

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

S.C. SUPREME COURT

DWAINE L. JOHNSON, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000492

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2011-GS-22-1185, 1186, 1187

The State,)

Plaintiff,)

vs.)

Dwaine Lamark Johnson, Jr.,)

Defendant.)

Transcript of Record

April 14-15, 2014

B E F O R E :

Honorable Edward B. Cottingham
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

Erin Bailey, Esquire
Attorney for Plaintiff

Ronald Hazzard, Esquire
Attorney for Defendant

Interpreter, Jian Qin

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Circuit Court Reporter

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Voir Dire

3

1 (On the record, April 14, 2014. The following takes place in
2 the presence of the jury panel.)

3 THE COURT: Solicitor, hand me, please, the indictment
4 for the case to be selected.

5 MS. BAILEY: Your Honor, I believe the Clerk's Office has
6 the original of the indictments. Beg the Court's indulgence
7 for one moment so I can read the proper indictment number into
8 the record.

9 THE COURT: Well, I want a copy -- I want the original or
10 a copy of the indictment here for voir dire purposes.

11 MS. BAILEY: Yes, Your Honor. The Clerk's Office has the
12 indictments.

13 THE COURT: Will somebody hand me the indictment?

14 MR. HAZZARD: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury panel.)

18 MR. HAZZARD: Thank you, Your Honor.

19 THE COURT: Come forward again, please.

20 MR. HAZZARD: Yes, sir.

21 (Whereupon, a bench conference is held in the presence
22 but out of the hearing of the jury panel.)

23 THE COURT: All right. Solicitor, call your case,
24 please.

25 MS. BAILEY: Thank you, Your Honor. The State calls

Voir Dire

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1 2011-GS-22-1185, that's a true-billed indictment for armed
2 robbery. This is State v. Dwaine Lamark Johnson, Jr. The
3 State also calls 2011-GS-22-1186, also a true-billed
4 indictment for attempted murder. That is State v. Dwaine
5 Lamark Johnson, Jr. Finally, State calls 2011-GS-22-1187.
6 That is also a true-billed indictment for attempted murder.
7 This is State v. Dwaine Lamark Johnson, Jr.

8 THE COURT: Mr. Hazzard, is the Defendant ready for
9 trial?

10 MR. HAZZARD: The Defendant is ready for trial, Your
11 Honor.

12 THE COURT: Thank you, sir.

13 Ladies and gentlemen of the jury, counsel for the State
14 and for the Defense desires from your number 12 jurors and two
15 alternates to serve as the finders of the facts and the judges
16 of the credibility of the witnesses in these particular cases.
17 Now, the State has read the indictments to be tried. These
18 indictments are shown on these documents that I hold in my
19 hand. To these charges contained in these indictments, this
20 Defendant specifically pleads not guilty, thereby placing the
21 burden of proof upon the State of South Carolina of proving
22 him guilty, if they can, by evidence to your satisfaction
23 unanimously beyond a reasonable doubt.

24 The State and the Defense desires from your number a jury
25 with no friends to reward, no enemies to punish, a juror who

Voir Dire

5

1 can say under their oath, "Judge, I know nothing about the
2 case. I've never discussed it with anyone. I have nobody --
3 no involvement with any, any of these Defendants," a juror who
4 can say, "If I am one of the 12 jurors selected, my verdict of
5 not guilty or guilty as to any of the within indictments will
6 be based on the law and evidence heard in this courtroom and
7 from no other source." If a juror has any reason to believe
8 that he cannot be a fair juror for the State or the Defense, I
9 want you to stand and tell me so.

10 (No response.)

11 THE COURT: Now, these are cases involving armed robbery,
12 allegedly, and attempted murder, allegedly, with reference to
13 two individuals. This Defendant has specifically pled not
14 guilty.

15 Now, I'm going to ask of you several questions to ensure
16 that we get a fair juror for the State and the Defense.

17 This alleged incident occurred at the name of the
18 restaurant -- what was the name of the restaurant, please?

19 MS. BAILEY: Thank you, Your Honor. It's the Szechuan
20 Restaurant on Highmarket Street.

21 THE COURT: Any of you have any connections with that
22 restaurant? Any of you work there? Any of you have any
23 family members there? Any of you attend that particular
24 restaurant?

25 (No response.)

1 THE COURT: The -- give me the names of the two alleged
2 victims. You can pronounce them better than me, please.

3 MS. BAILEY: Thank you, Your Honor. The victims are, and
4 they're present in the courtroom. If I may ask them to stand
5 so the jury can see them because their names are unusual.
6 They may not recognize them as I pronounce it.

7 THE COURT: Have them stand.

8 MS. BAILEY: Kwok Sung Chung and Rue Mei Dong.

9 THE COURT: Any of you related by blood or connected by
10 marriage with these two alleged victims? Any of you have any
11 close personal relationships with either one of them?

12 (No response.)

13 THE COURT: You may be seated.

14 The Defendant -- have the Defendant stand, Mr. Hazzard.

15 (Complies with request.)

16 THE COURT: The Defendant is Dwaine Johnson. Any of you
17 related by blood or connected by marriage with the Defendant
18 Johnson?

19 (No response.)

20 THE COURT: Any of you have any close personal
21 connections with him such as church members, neighbors, co-
22 workers?

23 (No response.)

24 THE COURT: Any of you have any close personal
25 connections with Dwaine Johnson's immediate family? If so,

Voir Dire

7

1 please stand.

2 (No response.)

3 THE COURT: If any of you know this Defendant in any
4 capacity whatsoever or have known him in the past, please
5 stand.

6 Come forward, please. Counsel, please join me at the
7 bench.

8 MR. HAZZARD: Yes, sir, Your Honor.

9 THE COURT: Come forward. Have them come forward. Mr.
10 Hazzard, join me, please.

11 MR. HAZZARD: Yes, sir, Your Honor.

12 THE COURT: Now, where is she -- where is the --

13 MS. BAILEY: I'm right here. We're all here.

14 THE COURT: What is your name?

15 MS. NESBIT: Bernice Nesbit.

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury panel with counsel for the
18 State and counsel for the Defense with Juror Number 127.)

19 MS. BAILEY: 127.

20 (Juror 127 is excused.)

21 THE COURT: This allegedly occurred at that restaurant in
22 August of 2011. Would any of you have read anything in the
23 newspaper about it or heard it on TV or have it discussed in
24 your presence?

25 (No response.)

Voir Dire

8

1 THE COURT: Now, the allegations are allegations of
2 violence with reference to an alleged armed robbery and
3 alleged attempted murder. Some of you may have had some type
4 of experience with violence in your lives or members of your
5 immediate family. If that be true and if that would impact on
6 your ability to be a fair juror, I want you to come forward
7 and let me discuss it with you.

8 Come forward, please. Counsel, join me.

9 May I have your name, sir?

10 MR. HUNYADI: Tom Hunyadi, H-U-N-Y-A-D-I.

11 (Whereupon, a bench conference is held in the presence
12 but out of the hearing of the jury panel with counsel for the
13 State and counsel for the Defense with Juror Number 86 and
14 juror is excused.)

15 THE COURT: Mr. Hazzard.

16 MR. HAZZARD: Yes, sir.

17 THE COURT: Do you have any further voir dire?

18 MR. HAZZARD: No, Your Honor.

19 THE COURT: Do you have any further?

20 MS. BAILEY: No, Your Honor.

21 THE COURT: Okay. How about the witness list?

22 MS. BAILEY: Oh, Your Honor, other than -- we have not,
23 we have not asked them whether they know us.

24 THE COURT: I understand. All right. As I understand
25 it, Solicitor, there's no further voir dire other than going

Voir Dire

9

1 over the witness list.

2 MS. BAILEY: Yes, Your Honor.

3 THE COURT: The same thing, Mr. Hazzard?

4 MR. HAZZARD: That's correct, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, I'm going
6 to call certain names who may or may not be a potential
7 witness in this case. My inquiry is going to be are any of
8 you related by blood or connected by marriage or have some
9 special relationship with these potential witnesses. This is
10 for my information. If you have any close or personal
11 relationships, for instance, a police officer, you may know
12 him casually, but that's not my concern. A close personal
13 relationship is my concern, but if you know them you can
14 stand. Go ahead.

15 LAW CLERK: Arnold Chung; Isiah Green; Isaac Priest;
16 Aundrey Myzick; Shawn Wright; Novetta Greene; Tamilla Greggs
17 who is also known as Amy Holmes.

