by the Department of Probation,
9 Parole and Pardon in order to fully investigate both my
10 client's ability to come a productive member of society
11 and to give the Court a full and better understanding as
12 to the circumstances surrounding and the elements
13 surrounding his sentencing. I think in light of the
14 jury's lengthy negotiation in this case and in light of
15 the jury coming back with three verdicts of being hung,
16 not being able to reach a verdict, again, on the violent
17 part of this crime. Again I think some of what the
18 Solicitor says is certainly true, it is certainly true.
19 This is a horrible crime, I express my condolences to the
20 family also. But the things that the Solicitor said, my
21 client was not convicted of, he was not convicted of Tommy
22 Mitchell's murder. He was not convicted of carrying a
23 deadly weapon, he was not convicted of carrying a deadly
24 weapon and robbing him. Those are not things that he was
25 convicted of. So I would respectfully request that the

1 Court delay the sentencing to allow for presentence
2 investigation especially in light of what I just informed
3 the Court. I think that Dr. Morgan, a psychologist in
4 Columbia would be able to shed significant light on my
5 client's ability to be a productive member of society.

6 THE COURT: I am not going to delay the sentencing.
7 I appreciate your comments. Mr. Poage, anything that you
8 want to say?

9 MR. POAGE: I just want to say to the family I am
10 truly sorry for what happened and I understand the wrong
11 man has been convicted today. And I feel like justice
12 should be served but they need to get the right person and
13 I am not that person.

14 THE COURT: I am obviously not going to consider the
15 charges for which there was no verdict returned. I am not
16 going to consider those in regard to my sentencing. As to
17 the kidnapping I have already written on the sentencing
18 sheet that the defense did not include a criminal sexual
19 offense or attempted criminal sexual offense. That is
20 required in order to keep Mr. Poage off of the sex
21 offender registry. These are all to run concurrent. They
22 are, giving you credit for 325 days you have already
23 served. The kidnapping is 30 years, the burglary 30 years
24 and the criminal conspiracy is 5. They are all to run
25 concurrent. Thank you.

1 MR. BRACKETT: Thank you, Your Honor.

2 (Whereupon, Court's Exhibit Nos 9-17 were marked for
3 identification only.)

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)

5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of York, South Carolina
14 on the day of August the 10th of 2011.

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

17

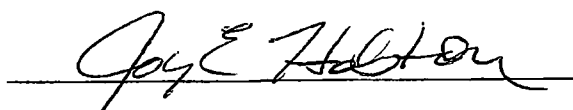
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March 4, 2012

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22

Joy E. Holston, Court Reporter

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My Commission expires: March 13, 2016

24

25

CERTIFIED TRUE COPY	
STATE OF SOUTH CAROLINA COUNTY OF YORK Christopher Poage SCDC# 00347355, Petitioner, vs. State of South Carolina, Respondent,	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2014 APR 28 PM 1:53 DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC 20140426-1304 APPLICATION FOR POST CONVICTION RELIEF DAVID HAMILTON J.C.C.P. & G.S. YORK COUNTY, SC 2014 APR 24 AM 11:19 FILED-RECEIVED

1. Petitioner Christopher Poage is an inmate at ^{McCormick} ~~Kirkland~~ Correctional Institution in Columbia, South Carolina.
2. The Petitioner's sentence was imposed in the Court of General Sessions in York County.
3. On August 8, 2011 in York County, Petitioner plead not guilty to the charges of Burglary 1st, Kidnapping, Criminal Conspiracy, and Accessory after the fact to Felony A, B, C or (Murder). The Indictment Numbers were 2011-GS-46-02264, 2011-GS-46-02265 and 2011-GS-46-02267. The murder charge, K327830, was nolle prossed on August 22, 2011.
4. On August 10, 2011, the Petitioner was convicted of Burglary 1st, Kidnapping, and Criminal Conspiracy and a concurrent sentence of thirty (30) years on the Burglary and Kidnapping charges as well as a concurrent five- (5) year sentence on the Criminal Conspiracy charge was imposed by the Honorable John C. Hayes, III.
5. The Petitioner filed a subsequent appeal with the South Carolina Court of Appeals. The Court dismissed the appeal on October 30, 2013 in State v. Christopher Poage. There was an Unpublished Opinion, No. 2013-UP-397. The case was remitted to the lower court on November 15, 2013.

7. Petitioner alleges that trial counsel was ineffective in at least one of the following particulars:
 - a. Failure to request lesser included charges;
 - b. Failure to object to inadmissible hearsay;
 - c. Failure to object to evidence tending to inject passion / sympathy in the trial;
 - d. Failure to advise regarding substantial assistance;
 - e. Failure to present evidence of duress;
 - f. Failure to engage in plea negotiations; and
 - g. Failure to request jury charges.
8. Petitioner reserves the right to allege any additional ground for relief that is determined during a hearing on this claim
9. Petitioner has not filed any petition in a State Court under South Carolina law prior to this application.
10. Petitioner has not filed any petition in State or Federal Courts for habeas corpus or post-conviction relief.
11. Petitioner has not filed any petition in the United States Supreme Court for Certiorari.
12. Petitioner was represented by an attorney at trial, sentencing, and the appeal.
13. The Petitioner was represented at trial by Bradford A. Rollinson of the Schiller Law Firm, 241 Oakland Avenue, Rock Hill, South Carolina, 29732.
14. The Petitioner was represented on Appeal by John Mobley of The Mobley Law Firm, P.A., 925 Calhoun Street, Columbia, South Carolina, 29201.
15. Petitioner is not under sentence from any other court that he has not challenged.

WHEREFORE, Petitioner requests the following relief:

1. An Order from the Court granting a new trial.
2. Any other relief the Court or Petitioner may deem appropriate subsequent to a new trial.

Respectfully submitted,

THE MOBLEY LAW FIRM, P.A.



John Mobley, Esquire
925 Calhoun Street
Columbia, South Carolina 29201
(803) 933-0010 (office)
(803) 931-3044 (facsimile)
ATTORNEY FOR PETITIONER

Columbia, South Carolina

March 3, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

2014 CP44-1304
VERIFICATION

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

Christopher Poage 3-11-14
Christopher Poage

SWORN to and subscribed before me this 11
day of march, 2014.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

FILED-RECEIVED
2014 APR 24 AM 11:19
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

CERTIFIED TRUE COPY
2014 APR 28 PM 4:33
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

580

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

York

VS.

