

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

R. Knox McMahon, Circuit Court Judge

RECEIVED

MAR 22 2016

SC SUPREME COURT

JOSHUA FORREST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001045

APPENDIX

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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going to show that the deed was within the defendant's mind¹ would be expressed malice. Malice may be inferred when the deed is done with a deadly weapon... (Emphasis added.)

Tr. p. 233, L. 15--p. 234, L. 25.

Following the Judge's Charge and during Jury deliberation, the Jury formen sent the Judge a note asking the following question:

Jury Formen: Does premeditation have to be toward a specific person or toward a random crowd?

Tr. p. 246, L. 24--p. 247, L. 1

The Judge acknowledged that this was a fairly difficult question because it contemplated "premeditation" as an element of Voluntary manslaughter or "specifically murder". Tr. p. 247, L. 24--p. 248, L. 1. The Judge informed the Counselors that he would... tell the Jury that... the term "premeditation," which is a legal term, but that premeditation is not an element of murder. The Judge said the issue that distinguished murder from other types of killings is malice and that he would define what "malice" is to the Jury. Tr. p. 248, L. 2-7.

Following this discussion with the attorneys, the Judge instructed the Jury as follows:

Court: Mr. Formen, ladies and gentlemen of the Jury, I have read your note which I'll read into the records. It says: does premeditation have to be toward a specific person or toward a random crowd... and to the extent this is a question about the law, the word "premeditation" is a legal term which is not a part of the offense of murder or voluntary manslaughter. Premeditation is not contemplated in the two crimes as defined in the State of South Carolina.

Tr. p. 250, L. 22--p. 251, L. 5.

The Judge then gave the Jury a Supplemental Jury Charge as follows:

Court: Malice aforethought does not require that malice exist for any particular time before the act is committed but malice must exist in the mind of the defendant just before and at the time of the act.... Therefore, there must be a combination of the previous evil intent and the act

Tr. p. 251, L. 6-11.

1. Although the Judge and Counselors were confused by the Jury's question, it can be reasonably assumed the Jury's question was about the warning shots allegedly fired by the applicant in the parking lot. Tr. p. 72, L. 16-12.

Inasmuch as the Jury's question contemplated "premeditation" as an element of murder, the Judge's instruction that it was not an element of murder in South Carolina was incorrect. See, e.g., State v. Franklin, 425 S.E.2d 758 (S.C.App. 1992) holding that Jury instruction on manslaughter as to defendant's total shooting of his father was not warranted, though they had argued and his father had told him that he would have to find another place to live, where they did not argue immediately before shooting; defendant's action in loading shotgun and returning to to continue yard work with father before returning inside and shooting him evidenced "deliberation and premeditation").

Moreover in further contradiction to the Judge's instruction, a review of the definition of the "aforethought" element of murder by the Black Law Dictionary shows that it defines this element as follows: (1) thought of in advance, (2) deliberate, (3) "premeditated" malice; malice aforethought is also defined as "premeditated malice"; preconceived malice. With regard to the substance of the law to be charged to the Jury, our Supreme Court has held that a trial Judge is required to charge the substance of the current and the correct law, and not any particular verbiage. State v. Hughey, 529 S.E.2d 721 (S.C. 2000). The applicant thus contends that the Judge could have correctly instructed the Jury, that while the verbiage of "premeditation" is not used to accompany murder in South Carolina, the element of "aforethought" accompanying murder does denote a "similar or identical meaning."

Of no less importance, it should be judicially noted that the Judge never asked the Jury Foreman for any explanation as to why the Jury was confused about the term "premeditation" as an element of murder. When faced with Supplemental Jury instruction, reviewing Court inquires whether Supplemental instruction fairly respond to Jury's question without . . . creating prejudice. U.S. v. United Medical Supply Corp., 989 F.2d 1290 (4th Cir. (S.C.) 1993); see also State v. Nichols, 481 S.E.2d 118 (S.C. 1997).

The applicant contends that it is reasonable to assume that the Jury had at the time of its request focused critical attention on the "aforethought/premeditated" element of murder and was in the process of deciding upon a verdict based on the Judge's instruction. The Supplemental instruction would be given special consideration by the Jury in deciding the case since the instruction was in response to its own inquiry. Therefore, applicant's Counsel's failure to object to the Judge's instruction and to request a specific inquiry by the Judge regarding the Jury's confusion over the

term "premeditated" to accompany murder was ineffective assistance of Counsel; and Counsel's failure to object to the instruction also relieved the prosecution of the burden of proving the "aforethought/premeditated" element of murder in violation of the Due Process Clause. Const. Amend. 14. See also In re Winship, 90 S. Ct. 1068 (1970) (The State must prove each element of the charge for a lawful conviction); State v. Blessingame, 244 S.E.2d 528 (S.C. 1978).

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to raise and argue the defense of self-defense.

A Counsel's performance may be deemed ineffective and prejudicial if their conduct so undermines proper function of the adversarial process that the trial cannot be relied on as having produced a just result. Smith v. Moore, 137 F.3d 808 (4th Cir. (S.C.) 1998).

To begin with, the Due Process Clause requires that a criminal defendant be given a reasonable opportunity to present a complete defense to the crime charged. California v. Trombetta, 104 S. Ct. 2528 (1984). Const. Amend. 14. Also, the Sixth Amendment requires defense counsel to put the State's case through adversary testing on behalf of the defendant. United States v. Cronin, 104 S. Ct. 2029 (1984).

Here, in applicant's case, the evidence revealed at trial that while he was at a club his ex-girlfriend, Tamika Bussey Campbell, who was having a relationship with the victim Mario Reddish, took his cap and went to the rear of the club where the victim and his friends were located. When applicant went to get his cap, his ex-girlfriend threw a drink on him and slapped his face several times. He ignored the assault, and after getting his cap, he was shoved by the victim and his friends. After this incident, he left the club and went to the parking lot to leave the club area in his cousin's car. Tr. p. 127, L. 15-24.

The evidence further showed that while applicant was in the parking lot trying to leave the area he saw his ex-girlfriend with the victim and his friends coming towards him. Tr. p. 127, L. 26--p. 128, L. 4. Upon seeing this, the applicant allegedly fired warning shots in the air to prevent these people from assaulting him again. Tr. p. 12, L. 10-12. However, the warning shots were ignored and applicant's ex-girlfriend came and slapped his face again. After he pushed his ex-away from him, the victim assaulted him by hitting him in the face several times and grabbing him. At this time, the victim was shot several times and killed. Tr. p. 73, L. 4-6/p. 128, L. 14-21. The police verified that the applicant had visible injuries to inner lip area from the assaults. Tr. p. 128, L. 12-13.

As evidenced by the facts adduced at trial, the applicant was physically assaulted by his ex-girlfriend, the victim and his friends inside the Club. He ignored these assaults and left the Club; therefore, he was without fault in bringing on the conflict. After leaving the Club to get in his Cousin's car to leave the area, his ex-girlfriend and the victim and his friends followed him to the parking lot and assaulted him again by hitting him in the face. The victim also grabbed him after hitting him in the face. In such a situation, the applicant submits that a prudent person of ordinary fairness and courage would have entertained the same belief about the danger perceived by the applicant in like circumstances. See, e.g., State v. Hill, 433 S.E.2d 848 (S.C. 1993).

Based on the evidence adduced at trial, the Judge even acknowledged "that the case was replete with plenty of evidence concerning manslaughter". Tr. p. 200, L. 14-15. It is well-settled law in South Carolina that the defense of self-defense and manslaughter are not mutually exclusive and both should be submitted to jury if supported by the evidence adduced at trial. State v. Nichols, 481 S.E.2d 118 (S.C. 1997). In addition, if there is any evidence in the record from which it could be reasonably inferred that the defendant acted in self-defense, the defendant is entitled to instruction on that defense, and trial judge's refusal to do so is reversible error. State v. Day, 535 S.E.2d 431 (S.C. 2000).

The applicant accordingly submits that based on the evidence adduced at trial regarding this case his trial counsel was ineffective for failing to advise him of his right to a "self-defense defense", and for failing to request a self-defense jury charge, which deprived him of a fundamental right to a defense and is per se prejudicial. Moore, Supra; Day, infra

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to evidence of prior bad acts.

To establish claim of ineffective assistance of counsel, applicant for post-conviction relief must prove counsel's performance was deficient and that deficient performance prejudiced his case. Estelle v. White v. State, 481 S.E.2d 709 (S.C. 1997).