18 THE COURT: Come forward. Join me, counsel.

19 MR. HAZZARD: Yes, sir, Your Honor.

20 THE COURT: May I have your name?

21 MR. GRIMMAGE: Kevin Grimmage.

22 THE COURT: Sir?

23 MR. GRIMMAGE: Juror Number 72.

24 (Whereupon, a bench conference is held in the presence
25 but out of the hearing of the jury panel with counsel for the

Voir Dire

10

1 State and counsel for the Defense with Juror Number 72 and
2 juror is excused.)

3 LAW CLERK: Makeshia Gibson; Antivion White; Lillian
4 Chavez; Ursula Herz; Rudolf Herz; Boeman Wong; Devon Jackson;
5 Isaac Grate; Asia Gamble; Pamela Rivers; Jonnell Sparkman;
6 Keith Small; Jason Ward; John Gregory; John Seale; Jimmy
7 Burke; Kyle Walton; Amy Stephens; Doris Yarborough; Stephanie
8 Stanley; Thomas Darnell; Rhonda Fields; Gayle Heath; Joanne
9 Cleary; Will Lynch; Randy Walker and someone from AT&T.

10 THE COURT: All right. Mr. Hazzard.

11 (Whereupon, a bench conference is held in the presence
12 but out of the hearing of the jury panel with counsel for the
13 State and counsel for the Defense.)

14 LAW CLERK: Mr. Dennis Cumbee.

15 THE COURT: Does that conclude the voir dire, gentlemen
16 and lady?

17 MR. HAZZARD: Except with regard to does any member of
18 the jury panel know me or the Prosecutor.

19 THE COURT: Oh, yeah. Well, I'm going to get to that,
20 sure.

21 MR. HAZZARD: Okay.

22 THE COURT: Ladies and gentlemen, this case is being
23 prosecuted by the Solicitor's Office of the 15th Circuit, which
24 is Conway and Georgetown. Any of you have any close personal
25 connections with the Solicitor's Office, any close relatives

Voir Dire

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1 working in the Solicitor's Office? Identify yourself,
2 counsel, for the record.

3 MS. BAILEY: Thank you, Your Honor. My name is Erin
4 Bailey. I'm a senior assistant solicitor here in Georgetown
5 County. Also with me is Richard Todd. He's an assistant
6 solicitor here in Georgetown County. Also, our deputy
7 solicitor is in the courtroom, Alicia Richardson.

8 THE COURT: Anybody have any close personal relationships
9 with any of these folks?

10 Come forward, please.

11 (Whereupon, a bench conference is held in the presence
12 but out of the hearing of the jury panel with counsel for the
13 State and counsel for the Defense with Juror Number 166.)

14 THE COURT: I thank you for coming forward though.

15 The Defense is represented by Mr. Ron Hazzard. Are any
16 of you clients of this gentleman or have been in the immediate
17 past?

18 (No response.)

19 THE COURT: Mr. Hazzard, any further inquiry?

20 MR. HAZZARD: Your Honor, I would simply identify myself.
21 I'm Ronald Hazzard. I'm the public defender for Georgetown
22 County. I work for Ms. Orrie West, who is the circuit public
23 defender for Horry and Georgetown Counties. In our office in
24 Georgetown I work with a young woman by the name of Wyn
25 Bessent, B-E-S-S-E-N-T, and a young woman by the name of Chala

Jury Selection

12

1 [spelled phonetically] Carter, C-A-R-T-E-R.

2 THE COURT: Thank you. Come forward one more time.

3 (Whereupon, a bench conference is held in the presence
4 but out of the hearing of the jury panel.)

5 THE COURT: All right. Madam Clerk, proceed drawing the
6 jury.

7 THE CLERK: Five and ten. Is that right?

8 MR. HAZZARD: Yes, ma'am.

9 THE CLERK: When I call your name as jurors, would you
10 come and stand right here where I'm standing and face the
11 doorway? Come stand right here and bring your belongings with
12 you. In case you are seated, you would have all of your
13 belongings.

14 Juror Number 74, Martha Hamel. What says the State?

15 MS. BAILEY: Please excuse the juror.

16 THE CLERK: You may return to your seat.

17 Juror Number 148, Matthew Roberts. What says the State?

18 MS. BAILEY: Please present Mr. Roberts.

19 THE CLERK: What says the Defense?

20 MR. HAZZARD: Please swear the juror.

21 THE CLERK: Please take a seat in the jury box.

22 Juror Number 166, Robert Stecz, Stecz.

23 MR. HAZZARD: I'm sorry, Madam Clerk. What was that
24 number?

25 THE CLERK: 166.

Jury Selection

13

1 MR. HAZZARD: Thank you.

2 THE CLERK: What says the State?

3 MS. BAILEY: Please present Mr. Stecz.

4 THE CLERK: What says the Defense?

5 MR. HAZZARD: Please excuse this juror from the trial of
6 this case.

7 THE CLERK: You may return to your seat.

8 Juror Number 151, Ramona Rollins. What says the State?

9 MS. BAILEY: Beg the Court's indulgence for one moment.
10 Please present Ms. Rollins.

11 THE CLERK: What says the Defense?

12 MR. HAZZARD: Please excuse the juror from the trial of
13 this case.

14 THE CLERK: You may return to your seat.

15 Juror Number 80, Ivory Hilton. What says the State?

16 MS. BAILEY: Please excuse Mr. Hilton.

17 THE CLERK: You may return to your seat.

18 Juror Number 147, Bernard Robb. What says the State?

19 MS. BAILEY: Please present Mr. Robb.

20 THE CLERK: What says the Defense?

21 MR. HAZZARD: Please excuse the juror from the trial of
22 this particular case.

23 THE CLERK: You may return to your seat.

24 Juror Number 92, Candace Jones. What says the State?

25 MS. BAILEY: Please present Ms. Jones.

Jury Selection

14

1 THE CLERK: What says the Defense?

2 MR. HAZZARD: Please swear the juror.

3 THE CLERK: Please take a seat in the jury box.

4 Juror Number 36, Joanne Craft. What says the State?

5 MS. BAILEY: Please present Ms. Craft.

6 THE CLERK: What says the Defense?

7 MR. HAZZARD: Please excuse the juror from the trial of
8 this particular case.

9 THE CLERK: You may return to your seat.

10 Juror Number 84, Krista Hudson. What says the State?

11 MS. BAILEY: Please excuse Ms. Hudson.

12 THE CLERK: You may return to your seat.

13 Juror Number 23, Walter Bryant. What says the State?

14 MS. BAILEY: Please present Mr. Bryant.

15 THE CLERK: What says the Defense?

16 MR. HAZZARD: Please excuse the juror from the trial of
17 this particular case.

18 THE CLERK: You may return to your seat.

19 Juror Number 120, Donna Moore. Juror Number 120, Donna
20 Moore.

21 MS. MOORE: Oh.

22 THE CLERK: What says the State?

23 MS. BAILEY: Please present Ms. Moore.

24 THE CLERK: What says the Defense?

25 MR. HAZZARD: Please excuse the juror from the trial of

Jury Selection

15

1 this particular case.

2 THE CLERK: You may return to your seat.

3 Juror Number 29, Elting Chapman, III. What says the
4 State?

5 MS. BAILEY: Please present Mr. Chapman.

6 THE CLERK: What says the Defense?

7 MR. HAZZARD: Please excuse the juror from the trial of
8 this particular case.

9 THE CLERK: You may return to your seat.

10 Juror Number 156, Sylvester Shackelford. What says the
11 State?

12 MS. BAILEY: Please excuse Mr. Shackelford.

13 THE CLERK: You may return to your seat.

14 Juror Number 95, Beverly Keith. What says the State?

15 MS. BAILEY: Please present Ms. Keith.

16 THE CLERK: What says the Defense?

17 MR. HAZZARD: Please swear the juror.

18 THE CLERK: Please take a seat in the jury box.

19 Juror Number 110, Charles McCray. What says the State?

20 MS. BAILEY: Please present Mr. McCray.

21 THE CLERK: What says the Defense?

22 MR. HAZZARD: Please excuse the juror from the trial of
23 this particular case.

24 THE CLERK: You may return to your seat.

25 Juror Number 112, Jonathan McCray. What says the State?

Jury Selection

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1 MS. BAILEY: Please present Mr. McCray.
2 THE CLERK: What says the Defense?
3 MR. HAZZARD: Please swear the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 98, Anastasia La Sane. What says the State?
6 MS. BAILEY: Please present Ms. La Sane.
7 THE CLERK: What says the Defense?
8 MR. HAZZARD: Please swear the juror.
9 THE CLERK: Please take a seat in the jury box.
10 Juror Number 47, Walter Frank. What says the State?
11 MS. BAILEY: Please present Mr. Frank.
12 THE CLERK: What says the Defense?
13 MR. HAZZARD: Please excuse the juror from the trial of
14 this particular case.
15 THE CLERK: You may return to your seat.
16 Juror Number 136, Margaret Palazzo. What says the State?
17 MS. BAILEY: Please present Ms. Palazzo.
18 THE CLERK: What says the Defense?
19 MR. HAZZARD: Please swear the juror.
20 THE CLERK: Please take a seat in the jury box.
21 Juror Number 10, Merideth Bennett. What says the State?
22 MS. BAILEY: Please present Ms. Bennett.
23 THE CLERK: What says the Defense?
24 MR. HAZZARD: Please swear the juror.
25 THE CLERK: Please take a seat in the jury box.