Christopher Markeem Poage

INDICTMENT/CASE#: 2011-GS46-02264

A/W#: K327842

Date of Offense: 7/28/2008

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

Race: B Sex: M Age: 21

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Rock Hill, SC 29730

DL#: [REDACTED] SID#: SC 01761195

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Walter W. Thompson 65118

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 325 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 130

_____ 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, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Joy Holston

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2049Sentence Date: 8-10-11

STATE OF SOUTH CAROLINA)

CERTIFIED TRUE COPY INDICTMENT

COUNTY OF YORK)

2014 APR 25 AM 9:48

DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, York County, SC, July 21, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Christopher Markeem Poage did in York County on or about July 28, 2008, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Ernest Floyd Jackson, II for the purpose of committing Burglary and Armed Robbery. The crimes occurred at [REDACTED] Steele Street in the City of Rock Hill, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

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


DEPUTY SOLICITOR

ARREST WARRANT

K- 327842

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

THE STATE
against

Christopher Markeem Poage

Address: Rock Hill, SC 29731-1706

Phone: _____ SSN: _____
Sex: M Race: B Height: 6'02" Weight: 210
DL State: SC DL#: _____
DOB: _____ Agency ORI#: SC0460300

Prosecuting Agency: Rock Hill Police DepartmentProsecuting Officer: Harveston, KathyOffense: Criminal Conspiracy

Offense Code: _____

Code/Ordinance Sec: 16-17-410

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.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Chris Poage
on 2/23/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

RODIA, MUNICIPAL JUDGE
Black Street
Rock Hill, SC 29731-1706

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

Personally appeared before me the affiant Kathy Harveston who
being duly sworn deposes and says that defendant Christopher Markeem Poage
did within this county and state on July 28, 2008 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court)
in the following particulars:
DESCRIPTION OF OFFENSE: Criminal Conspiracy 49

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 willfully and unlawfully violate SC Code 16-17-410, Criminal Conspiracy by scheming and
conspiring with another individual to commit the act of Burglary, by entering the residence of the
victim, one Tommy Mitchell, without his consent and during the burglary the victim was stabbed which
resulted in his death. This incident occurred at Steele Street within the city limits of Rock Hill.

Police Investigation

Recovery of evidence

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

Affiant's Address 120 E. Black StreetRock Hill, SC 29731-1706Affiant's Telephone 803-329-5695

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 July 28, 2008 defendant Christopher Markeem Poage
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

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

Sworn to and subscribed before me
on 02/20/2009 2/23/09

Signature of Issuing Judge Wiggy Stowe (L.S.)

Signature of Issuing Judge

Judge Code: 6070Judge's Address 120 E. Black StreetRock Hill, SC 29731-1706Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-327842

Ref #: 0808030159

YORK
VS.
Christopher Markeem Poage

INDICTMENT/CASE#: 2011-GS46-02265

A/W#: K327844

Date of Offense: 7/28/2008

S.C. Code §: 16-03-0910

Code #: 0095

ORIGINAL

AKA:

Race: B

Sex: M

Age: 21

DOB: 10-25-1989

SS#: 251-01-5070

Address:

City, State, Zip:

SID#:

SC 0176119

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / Kidnapping

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 32.5 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea.	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 130

_____ 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:

This offense did not include a criminal sexual offense or an attempted criminal sexual offense

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2049

8-10-11

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
COUNTY OF YORK) 2014 APR 25 AM 9:48

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

KIDNAPPING

Christopher Markeem Poage did in York County on or about July 28, 2008, commit the crime of Kidnapping in violation of Section 16-3-910, *Code of Laws of South Carolina*, (1976), as amended. Christopher Markeem Poage, unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away Tommie Mitchell without authority of law and against the victim's will and consent. Mr. Mitchell was kidnapped while at his residence at [REDACTED] Steele Street in Rock Hill, South Carolina.

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


DEPUTY SOLICITOR

ARREST WARRANT

K- 327844

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

THE STATE
 against

Christopher Markeen Poage

Address: [REDACTED]
Rock Hill, SC 29731-1706

Phone: [REDACTED] SSN: [REDACTED]

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: SC0460300

Prosecuting Agency: Rock Hill Police Department

Prosecuting Officer: Harveston, Kathy

Offense: Kidnapping

Offense Code: _____

Code/Ordinance Sec: 16-3-910

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.

 Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant Chris Poage

on 2/22/09

Kathy Harveston
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

RODIA, MUNICIPAL JUDGE
120 E. Black Street
Rock Hill, SC 29731-1706
803-329-5695

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

Personally appeared before me the affiant Kathy Harveston who
 being duly sworn deposes and says that defendant Christopher Markeen Poage
 did within this county and state on July 28, 2008 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court)
 in the following particulars:

DESCRIPTION OF OFFENSE: Kidnapping

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 willfully and unlawfully violate SC Code 16-3-910, Kidnapping, by restricting the
 victim, one Tommy Mitchell, of his movements and forcefully holding onto the victim during the act of an
 Armed Robbery in which the victim was stabbed multiple times with a knife, which resulted in the
 victim's death. This incident occurred at [REDACTED] Steele Street within the city limits of Rock Hill.

****Police Investigation****

****Recovery of evidence****

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Rock Hill Municipal Court

Affiant's Address 120 E. Black Street

Rock Hill, SC 29731-1706

Affiant's Telephone 803-329-5695

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 July 28, 2008 defendant Christopher Markeen Poage
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping

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

Sworn to and subscribed before me _____)

on 02/23/2009 _____)

Ugo S Howe (L.S.) _____)

Signature of Issuing Judge

Judge Code: 6610

Judge's Address 120 E. Black Street

Rock Hill, SC 29731-1706

Judge's Telephone 803-329-5695

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-327844

Iref #: 0808030159

586
STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
Christopher Markeem Poage

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS46-02267

A/W#: K327846

Date of Offense: 7/28/2008

S.C. Code §: 16-11-0311

AKA:

Race: B

Sex: M

Age: 21

DOB: [REDACTED]

Street

City, State, Zip: Rock Hill, SC 29730

DL#:

SID#:

SC01761195

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,

☐ County Detention Center,

for a determinate term of 30 days/months/years or

☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 14-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

§ 56-5-2995 (DUI Assessment)

\$12

§ 56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

§ 14-1-212 (Law Enforce. Funding)

\$25

§ 14-1-213 (Drug Court Surcharge)

\$150

§ 50-21-114(BUI Breath Test Fee)

\$50

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

\$

TOTAL

\$ 130

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, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

David Hamilton
Jay Holston

John Hays
2049
8-10-11

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY
COUNTY OF YORK) 2014 APR 25 AM 9:48

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

BURGLARY FIRST DEGREE

Christopher Markeem Poage did in York County on or about July 28, 2008, willfully and unlawfully enter the dwelling of Tommie James Mitchell located at [REDACTED] Steele Street in Rock Hill, South Carolina. Christopher Markeem Poage entered without consent and with the intent to commit a crime therein. At some point during the commission of the crime, Christopher Markeem Poage, or another participant in the crime committed one or more of the following acts: 1. He was armed or became armed with a deadly weapon; 2. He caused physical injury to Tommie James Mitchell who was not a participant in the crime; 3. He used or threatened the use of a dangerous instrument; Or 4. He displayed a knife. All in violation of Section 16-11-311, *Code of Laws of South Carolina* (1976), as amended.