During the trial, the State solicited evidence by a police officer that the applicant's ex-girlfriend had formed a relationship with the victim, Mario Reddish, "during applicant's recent incarceration" in prison. Tr. p. 127, L. 12-14. Evidence that defendant was previously jailed on unspecified charges was not admissible under any exception Geter v. State, 409 S.E.2d 344 (S.C. 1991). A defendant's character may not be attacked unless he puts it in issue; hence, evidence

of Commission of another independent crime is not admissible against a defendant for purpose of showing that he is a person of bad character and likely to have committed the crime charged, State v. Green, 200 S.E.2d 74 (S.C. 1973).

As a result, the applicant contends that his counsel was ineffective for not objecting to the prior bad act testimony and for failing to request a curative instruction to the jury. He also contends that he was prejudiced by counsel since the jury could believe that he was a bad person who could have committed the crime for which he was charged.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to, and move to quash, an indictment that charged double jeopardy offenses.

The applicant contends that his indictment for "Possession of Firearm During Commission of or Attempt to Commit a Violent Crime" charged him with double jeopardy offenses because the indictment charges on the one hand that "he displayed a firearm during commission of a violent crime"; while charging on the other hand that "he displayed a firearm during an attempt to commit a violent crime; to wit murder". Jeopardy attaches when the jury is impaneled and sworn unless prior to reaching a verdict, the jury is discharged with defendant's consent or upon grounds of legal necessity. State v. Rowland, 539 S.E. 2d 417 (S.C. App. 2000).

The artful phrasing of an indictment cannot frustrate the protection of Double Jeopardy Clause when putatively "different offenses" are properly characterized as a single continuing offense (as in applicant's indictment). Hess v. Madlock, 820 F.2d 1368 (4th Cir. (S.C.) 1987).

The applicant contends that based on the double jeopardy offenses alleged in his indictment counsel's failure to object to the charges and to move to quash the indictment was ineffective assistance that was prejudicial, see Johnson v. State, 400 S.E.2d 433 (S.C. 1997).

CONCLUSION

WHEREFORE, for the foregoing reasons, the Honorable Court should grant the applicant post-conviction relief to reverse his unjust conviction.

Respectfully Submitted,

/s/

Joshua Lamar Forrest, 274525
Perry Correctional Institution
4130 Oaklawn Road - B2A/213
Pelzer, S.C. 29669

Date: _____ 2012

Date: _____, 2012

Hon. Liz Godard
Clerk of Court
P.O. Box 583
Aiken, S.C. 29802-0583

Re: PCR Application
C/A No. 2011-CP-02-1834

Dear Ms. Godard:

Enclosed please find the Original Memorandum of Law in Support of Application for Post-Conviction Relief for filing with your office. I have also included a self-addressed stamped envelope for your return to me clocked-stamped copies of this document for my record.

Sincerely,

Jashua Lamar Forrest, 274525
Perry Correctional Institution
430 Oaklawn Road-Q2A/2B
Pelzer, S.C. 29669

cc: file

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
)	
JOSHUA LAMAR FORREST,)	
	)	Case No. 2011-CP-02-1834
Petitioner,)	
)	
vs.	)	<u>SUPPLEMENTAL GROUNDS IN SUPPORT</u>
	)	<u>OF PETITION FOR POST-CONVICTION</u>
STATE OF SOUTH CAROLINA	)	<u>RELIEF</u>
)	
Respondent.)	

COMES NOW the Petitioner, Joshua Lamar Forrest, by and through his attorney, and hereby states these additional grounds in support of his Petition for Post-Conviction Relief:

TRIAL COUNSEL DENIED APPLICANT EFFECTIVE ASSISTANCE IN VIOLATION OF THE SOUTH CAROLINA CONSTITUTION ARTICLE ONE, SECTIONS THREE AND FOURTEEN, AND THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The record reflects that defense counsel failed to object to the trial judge's charge that "malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon." (T tr p. 234 l. 16-18) That was all that was charged with regard to the inference of malice. It is, of course, a violation of the due process clause of the Fourteenth Amendment "when a jury charge creates a mandatory presumption, and impermissibly shifts the burden of proof to the defendant." Sandstrom v. Montana, 442 U.S. 510, 524, 99 S.Ct. 2450, 61 L.Ed.2d 508 (1979). See also Mullaney v. Wilbur, 421 U.S. 684, 703-04, 95 S.Ct. 1881, 44

L.Ed.2d 508, holding that the due process clause forbids a state from placing the burden on the accused to prove his actions reduced the crime from murder to manslaughter.

Admittedly, the charge given in this case was that inferred malice may arise ... with a deadly weapon. It simply did not go far enough to protect applicant's due process rights. In the case of State v. Elmore, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983), the South Carolina Supreme Court outlined a jury charge that it felt would pass muster with reference to the due process clause. "The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive." It is important to note that the Court will tolerate "only slight deviations from this charge." Id.

Telling a jury that it may infer malice from the use of a deadly weapon takes the decision as to malice out of its hands when, in fact, a deadly weapon was used. There is nothing to explain whether the word "may" means that the jury is allowed to infer malice, or that it should. Moreover, there was nothing in the charge that told the jury in this case that the inference was simply "an evidentiary fact to be taken into account ... along with other evidence." Without that caution, it is the same as telling the jury that a weapon equals

malice. Malice is required for the State to prove a charge of murder. When the jury is told that it may infer malice from the use of a deadly weapon, the State need not prove it beyond a reasonable doubt. Every element of a crime must be proven; the trial court's jury charge must correctly state the elements of the offense and "lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." Sandstrom at S.Ct. 2457, quoting In Re Winship, 397 U.S. 358, 90 S.Ct. 1068, L.Ed. 2d 368 (1970).

Telling the jury that it may infer malice from the use of a deadly weapon means that the State did not have to prove malice beyond a reasonable doubt. The proof of malice is necessary in order to sustain a murder conviction. Because defense counsel did not object to the faulty jury instruction, her conduct fell below the prevailing standards of the profession. The failure to object did not preserve the error when the jury charge reduced the burden of proof to that of strict liability. Use of a deadly weapon, which results in death, calls for a verdict of guilty to a layman (juror). The State no longer had to prove that essential element and the applicant was severely prejudiced by this error. Without this inference, the State was unable to prove murder in this case and the jury would have been forced to either find applicant not guilty or guilty of the lesser included offense of voluntary manslaughter or find that he acted in

self-defense. As such, applicant would respectfully request that he be granted a new trial in this matter.

THE BELCHER DECISION.

The impropriety of the implied malice jury charge at issue here, where "evidence has been presented that would reduce, mitigate, excuse or justify the homicide" was addressed in 2009 by the State Supreme Court in the case of State v. Belcher, 385 S.C. 597, 685 S.E. 2d 802 (2009). The Court provided an analysis of the law surrounding the implied malice charge, dating back to the 1800s. The Court held that, if evidence is presented that would reduce, mitigate, excuse or justify the homicide, a charge that malice may be inferred from the use of a deadly weapon would no longer be good law in South Carolina. Id. The ruling was to apply to "all cases which are pending on direct review or not yet final where the issue is preserved." Belcher at 612.

Had counsel made proper objections to the inferred malice jury instruction, thus preserving it for appeal, applicant would have been given a new trial based upon the Belcher decision. There was clearly evidence presented at trial that would have reduced the crime to voluntary manslaughter or even self-defense. (See T tr p. 200, l. 14-16.) In light of the Belcher decision, applicant should be granted a new trial.

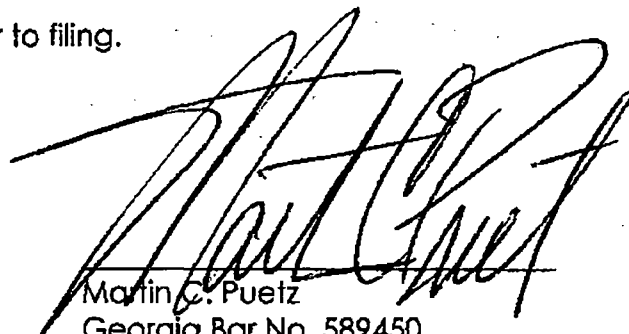
CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the within and foregoing **Memorandum of Law In Support of Application for Post-Conviction Relief** upon opposing counsel:

Daniel Gourley, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia SC 29211

by depositing same in the United States mail, in a properly addressed envelope, with adequate postage thereon, prior to filing.

This 3 day of January, 2014.