Jury Selection

17

1 Juror Number 35, Nanci Conley. What says the State?

2 MS. BAILEY: Please present Ms. Conley.

3 THE CLERK: What says the Defense?

4 MR. HAZZARD: Please excuse the juror from the trial of
5 this case.

6 THE CLERK: Juror Number 130, Marvin O'Dell. What says
7 the State?

8 MS. BAILEY: Please present Mr. O'Dell.

9 THE CLERK: Are there any challenges from the Defense?

10 MR. HAZZARD: The Court's indulgence. Please swear the
11 juror.

12 THE CLERK: Please take a seat in the jury box.

13 Juror Number 121, Latharsha Moore. What says the State?

14 MS. BAILEY: Beg the Court's indulgence one moment.

15 Please present Ms. Moore.

16 THE CLERK: Any challenges from the Defense?

17 MR. HAZZARD: Please swear the juror.

18 THE CLERK: Please take a seat in the jury box.

19 Juror Number 103, Stephen Lindamood.

20 MR. HAZZARD: I'm sorry, Madam Clerk. What was that
21 number again?

22 THE CLERK: 103.

23 MR. HAZZARD: Thank you.

24 THE CLERK: What says the State?

25 MS. BAILEY: Please present Mr. Lindamood.

Jury Selection

18

1 THE CLERK: Are there any challenges from the Defense?

2 MR. HAZZARD: Please swear the juror.

3 THE CLERK: Please take a seat in the jury box.

4 Juror Number 1, Joni Roberts. What says --

5 MR. HAZZARD: Sorry, Madam Clerk. What was that number
6 again?

7 THE CLERK: That was Juror Number One.

8 MR. HAZZARD: Thank you, Madam Clerk.

9 THE CLERK: What says the State?

10 MS. BAILEY: Please present Ms. Roberts.

11 THE CLERK: What says the Defense?

12 MR. HAZZARD: Please swear the juror.

13 THE CLERK: Take a seat in the jury box.

14 Juror Number 200, Curtis York.

15 MR. HAZZARD: I'm sorry. Was that Number 200, Madam
16 Clerk?

17 THE CLERK: Yes.

18 MR. HAZZARD: Thank you.

19 THE CLERK: What says the State?

20 MS. BAILEY: Please excuse the juror.

21 THE CLERK: You may return to your seat.

22 Juror Number 24, Lisa Cameron. Are there any challenges
23 from the State?

24 MS. BAILEY: No.

25 THE CLERK: Are there any challenges from the Defense?

Jury Selection

19

1 MR. HAZZARD: Please swear the juror.

2 THE CLERK: Please take a seat in the jury box.

3 THE COURT: That constitutes the 12 according to my
4 notes.

5 THE CLERK: Yes, Your Honor.

6 THE COURT: All right. We'll have two alternates. The
7 strikes are one and two as to each alternate. Proceed,
8 please.

9 THE CLERK: Juror Number 28, Richard Celentano. What's
10 your last name, Richard?

11 MR. CELENTANO: Celentano.

12 THE CLERK: Yes, sir. What says the State?

13 MS. BAILEY: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. HAZZARD: Please excuse the juror from the trial of
16 this case.

17 THE CLERK: You may return to your seat.

18 Juror Number 131, Karen Olson. What says the State?

19 MS. BAILEY: Please present Ms. Olson.

20 THE CLERK: What says the Defense?

21 MR. HAZZARD: Please excuse the juror from the trial of
22 this case.

23 THE CLERK: You may return to your seat.

24 Juror Number 22, Lisa Bryant. What says the State?

25 MS. BAILEY: Please present Ms. Bryant.

Jury Selection

20

1 THE CLERK: Any challenges from the Defense?

2 MR. HAZZARD: No challenges.

3 THE CLERK: Please take a seat in the jury box.

4 Juror Number 174, Charlene Tisdale. What says the State?

5 MS. BAILEY: Please present Ms. Tisdale.

6 THE CLERK: What says the Defense?

7 MR. HAZZARD: Please swear the juror.

8 THE CLERK: Please take a seat in the jury box.

9 THE COURT: Ladies and gentlemen, I'm going to send you
10 to the jury room in just a moment. Under our procedure we
11 select one person, male or female, to serve as foreperson of
12 the jury who will always sit in the foreman's box. That
13 person's duties will be to preside in the jury room during
14 your deliberations and that person will be the jury's --
15 jurors' spokesman in the courtroom. Sometimes we select the
16 foreperson and other times we let the jury select your
17 foreperson, and that's what I'm going to do in this case. I
18 want you -- the alternates, now, will not participate in the
19 jury selection. Please go to your jury room. From your
20 number, select a foreperson who feels qualified to handle the
21 foreperson duties and let me know who that party is. You may
22 now break, go to the jury room. Thank you.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. First for the State, are there

Batson Motion

21

1 any issues concerning the composition of the jury?

2 MS. BAILEY: Yes, Your Honor, a matter to be taken up
3 outside of the jury pool's presence.

4 THE COURT: All right, sir. Ladies and gentlemen of the
5 jury, I have some matters to deal with that are not of your
6 concern. Please step outside. Remain. I may need you back
7 in. So all the jurors please step outside at this time.

8 (Jury panel exits courtroom.)

9 THE COURT: Mr. Bailiff, ensure that all jurors are
10 outside the courtroom. Have all potential jurors departed the
11 courtroom?

12 BAILIFF: Yes, sir.

13 THE COURT: Is the courtroom secured, the doors closed?

14 BAILIFF: Yes, sir.

15 THE COURT: All right. What is your issue, Solicitor?

16 MS. BAILEY: Thank you, Your Honor. The State challenges
17 the selection of the jury under State v. Batson, which says
18 that the jurors and the jury selection process have a right to
19 be free of racial or sexual discrimination, and in this case
20 every single person struck, both for the main jury pool and
21 for the alternate, by the Defense was white.

22 THE COURT: My records will reflect that that did occur.
23 Counsel for the Defense, would you care to respond?

24 MR. HAZZARD: Your Honor, the only response that I can
25 give is this, I've been doing this for 25 years and this is

1 only the second time in my career that a client has decided
2 that they wanted to pick the jury. So all strikes that were
3 made were made by Mr. Johnson, not by me. So if the Court has
4 an inquiry as to the bases for his choices, you would have to
5 ask him directly, and after that is complete, I would ask this
6 Court to be relieved as his counsel of record.

7 THE COURT: You would ask the Court do what?

8 MR. HAZZARD: To be relieved as his counsel of record to
9 allow him to proceed pro se. If he wishes to pick the jury
10 and do everything else, he can do it without me here.

11 THE COURT: No, sir. I'll deal with that as it becomes
12 necessary. Of course, you understand that under the rules the
13 Defendant cannot -- he, he's a -- has to go by Batson
14 decision, also.

15 MR. HAZZARD: Yes, sir.

16 THE COURT: He just can't select them -- I am concerned
17 that -- and I noticed that he was doing the process. I
18 noticed that throughout.

19 MR. HAZZARD: Yes, sir.

20 THE COURT: Have the Defendant stand.

21 (Defendant stands.)