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

CERTIFIED TRUE COPY

2014 APR 25 AM 9:48

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

BURGLARY FIRST DEGREE

Christopher Markeem Poage did in York County on or about July 28, 2008, willfully and unlawfully enter the dwelling of Tommie James Mitchell located at [REDACTED] Steele Street in Rock Hill, South Carolina. Christopher Markeem Poage entered without consent and with the intent to commit a crime therein. At some point during the commission of the crime, Christopher Markeem Poage, or another participant in the crime committed one or more of the following acts: 1. ^{Jo A} He entered or remained in the nighttime; 2. ^{2 Jo A} He was armed or became armed with a deadly weapon; 3. ^{2 Jo A} He caused physical injury to Tommie James Mitchell who was not a participant in the crime; 4. ^{2 Jo A} He used or threatened the use of a dangerous instrument; Or 5. ^{4 Jo A} He displayed a knife. All in violation of Section 16-11-311, Code of Laws of South Carolina (1976), as amended.

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

Willy Thompson
 DEPUTY SOLICITOR

ARREST WARRANT

K- 327846

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Rock Hill Municipal Court

 THE STATE
 against

Christopher Markeen Poage

 Address: Rock Hill, SC 29731-1706

Phone: _____ SSN: _____

Sex: M Race: B Height: 6'02" Weight: 210DL State: SC Agency ORI#: SC0460300Prosecuting Agency: Rock Hill Police DepartmentProsecuting Officer: Harveston, KathyOffense: Burglary 1st Degree

Offense Code: _____

Code/Ordinance Sec: 16-11-311
 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 Chris Poage
 on 2/23/09
Kathy Harveston
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 JANE MODLA, MUNICIPAL JUDGE
 120 E. Black Street
 Rock Hill, SC 29731-1706
 803-329-5695

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
 Rock Hill Municipal Court)

AFFIDAVIT

 Form Approved
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant Kathy Harveston
 being duly sworn deposes and says that defendant Christopher Markeen Poage
 did within this county and state on July 28, 2008 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill Municipal Court)
 in the following particulars:
 DESCRIPTION OF OFFENSE: Burglary 1st Degree

 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 willfully and unlawfully violate SC Code 16-11-311, Burglary 1st degree, by entering
 into the residence of the victim, one Tommy Mitchell, without his consent, with the intent to rob the
 victim of his personal property and did hold the victim while he was being stabbed which resulted in the
 victim's death. This incident occurred at Steele Street within the city limits of Rock Hill.

Police Investigation

Recovery of evidence

Signature of Affiant

Kathy Harveston
 Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706
 Affiant's Telephone 803-329-5695

 CERTIFIED TRUE COPY
 2014 APR 25 AM 9:48
 DAVID L. HARRISON
 CLERK OF COURT
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of
 Rock Hill Municipal Court)

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 July 28, 2008 defendant Christopher Markeen Poage
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill Municipal Court) as set forth below:
DESCRIPTION OF OFFENSE: Burglary 1st Degree
 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me)
 on 02/23/2009)

Steve S. Howe (L.S.)

Signature of Issuing Judge

Judge Code: 6670
 Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706
 Judge's Telephone 803-329-5695

 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

K-327846

Ref #: 0808030159

589

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT.
	)	
Christopher Poage, #347355,	)	2014-CP-46-1306
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on April 24, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the York County Grand Jury for Burglary, 1st degree (2011-GS-46-2267), Kidnapping (2011-GS-46-2265) and Criminal Conspiracy (2011-GS-46-2264). Brad Rawlinson, Esquire, represented him. On August 8-10, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Burglary, 1st degree, thirty (30) years, concurrent, for Kidnapping and five (5) years, concurrent for Criminal Conspiracy.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Poage. 2013-UP-397 (filed October 13, 2014). The Remittitur was issued on November 18, 2013.

II.

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

1. Ineffective Assistance of Trial Counsel
 - a. "Failure to request lesser included charges"
 - b. "Failure to object to inadmissible hearsay"
 - c. "Failure to object to evidence tending to inject passion/sympathy in the trial"
 - d. "Failure to advise regarding substantial assistance"
 - e. "Failure to present evidence of duress"
 - f. "Failure to engage in plea negotiations"
 - g. "Failure to request jury charges"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcripts. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV.

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

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 20, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2014-CP-46-1306

CHRISTOPHER POAGE, #347355)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

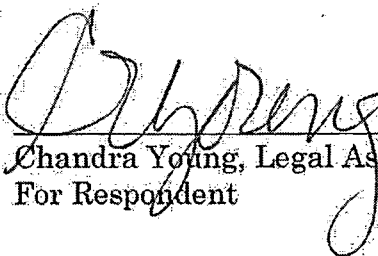
STATE OF SOUTH CAROLINA,)

Respondent.)

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

John T. Mobley, Esquire
 925 Calhoun St.
 Columbia, SC 29201

DATED this 20th day of August, 2014.


 Chandra Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2014-CP-46-1305
	)	
CHRISTOPHER POAGE,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA.	)	
	)	
	)	
	)	

January 20th, 2015
York, South Carolina

BEFORE:

THE HONORABLE J. DERHAM COLE , JUDGE.

APPEARANCES:

JOHN T. MOBLEY, ESQ.
Attorney for the APPLICANT,

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the State

AMINAH R. HARDY
Official Court Reporter

INDEX

<u>WITNESS</u>	Direct	Cross	Redirect
Christoper Poage	3	9	
Bradford Robinson	10		
Kevin Brackett	16		
CERTIFICATE			24

EXHIBITS

No.	Description	Page
-----	-------------	------

(No exhibits were marked.)

P R O C E E D I N G S

1

2

3

THE COURT: All right. Mr. Christopher Poage,
2014-1305.

4

Mr. Mobley, you represent Mr. Poage?

5

MR. MOBLEY: That is correct, Your Honor.

6

7

THE COURT: Are you ready to proceed on the
application?

8

MR. MOBLEY: Yes, Your Honor.

9

THE COURT: Okay.

10

11

12

13

14

15

MR. MOBLEY: May it please the Court, Your Honor. My
motion is for the Court to remand my client's conviction
and -- for a new trial on the ground of ineffective
assistance of counsel. Specifically, trial counsel was
ineffective in advising my client regarding the
substantial assistance statute 17-25-65.