Martin C. Puetz
Georgia Bar No. 589450
South Carolina Bar No. 4591
415 Fourth Street
Augusta, GA 30901
706-722-4283
Attorney for Joshua Lamar Forrest

BUSSEY CAMPBELL - DIRECT

1 Q. Was it torn like that?

2 A. No, sir.

3 Q. But that's the one y'all were arguing about?

4 A. Yes, sir.

5 Q. All right. You took the hat off of him, went back to
6 the back of the club. He came back there and y'all
7 started an argument. What happened during the argument?

8 A. It was like a little bit of touching. Then when he
9 grabbed me, I threw the alcohol in his face that I had in
10 the cup that I was drinking out of.

11 Q. Yes, ma'am.

12 A. And then that's when people started getting between
13 us.

14 Q. People started doing what?

15 A. Getting between us. Like that's him, and this is me.

16 Q. Who was getting between y'all; do you remember?

17 A. It was Tanika Roberson and Jonathan Thomas.

18 Q. And they were separating the two of y'all?

19 A. Yes, sir.

20 Q. And what happened then?

21 A. Then Jonathan Thomas told Joshua Forrest that he
22 wasn't going to be putting his hands on me. And that's
23 when Mr. Reddish came over there.

24 Q. And did you know Mr. Reddish?

25 A. Yes, sir. I did.

BUSSEY CAMPBELL - DIRECT

set for [unclear]

1 Q. What was your relationship with him?

2 A. He was like my best friend.

3 Q. Were y'all boyfriend and girlfriend?

4 A. No, sir.

5 Q. Just close friends?

6 A. Yes, sir.

7 Q. And he and Jonathan kind of broke y'all up again?

8 A. Yes.

9 Q. What happened after that?

10 A. After that Joshua went out the door, and then Jonathan
11 and Mario went out the door. And me and Tanika and Chris
12 stayed in the club.

13 Q. How long did y'all stay in the club?

14 A. For about two to three minutes.

15 Q. Then what did you do?

16 A. We walked out the entrance to go out the club.

17 Q. What was going on when you got out the club?

18 A. They was having a little altercation.

19 Q. Who was?

20 A. Joshua Forrest and Jonathan Thomas.

21 Q. Was Mario out there, too?

22 A. Yes, sir.

23 Q. Was he in the altercation, too?

24 A. He wasn't fighting with Joshua. He was trying to
25 break it up.

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 that regard. If he indeed knows what happened and/or if
2 he has an idea what happened.

3 THE WITNESS: Investigator Kevin Liles initiated
4 the sequence to begin the taping of the interview. The
5 recording itself stopped minutes after it started. And
6 when Investigator Liles left the room, the interview room,
7 to go and turn the machine off, he noticed that it had
8 been turned off by itself, that it was not recording. So
9 he initiated it back again and that caught the last
10 segments of the entire interview.

11 BY MR. KODMAN:

12 Q. Did you make some written notes of what was said
13 during that interview?

14 A. Yes, sir.

15 Q. And when did you make those notes?

16 A. I made those notes while the interview was in
17 progress.

18 Q. At some point did you convert those notes into an
19 investigative report?

20 A. Immediately. That evening; yes, sir.

21 Q. And referring to your notes in your investigative
22 report, what specifically did the Defendant tell you as to
23 what he says happened on the night in question?

24 A. Mr. Forrest reported of Chantelle Epps driving him to
25 the Elk's Club and arriving and entering between 01:30 and

2nd Time) Self Defense

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 02:00 hours on 12-4-05 and consumed a large quantity of
2 alcohol that intoxicated him.

3 Forrest reported while inside Bussey, his
4 ex-girlfriend who had formed a relationship with Reddish
5 during his, being Forrest, recent incarceration, began a
6 verbal argument over his flirtations with Monique.

7 Forrest continued to report Bussey took his ball cap
8 and relocated within a group of 12 males toward the rear
9 of the Elk's Club. Forrest reported he approached her to
10 retrieve his cap whereas Bussey threw a drink on him and
11 slapped his face several times.

12 Forrest reported he ignored Bussey's assault and after
13 obtaining his cap the 12 males began to shove him and he
14 left the interior of the Elk's Club, relocating to the
15 rear driver door of the white-in-color Lincoln operated by
16 James Forrest.

17 Forrest reported he opened the door to enter, was
18 unable -- was unable to due to the driver's seat being
19 fully declined (sic) and upon relocating to the front of
20 the vehicle observed Bussey and the same group of males
21 approaching him.

22 Forrest reported Bussey hit his face several times and
23 he grabbed her throat and pushed her away. Forrest
24 reported Reddish then approached him and punched him in
25 the face and a physical fight erupted whereas Reddish

JACKSON -V- DENNO: CHUCK CAIN - DIRECT

1 again struck him in the jaw as the fight relocated to the
2 front region of the Lincoln.

3 Forrest displayed apparent visible injury to his inner
4 lip region. Forrest reported and demonstrated during the
5 fight, Reddish secured him in a frontal bear hug, gripping
6 both of his, Reddish's, arms around his, Forrest's, arms
7 and torso.

8 Forrest reported upon trying to break free he heard
9 apparent gunshots and began to back away from Reddish, who
10 ripped his, Forrest, shirt off while falling forward to
11 the ground.

12 Forrest reported of running to and entering the
13 Lincoln with Little James, James Forrest and Jay, Joseph
14 Gartrell, while hearing Bussey state, shoot that nigger.
15 Forrest reported while departing the incident location
16 to -- while departing the incident location an unknown
17 black male ran beside the Lincoln firing a pistol.

18 Forrest reported of soon arriving to the Waffle House
19 located at Highway 19 and I-20, Aiken, South Carolina,
20 where he accepted a ride from Myron to his, Forrest,
21 girlfriend, Marcy Coleman's residence located in Apple
22 Valley Subdivision, Augusta, Georgia, arriving between
23 05:00 and 06:00 hours on 12-4-05.

24 Finally Forrest reported of overhearing Coleman's
25 mother state at 08:30 hours that he was wanted by the

1 police and of speaking with his mother later that day who
2 coordinated his surrender to law enforcement.

3 Q. Did he tell you anything else?

4 A. I asked him during the interview how was it possible
5 that while he was in a frontal bear hug and he heard
6 gunshots, how was it possible that the victim, Mario
7 Reddish, sustained two gunshots to his front while he was
8 in a frontal bear hug with Mr. Forrest. And he said that
9 was God's will.

10 Q. Did he make any other statements to you?

11 A. I asked him was -- did he mean divine intervention and
12 he said yes.

13 Q. And was that the extent of your contact with the
14 Defendant in terms of any statements he provided?

15 A. Statement wise. Yes, sir.

16 Q. Okay.

17 MR. KODMAN: Please answer any questions
18 Ms. Stoney may have.

19 THE WITNESS: Yes, sir.

20 THE COURT: Before we go, how long did the
21 questioning take place? How long? Over what period of
22 time did the statement take?

23 THE WITNESS: You mean the length of the
24 interview, sir?

25 THE COURT: Right.

ROBERSON - DIRECT

*Self Defense
turn over*

- 1 hollering, give me my clothes I brought you, give me my
2 stuff I brought you. And he was just kept on walking. He
3 was, like Tamika, go ahead, Tamika go ahead. As he was
4 getting in the car that's when I seen Jonathan hit him.
- 5 Q. Jonathan?
- 6 A. Hit Junior.
- 7 Q. Jonathan who?
- 8 A. Jonathan Thomas hit Joshua Forrest.
- 9 Q. All right. Let me stop you there for a minute. I
10 don't want to get this confused. How many people were you
11 and Tamika with that night?
- 12 A. When we got to the club?
- 13 Q. Yes, ma'am.
- 14 A. When we got to the club it wasn't nothing but me,
15 Tamika, Timothy, we call him Pull and Nicole Funchez, four
16 of us. We all rode in my rental car. I had rented a car
17 that weekend.
- 18 Q. When Joshua left out the door and y'all followed him
19 after him, how many of y'all followed out the door?
- 20 A. Two, me and Tamika.
- 21 Q. The other people stayed inside? And then you
22 mentioned somebody named Jonathan.
- 23 A. They came out after -- okay. After me and Tamika got
24 out, I would say like five minutes later that's when
25 Jonathan and them, everybody just started coming out the

ROBERSON - DIRECT

Self-defense

1 door. Because they heard her -- they heard Tamika yelling
2 and screaming saying give her her stuff.

3 Q. How many people came up right next to Tamika?

4 A. After we got out the club?

5 Q. Yes, ma'am.

6 A. It was about ten, 15 people. It was just everybody
7 just after, you know, she started yelling and screaming
8 everybody just start coming out the club.