22 THE COURT: Mr. Defendant, how old are you, sir?

23 MR. JOHNSON: Twenty, sir.

24 THE COURT: You're going to have to talk a little louder
25 for my court reporter.

Batson Motion

23

1 MR. JOHNSON: Twenty, sir.

2 THE COURT: And how far did you go in school?

3 MR. JOHNSON: Eighth grade.

4 THE COURT: The record would reflect that you used all of
5 your strikes to dismiss Caucasian -- of the -- people of the
6 Caucasian race. Under our United States Supreme Court
7 decisions in South Carolina that is improper. Members of all
8 races are entitled to sit on a jury. Now, you want to tell me
9 for what legal reason you struck ten whites, used all your
10 strikes pretending -- I noticed you did it. I observed you
11 very carefully. You want to tell me why?

12 MR. JOHNSON: I was -- I was just being a good judge of
13 character.

14 THE COURT: Sir?

15 MR. JOHNSON: I was just being a good judge of character.

16 THE COURT: That is not sufficient. You didn't know
17 them; did you?

18 MR. JOHNSON: No, sir.

19 THE COURT: Sir?

20 MR. JOHNSON: No, sir.

21 THE COURT: Under what bases did you make a consideration
22 as to their character? What?

23 MR. JOHNSON: I'm not -- I'm not racist though, sir.

24 THE COURT: Sir?

25 MR. JOHNSON: I said I'm not racist.

1 THE COURT: I understand that, but why did you strike --
2 you say you did it for character. You didn't strike a single
3 African American. You struck all whites. Why?

4 MR. JOHNSON: I apologize if I, if I --

5 THE COURT: Sir?

6 MR. JOHNSON: I said I apologize, but I just -- it wasn't
7 -- ain't nothing behind this.

8 THE COURT: I understand that, but you know under our
9 rules you can't do that. If they're qualified to serve you
10 can't strike them because of their race, be it black or white.
11 Do you understand that?

12 MR. JOHNSON: I didn't, I didn't know that, sir.

13 THE COURT: Sir?

14 MR. JOHNSON: I say I didn't know that, sir.

15 THE COURT: Mr. Hazzard, did you chat, chat with him
16 about it?

17 MR. HAZZARD: No, sir, Your Honor. Up until the time
18 jury selection began I was under the impression that I was
19 going to be selecting the jury. After I approved the first
20 juror chosen, Mr. Johnson indicated at that point that he was
21 unhappy with my choices and that he would take it from there.
22 So, no. We never had any discussion regarding Batson versus
23 Kentucky.

24 THE COURT: Well, you would have to agree that, that he
25 is violating the Batson rule. You would, you would have to

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1 agree with that. He has articulated no reason that I can
2 accept why he struck all -- every black -- every white on the
3 jury.

4 MR. HAZZARD: Yes, sir.

5 THE COURT: Now, do you further know the rule that if any
6 of those that he struck are called again you will not be
7 permitted to strike them?

8 MR. HAZZARD: Yes, sir.

9 THE COURT: Sir?

10 MR. HAZZARD: Well, I don't know about that. If there's
11 a --

12 THE COURT: No. That's the --

13 MR. HAZZARD: Actually, if there is a race neutral reason
14 that Mr. Johnson hasn't articulated, assuming that I'm allowed
15 to actually pick the second jury panel, I would, I would bring
16 up the race neutral reason at that time.

17 THE COURT: Well, that doesn't comply with the rule,
18 though.

19 MR. HAZZARD: Which rule is the Court referring to, Your
20 Honor?

21 THE COURT: I'm talking about the Batson rule. Once they
22 illegally strike them you don't have an opportunity to strike
23 them again. That's the rule. State what you want us to know,
24 but this being a --

25 MR. HAZZARD: Well, I would, I would disagree with the

1 Court on that, but --

2 THE COURT: I understand. Well, what's the State's
3 position? The rule is very clear you don't get a chance to
4 strike them twice. I mean, that's clear.

5 MS. BAILEY: Your Honor, the State's understanding is
6 that basically we -- if the Court were to find that, first of
7 all, there's prima fascia discrimination, which I believe Your
8 Honor has, and second of all, that the Defendant doesn't have
9 a race neutral explanation, that at that point we would move
10 to re-pick the jury. I believe we get to start over with
11 strikes. I'm not aware of a rule that says that the Defense
12 or the State can't strike somebody that they struck the last
13 time. It's just that if it, again, we would go through -- if,
14 if another Batson challenge was raised, we would go through
15 the examination again.

16 THE COURT: Well, that's the rule, but in this case in
17 fairness to Mr. Hazzard I'm going to permit him to strike
18 those that he concluded are race neutral.

19 MR. HAZZARD: Thank you, Your Honor.

20 MS. BAILEY: Thank you, Your Honor.

21 THE COURT: Clear the rule, the rule is -- I know what
22 the rule is.

23 MR. HAZZARD: Yes, sir.

24 THE COURT: But given the fact that this is an attempted
25 murder, and perhaps the young man didn't know what he was

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1 doing. Now, young man, you listen to me. You are not to
2 strike. Your lawyer has that responsibility. You understand?

3 MR. JOHNSON: Oh, yes, sir.

4 THE COURT: Now, Ron, if he deliberately tries it again,
5 don't do it again because if I have to pick another jury
6 whoever's struck is going to stay on.

7 MR. HAZZARD: Yes, sir.

8 THE COURT: I'm, I'm bending the rules here in fairness
9 to the Defendant.

10 MR. HAZZARD: I appreciate that, Your Honor.

11 THE COURT: All right. Bring my jury back out. Bring
12 the rest of the panel in.

13 (Jury and jury panel enters courtroom.)

14 THE COURT: Please go back. We're going to have to pick
15 another jury. Please go back to your --

16 (Clerk and Court confer.)

17 THE COURT: All right. Ron and the State, come forward,
18 please, Solicitor and Ron.

19 (Whereupon, a bench conference is held in the presence
20 but out of the hearing of the jury panel.)

21 THE COURT: All right. Now, ladies and gentlemen, we are
22 going to select another jury in this case. There's absolutely
23 no adverse inference to be derived towards the State or the
24 Defendant as a result of our rescheduling jury selection.
25 It's just a process that the Court concludes is appropriate in

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1 this case. So we will begin anew with the selection process,
2 strikes five and ten, alternates one and two, two alternates.
3 We will now begin anew the identical process that we did
4 before. Have you reshuffled?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: And have you provided a list of the
7 reshuffling with counsel for the State and the Defense?

8 THE CLERK: We have them, Your Honor.

9 THE COURT: Now, proceed.

10 THE CLERK: All right.

11 Juror Number 148, Matthew Roberts.

12 THE COURT: Well, we're glad to see you again.

13 THE CLERK: What says the State?

14 MS. BAILEY: Please present Mr. Roberts.

15 THE CLERK: What says the Defense?

16 MR. HAZZARD: Please swear the juror.

17 THE CLERK: Please take a seat in the jury box.

18 Juror Number 130, Marvin O'Dell. What says the State?

19 MS. BAILEY: Please present Mr. O'Dell.

20 THE CLERK: What says the Defense?

21 MR. HAZZARD: Please swear Mr. O'Dell.

22 THE CLERK: Please take a seat in the jury box.

23 Juror Number 95, Beverly Keith. What says the State?

24 MS. BAILEY: Could you repeat the juror's number, please?

25 THE CLERK: 95.

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1 MS. BAILEY: Please present Ms. Keith.
2 THE CLERK: What says the Defense?
3 MR. HAZZARD: Please swear the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 105, Robert Locasale. Locasale?
6 MR. LOCASALE: Yes, ma'am.
7 THE CLERK: Okay. What says the State?
8 MS. BAILEY: Please present the juror.
9 THE CLERK: What says the Defense?
10 MR. HAZZARD: Please swear the juror.
11 THE CLERK: Please take a seat in the jury box.
12 Juror Number 92, Candace Jones. What says the State?
13 MS. BAILEY: Please present Ms. Jones.
14 THE CLERK: What says the Defense?
15 MR. HAZZARD: Please swear Ms. Jones.
16 THE CLERK: Please take a seat in the jury box.
17 Juror Number 160, Victoria Simmons. What says the State?
18 MS. BAILEY: Please excuse Ms. Simmons.
19 THE CLERK: You may return to your seat.
20 Juror Number 23, Walter Bryant. What says the State?
21 MS. BAILEY: Please present Mr. Bryant.
22 THE CLERK: What says the Defense?
23 MR. HAZZARD: Please swear the juror.
24 THE CLERK: Please take a seat in the jury box.
25 Juror Number 145, Montez Richardson. What says the

1 State?

2 MS. BAILEY: Please present Mr. Richardson.

3 THE CLERK: What says the Defense?

4 MR. HAZZARD: Please swear the juror.

5 THE CLERK: Take a seat in the jury box.

6 Juror Number 110, Charles McCray. What says the State?

7 MS. BAILEY: Please present Mr. McCray.

8 THE CLERK: What says the Defense?

9 MR. HAZZARD: Please excuse the retired law enforcement
10 officer.

11 THE CLERK: You may return to your seat.

12 Juror Number 24, Lisa Cameron. What says the State?

13 MS. BAILEY: Please present Ms. Cameron.

14 THE CLERK: What says the Defense?

15 MR. HAZZARD: Please swear Ms. Cameron.

16 THE CLERK: Please take a seat in the jury box.

17 Juror Number 146, Shari Rincione. What says the State?

18 MS. BAILEY: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. HAZZARD: Please excuse the juror from the trial of
21 this particular case.