16

17

18

19

20

21

22

To give the Court some background as to why it's
significant in this case, Your Honor, my client was
convicted -- was initially charged with murder,
kidnapping, burglary and conspiracy. The allegation was
that he and a codefendant broke into the home of the
victim and the case was primarily based on my client's
statement to law enforcement prior to being arrested.

23

24

25

There was an investigation, my client and the
codefendant were identified as suspects. They interviewed
my client. My client gave a detailed statement regarding

1 his involvement and the codefendant's involvement where
2 they allegedly -- the codefendant being the ringleader,
3 persuaded my client to go the victim's home where they
4 wait for him. The victim shows up at home. The
5 codefendant proceeds to attack and beat and kill the
6 victim. My client was present and had some degree of
7 culpability. The codefendant was the ringleader, but the
8 victim was murdered and robbed. He gave a statement. The
9 other suspect, the codefendant, never actually gave a
10 statement. So the case was solely made as a result of my
11 client's statement.

12 Now, for the logistical standpoint at trial, that
13 presented a problem for the Solicitor's Office because
14 while they could certainly prosecute my client with his
15 statement, unless he agreed to testify, based on the
16 confrontation clause issues, they could not prosecute the
17 codefendant. My client went to trial on the charges of
18 murder, burglary, kidnapping, robbery, conspiracy, and he
19 was convicted of everything but the murder and given a
20 30-year sentence concurrent on the charges, Your Honor.

21 At this point, Your Honor, my client, his testimony
22 was critical to the prosecution of the codefendant. He
23 was never advised of -- number one, of the -- by the trial
24 counsel of the substantial assistance statute which
25 allowed for a defendant to receive a reduction in sentence

1 for post-conviction cooperation. And that's significant,
2 Your Honor, because after he got convicted, under the
3 statute, there are time limitations. And the time
4 limitation was based on evidence that was not new
5 evidence, was one year from the date of conviction. My
6 client, because he was not advised of that statute and the
7 time limitation, he was unable to make an informed
8 decision as to whether or not he would cooperate and
9 testify after conviction to have the opportunity for a
10 sentence reduction.

11 I will proffer the testimony of the prosecutor in
12 this case, Kevin Brackett, in that he was interested in
13 obtaining my client's assistance in order to prosecute the
14 codefendant, however, the time -- due to the time
15 limitations, he was not allowed to or not able to file a
16 motion for a reduction in sentence based on the statute.
17 So my client is unable to receive the benefit of the
18 substantial assistance statute, Your Honor, based on the
19 lack of advice of trial counsel. And that's my argument,
20 Your Honor.

21 THE COURT: That's the sole ground on which he's
22 seeking post-conviction relief?

23 MR. MOBLEY: That's correct, Your Honor.

24 THE COURT: All right. Mr. Johnson, do you have
25 anything you want to tell me about it?

1 MR. JOHNSON: Your Honor, not at this time, until we
2 hear testimony.

3 THE COURT: Okay. Mr. Mobley.

4 MR. MOBLEY: At this time, Your Honor, I want to call
5 my client, Mr. Poage to the stand.

6 CHRISTOPHER POAGE, after having first being duly
7 sworn, testified under oath as follows:

8 DIRECT EXAMINATION:

9 BY MR. MOBLEY:

10 Q Please state your name for the record, sir.

11 A Christopher Poage.

12 Q Okay. Mr. Poage, you're aware you're under oath; is
13 that correct?

14 A Yes, sir.

15 Q And you know that means you've got to tell the truth?

16 A Yes, sir.

17 Q Are you currently serving a sentence right now?

18 A Yes, sir.

19 Q Please briefly tell the Court what you're serving the
20 sentence for.

21 A For burglary, kidnapping, and criminal conspiracy.

22 Q How much time have you served on your active
23 sentence?

24 A Thirty years.

25 Q And you had -- were you convicted at trial in this

CHRISTOPHER POAGE - DIRECT EXAMINATION BY MR. MOBLEY

1 matter?

2 A Yes, sir.

3 Q Okay. And who was your trial counsel?

4 A Bradford Robinson.

5 Q And I understand that Mr. Robinson was a fairly nice
6 gentleman to work with, correct?

7 A Yes, sir.

8 Q And I reviewed the trial transcript and I think it
9 would be fair to say he was fairly aggressive at trial?

10 A Yes, sir.

11 Q He fought for you pretty hard, right?

12 A Yes, sir.

13 Q But you were still convicted?

14 A Yes, sir.

15 Q And to Mr. Robinson's credit, even though you went to
16 trial for murder, you were not convicted of murder?

17 A No, sir.

18 Q So he did get you acquitted of the most serious of
19 the charges?

20 A Yes, sir.

21 Q Okay. Now, during the time that Mr. Robinson
22 represented you, were there discussions about plea
23 negotiations?

24 A No, sir.

25 Q Were there discussions about you testifying?

CHRISTOPHER POAGE - DIRECT EXAMINATION BY MR. MOBLEY

1 A No, sir.

2 Q Okay. Were you ever advised or made aware of the
3 statute that allows for a defendant to receive a reduction
4 in sentence if he gives cooperation within one year after
5 being convicted?

6 A No, sir.

7 Q And do you understand or have some reason to
8 understand that your testimony was necessary in order to
9 prosecute the codefendant in the case?

10 A Yes, sir.

11 Q Now -- and I understand you made a decision to go to
12 trial --

13 A Yes, sir.

14 Q -- correct? And this was your decision?

15 A Yes, sir.

16 Q And you got a good result on the murder, but a bad
17 result on everything else?

18 A Yes, sir.

19 Q Okay. And at this point, you're serving a 30-year
20 sentence?

21 A Thirty years, yes, sir.

22 Q If you had the opportunity, if you were advised that
23 you had to make a decision to cooperate and give
24 cooperation and testimony to the State within one year of
25 your conviction, understanding that would have been your

CHRISTOPHER POAGE - DIRECT EXAMINATION BY MR. MOBLEY

1 primary means to get a reduced sentence, would you have
2 done so?

3 A Yes, sir.

4 Q That's not something you talked about with your trial
5 attorney?

6 A No, sir.

7 MR. MOBLEY: That's all I have, Your Honor.

8 MR. JOHNSON: Just briefly, Your Honor.

9 CROSS-EXAMINATION:

10 BY MR. JOHNSON:

11 Q Mr. Poage, your entire application, your entire
12 argument is that had counsel advised you of 17-25-65, you
13 would have filed a motion to get a sentence reduction, is
14 that what you're saying?

15 A Yes, sir.

16 Q Are you aware that the statute actually states that
17 the State has to make that motion, that you don't have a
18 choice about that?