9 Q. Were they out there to help her, do you think or were
10 they just out there seeing what was going on?

11 A. They were just out there seeing what was going on.

12 Q. So they weren't people with you two?

13 A. No, sir.

14 Q. All right. So the crowd came outside. Tamika and the
15 Defendant were arguing. What happened next, do you say?

16 A. Joshua was getting there. He was on the driver's side
17 of the car. He was -- he had one foot in the car and the
18 back door was open and he was going to get in the car.

19 Q. All right. Whose car?

20 A. It was a white Lincoln. It was driven by James
21 Forrest. That's his cousin.

22 Q. And you say the Defendant was trying to get into a
23 white Lincoln?

24 A. Yes, sir.

25 Q. Was anybody else there with him?

LATASHA BROWN - DIRECT

1 A. Not, not the shot that went in the air, whatever. I
2 didn't see that.

3 Q. What did you see next?

4 A. Then I seen Mario walk back towards the club. He was
5 walking back towards the club and then for some reason he
6 turned around and walked back and when he walked back he
7 punched -- Mr. Forrest / start walking towards him and when
8 they met, Mario punched him in the face and then they had
9 locked up.

10 Q. When you say they locked up, what do you mean by that?

11 A. They was like, like in a bear hug. They had locked
12 up.

13 Q. Okay. And what happened next?

14 A. Then after that I seen Mr. Forrest pull a gun from
15 his, like, waist area, right here. And then I heard two
16 shots fired and Mario had hit the ground.

17 Q. Did you see him with a gun?

18 A. Yes.

19 Q. Can you describe it?

20 A. It was black.

21 Q. How many shots did you hear?

22 A. Two.

23 Q. After Mario hit the ground, what did the Defendant do?

24 A. He got in the car and left.

25 Q. Do you remember who he got -- who he went with or

LATASHA BROWN - DIRECT

1 anything about it?

2 A. No.

3 Q. And what did you do after the shooting happened?

4 A. I just started screaming and looking for my keys
5 because I couldn't find my keys.

6 Q. What happened? Was Mario moving at all after that?

7 A. No, he wasn't moving.

8 Q. And what happened next?

9 A. Then some, some guys picked Mario up off the ground
10 and they put him in the car. And then I got, got my keys
11 and I got in the car and I put on my blinkers and we
12 followed the car to the hospital.

13 Q. And other than the Defendant when he was locked up
14 with Mario, was there anybody else close to the two of
15 them when the shooting occurred?

16 A. No.

17 Q. And at any time during the altercation between Mario
18 and Joshua in the parking lot, was anybody ever standing
19 in between you and them?

20 A. No.

21 Q. The person that you say shot Mario Reddish, do you see
22 him here in the courtroom today?

23 A. Yes.

24 Q. Could you point him out for the jury?

25 A. Right there (pointing)..

BUSSEY CAMPBELL - DIRECT

Bill (Dillon?)

- 1 Q. Facing which way?
- 2 A. It was facing the same way we was facing.
- 3 Q. Right here by the number seven?
- 4 A. Yes, sir.
- 5 Q. Where was everybody at, the people?
- 6 A. Standing right here beside James Forrest car.
- 7 Q. Who was there?
- 8 A. It was James standing by the front door, Joshua
- 9 standing by the back door.
- 10 Q. James was by the front -- was the door open or closed?
- 11 A. It was open.
- 12 Q. So you said James was here?
- 13 A. Uh-huh. No. They was standing -- like when they had
- 14 the doors open like they was standing right--
- 15 Q. In the doorway?
- 16 A. Uh-huh.
- 17 Q. Who else was by the car?
- 18 A. Joshua Forrest.
- 19 Q. Which door was he here?
- 20 A. Like between the back door.
- 21 Q. He was standing inside the back door?
- 22 A. Uh-huh.
- 23 Q. Was there anybody else around the car?
- 24 A. Yes. It was Jonathan standing up on Joshua.
- 25 Q. He was standing where?

BUSSEY CAMPBELL - DIRECT

- 1 Q. If you could, come down here. There's a diagram here
2 of the club.
- 3 A. (Complying.)
- 4 Q. Do you recognize how that's laid out?
- 5 A. Yes, sir.
- 6 Q. Could you stand to the side so they can -- you got to
7 show these people. Could you state where everybody was
8 that night?
- 9 A. We came out this entrance. Tanika car is right here,
10 car was right here.
- 11 Q. Parked facing which way?
- 12 A. This way.
- 13 Q. Facing to the street?
- 14 A. Facing to the club.
- 15 Q. Facing to the club?
- 16 A. Uh-huh.
- 17 Q. Right here?
- 18 A. Uh-huh.
- 19 Q. An arrow to the front; right?
- 20 A. Uh-huh, yes.
- 21 Q. Okay. That's the car you came in?
- 22 A. Yes, sir.
- 23 Q. Was there another car out there?
- 24 A. Yes. The car that James Forrest was driving was right
25 here beside the oak tree.

BUSSEY CAMPBELL - DIRECT

Self Defenses

- 1 A. He was standing in front of Joshua.
- 2 Q. At the back of the car?
- 3 A. Uh-huh. And Mario was standing behind Jonathan.
- 4 Q. So Jonathan was here?
- 5 A. Uh-huh. No. Jonathan was right here because they're
- 6 all facing this way.
- 7 Q. They're facing the club?
- 8 A. They're facing the club.
- 9 Q. Did I get the names wrong?
- 10 A. It was James, then it was Joshua standing back here by
- 11 the back door. It was Jonathan standing right here and
- 12 Mr. Reddish standing right there.
- 13 Q. One was in front or both in front?
- 14 A. They both in front.
- 15 Q. Over here?
- 16 A. Uh-huh. Right here.
- 17 Q. They were here?
- 18 A. Uh-huh.
- 19 Q. And then Mario was the same, right next to Jonathan?
- 20 A. Uh-huh.
- 21 Q. What were they doing?
- 22 A. Well, I was just heard commotion going back and forth
- 23 between Jonathan and Joshua.
- 24 Q. Did you hear Mario in the middle of their
- 25 conversation?

BUSSEY CAMPBELL - DIRECT

1 A. I heard Mario trying to stop it.

2 Q. What happened next?

3 A. What happened next was when we heard the gunfire.

4 Q. How many gunshots did you hear?

5 A. Two.

6 Q. Did you see a gun?

7 A. Did I see a gun? I seen a gun, but I couldn't tell

8 who had the gun in their hand.

9 Q. Did you hear all the shots come at one time?

10 A. It was like pow pow.

11 Q. How many times did you hear it go off?

12 A. Twice.

13 Q. Just twice?

14 A. When I walked out the door.

15 Q. Did you hear any more shots after that?

16 A. No. I just heard people started screaming and stuff.

17 Q. And what did you do?

18 A. What did I do? I seen them jump in the --

19 THE COURT: She can come back up here.

20 THE WITNESS: (Complying). I seen him jump in

21 the car. What I did, I had on some heels. The white car

22 that James Forrest was driving, they jumped in that car to

23 speed off. I had on some heels. I took off one of my

24 heels and threw it, threw it at the car.

25 BY MR. GIBBONS:

ROBERSON - CROSS

Self-Defense

- 1 A. I don't remember.
- 2 Q. How much had you been drinking that night?
- 3 A. Because I was drinking at Belajio's, I'd say I had
- 4 about eight drinks, nine drinks.
- 5 Q. So you said before you were, that you were admittedly
- 6 drunk?
- 7 A. Yes, ma'am.
- 8 Q. You don't really remember what happened?
- 9 A. Yes, ma'am.
- 10 Q. And you said that Mario swung at Joshua?
- 11 A. No, ma'am. Jonathan Thomas.
- 12 Q. But later on you said that you heard gunshots and
- 13 Mario swung?
- 14 A. Yes, ma'am. Yes, I did.
- 15 Q. So Mario swung?
- 16 A. Yes, ma'am. When he came on the other side of the
- 17 car.
- 18 Q. Did you actually hear the gunshots?
- 19 A. Yes, ma'am.
- 20 Q. How many?
- 21 A. Four. It was like pow-pow, pow-pow.
- 22 Q. And you heard someone yell that Mario had been shot
- 23 four times?
- 24 A. Yes, ma'am.
- 25 Q. How fast were the gunshots between each other?