22 THE CLERK: You may return to your seat.

23 Juror Number 151, Ramona Rollins. What says the State?

24 MS. BAILEY: Beg the Court's indulgence. Please present
25 Ms. Rollins.

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1 THE CLERK: What says the Defense?

2 MR. HAZZARD: Please swear the juror.

3 THE CLERK: Please take a seat in the jury box.

4 Juror Number 76, Cassidy Hardee. What says the State?

5 MS. BAILEY: Just to clarify, is this Juror 76?

6 THE CLERK: Yeah. Juror Number 76.

7 MS. BAILEY: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. HAZZARD: Please excuse the juror from the trial of
10 this case.

11 THE CLERK: You may return to your seat.

12 Juror Number 156, Sylvester Shackelford. What says the
13 State?

14 MS. BAILEY: Please excuse Mr. Shackelford.

15 THE CLERK: You may return to your seat.

16 Juror Number 112, Jonathan McCray. What says the State?

17 MS. BAILEY: Please excuse Mr. McCray.

18 THE CLERK: You may return to your seat.

19 Juror Number 118, Jean --

20 MR. MICHENON: Michenon.

21 THE CLERK: Yes, sir. What says the State?

22 MS. BAILEY: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. HAZZARD: Please excuse Mr. J.P. Michenon from the
25 trial of this case.

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1 MR. MICHENON: Thank you very much.

2 MR. HAZZARD: Thank you.

3 THE CLERK: You may return to your seat.

4 Juror Number 187, Sheryn Waterman. What says the State?

5 MS. BAILEY: Please present Mrs. Waterman.

6 THE CLERK: What says the Defense?

7 MR. HAZZARD: Please swear the juror.

8 THE CLERK: Please take a seat in the jury box.

9 Juror Number 35, Nanci Conley. What says the State?

10 MS. BAILEY: Please present Ms. Conley.

11 THE CLERK: What says the Defense?

12 MR. HAZZARD: Please swear Ms. Conley.

13 THE CLERK: Take a seat in the jury box.

14 Juror Number 56, Sandra Gates. What says the State?

15 MS. BAILEY: Please excuse Ms. Gates.

16 THE CLERK: You may return to your seat.

17 Juror Number 98, Anastasia La Sane. What says the State?

18 MS. BAILEY: Please present Ms. La Sane.

19 THE CLERK: What says the Defense?

20 MR. HAZZARD: Please swear the juror.

21 THE CLERK: Please take a seat in the jury box.

22 THE COURT: We'll have two alternates, one and two,
23 please.

24 THE CLERK: Juror Number 47, Walter Frank. What says the
25 State?

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1 MS. BAILEY: Please present Dr. Frank.
2 THE CLERK: What says the Defense?
3 MR. HAZZARD: Please excuse Dr. Frank.
4 THE CLERK: You may return to your seat.
5 Juror Number 121, Latarsha Moore. What says the State?
6 MS. BAILEY: Please present Ms. Moore.
7 THE CLERK: What says the Defense?
8 MR. HAZZARD: Please excuse the school resource officer.
9 THE CLERK: You may return to your seat.
10 Juror Number 166, Robert Stecz. What says the State?
11 MS. BAILEY: Please present Mr. Stecz.
12 THE CLERK: What says the Defense?
13 MR. HAZZARD: Please seat the alternate juror.
14 THE CLERK: Please take a seat in the jury box.
15 Juror Number 191, Dreamer Wilder. What says the State?
16 MS. BAILEY: Please present Mr. Wilder.
17 THE CLERK: What says the Defense?
18 MR. HAZZARD: Please swear the juror.
19 THE CLERK: Please take a seat in the jury box.
20 THE COURT: All right. As before I'm going to need a
21 foreman or a forelady to serve as foreperson of this jury.
22 That individual will preside in the jury room during your
23 deliberations and will be the jury's spokesman in the
24 courtroom. Please retire to the jury room and select from
25 your number someone who wants to serve, is willing to serve

1 and who's capable of serving. You may retire to the jury
2 room. Let the bailiff know when you have selected an
3 individual to serve as the foreperson.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Any issues regarding the composition of the
7 jury? What says the State?

8 MS. BAILEY: None from the State, Your Honor.

9 THE COURT: Defense?

10 MR. HAZZARD: Defense has a matter to take up outside the
11 presence of the jury panel, Your Honor.

12 THE COURT: Outside the whole panel?

13 MR. HAZZARD: Yes, sir, Your Honor.

14 THE COURT: Have them -- please step out to the jury --
15 outside. We'll talk about it. Please close the door after
16 all jurors have departed.

17 (Jury panel exits courtroom.)

18 THE COURT: The courtroom is secure. Yes, Mr. Hazzard.

19 MR. HAZZARD: Yes, sir. During the jury selection
20 process I noticed that of the State's four strikes that were
21 utilized three of those strikes were for the purpose of
22 striking individuals who apparently are African American in
23 decent. That would be Juror Number 160, a black female; Juror
24 Number 156, a black male; and Juror Number 112, a black male.
25 So of the, I believe it's six black or African-American jurors

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1 whose names were called the State chose to use as preemptory
2 challenges to disqualify three of them, and we would submit
3 that that does not comport with Batson versus Kentucky.

4 THE COURT: Well, let's take the juror, let's take them
5 one at a time. What's the first one they struck?

6 MR. HAZZARD: Juror Number 160 is a black female, Your
7 Honor.

8 THE COURT: Articulate a basis for that, please.

9 MS. BAILEY: She's unemployed, Your Honor.

10 THE COURT: Pardon me?

11 MS. BAILEY: She was unemployed. She did not have a job.

12 THE COURT: How many more unemployed did you select on
13 the jury?

14 MS. BAILEY: None that I'm aware of, and Number 56, who
15 was a white female ---

16 THE COURT: Wait a minute. Let's -- wait a minute.
17 Let's deal with the first one.

18 MS. BAILEY: Well, Your Honor, Number 56, who's a white
19 female who I struck, was also unemployed. I, I had struck
20 every unemployed person who came before me.

21 THE COURT: Is that the sole basis?

22 MS. BAILEY: Yes.

23 THE COURT: You don't think unemployed people can serve
24 on a juror?

25 MS. BAILEY: Well, Your Honor, I get a preemptory strike,

1 as long as it's race neutral, and being unemployed is a race
2 neutral reason to strike somebody from a jury.

3 THE COURT: Did you -- were any whites unemployed?

4 MS. BAILEY: Yes, Your Honor. Number 56 and I struck
5 her.

6 THE COURT: So you are saying you've consistently did
7 that?

8 MS. BAILEY: I did.

9 MR. HAZZARD: And that would be fine, Your Honor, but the
10 second juror on there, Mr. O'Dell, is also unemployed.

11 MS. BAILEY: Mr. O'Dell has a criminal record. That's
12 why I struck him.

13 MR. HAZZARD: No. He's on the jury.

14 MS. BAILEY: In 1981 he was charged with assault with a
15 weapon. I'm showing no disposition for that charge. Given
16 this charge, I did not want him on my jury. That's a race
17 neutral reason.

18 THE COURT: He is -- he's on the jury.

19 MS. BAILEY: 156.

20 MR. HAZZARD: I said number -- I said 130. With regard
21 to you were saying no one, then you struck Number 160 because
22 they were unemployed. Mr. -- Number 130, Mr. O'Dell, who is
23 Caucasian, is also unemployed.

24 MS. BAILEY: He's disabled. That's different from
25 unemployed.

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1 MR. HAZZARD: It's different from unemployed?

2 THE COURT: You struck him, too?

3 MS. BAILEY: I struck someone -- no. I seated someone
4 who is disabled. I struck everyone who was unemployed.
5 There's a difference between disabled and unemployed.