19 A No, sir.

20 MR. JOHNSON: No further questions, Your Honor.

21 MR. MOBLEY: No questions for this witness. I'd like
22 to call Mr. Robinson.

23 THE COURT: You may step down. Thank you.

24 BRADFORD ROBINSON, after having first being duly
25 sworn, testified under oath as follows:

BRADFORD ROBINSON - DIRECT EXAMINATION BY MR. MOBLEY

DIRECT EXAMINATION

1
2 BY MR. MOBLEY:

3 Q Good morning, Mr. Robinson.

4 A Good morning.

5 Q It's nice to see you, sir. I'm going to direct your
6 attention to the trial and your representation of
7 Mr. Poage in this case. And were you his trial counsel
8 for the burglary, murder, and kidnapping, and robbery
9 charges stemming from a home invasion in York County?

10 A I was.

11 Q And you tried that case, correct?

12 A That's correct.

13 Q And I've read the transcript and, obviously, you were
14 a very aggressive advocate for your client. That's not
15 disputed during the trial. Obviously, on the charges --
16 the most serious charge of murder, you actually got him
17 acquitted of that charge, correct?

18 A That is correct. It was a hung jury, I believe, on
19 the murder charge, along with the armed robbery and
20 possession of a weapon during the commission of a violent
21 crime.

22 Q And you're familiar with the basic facts of the
23 investigation of the case against him, correct?

24 A That's correct.

25 Q And would it be fair to say that the investigation

BRADFORD ROBINSON - DIRECT EXAMINATION BY MR. MOBLEY

1 into the murder of the victim really was broken based on
2 Mr. Poage's statement to law enforcement?

3 A Absolutely.

4 Q And just so we're clear, the other suspect, the
5 codefendant never gave a statement to law enforcement,
6 correct?

7 A That's correct.

8 Q And you were aware as an experienced criminal trial
9 attorney of the confrontation clause issues that would
10 impair the ability of the State to prosecute the
11 codefendant without Mr. Poage's statement; is that
12 correct?

13 A Yes, sir.

14 Q Which is why Mr. Poage went to trial by himself?

15 A That's correct.

16 Q Now, understanding that, you understood that in order
17 to have a legitimate chance of convicting the codefendant,
18 it was critical for the State to have the cooperation of
19 Mr. Poage, correct?

20 A That's correct.

21 Q Okay. And now, I understand that there are a lot of
22 factors that go into the decision to go to trial or take a
23 guilty plea or enter in plea negotiations that go on
24 between you and your client. And I understand that,
25 obviously, the decision to go to trial is ultimately the

BRADFORD ROBINSON - DIRECT EXAMINATION BY MR. MOBLEY

1 client's. However, in those discussions, did you ever
2 advise Mr. Poage of section 17-25-65 regarding the
3 reduction of sentence?

4 A I do not remember specifically discussing that
5 section. There was some substantial conversation
6 regarding his willingness or ability to testify against
7 Mr. Jackson, I believe was the -- was his codefendant.
8 But I cannot honestly remember either before trial or in
9 the immediate aftermath specifically discussing that
10 statute.

11 Q So you can't affirmatively say you advised your
12 client that okay, you went to trial, you got convicted, if
13 you want to use substantial assistance, it needs to be
14 within one year of your conviction, you can't recall
15 advising him of that?

16 A That's correct.

17 MR. MOBLEY: That's all I have, Your Honor.

18 MR. JOHNSON: No questions for this witness, Your
19 Honor.

20 THE COURT: You may step down.

21 MR. MOBLEY: Your Honor, as I indicated, Mr. Brackett
22 was who prosecuted this case and was, ultimately, the
23 decision maker in all negotiations and discussions about
24 my client's testimony and cooperation. I would proffer
25 his testimony. I'm not sure how the Court wants to handle

1 Mr. Brackett, but I'll proffer Mr. Brackett's testimony
2 that even after my client was convicted, in the interest
3 of justice, he would have sought my client's cooperation
4 and testimony in order to process the codefendant. As you
5 heard Mr. Robinson, trial counsel, say they really had no
6 ability to prosecute the codefendant without my client's
7 testimony.

8 Now, obviously, my client exercised his right to go
9 the trial and has to take the consequences from getting
10 convicted, for which he is serving. However, his only
11 real opportunity to have a post-sentence reduction would
12 be to give testimony or cooperate with the government. At
13 this point, my client having understood that he has
14 lost -- he assumed the risk of trial and got a bad result,
15 his only opportunity to further have his sentence reduced
16 or to get some relief would be to testify and have the
17 government make the motion based on that. However,
18 number one, he was unable to make a informed decision due
19 to the lack of advice of trial counsel regarding that
20 statute. And secondly, it was the only real remedied
21 option, which is no longer available to him because once
22 he was made aware of that, the time lapse had expired.
23 There are no other limitations. The limitations, the time
24 limitations require a one year start date from either when
25 it's old knowledge and or told it's new information or new

1 knowledge he didn't have at the time of trial. However,
2 the knowledge my client had, the information was knowledge
3 he had prior to being convicted, so it had to be made --
4 the decision had to be made within one year of his
5 conviction.

6 You've heard from trial counsel, he didn't advise my
7 client of that right. Accordingly, my client did not make
8 an informed decision. As to his decision and ability to
9 make that decision in a timely fashion and cooperate with
10 the government, I proffer the testimony of Mr. Brackett
11 that I think clearly the Court can see in the interest of
12 justice, he would try to have some type of dialogue with
13 the defendant in order to prosecute a codefendant of
14 murder. But at this point, you know, both the government
15 and the -- my client have lost that opportunity based on
16 trial counsel's ineffective assistance of counsel. Based
17 on that, Your Honor, I would ask the conviction be set
18 aside in the case.

19 THE COURT: When you say you're proffering
20 Mr. Brackett, are y'all agreeing to stipulation?

21 MR. JOHNSON: No, Your Honor, the State has not
22 agreed to anything.

23 THE COURT: Well, you can't proffer it. I mean, he
24 has to be here to testify if you want to present the
25 testimony of Mr. Brackett. Otherwise, we wouldn't need

1 any witnesses. Y'all just tell me what you want me to
2 know.

3 MR. MOBLEY: Can I confer with counsel?

4 (Pause.)

5 MR. JOHNSON: Your Honor, counsel and I have agreed
6 to take a break in this case and try to go get Solicitor
7 Brackett to come in here and testify. Under Bannister vs.
8 State, he must produce the witness to testify to prove
9 prejudice in this case. So I give him his one bite at the
10 apple, Your Honor.