ADAMS - DIRECT

1 A. They were like pow-pow pow-pow.

2 Q. But you had ever see anyone with a gun?

3 A. No, ma'am.

4 Q. Do you have any idea who shot Mario?

5 A. No, ma'am.

6 MS. STONEY: No more questions.

7 THE COURT: Redirect?

8 MR. GIBBONS: Nothing further from this witness,

9 Your Honor.

10 THE COURT: All right. You may step down. Call
11 your next witness.

12 MR. GIBBONS: Clay Adams.

13 THE COURT: Any objection to her being released
14 from her subpoena?

15 MR. GIBBONS: No, sir.

16 THE COURT: You're free to go, ma'am.

17 MARTIN CLAY ADAMS, having been duly sworn, was
18 examined and testified as follows:

19 THE CLERK: Have a seat in the witness box, state
20 your full name for the Court, spelling your last.

21 THE WITNESS: Martin Clay Adams. A. D. A. M. S.

22 DIRECT EXAMINATION

23 BY MR. GIBBONS:

24 Q. Mr. Adams, where are you employed?

25 A. I'm sergeant of forensic investigations for the

BUSSEY CAMPBELL - CROSS

1 Q. At what point did he say that?

2 A. When they was by the car.

3 Q. Did you see anybody passing licks?

4 A. No, sir.

5 Q. And if you had to say the two people that were hottest
6 in this argument, who were they?

7 A. Jonathan Thomas and Joshua Forrest.

8 MR. GIBBONS: Answer any questions Ms. Stoney
9 has.

10 CROSS-EXAMINATION

11 BY MS. STONEY:

12 Q. You say that you arrived there with Tanika, Timothy
13 Mario, Johnson and who else?

14 A. Jonathan Thomas, Charles Bush and Jeanette Thomas.

15 Q. And Nicole?

16 A. And Nicole Funchez.

17 Q. And you arrived about 12:30?

18 A. To my knowledge about 12:30 or something till one. It
19 was probably a little earlier than that.

20 Q. So basically were you with Mario and Jonathan at the
21 time you got there?

22 A. No. I rode in the car with Tanika. We walked in
23 together. Jonathan and Mario walked in together. We all
24 left one club and came to another.

25 Q. So you were all basically together, just in two

Self-Defense

BUSSEY CAMPBELL - CROSS

- 1 separate cars?
- 2 A. Yes.
- 3 Q. What club did y'all leave?
- 4 A. Belajio's.
- 5 Q. Were you drinking there?
- 6 A. No, ma'am.
- 7 Q. Outside after Joshua left the club Jonathan and Mario
8 were surrounding him by his car. Is that your testimony?
- 9 A. Yes, they was right there where he was.
- 10 Q. And was he trying to get in the car?
- 11 A. I can't tell he was trying to get in the car. They
12 was standing beside the car with the doors open when I
13 came out the door.
- 14 Q. Did you see everything that happened that night?
- 15 A. Most of it. It started in the club.
- 16 Q. Did Mario ever hit --
- 17 A. I didn't see Mr. Reddish touch Mr. Forrest at all.
- 18 Q. Were you looking at him the whole time?
- 19 A. No, I wasn't but when I got out the door I looked over
20 there and walked towards that way.
- 21 Q. So it's possible that Mario may have hit him and you
22 just didn't see it?
- 23 A. I didn't see it. I'm saying to my knowledge I didn't
24 see him.
- 25 Q. How close were the rest of the cars parked there? How

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-02-1834

Joshua Forrest, #274525,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED 10 9 14
Liz Rodard
D.C.C.P. & G.S.
Anita Knoebel
Deputy Clerk

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 23, 2011. The State made its return on June 15, 2012. A hearing was convened at the Aiken County Courthouse on July 30, 2014. Applicant was present and represented by Martin C. Puetz, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant's trial counsel, Sherri Hicks Stoney, Esquire, was called as a witness by Applicant. Applicant also testified on his own behalf. This Court also had before it the pleadings of both parties, the Applicant's records from the Department of Corrections, the Clerk of Court's records regarding the convictions, and the transcript of both of Applicant's trials.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted during the April 2006 term of the Aiken County Grand Jury for murder (2006-GS-02-695) and possession of a firearm or knife during commission of or attempt to commit a violent crime (2006-GS-02-694). Applicant was represented by Sherri Hicks Stoney, Esquire. Applicant was tried by jury

on December 4-6, 2006, before the Honorable Doyet A. Early, III. Judge Early declared a mistrial after the jury was unable to reach a verdict. Applicant proceeded to trial a second time and was found guilty on June 24, 2009. Applicant was sentenced by the Honorable Michael G. Nettles to life without parole to run concurrent with a sentence of five years imprisonment for possession of a weapon during a commission of or attempt to commit a violent crime.

A timely notice of Appeal was filed on behalf of the Applicant. The South Carolina Court of Appeals affirmed the conviction. State v. Forrest, Op. No. 2011-UP-254 (filed June 1, 2011). The Remittitur was sent June 24, 2011.

STATEMENT OF FACTS

Applicant was convicted of murdering Mario Reddish in the parking lot of an Elks Club in Aiken County. The homicide occurred on December 4, 2005. The first witness for the State was Latasha Brown, who testified that she knew both Reddish and Applicant. She testified that Applicant and Tameka Bussey (at the time of trial, her name was Tameka Campbell) got in a fight. Applicant pinned Bussey against the wall. Brown testified that the fight was over a hat and shoes. She testified that Applicant was then in an altercation with Reddish and Jonathon Thomas. This occurred around closing time at the club and everyone then went outside. Tr. pp. 68-72.

Outside, there was a commotion and Brown heard a gunshot. She then heard Applicant say Reddish was not leaving tonight. Applicant and Reddish walked towards each other. Reddish threw a punch and they were then "locked up" with each other. Brown testified that Applicant pulled out a gun and she then heard two shots. Reddish hit the ground. Applicant then left in a car. Tr. pp. 72-74.

Sherry Cade testified that she has known Applicant for nine years. She testified that she

saw Bussey fussing with Applicant over a baseball hat and shoes. Then Jonathon Thomas and Reddish tried to break up the altercation between Bussey and Applicant. Cade testified that nothing physical occurred when they intervened. After walking out of the club, she saw Applicant pull a gun from out of his pants and say to Reddish "MF, I'm going to kill you tonight" and fire a shot into the ground. Applicant and Reddish then ended up in a bear hug. Reddish fell after two more shots were fired. Tr. pp. 81-85.

Jonathon Thomas testified that he knew Applicant all his life and was best friends with Reddish. Thomas testified that he went to break up an argument between Applicant and Bussey. Thomas said nothing physical occurred. He clarified on cross-examination that Reddish was not anywhere near Applicant at this time. Thomas said that he approached Applicant outside and they shook hands. He was walking away when he looked back and saw Applicant fire shots at Reddish. Thomas denied having any personal conflict with Applicant. Tr. pp. 92-97; p. 103.

Applicant gave a statement to Investigator Cain. Cain testified that Applicant told him the Bussey took a baseball cap from him and ran into a crowd of people. She also slapped him and threw a drink in his face. Applicant alleged twelve males began to push him inside the club and he went outside the club. Applicant alleged Bussey and the same group of males approached him outside the club. Bussey approached Applicant and hit him again. This time, he grabbed her throat and pushed her away. Reddish then approached and hit Applicant in the face and a physical fight broke out where Reddish struck Applicant again. Cain observed that Applicant had an injury to his lip. Applicant alleged that Reddish had Applicant secured in a bear hug. While trying to break free, Applicant heard gunshots and Reddish fell to the ground. Tr. pp. 128-29. Cain asked Applicant to explain how Reddish had two frontal gunshot wounds without Applicant suffering any injury if they were locked in a bear hug. Applicant responded it



was "God's will" and confirmed he meant divine intervention. Tr. p. 130.

No defense witnesses were presented and counsel had the benefit of last closing argument. She argued inconsistencies between the three eyewitnesses and questioned why the State did not present other witnesses from the crowded club. Tr. pp. 214-217.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct



should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Batson motion

Applicant alleges trial counsel was ineffective for failing to make a Batson motion because three of the four jurors struck by the prosecution were African-American. Counsel testified that the jurors struck had criminal records, which would justify the prosecution's strikes. Counsel testified that in her view, it was unlikely that the Batson motion, if made, would be granted. Counsel further testified that Aiken's population is roughly seventy-five percent Caucasian and two of the jurors selected were African-American, so she felt that the racial makeup of the jury was consistent with county demographics. Counsel testified she was more concerned about the number of teachers in the jury pool, due to the fact that the trial was taking place in the summer.

This Court finds that Applicant has not met his burden of proving counsel was ineffective. This Court finds that Counsel stated reasonable trial strategy in her decision not to move to strike the jury under Batson and further, Applicant has failed to meet his burden of proving prejudice. This allegation is denied.