6 THE COURT: I understand.

7 MR. HAZZARD: The Court's indulgence, Your Honor.

8 THE COURT: All right, sir. Yes, Mr. Hazzard.

9 MR. HAZZARD: Yes, sir, Your Honor. There's also -- I
10 was checking the individuals who were called to see who else
11 or whether or not someone had been unemployed. So since that
12 is the race neutral reason that has been offered, it is then
13 incumbent upon me to indicate whether someone of a different
14 race would fit into that same category who was actually placed
15 on the jury, and so I'm checking the list, which is kind of
16 time-consuming, but I appreciate the Court's allowing me to
17 take that time. All right. The Defense will -- if the Court
18 finds that being unemployed is a race neutral reason for Juror
19 Number 160, I'm ready to move forward to Juror Number 156,
20 Your Honor.

21 THE COURT: What about 156?

22 MR. HAZZARD: An African-American male, the State used
23 its second preemptory challenge to excuse him.

24 THE COURT: Unemployed, was he not?

25 MS. BAILEY: No. Number 156 was employed, but in 1981 he

1 was charged with assault with a weapon. There was no
2 disposition on his record for that charge, but given that it's
3 on his record and that I know now that in the past he's been
4 charged with that, I wanted to strike him from the jury.

5 MR. HAZZARD: And I would submit that is nowhere near a
6 race neutral reason, the fact that someone has been charged
7 with a crime.

8 THE COURT: Well, no, he had -- there was, there was
9 indicia of a prior criminal record.

10 MR. HAZZARD: It's not indicia, the fact that someone was
11 charged with no disposition and no conviction.

12 THE COURT: Well --

13 MS. BAILEY: Your Honor, it doesn't have to be a good
14 reason. It just has to be a race neutral reason.

15 THE COURT: No. It's -- that's race neutral. I would
16 conclude that's race neutral. He was charged at one time, and
17 we had enough jurors to select him -- without him, and with
18 regards to the striking for unemployment, she was certainly
19 consistent throughout in that position, and clearly, that's
20 racial neutral.

21 MR. HAZZARD: So there was no one else on the jury panel
22 who had any prior criminal charge whatsoever?

23 THE COURT: I'm not saying that. I'm saying that --

24 MR. HAZZARD: And that's what it would take for it to be
25 race neutral.

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1 THE COURT: -- my concern --

2 MS. BAILEY: Your Honor --

3 THE COURT: -- is with those that she struck.

4 MS. BAILEY: -- for the record, specifically, it's not
5 just a criminal record or no criminal record. He was charged
6 with assault with a weapon, which is similar to the
7 allegations in this case.

8 THE COURT: I understand that. That's race neutral,
9 clearly. I'm just dealing with those that she struck.

10 MR. HAZZARD: Yes, sir, Your Honor, and when she --

11 THE COURT: And I, I conclude that those strikes were
12 race neutral.

13 MR. HAZZARD: Yes, sir. Your Honor, but for the record,
14 when she gives a reason, the analysis then shifts back to does
15 that race neutral reasoning that is given apply to every other
16 person who was called.

17 THE COURT: Well, I, I got the impression she said --

18 MR. HAZZARD: And that's what I'm checking to see.

19 THE COURT: -- she did with the one exception who was
20 disabled. What's your answer to that?

21 MS. BAILEY: I'm sorry. I'm unclear as to what your
22 question is.

23 THE COURT: The question is were there any other
24 unemployed that you struck, that you did not strike?

25 MS. BAILEY: That, that I struck or that I did not

1 strike?

2 THE COURT: That you, you --

3 MR. HAZZARD: Did not strike.

4 THE COURT: That you did not strike?

5 MS. BAILEY: None to answer that they were unemployed.

6 THE COURT: Does that answer your inquiry, Mr. Hazzard?

7 MR. HAZZARD: Yes, sir, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. HAZZARD: With regard to --

10 THE COURT: I conclude that the strikes were
11 appropriately race neutral and the jury will stand as
12 selected. Now, bring my jury back in.

13 MR. HAZZARD: Your Honor.

14 MS. BAILEY: Your Honor.

15 MR. HAZZARD: Your Honor.

16 THE COURT: Sir?

17 MR. HAZZARD: That's Juror Number 160, Juror Number 156.

18 The Defense also questions the basis for striking Juror Number
19 112.

20 THE COURT: Oh, I'm sorry. Who was the 112?

21 MR. HAZZARD: That's an African-American male.

22 THE COURT: Tell me about 1 -- what's the name?

23 MS. BAILEY: Jonathan McCray.

24 THE COURT: What about him?

25 MS. BAILEY: He's also unemployed.

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1 THE COURT: Does that answer your question, Mr. Hazzard?

2 MR. HAZZARD: Yes, sir, Your Honor. I believe during
3 jury qualification Mr. McCray indicated that he had been
4 employed at Pizza Hut, but was not currently working there.

5 MS. BAILEY: Correct. That'd be unemployed.

6 THE COURT: She's been consistent with that position.
7 It's race neutral.

8 MR. HAZZARD: Your Honor, I simply place the matter on
9 the record.

10 THE COURT: Well, she --

11 MS. BAILEY: If I may for the record also say that I
12 struck Juror Number 56 who is a white female. I struck her
13 because she has a criminal record and is unemployed.

14 THE COURT: I got you. I'm very comfortable with the
15 fact that that jury is a qualified jury, that your strikes
16 were race neutral and it will stand as selected. Bring the
17 venire back so I can give them some further instructions and
18 find out for me about my inquiry about the foreperson. Bring
19 the jury back in, please. Wait a minute, now, no. I don't
20 want the jury back. I want the name of the person. Okay. I
21 don't want the jury back yet. These remarks are outside the
22 presence of the jury.

23 (Remaining jury panel excused by Court with call-in
24 instructions.)

25 THE COURT: Counsel, come forward, both of you, the

1 State, Mr. Hazzard.

2 MR. HAZZARD: Yes, sir, Your Honor.

3 (Whereupon, a bench conference is held.)

4 THE COURT: All right. Bring my jury in now, please.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: Put Mr. Locasale in the foreman's chair for
8 me.

9 FOREPERSON: Right here?

10 THE COURT: Have the alternates take their regular
11 alternate's chair, please.

12 All right. Mr. -- is it --

13 MR. LOCASALE: Locasale.

14 THE COURT: Is it pronounced Locasale?

15 MR. LOCASALE: Locasale.

16 THE COURT: Locasale.

17 MR. LOCASALE: Yes.

18 THE COURT: I apologize for mispronouncing it.

19 Congratulations. I understand you've been selected as
20 foreperson.

21 MR. LOCASALE: Yes, sir.

22 THE COURT: That's fine. I will keep you fully advised
23 of your duties as the child -- as the trial progresses.
24 Primarily you will be charged with presiding in the jury room
25 during the deliberations and will be charged with speaking the

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1 jury's verdict for me in the courtroom at the appropriate
2 time. I, too, will keep you fully advised of your duties as
3 well as the jury, and you and the jury will be fully advised
4 procedurally as we move along.

5 I'm going to leave you unsworn to report -- where does
6 the jury report in the morning at 9:30, in the jury room or
7 outside in the gathering room? Where?

8 BAILIFF: Outside.

9 THE COURT: Sir?

10 BAILIFF: Outside.

11 THE COURT: Will they know where to report?

12 BAILIFF: We'll tell them.

13 THE COURT: Please report here at 9:30 in the morning
14 ready to start the trial of this case. Guessing, we
15 anticipate that this case will last probably through
16 Wednesday. That's our best estimate. That'll give you some
17 idea.

18 Do not discuss this case with anyone. Let no one discuss
19 it with you. Make no independent inquiry, and do not even
20 discuss it among yourselves until I have given you the case
21 for your deliberation.

22 Now, in this day of the internet and iPhone, it's so easy
23 for jurors who are so inclined to seek additional information
24 on the trial of a case. That is totally improper and should
25 that occur and I find out about it, this entire trial will

1 have to be dismissed and start again with the same procedure.
2 That occurred, unfortunately, in Horry County when a juror
3 stopped the bailiff and said, "I've made some investigation
4 and I've got some notes off the internet. I want to share it
5 with the jury." Fortunately he stopped her, and I had to, of
6 course, had to dismiss her, but it's important and essential
7 that whatever your verdict is, not guilty or guilty, be based
8 on the law and evidence heard in this courtroom and from no
9 other source.