11 THE COURT: If there's any question, you've got to
12 present testimony. If you want to present testimony,
13 you've got to call a witness, I mean, unless y'all agree
14 to a stipulation, which you tell me you're not. I don't
15 understand why we don't have Mr. Brackett already here,
16 subpoenaed or requested to come. Were you under the
17 impression that Mr. Johnson was going to let you tell me
18 what Mr. Brackett would say if he were here?

19 MR. MOBLEY: Actually, I assumed Mr. Brackett would
20 be here because generally the prosecutors are here.

21 THE COURT: I don't know about that assumption.
22 That's not my experience. They'll be here if you subpoena
23 them or ask them to be here, but, otherwise, they won't
24 come unless they're involved in the trial or somebody
25 needs them to testify.

KEVIN BRACKETT - DIRECT EXAMINATION BY MR. MOBLEY

1 MR. MOBLEY: Thank you for the recess, Your Honor.
2 We'll be back shortly.

3 THE COURT: All right. We're resuming with
4 Mr. Christopher Poage.

5 Mr. Mobley.

6 MR. MOBLEY: Thank you, Your Honor. At this time, I
7 would call Solicitor Brackett to the witness stand.

8 KEVIN BRACKETT, after having first being duly sworn,
9 testified under oath as follows:

10 DIRECT EXAMINATION:

11 BY MR. MOBLEY:

12 Q Good morning, Solicitor Brackett.

13 A Mr. Mobley. I'm going to ask if you recall your
14 involvement in the prosecution of my client, Christopher
15 Poage, for the charges of murder, armed robbery and
16 burglary in 2011?

17 A Yes, sir, I do.

18 Q And I know you handle a number of cases and trials
19 and you can't recall every detail of a case, but do you
20 recall the basic facts of this case, sir?

21 A Yes, sir.

22 Q And I'm going to ask you some questions and if what
23 I'm asking you is not accurate, please correct me, okay,
24 based on your memory?

25 A Very good.

KEVIN BRACKETT - DIRECT EXAMINATION BY MR. MOBLEY

1 Q Now, it's my understanding, basically, this case
2 involved a home invasion which resulted in the victim
3 being robbed and murdered; is that correct?

4 A Yes, sir.

5 Q And there were two suspects which later became
6 defendants, my client, correct, was one?

7 A Yes, sir.

8 Q And another individual, Mr. Jackson?

9 A That is correct.

10 Q Now, there are no eyewitness in this case, correct?

11 A Just Mr. Poage and Mr. Jackson.

12 Q And Mr. Jackson never gave a statement to law
13 enforcement, did he?

14 A He did not.

15 Q So of the witnesses present, there was the victim,
16 who is deceased, Mr. Jackson, and my client, Mr. Poage?

17 A That.

18 Q And of those three individuals, the only person that
19 actually gave a factual account of what happened was my
20 client, Mr. Poage, correct?

21 A That is correct.

22 Q And he gave that statement prior to being arrested or
23 contemporaneous with the investigation?

24 A He was interviewed after arrest and gave that
25 statement, yes, sir.

KEVIN BRACKETT - DIRECT EXAMINATION BY MR. MOBLEY

1 Q Now, based on your recollection of the facts of the
2 case, was there a logistical problem trying to prosecute
3 Mr. Jackson without Mr. Poage's testimony?

4 A Yes. Mr. Jackson could not be successfully
5 prosecuted because the primary evidence against Mr.
6 Jackson was Mr. Poage's statement. We also had a
7 videotape of Mr. Poage and Mr. Jackson being together some
8 period of time after -- the same day, but some period of
9 time after the murder, which just placed them together,
10 but not at the scene of the crime. We depended on
11 Mr. Poage's testimony in order to convict Mr. Jackson
12 because without -- obviously, we had a statement, but
13 under the confrontation cause, we couldn't use that
14 statement against Mr. Jackson unless Mr. Poage took the
15 stand.

16 Q Would it be fair to say, Solicitor Brackett, that
17 scenario where you need the testimony of one defendant
18 against another is something you have to deal with on a
19 somewhat regular basis when you're prosecuting violent
20 crimes?

21 A Yes, sir.

22 Q When a situation like that occurs, would it be fair
23 to say you try to have a dialogue with the counsel for the
24 defendant regarding obtaining the testimony of the
25 defendant?

KEVIN BRACKETT - DIRECT EXAMINATION BY MR. MOBLEY

1 A Yes, sir. We had tried to get Mr. Poage to cooperate
2 prior to trial and we were unsuccessful in getting his
3 cooperation that would have required him to plead guilty,
4 proffer, you know, his testimony and testify consistently
5 with what his police statement said and so forth. But we
6 were unsuccessful. After the trial, I spoke with, I
7 believe, Mr. Robinson some period of time after the trial
8 and I believe at some point, I spoke with you. I don't
9 remember when those conversation took place, but we also
10 explored the possibility of Mr. Poage cooperating.

11 Q And, of course, it's difficult for you as a
12 prosecutor when a defendant wants to cooperate and wants
13 to get something in return, it's difficult for you to try
14 to offer that person something in exchange for his
15 cooperation because it affects his credibility, correct?

16 A Yes, sir, that's right, especially after someone has
17 been convicted, you know, and they have a clear motive for
18 wanting to testify for their own personal benefit. You
19 know, that has to be revealed to -- that would have had to
20 have been revealed to Mr. Jackson's attorney so that he
21 could have developed that on cross to show motive and
22 bias.

23 Q And you're familiar with section 17-25-65 regarding
24 reduction of sentence for substantial assistance to the
25 State?

KEVIN BRACKETT - DIRECT EXAMINATION BY MR. MOBLEY

1 A Yes, sir.

2 Q And, of course, you understand that it's very similar
3 to the federal counterpart where if the defendant gives
4 post-conviction and the post-trial cooperation and the
5 prosecutor deems it substantial, at his discretion, the
6 prosecutor can make that motion on behalf of the
7 defendant?

8 A Yes, sir.

9 Q And that's never a guarantee, but that mechanism is
10 in place?

11 A Yes, sir. I've used it a couple of times.

12 Q Okay. And in this case, would it fair to say, that
13 even after Mr. Poage was convicted, while there was
14 never -- you could not guarantee you were going to use
15 him, you weren't going to guarantee, you know, whether he
16 filed a motion, but you would have been interested in
17 having a dialogue or exploring the possibility of
18 obtaining his testimony to prosecute the codefendant, is
19 that fair to say?