State's witnesses with criminal records

Applicant alleges Counsel was ineffective for failing to impeach State's witnesses with prior criminal records. Latasha Brown had a conviction from 1996 for shoplifting. Counsel testified that she considered the conviction too old to carry any valuable impeachment value. Counsel testified that she was concerned that if she impeached Brown with a stale conviction, it

would appear to the jury that she was trying to distract the jury from the real issues at trial.

Applicant also alleges that Jonathan Thomas should have been impeached with prior convictions. Thomas was convicted in 1997 of criminal sexual conduct in the third degree, and in 1999 and 2008 for failure to register on the sex offender registry. The 1997 conviction would have been stale at trial and subject to a probative/prejudicial analysis with doubtful probative value; and the sex offender registry convictions would not be admissible since they carried less than a year imprisonment and are unlikely to be considered a crime of dishonesty. See Rule 609, SCRE. This Court is skeptical that these convictions would have been allowed at trial had counsel sought to impeach with the convictions. Thomas, although called as a prosecution witness, was valuable for the defense. Thomas testified, as other witnesses did, to intervening in the dispute between Bussey and Applicant. However, he testified that Reddish was not with him. Importantly, Thomas testified that outside the club, he shook hands with Applicant and walked away. Thomas subsequently turned around to see Applicant firing gunshots. His testimony, corroborating a number of facts not particularly in controversy, also suggested that Applicant was not mad at him over the confrontation. This gives some support to Applicant's theory that Reddish, and not Applicant, was the aggressor in their controversy, since Applicant had calmed down according to Thomas.

Regardless, this Court finds counsel's strategy in not utilizing prior convictions against Brown to be reasonable and does not think it is likely that Thomas's convictions would have been admitted for impeachment purposes at trial. Further, this Court finds impeachment with these convictions would not likely change the outcome of trial. Accordingly, this Court finds that Applicant has not met his burden of proving counsel ineffective.

Failure to investigate, failure to subpoena witnesses

Applicant alleges counsel should have subpoenaed witnesses for the defense. Counsel testified that beyond one witness, Tiffany Grimes, Applicant did not give any other names of potentially helpful witnesses. Grimes testified at trial, and in counsel's estimation was not a beneficial defense witness. Counsel also testified she was concerned that if she sought out additional witnesses from the club, she might generate witnesses for the prosecution that would be detrimental to Applicant's case. Counsel agreed there was a strategic advantage to having last closing argument. This Court notes Applicant failed to present any witnesses at the PCR hearing to support this claim. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (in order to succeed on a claim that counsel was ineffective for failing to interview/call a witness, the applicant must present competent evidence showing what the testimony of the proposed witness would be). This Court finds that counsel's performance was not deficient and that she explained reasonable trial strategy in regards to investigating or interviewing potential witnesses. This Court finds reasonable her decision not to call Grimes at the second trial, and concurs in her professional judgment that Grimes was not a beneficial witness. This Court also find that Applicant failed to show he was prejudiced by any perceived deficiency of counsel in regards to investigating or obtaining potential witnesses for the defense.

Investigator Cain's testimony

Applicant complains about testimony from Investigator Cain that referenced Applicant's prior period of incarceration:

... Forrest reported while inside, Bussey, his ex-girlfriend, who had formed a relationship with Mario Reddish during his, Forrest, recent incarceration, began a verbal argument over his flirtations with Monique.

Forrest continued to report Bussey took his ball cap and relocated within a group of 12 males toward the rear of the Elk's

Club. Forrest reported he approached her to retrieve his cap whereas Bussey threw a drink on him and slapped his face several times.

Forrest reported he ignored Bussey's assault and after obtaining his cap, the 12 males began to shove him and he left the interior of the Elk's Club relocating to the rear driver door of the white-in-color Lincoln operated by James Forrest.

Forrest reported he opened the door to enter, was unable to due to the driver's seat being fully declined and upon relocating to the front of the vehicle observed Bussey and the same group of males approaching him.

Forrest reported Bussey hit his face several times and he grabbed her throat and pushed her away. Forrest reported Reddish then approached - Mario Reddish then approached him and punched him in the face and a physical fight erupted whereas Mario Reddish again struck him in the jaw as the fight relocated to the front region of the Lincoln.

Tr. p. 127, line 10 - p. 128, line 11. Cain testified similarly at the Jackson v. Denno hearing. Applicant alleges that counsel should have made a motion in limine to not have the term incarcerated mentioned.

Counsel testified she did not object to Cain's testimony because she did not want it to appear that she was hiding anything from the jury. Additionally, she noted the testimony suggested a short period of incarcerated and did not reference a particular charge. Given this context, she did not think the testimony was prejudicial. This Court agrees with counsel that the oblique reference to incarceration was not prejudicial. Further, the testimony provides context beneficial to the defense. Bussey was clearly the instigator and clearly was unreasonable. This is underscored by the fact that she broke up with Applicant while he was involuntarily elsewhere and was now jealous that he was flirting with another women, even though she started dating Reddish while he was incarcerated. Her actions were clearly the catalyst for these unfortunate events. This Court does not find that the testimony was prejudicial and finds its omission would not have changed the outcome of trial. Instead, this Court believes it was generally beneficial to

the defense and probative in providing context. This Court finds that counsel's performance was not ineffective.

Advice in rejecting plea offer

Applicant alleges counsel was ineffective in her advice regarding an offer from the prosecution for Applicant to plead guilty to voluntary manslaughter and receive a twenty year prison sentence. Applicant alleges he was not advised correctly on his exposure to life without parole and did not have adequate time to discuss the offer. Counsel testified she advised Applicant he was facing life without parole. Counsel testified the offer came after Applicant was already served with notice that the prosecution would seek life without parole based on a prior most serious offense. Counsel urged Applicant to take the offer and discussed the offer at length. This Court finds Applicant's testimony lacks credibility and finds counsel's testimony to be credible and gives it great weight. This Court finds Applicant was advised that he would receive life without parole upon conviction for murder and that Applicant rejected the offer with eyes wide open as to the risks and benefits of rejecting the offer. This Court finds counsel's advice to take the plea offer was reasonable and did not fall below professional norms. Given Applicant's credibility problems that will be further discussed, this Court finds that Applicant failed to meet his burden of proving prejudice. Accordingly, this allegation is denied.

Cross examine witnesses on sobriety or drug use

Applicant alleges that counsel should have cross-examined more thoroughly witnesses from the first trial who claimed sobriety because they were drug users and/or dealers. This Court denies this allegation because the first trial ended in mistrial. The remedy for ineffective assistance of counsel is a new trial, so any defects in counsel's representation are mooted by a mistrial.

Fractured humerus in victim's autopsy

Applicant alleges counsel should have investigated evidence showing Applicant's existing injuries that were noted in the autopsy. Applicant has failed to show what additional benefits would accrue from investigating the autopsy results. Counsel testified that she did not see any potential gains from further investigation. This Court finds Applicant failed to meet his burden of proving either prong of Strickland and denies this allegation.

Inferred malice charge

Applicant complains that counsel was ineffective for failing to object to the implied malice instruction given by the trial court to the jury, citing State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). However, Belcher explicitly holds that it will not apply retroactively and Applicant's trial occurred prior to Belcher being issued. Further, counsel is not required to be clairvoyant and anticipate changes in law. Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992). Accordingly, this Court finds that counsel was not ineffective.

Burden shifting allegation

Applicant further claims that the following portion of the trial court's instruction to the jury was impermissible burden shifting: "Malice may be inferred from conduct showing total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon." Tr. p. 234, lines 16-18. Despite the use of the permissive term "may" in the instruction, Applicant describes this instruction as a mandatory presumption. This Court disagrees. Counsel testified that she did not consider this instruction to be burden shifting. This Court finds that counsel's judgment on the matter does not fall below professional norms and further finds that the instruction does not tend to shift the burden of proof and is an accurate statement of law. Accordingly, this Court finds counsel was not ineffective.