10 Now, Mr. Foreman, it is particularly important that
11 during the trial of this case you permit no discussion about
12 any issue in this case, and that's simply because the jury,
13 your jury needs to hear all the witnesses and here to need my
14 discussion with you about the law of the case. So you'll not
15 even discuss it until I have said to you, "Mr. Foreman, ladies
16 and gentlemen, you may now retire and begin your discussions."
17 Now, it's not likely, but if anyone should attempt to discuss
18 any issue of this case with you at any time, under your oath
19 you have the responsibility to report that fact to me.

20 I'm going to excuse you now, ask you to be back, ready to
21 go at 9:30 in the morning, and thank you so much for your
22 morning's patience. I deeply appreciate it. Bye-bye.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Anything further from the State

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1 or the Defense at this time?

2 MR. HAZZARD: Nothing from the Defense, Your Honor.

3 THE COURT: We'll start at 2:30. We're going to hear all
4 motions and anything pertaining to this case for trial
5 promptly at 2:30. Thank you.

6 MS. BAILEY: Thank you, Your Honor.

7 MR. HAZZARD: Yes, sir.

8 THE COURT: Now, if you've got any witnesses that we need
9 to be here to discuss any issues that are raised, have them
10 here at 2:30.

11 MS. BAILEY: Well, Your Honor, I'm not sure which issues
12 are to be raised because the --

13 THE COURT: Pardon me?

14 MS. BAILEY: -- the Defense hasn't filed any motions. So
15 I don't know what issues those might be.

16 THE COURT: Well, discuss it with him briefly before you
17 -- just ask him. He'll tell you.

18 OFF THE RECORD.

19 (On the record. The following takes place outside the
20 presence of the jury.)

21 THE COURT: Good afternoon. Please be seated.

22 All right. I understand we have some motions in the case
23 that we picked a jury this morning. How you want to proceed?

24 MR. HAZZARD: Your Honor, the Defense is ready to present
25 its motions in turn, and I'm sure the Prosecutor will address

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1 each motion as we go.

2 THE COURT: All right, sir.

3 MR. HAZZARD: All right.

4 Your Honor, the first motion for the Defense in the State
5 of -- in the case of State versus Dwaine Johnson, the Defense
6 moves to quash indictments 2011-GS-22-1185 and 2011-GS-22-
7 1186. 1185 is for armed robbery. 1186 is for attempted
8 murder. The basis for the motion --

9 THE COURT: 1186 is what?

10 MR. HAZZARD: For attempted murder.

11 THE COURT: Okay.

12 MR. HAZZARD: The basis for the motion to quash is that
13 the indictments, the Defense submits the indictments are
14 insufficient as required. In the cases of State v. Miller,
15 287 S.C. 280, that's a 1985 South Carolina Supreme Court case,
16 and State versus Means, which is a 367 S.C. 374, 2006 South
17 Carolina Supreme Court case.

18 THE COURT: You mentioned two indictments. Are two
19 different from the other two?

20 MR. HAZZARD: We have three indictments, Your Honor. We
21 have two attempted murders and one armed robbery.

22 THE COURT: Yeah.

23 MR. HAZZARD: And our submission as the defense is that
24 one of the armed robbery indictments and one of the attempted
25 murder indictments are insufficient. With regard to 1185, the

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1 armed robbery indictment, it says that Dwaine Johnson, along
2 with a Co-Defendant did in Georgetown County on or about
3 August 24th, 2011, while armed with a deadly weapon, to wit, it
4 then says the Defendant demanded money at gunpoint from the
5 victim. He did take and carry away personal property of Kwok
6 Chung from or in the immediate presence of Kwok Chung with
7 intent to deprive Kwok Chung of possession by use of force,
8 threats or intimidation.

9 THE COURT: Where is the deficiency in that indictment?

10 MR. HAZZARD: It says while armed with a deadly weapon,
11 to wit, and then it says demanded money at gunpoint. It never
12 specifies specifically that he's the person who had the gun.

13 THE COURT: It says to wit, and then later on it said by
14 gun.

15 MR. HAZZARD: No. It says demanded money at gunpoint.
16 Whose gunpoint?

17 THE COURT: I think the indictment speaks to the
18 Defendant whose name appears on that indictment. You want to
19 answer that, Solicitor?

20 MS. BAILEY: Yes, Your Honor. In the first phrase of the
21 indictment it says Dwaine Lamark Johnson, Jr., along with a
22 Co-Defendant, so it clearly at that point is demarking that
23 there is a Defendant and a Co-Defendant and that it then later
24 when -- so what -- later when it says the Defendant demanded
25 money at gunpoint, clearly it's talking about Dwaine Johnson.

1 In addition, I would argue to the Court that under the case
2 law of this state an indictment is simply a notice document, a
3 notice of generally the charges to be tried.

4 THE COURT: I would respectfully deny that. Clearly, the
5 Defendant is put on notice, to wit, that on that date and on
6 that occasion and at that place he is charged with committing
7 an armed robbery at gunpoint. He had all the notice he
8 needed. So I would respectfully deny that. How about your --

9 MR. HAZZARD: Thank you, Your Honor. With regard --

10 THE COURT: -- your next one?

11 MR. HAZZARD: I'm sorry. With regard to indictment 2011-
12 GS-22-1186, for attempted murder, that indictment reads that
13 Dwaine Lamark Johnson, Jr., along with a Co-Defendant did in
14 Georgetown County on or about August 24th, 2011, did with
15 malice aforethought and with intent to kill Rui Mei Dong with
16 a handgun causing life-threatening injuries during the
17 commission of a robbery. We would submit that it does not
18 indicate in any way, shape or form what it is about the
19 handgun that supposedly caused the life-threatening injuries.

20 THE COURT: Well, of course, you're under the hand of one
21 the hand of all and both of them is equally responsible, but
22 I'll let the Solicitor respond to that, too.

23 MS. BAILEY: Thank you, Your Honor. There's a
24 scrivener's error in that indictment that it's missing the
25 word shoot. That's it. It's just missing one word, shoot.

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1 Again, an indictment is a notice document. It mirrors the
2 statute, and clearly the discovery indicated that, that the,
3 that the victim was shot. He's been --

4 THE COURT: Now, it's, it's clear, Mr. Hazzard. I
5 understand the basis for your motion. It's respectfully
6 denied. Clearly, the indictment is a notice document, and he
7 clearly had notice of the charges for which he was going to be
8 tried, which is murder and armed robbery.

9 MR. HAZZARD: Okay.

10 THE COURT: Or attempted murder, excuse me.

11 MR. HAZZARD: Yes, sir.

12 THE COURT: What's your next motion, please?

13 MR. HAZZARD: Your Honor, as the Court knows, we have had
14 the opportunity to work together many times, and you know that
15 one of the things I always do, especially on a very serious
16 case, is that I place the plea offer on the record.

17 THE COURT: Yes, sir.

18 MR. HAZZARD: While there has never been a formal plea
19 offer in this case, the plea offer that was bandied about and
20 discussed and that was made known to Mr. Johnson as a
21 possibility was a plea offer to one count of armed robbery
22 with a cap of 15 years. As the Court knows, armed robbery
23 carries 10 to 30. So the effective range would be 10 to 15.
24 That in exchange for that plea to armed robbery with a cap of
25 15 years, all remaining charges, including the two counts of

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1 attempted murder, would be dismissed against Mr. Johnson. He
2 and I have discussed this on several different occasions at
3 the Georgetown Detention Center. When he was incarcerated in
4 Effingham in Florence County, we discussed it there. We have
5 made arrangements for him to discuss it with his family
6 members who are present in the courtroom today. It is my
7 understanding that up to this point and even as we stand here
8 today he rejects that plea offer, and I simply wanted the
9 record to reflect that he was aware of the plea offer and that
10 he has rejected the plea offer. Please stand up, sir.

11 THE COURT: That plea offer, in fairness to the
12 Defendant, is still available at this moment to him; is it
13 not?

14 MS. BAILEY: No, Your Honor. It expired last Monday or
15 Tuesday.

16 THE COURT: So the plea offer is gone?

17 MS. BAILEY: Yes.

18 THE COURT: Was he advised that that offer --

19 MS. BAILEY: We, we advised Mr. Hazzard.

20 THE COURT: Pardon me?

21 MS. BAILEY: We advised Mr. Hazzard that the plea offer
22 had an expiration date on it of last Monday. I believe we
23 actually --

24 THE COURT: Well, the witnesses are not here, in fairness
25 to Mr. Hazzard's position, can you leave the plea offer on, on

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1 for, for 30 minutes in case he has -- likes a further
2 opportunity to talk to his client?