20 A Yes, sir.

21 MR. MOBLEY: That's all I have, Your Honor.

22 MR. JOHNSON: I don't have any questions for
23 Solicitor Brackett, Your Honor.

24 THE COURT: You can step down.

25 Anything else on behalf of the applicant?

1 MR. MOBLEY: That's all I have, Your Honor, from the
2 witness standpoint.

3 I think at this point, it's been fairly consistent
4 from all three individuals. First, taking them out of
5 order, Mr. Brackett did testify he was involved in the
6 prosecution of the case. He testified about the
7 logistical and confrontation clause issues which
8 prohibited him from prosecuting the codefendant without my
9 client's testimony. He indicated that even after my
10 client was convicted, he was familiar with 17-25-65
11 regarding reduction of the sentence. He's used it in the
12 past and he would have been open to exploring the
13 possibility of gaining my client's testimony or to convict
14 the unprosecuted defendant in the case, Your Honor.

15 As you heard from Mr. Robinson and my client, they
16 were in contact and communication after he was convicted.
17 There was never a discussion about 17-25, the time
18 limitations and the possibility of my client cooperating
19 with the State in order to obtain that reduction. And,
20 basically, Your Honor because my client was never advised
21 of that possibility and that option, he was unable to make
22 an informed decision and effectively denied the right and
23 ability to do so.

24 At this point, I would ask the Court, based on the
25 uncontradicted testimony, to either A, grant my client a

1 new trial, or B, reset the clock in the alternative to
2 give my client the one year that he has the possibility of
3 giving information to the government in order to
4 potentially take advantage of 17-25-65. And that would
5 benefit the State as well, Your Honor.

6 THE COURT: Mr. Johnson.

7 MR. JOHNSON: Just briefly, Your Honor. The State's
8 position is that the applicant failed to meet its burden
9 of proving that had counsel advised him concerning
10 17-25-65 the result of the trial would have been
11 different. What he's claiming is that he's entitled to
12 file this newly-discovered-evidence-type claim to get a
13 reduction in sentence. However, the State's position is
14 that the statute is akin to parole eligibility of which
15 counsel need not inform the applicant.

16 I've got a case here, Smith vs. State, that's 329
17 S.C. 280, 1997, says counsel is not ineffective for
18 failing to advise a defendant regarding parole eligibility
19 because it's a collateral consequence of sentencing. This
20 is the same thing. Just like there's a case I forget the
21 name of it at this point, but the SVP, the sexually
22 violent predator act, is also a collateral consequence.
23 This would be a collateral consequence of which the
24 defense counsel need not advise Mr. Poage in this case and
25 we ask you deny his application.

1 THE COURT: All right. I'll issue an order.

2 MR. MOBLEY: I'm sorry, Your Honor?

3 THE COURT: I will issue an order in the case.

4 MR. MOBLEY: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA

COUNTY OF YORK

)
)
)

I, Aminah R. Hardy, CM, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for York County, South Carolina, on the 20th
day of January, 2016.

November 20th, 2016 .



Aminah R. Hardy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2014-CP-46-1306
Christopher Poage,	)	
S.C.D.C. No. 347355,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED RECEIVED
2015 AUG 24 AM 9:30
DAVID HADLITZ
C.C.D.C. 1603
YORK COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 24, 2014. Respondent made its Return on or about August 20, 2014. An evidentiary hearing into the matter was convened on January 20, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by John Mobley, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Brad Rawlinson, Esquire, also testified. Sixteenth Circuit Solicitor Kevin Brackett also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted at the July 2011 term of the York County Grand Jury for Burglary, 1st degree (2011-GS-46-2267), Kidnapping (2011-GS-46-2265) and Criminal Conspiracy (2011-GS-46-2264). Brad Rawlinson, Esquire,

(hereinafter "Counsel") represented him. On August 8-10, 2011, Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced Applicant to confinement for thirty (30) years for Burglary, 1st degree; thirty (30) years, concurrent, for Kidnapping; and five (5) years, concurrent for Criminal Conspiracy.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Poage, 2013-UP-397 (filed October 13, 2014). The Remittitur was issued on November 18, 2013.

PCR Application

On April 24, 2014, Applicant filed an application for post-conviction relief alleging the following grounds:

- I. Ineffective Assistance of Trial Counsel
 - a. "Failure to request lesser included charges"
 - b. "Failure to object to inadmissible hearsay"
 - c. "Failure to object to evidence tending to inject passion/sympathy in the trial"
 - d. "Failure to advise regarding substantial assistance"
 - e. "Failure to present evidence of duress"
 - f. "Failure to engage in plea negotiations"
 - g. "Failure to request jury charges"

II. SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant testified that he was only proceeding on the ground of ineffective assistance of counsel in that Counsel did not advise him nor make a motion regarding the possibility of a reduction in sentence due to substantial assistance to the State pursuant to S.C. Code § 17-25-65.

Applicant testified that Counsel did not advise him of S.C. Code § 17-25-65 dealing with the State asking for a reduced sentence due to Applicant's assistance. He testified that his testimony was crucial to prosecuting his codefendant.

Counsel Brad Rawlinson's Testimony

Counsel testified that Applicant's statement to law enforcement was the crux of the State's case against him. He testified that he did not advise Applicant of S.C. Code § 17-25-65. Counsel testified that he did talk to Applicant about testifying against his codefendant.

Solicitor Kevin Brackett's Testimony

Sixteenth Circuit Solicitor Kevin Brackett testified that he handled Applicant's case. He testified that Applicant gave a statement but his codefendant did not give a statement to law enforcement. Solicitor Brackett further testified that the State could not prosecute Applicant's codefendant because Applicant did not testify at trial. He testified that Applicant's credibility was an issue.

Regarding S.C. Code § 17-25-65, Solicitor Brackett testified that for Applicant to get a reduction in sentence, the State has to make a motion.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that Applicant has failed to show that Counsel was deficient regarding S.C. Code § 17-25-65. This Court finds that Counsel has no duty to file a motion for a reduced sentence pursuant to this code section as the section clearly states that such a motion is to be filed by the State.¹ This Court also finds that Counsel has no duty to advise Applicant regarding the possibility of the State making a motion for a reduced sentence due to substantial assistance. As Counsel had no duty to give such advice, this Court finds that Counsel was not deficient for failing to do so.

Furthermore, Applicant has failed to show that he was prejudiced by Counsel's actions. Even assuming arguendo that Counsel was required to advise of the possibility of the State making a motion for a reduced sentence pursuant to S.C. Code § 17-25-65, Applicant has failed to show that the State would have, by its discretion, made such a motion or that the motion would have been successful in reducing his sentence. As Applicant has failed to meet his burden on both prongs of Strickland, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

¹ See S.C. Code Ann. § 17-25-65 ("A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose.")

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of August, 2016.


J. DERHAM COLE
Presiding Judge
Sixteenth Judicial Circuit

, South Carolina

State of South Carolina)
 City of Rock Hill :
 Rock Hill Police Department)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

K. Harvester
 (Witness)

Christopher M. Poage
 (Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person(s) talking with me is a police officer and I understand what he is talking about.