Self-defense

Applicant alleges counsel was ineffective for not discussing and pursuing self-defense. Counsel testified she thought self-defense would be a strong claim, but Applicant insisted he did not have a weapon. See generally McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995) (upholding denial of relief where counsel testified he did not pursue an entrapment defense because applicant denied committing drug distribution offense until fifteen minutes prior to trial). Applicant admits he did not tell counsel that he had a weapon. Underscoring Applicant's credibility problems is his testimony on this point. Applicant told Investigator Cain that he did not have a weapon, that he heard shots while he was in a bear hug with Reddish, and after the shots were fired, Reddish fell down. Applicant now admits at the PCR hearing that he had a weapon, but claims he acted in self-defense and despite what he told Cain and the testimony from other witnesses, he was not locked in a bear hug with Reddish. Applicant admits he did not tell Cain the truth because he was trying to get out of trouble. This Court finds that Applicant's new version of events is not credible. Further, Applicant failed to advise counsel of this information. Accordingly, counsel's performance is not deficient, nor is Applicant prejudiced by the alleged deficiency. In so finding, this Court finds counsel's testimony is credible and gives it great weight. Further, this Court finds that Applicant's testimony lacks credibility and finds that he has picked another untruthful version of events to obtain a desired result. This Court further finds that had he testified, his testimony would not have affected the outcome of the trial. This allegation is denied.

Family difficulties

Applicant alleges counsel was ineffective for failing to present evidence that there was a history of difficulties and ill will between the Thomas and Forrest families. At the PCR hearing,

Applicant introduced an indictment from 1991 charging a James Forrest with assaulting Lewis Thomas, Sr. Applicant testified that this James Forrest was his brother (Applicant was with his cousin, also named James Forrest, the night of the murder). Applicant testified that Lewis Thomas was Jonathan Thomas' older brother. Applicant alleges that Lewis Thomas died as a result of the assault and his brother James Forrest pled guilty to voluntary manslaughter. Applicant's counsel indicated that he had not been able to locate an indictment or sentencing sheet for voluntary manslaughter.

This Court notes Applicant's lack of credibility generally in his testimony and further notes Applicant bears the burden of proof in this proceeding. Accordingly, in the absence of proof, this Court finds that Applicant did not meet his burden of proving bad blood between families or even the purported 1991 homicide. However, this Court will continue further analysis that assumes these facts were true.

This Court would note that at trial, during cross-examination, Thomas denied knowledge of bad blood. Thomas also denied that Forrest's brother killed his brother. He denied any animosity personally with Applicant. Tr. pp. 103-104.

The evidence at trial supported a physical confrontation with Reddish, but not Thomas. Further, some evidence suggests that Reddish might have been the aggressor, but no evidence indicates Thomas was the aggressor or that bad blood between families was a motive for Thomas or a basis for fear by Applicant. The matter seems generally collateral to the issues presented at trial, and so this Court questions whether counsel would have been able to present extrinsic evidence of the alleged difficulties at trial. See State v. Beckham, 334 S.C. 302, 321, 513 S.E.2d 606, 615 (1999) ("When a witness denies an act involving a matter collateral to the case in chief, the inquiring party is not permitted to introduce contradictory evidence to impeach the

witness.”).

Even if the court records were found and admitted, this Court does not believe that it would have changed the result of trial. For one thing, the fact that Applicant might have a brother who also committed a homicide carries potential prejudice to Applicant. Second, the conflict was principally with Bussey and then Reddish, not Thomas. The evidence would not have changed the outcome of trial if it was admitted. Further, this Court adheres to its position that Thomas' testimony was more helpful than prejudicial to Applicant, because it established the lack of hard feelings between the two, giving some support to the contention that Reddish was the actual aggressor. This Court finds that Applicant failed to meet his burden of proving this allegation.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

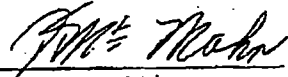
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.


IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of Oct, 2014.



R. Knox McMahon
Presiding Judge
Second Judicial Circuit

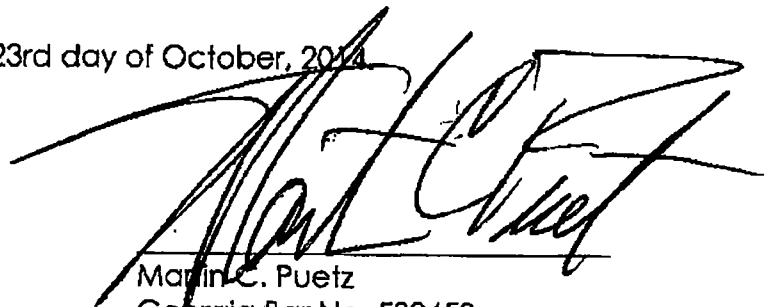
 South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
)	
JOSHUA LAMAR FORREST,)	
	)	Case No. 2011-CP-02-1834
Petitioner,)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA	)	<u>MOTION TO AMEND FINAL ORDER</u>
	)	<u>PURSUANT TO RULE 59(e), SCRPC</u>
Respondent.)	

The Order of Dismissal entered by this Court on October 9, 2014, did not address the Petitioner's claim of ineffective assistance of trial counsel, who failed to object to the premeditation instruction given by the Court at the trial and Petitioner has requested that PCR counsel file this Motion pursuant to Rule 59(e).

The only method of communication between PCR counsel and the Petitioner is through the mail and PCR counsel received from Petitioner on this date the filing which is attached hereto as **Exhibit A** and by reference incorporated herein.

Respectfully submitted this 23rd day of October, 2014



Martin C. Puetz
 Georgia Bar No. 589450
 South Carolina Bar No. 4591
 415 Fourth Street
 Augusta, GA 30901
 706-722-4283
 Attorney for Joshua Lamar Forrest

1

FILED 10.23 2014
Liz Hodard
 C.C.P.&G.S. 3:20pm
[Signature]
 Deputy Clerk

CERTIFICATE OF SERVICE

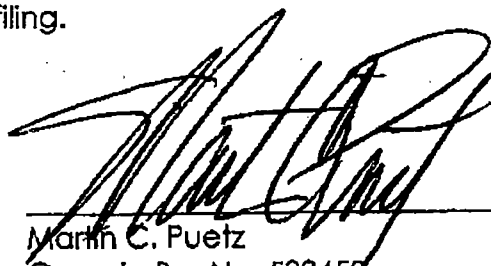
This is to certify that I have this date served a copy of the within and foregoing **Motion to Amend Final Order Pursuant to Rule 59(e), SCRPC** upon:

David Spencer, Esq.
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211-1549

Honorable R. Knox McMahon
Circuit Court Judge
205 E. Main Street
Lexington, South Carolina 29072-3456

by depositing same in the United States Mail, in a properly addressed envelope, with adequate postage thereon, prior to filing.

This 23rd day of October, 2014.



Martin C. Puetz
Georgia Bar No. 589450
South Carolina Bar No. 4591
415 Fourth Street
Augusta, GA 30901
706-722-4283
Attorney for Joshua Lamar Forrest

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Joshua Lamar Forrest,
Applicant,

v.

State of South Carolina,
Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2011-CP-02-1813

MOTION TO AMEND FINAL
ORDER PURSUANT TO RULE
59(e), SCRPC

The applicant, by and through his undersigned Counsel, do hereby move the Honorable Court pursuant to Rule 59(e), SCRPC, to amend its Final Order in the above entitled Case, dated October 9, 2014, and received by the applicant from the Perry CI Mail room on October 18, 2014, to include a ruling on the following ground that was raised in his original PCR application. *see e.g., Marklar v. State, 653 S.E.2d 206 (2007)*, as further authority to grant this motion.

The applicant was denied the right to effective assistance of trial counsel by counsel's failure to object to the trial judge's erroneous and misleading jury instruction (on premeditation/forethought element of murder).

Accordingly, during the jury's deliberation, the jury foreman sent the judge a note asking the judge if "premeditation" was an element of murder. Tr. p. 246, L. 24 - p. 247, L. 2. The judge informed the jury that "in South Carolina premeditation was not an element of murder". Tr. p. 250, L. 22-251, L. 5.

The applicant argued in his PCR that his trial counsel was ineffective for failing to object to the trial judge's erroneous instruction to the jury that "premeditation" was not an element of murder because it essentially relieved the state of its burden of proving each element of murder to legally convict him of this charged offense. This is evidenced by the S.C. Supreme Court's case law recognizing "premeditation" as an element of murder. *see e.g., State v. Franklin, 425 S.E.2d 758 (S.C. App. 1992).*

FILED 10. 23 2014

Liz Hodard
E.C.C.P. & G.S.
W. [Signature]
Deputy Clerk

EXHIBIT
A

Moreover, our Supreme Court has held that a trial Judge is required to (recognize) charge the substance of the correct and current law, and not necessarily any particular verbiage to satisfy the jury's inquiry. See State v. Hughey, 529 S.E.2d 721 (S.C. 2000). Therefore, while S.C. Statutory Law does formally cite "aforethought", and not "premeditation", as an element of murder, it is also clear that our Supreme Court has recognized "premeditation" as an informal definition to convey the "substance of the current and correct law" to a jury for a murder conviction.