K. Harvester
 (Witness)

Christopher M. Poage
 (Signed)

PERSONALLY appears before me: Christopher Markeem Poage , who after being duly sworn deposes and says: "My name is: Christopher Markeem Poage
 Date of Birth: Social Security Number:
 My address is:
 Place of Employment :
 Cell Phone Number :
 Home Phone Number:
 I have completed 11 years is school. I X can _____ cannot read and write.

Back in the summer EJ (Ernest Jackson) called me and asked me to walk somewhere with him. I met up with him on Chestnut Street. I knocked on the door and he said, "you ready?" "I said "yeah I guess" and I asked him where we was going. He said don't worry about it, cuz, just chill. We started walking and got to this green house that is up behind the old folks home. I sat down on a chair on the porch. EJ knocked on the door and nobody answered. He said for me to knock and he was going around to the back. He got in and he come and opened the front door and let me in. That's when EJ told me we were at Short Dog's house. That's when I started feeling funny in my stomach. EJ went in the bedroom and he said start looking for the money. I didn't know what he was talking about and he said Short Dog got a big settlement. I walked out the bedroom and EJ was shaking the pillow cases, lifting up the mattresses and stuff. I went to the living room and picked up a screw driver and was sitting there playing with it. He come in and

got the screw driver from me and went to the kitchen and scratched a big "1" in the refrigerator. I was saying come on "let's go let's get outta here." Bout that time I heard the spree pull up outside and He said hide, hide behind that stereo. I got beside the stereo and EJ went to the bedroom. Short Dog come in the back door. He didn't see me and he walked in his room. He had some grocery bags when he come in and when he walked in his room EJ threw some liquid at him and he dropped his that stuff. He screamed and ran back out the room and EJ was running after him. EJ was saying "get em cuz and I hesitated and short dog almost made it out the kitchen door. Me and EJ bumped into each other and EJ pushed me out of the way. He caught up with Short Dog and grabbed him around the neck. They started scuffling and was on the ground. I was still yelling "come on let's go, it ain't worth it"...over and over. Somehow they ended up back in the bedroom. I went out the back door. I come back in to get EJ to come on, EJ said "fuck that, he got to go, he saw my face". I saw Short Dog was on the bedroom floor face down and EJ was beating him with a stick. Short Dog started breathing like he was asleep. EJ had hit him every where he could. EJ through the stick down and I grabbed his arm and said "let's go, it ain't worth it". He told me to get Short Dog's arms and I did. He got a knife from somewhere and started stabbing Short Dog. I couldn't watch it so I let go and went out the back door. After a little bit, EJ came out and he was dangling some keys. They went to the spree. He had his clothes in a bag and he put them under the seat of the spree. We got on it and went to EJ's dad's house out in the country. We took the spree across the road to the woods. That's the last time I saw it. We come back to his daddy's house and he burned his clothes and he told me to burn mine. Then we was walking up the road after that to the store and EJ threw the keys away. When we was coming back from the store, a York County deputy turned around and stopped us. He thought I was D.J. Hinton. Then Tim Williams, EJ's cousin come picked us up from his daddy's house and took us back to Rock Hill. We didn't talk about it on the drive back to Rock Hill.

Christopher M. Poole
Signature of Person Giving Statement

2/20/09
Date

STATE OF SOUTH CAROLINA)
 CITY OF ROCK HILL :
 ROCK HILL POLICE DEPARTMENT)

PERSONALLY appears before me: Christopher Markeem Poage, who deposes and says: "I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 3 page(s) and have received a copy of this statement."

Christopher M Poage

(SIGNATURE)

K. Harveston

(WITNESS)

SWORN AND SUBSCRIBED BEFORE ME
 THIS 20th DAY OF February, 2009

John Q. [Signature]
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES 7-24-2010

STATEMENT PREPARED BY: K. Harveston
 DATE: 2/20/09 TIME: 4:03 pm

WITNESSES

RHPD / Harveston

ARREST WARRANT NUMBER

K327842

ACTION OF GRAND JURY

TRUE BILL

George M. White
Foreperson of Grand Jury

VERDICT

Guilty

Art Harris
Foreperson of Petit Jury

Date:

8/10/2011

DOCKET NO. 2011-GS46-

02264

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 21, TERM 2011

THE STATE

vs.

CHRISTOPHER MARKEEM
POAGE

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code:0049

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Christopher Markeem Poage did in York County on or about July 28, 2008, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Ernest Floyd Jackson, II for the purpose of committing Burglary and Armed Robbery. The crimes occurred at ■ Steele Street in the City of Rock Hill, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

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


DEPUTY SOLICITOR

WITNESSES

RHPD / Harveston

ARREST WARRANT NUMBER

K327844

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS46-

02265

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF GENERAL SESSIONS

JULY 21, TERM 2011

THE STATE

vs.

CHRISTOPHER MARKEEM
POAGE

Indictment for

KIDNAPPING

SC Code: §16-3-910
CDR Code: 0095

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

KIDNAPPING

Christopher Markeem Poage did in York County on or about July 28, 2008, commit the crime of Kidnapping in violation of Section 16-3-910, *Code of Laws of South Carolina*, (1976), as amended. Christopher Markeem Poage, unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away Tommie Mitchell without authority of law and against the victim's will and consent. Mr. Mitchell was kidnapped while at his residence at [REDACTED] Steele Street in Rock Hill, South Carolina.

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


DEPUTY SOLICITOR

WITNESSES

IPD / Harveston

ARREST WARRANT NUMBER

327846

ACTION OF GRAND JURY

TRUE BILL

George White
 reperson of Grand Jury 7/21/11

VERDICT

Guilty

D. J. Harris
 reperson of Petit Jury
 ate:

DOCKET NO. 2011-GS-46-02267

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 21, TERM 2011

THE STATE

VS.

CHRISTOPHER MARKEEM
 POAGE

Indictment for

BURGLARY FIRST DEGREE

SC Code: 16-11-311
 CDR Code: 0079

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

BURGLARY FIRST DEGREE

Christopher Markeem Poage did in York County on or about July 28, 2008, willfully and unlawfully enter the dwelling of Tommie James Mitchell located at [REDACTED] Steele Street in Rock Hill, South Carolina. Christopher Markeem Poage entered without consent and with the intent to commit a crime therein. At some point during the commission of the crime, Christopher Markeem Poage, or another participant in the crime committed one or more of the following acts: 1. He was armed or became armed with a deadly weapon; 2. He caused physical injury to Tommie James Mitchell who was not a participant in the crime; 3. He used or threatened the use of a dangerous instrument; Or 4. He displayed a knife. All in violation of Section 16-11-311, *Code of Laws of South Carolina* (1976), as amended.

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


DEPUTY SOLICITOR