The applicant argued under this ground that the judge's erroneous instruction to the jury that "premeditation" was not an element of murder without instructing jury that this term connoted the same or similar meaning as the "aforethought element" to prove murder unconstitutionally relieved the state of its burden to prove each and every element of its murder charge to lawfully convict him. See, e.g., State v. Manning, 409 S.E.2d 372 (S.C. 1991); accord In re Winship, 39 S.Ct. 1068 (1970).

In further support of his claimed violation, the applicant finally argued in his PCR that it was reasonable to assume that the jury's question regarding the "premeditation element" of his murder offense clearly indicated that it was in the process of deciding upon a verdict, but wanted to be advised on the "premeditation/aforethought" element of murder. The additional instruction which the trial judge would relay to the jury would be especially considered by the jury since it was in response to its own inquiry. Under these circumstances, the judge's failure to instruct the jury on the substance of the law was prejudicial error that deprived the applicant of a fundamental right to a fair trial. See e.g., State v. Blossingame, 244 S.E.2d 528 (S.C. 1978).

The applicant finally contends that he was deprived of the right to effective assistance of trial counsel by counsel's failure to object to the trial judge's erroneous jury instruction regarding the premeditation/fore-thought element of his murder charge that was per se prejudicial. See, e.g., Edmond v. State, 534 S.E.2d 621 (S.C. 200).

CONCLUSION

WHEREFORE, the Honorable Court should grant the motion pursuant to Marlar, *Supra*.

Respectfully Submitted,

/s/

Martin C. Puetz, LLC
415 Fourth Street
Augusta, Georgia 30901

This _____ day
of _____, 2014

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-02-1834

Joshua Forrest, #274525,

Applicant,

v.

**ORDER DENYING
MOTION TO ALTER
OR AMEND JUDGMENT**

State of South Carolina,

Respondent.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 23, 2011. The State made its return on June 15, 2012. A hearing was convened at the Aiken County Courthouse on July 30, 2014. Applicant was present and represented by Martin C. Puetz, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General. Following the hearing, this Court issued its Order of Dismissal on October 9, 2014, denying Applicant's PCR application. On October 23, 2014, Applicant's counsel filed a motion pursuant to Rule 59(e), SCRPC, attaching Applicant's handwritten arguments.

Applicant alleges counsel was ineffective for not objecting to the trial court's answer to a jury note stating the following: "Does premeditated have to be toward a specific person or toward a random crowd." Tr. p. 246, line 24 - p. 247, line 1. After discussion between the prosecution and counsel, the trial court advised the jury of the following:

And to the extent this is a question about the law, the word premeditated is a legal term which is not a part of the offense of murder or voluntary manslaughter. Premeditation is not contemplated in the two crimes as defined in the State of South Carolina.

Liz Godard
C.C.P. & G.S.
Sharon Jones
Deputy Clerk

1 of 3

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

13 day of April 2015

C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time of the act - the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Tr. p. 251, lines 1-11.

This Court disagrees with Applicant's argument that this was not an appropriate manner to answer the jurors' question. Applicant relies on State v. Franklin, 310 S.C. 122, 425 S.E.2d 758 (Cl. App. 1993) *rev'd on other grounds by* Brightman v. State, 336 S.C. 352, 362, 520 S.E.2d 614, 616 (1999). In Franklin, the Court of Appeals found the defendant was not entitled to a jury instruction on voluntary manslaughter based on an argument between defendant and his father the day before and the day that defendant killed his father. Defendant also killed his stepmother. The Court of Appeals found that there was no evidence of legal provocation since "mere words are not a sufficient provocation for killing with a deadly weapon." Id. at 126, 520 S.E.2d at 761. Further, the argument did not occur immediately before the shooting, indicating a lack of heat of passion. Id. The Court of Appeals noted, "There was also ample evidence of deliberation and premeditation by Franklin before he shot his victims." Id.

In this context, the Court of Appeals was not finding that premeditation was a necessary element of murder. Instead the Court of Appeals was noting the lack of evidence of a sudden heat of passion as an element of voluntary manslaughter based on the evidence of premeditation.

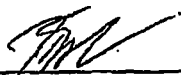
Applicant also relies on State v. Blassingame, 271 S.C. 44, 244 S.E.2d 528 (1978). In that case, the jury sent a note asking for additional instructions on the definitions of murder and voluntary manslaughter. The trial judge advised the jury, in relevant part, "If you believe that this defendant killed her son but did not have malice aforethought in her heart, didn't intend to kill him, she would be guilty of [voluntary] manslaughter." Id. at 46, 244 S.E.2d at 529. The

Supreme Court noted that voluntary manslaughter does require intent and therefore the instruction was erroneous. In the instant case, the trial court's instruction was a correct statement of law. Therefore, the issue has no merit and this Court denies Applicant's motion.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRCP.

IT IS THEREFORE ORDERED: That Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 8th day of April, 2015.



R. Knox McMahon
Presiding Judge
Second Judicial Circuit

WITNESSES

K. Liles, A.C.S.O.

FILED

April 13 2006

Liz Godard

A.C.P.&G.S.

Pauline Finney

Jenury Clerk

ARREST WARRANT NUMBER

K-093070

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: April 13, 2006

Pauline Finney

VERDICT

Foreperson of Petit Jury

Date:

552

DOCKET NO. 2006-GS-02 - *694*

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL 17, TERM 2006

THE STATE

vs.

JOSHUA LAMAR FORREST

**Indictment for
POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT
CRIME**

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on April 17, 2006, the Grand Jurors of Aiken County present upon their oath:

POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT CRIME

That JOSHUA LAMAR FORREST did in Aiken County on or about December 4, 2005, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, 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.


BARBARA R. MORGAN, SOLICITOR

1110-24-01

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE

INDICTMENT/CASE#: 2006GS0200694

VS. Joshua Lamar Forrest

AW#: K093070

AKA: [Redacted]
Race: [Redacted] Sex: M Age: 26
DOB: [Redacted] SS#: [Redacted]
Address: [Redacted] Street
City, State: [Redacted] SC 29801
DL# [Redacted] SID# [Redacted]

Date of Offense: 12/4/2005
S.C. Code #: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

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: GPL 9276 Shawn H. Stoney 11577
Solicitor 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: 6-24-09
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on 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: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____ Substance Abuse Counseling

*Fines:
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
§47.12 (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$100 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
§90.7 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90
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 Shannan D. Rosenkrantz Presiding Judge Michael [Signature]

Court Reporter: Cheri Young Judge Code: 140

SCCA/217 (06/2009) Sentence Date June 24, 2009

555

WITNESSES

K. Liles, A.C.S.O.

FILED

April 13 2006

Leiz Godard

L.E.C.P.&C.S.

Pauline Finney

Clerk

ARREST WARRANT NUMBER

K-093069

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: April 13, 2006

Travis R. Co

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-02 - 695

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

April 17, Term 2006

THE STATE

vs.

JOSHUA LAMAR FORREST

Indictment for

MURDER

SC Code 16-3-10

CDR Code 116

Class FEL-EXM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

Aiken

INDICTMENT/CASE#:

2006GS0200695

VS.

Joshua Lamar Forrest

AW#: K093069

Date of Offense: 12/4/2005

S.C. Code #: 16-03-0010; 16-03-0020

CDR Code #: 0116

AKA: Race: B Sex: M Age: 28

DOB: [redacted] SS#: [redacted]

Address: [redacted]

ZIP: AIKEN, SC 29801

DL# [redacted] SIC# SC01141578

SENTENCE SHEET

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

CONVICTED OF or PLEADS

TO: Murder / Murder

In violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is As Indicted, Lesser Included Offense.

Defendant Waives Presentation to Grand Jury, (defendants initials)

The plea is: Without Negotiations or Recommendation,

Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]

9276

[Signature]

11577

Solicitor

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 life 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: 6-24-09
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GEO

Set by SCDPPTS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:	\$	
\$14-1-208 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
\$58-5-2895 (DUI Assessment)	\$12	
\$58-1-288 (DUI Breath Test)	\$25	
\$47.12 (Public Def/Prob)	\$500	
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	
\$50-21-114 (BUI Breath Test Fee)	\$50	
\$58-5-2942(J) (Vehicle Assessment)	\$40/ea	
\$90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL	\$	\$ 133.90

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

[Signature]

Presiding Judge

[Signature]

Court Reporter:

[Signature]

Judge Code: 140

SCCA/217 (06/2009)

Sentence Date: June 24, 2009