3 MS. BAILEY: Well, Your Honor, he can also, he can plead
4 straight up and still receive the same benefit if Your Honor
5 were to see that it would be a fair offer because it's -- I
6 mean, we had set a cap of 15. It still carries a minimum of
7 ten. So it doesn't require a charge reduction for the
8 Defendant to plead to it.

9 THE COURT: I understand.

10 Mr. Hazzard, come -- you all come forward here a minute.

11 MR. HAZZARD: Yes, sir.

12 (Whereupon, a bench conference is held.)

13 THE COURT: All right. Mr. -- let me talk to -- have the
14 Defendant rise, please.

15 (Complies with request.)

16 THE COURT: Mr. Defendant, you are charged with two
17 counts of attempted murder. Do you understand that?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Talk a little louder.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Upon conviction, you could be convicted --
22 you could be sentenced to 30 years on each one consecutive,
23 which is 60 years. Additionally, you are charged with a count
24 of armed robbery, which carries an absolute minimum of ten
25 years and could carry up to 30. You understand that?

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1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: Or do you understand that?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: Do you understand a jury well may find you
5 not guilty, and that's their province, and that's fine. If
6 convicted, the law requires any judge to sentence you to a
7 minimum of ten years, and could send you for 30 on that
8 consecutive to the other charges. Do you know that?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: And did you know it? And did you know early
11 on that you could have resolved all of these charges for 15
12 years. Did you know that?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: Sir?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Your attorney told you that; did he not?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: And he told you that that offer would not
19 remain open; did he not?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: And it is -- it was your decision to reject
22 that offer, not his, but yours; is that correct?

23 MR. JOHNSON: Yes, sir.

24 THE COURT: That's fine. I just want to make sure that
25 you can't take the position that your lawyer made you do it or

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1 this, that and the other, but the decision to reject that
2 offer is yours.

3 MR. JOHNSON: Yes, sir.

4 THE COURT: That's fine.

5 MR. HAZZARD: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Hazzard. That's on the
7 record.

8 MR. HAZZARD: Thank you. You can be seated.

9 THE COURT: And I'm glad we did that. Quite often when
10 they convict and get a much serious sentence the first thing
11 they do is said the lawyers never told me.

12 MR. HAZZARD: Yes, sir.

13 THE COURT: So I wanted him to know that this lady took
14 down everything that he said and everything that I said.

15 MR. HAZZARD: Yes, sir.

16 THE COURT: All right, sir. Let's go, go forward ---

17 MR. HAZZARD: The next -- yes, sir.

18 THE COURT: -- with any other motions. You may be
19 seated, Mr. Johnson.

20 MR. HAZZARD: Yes, sir. The next Defense motion, as part
21 of discovery in this case, a couple of names came up, and
22 there are a lot of names in this case, but two of the names
23 that came up are Devon Jackson and Raymond Moyd. They would
24 fall under the, under the heading of basically jailhouse
25 informants. The significance of Devon Jackson and Raymond

1 Moyd is that I previously represented Mr. Jackson, and he, if
2 his information were to be believed, he is still within his
3 one year to obtain a downward departure for helpful evidence
4 to the Prosecution, which would create a conflict for me
5 whether to represent Mr. Johnson's best interest or whether to
6 represent Mr. Jackson's best interest in giving evidence
7 against Mr. Johnson. The same goes with Raymond Moyd, M-O-Y-
8 D. That's a gentleman I currently represent. It is my
9 understanding that the Prosecution has investigated both of
10 these statements by Mr. Jackson and Mr. Moyd thoroughly and
11 that they do not intend to call either of them to testify at
12 trial, and I wanted to address that now on the front end as
13 opposed to us get a day and a half into it, one of these
14 fellows shows up on the stand, I've got a conflict and we have
15 a mistrial.

16 THE COURT: All right. What about it, counsel?

17 MS. BAILEY: The State for strategic reasons does not
18 intend to call either Devon Jackson or Raymond Moyd.

19 THE COURT: That will solve any conflict. I declare they
20 will not now be called, period.

21 MR. HAZZARD: The Court's indulgence, Your Honor.

22 Your Honor, the Defense would move for sequestration of
23 witnesses pursuant to Rule 615, South Carolina Rules of
24 Evidence.

25 THE COURT: I decline to do that. I will do that at the

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1 trial of the case but not at, not in this motion hearing.

2 MR. HAZZARD: Yes, sir, Your Honor. But for the purposes
3 of the trial?

4 THE COURT: Yes, sir.

5 MR. HAZZARD: Okay.

6 THE COURT: I would -- the witnesses will be sequestered.

7 MR. HAZZARD: All right. Thank you, Your Honor.

8 MS. BAILEY: Your Honor, if I may just put a point on the
9 record for that. The State is in agreement on sequestration
10 of witnesses. There is one Defense witness, Dennis Cumbee,
11 who I don't know what he looks like. He actually was supposed
12 to be here for roll call Friday and didn't show up. I just
13 want to bring to the Court's attention if he were to walk in
14 the back of the courtroom I wouldn't know it, but I would
15 request that he also be sequestered.

16 THE COURT: Would you alert the bailiffs so they can
17 inquire as to people coming in as to that name?

18 MS. BAILEY: Sure. Yes, Your Honor.

19 THE COURT: Okay. Now, obviously, the victims in this
20 case will be allowed to remain in the courtroom.

21 MS. BAILEY: Yes, Your Honor.

22 THE COURT: And your chief investigating officer.

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: Who else? Anybody else?

25 MS. BAILEY: No, Your Honor.

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1 MR. HAZZARD: For the record, who is the chief
2 investigating officer?

3 MS. BAILEY: Well, Your Honor, the --

4 THE COURT: Or not the chief, you can --

5 MS. BAILEY: The State intends --

6 THE COURT: -- whatever investigating officer you want
7 you can have him here.

8 MS. BAILEY: Right. Yeah. The State intends to keep
9 Steven Brown in the courtroom. He will be in and out of the
10 courtroom. He works for the Solicitor's Office. It's my
11 understanding that actually our chief --

12 THE COURT: No. I want the name of the investigator who
13 will be permitted in the courtroom.

14 MS. BAILEY: Yes, Your Honor. I was getting to that.
15 Mr. Sparkman, who was the chief investigating officer, he has
16 a family commitment. So he won't be able to stay in the
17 courtroom anyway.

18 THE COURT: Who -- some investigator will be permitted to
19 be in the courtroom. Who do you want?

20 MS. BAILEY: That would be Keith Small, Your Honor.

21 THE COURT: That's all I wanted to know.

22 MR. HAZZARD: Okay.

23 THE COURT: Does that answer your inquiry, Mr. --

24 MR. HAZZARD: Yes, sir, Your Honor.

25 THE COURT: Sir?

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1 MR. HAZZARD: Yes, sir. It does.

2 THE COURT: All right.

3 MR. HAZZARD: Thank you very much.

4 THE COURT: Obviously your, your -- the public -- your
5 own investigator can stay in the courtroom along with the
6 investigator that you designate. Otherwise, they will be
7 sequestered, and alert the bailiffs so we can determine who
8 that individual is for sequestration purposes. Okay?

9 MS. BAILEY: Yes, Your Honor. Thank you.

10 THE COURT: All right. What next, Mr. --

11 MR. HAZZARD: Your Honor, the Defense moves for a copy of
12 the criminal records, if any exist, of any and all State
13 witnesses pursuant to Rule 609, South Carolina Rules of
14 Evidence.

15 THE COURT: You're entitled to that. Have you gotten
16 that for him?

17 MS. BAILEY: Your Honor, the State doesn't have it at the
18 moment, but I will have him -- he will be provided with the
19 criminal records prior to their testimony.

20 THE COURT: You had to -- you don't have it. Now, you
21 had to know that, that motion was coming.

22 MS. BAILEY: Your Honor, some of these folks were
23 difficult to find. In fact, two of them were just located
24 this morning. So I didn't have their Social Security numbers.
25 That's all.

1 THE COURT: Okay. Get them to him this afternoon.

2 MS. BAILEY: Yes. Thank you.

3 THE COURT: All right. Next.

4 MR. HAZZARD: Your Honor, as the Court knows, another
5 thing I like to address on the front end is whether or not any
6 prior record of my client will be admissible for the purposes
7 of impeachment so that my client can be thinking through this
8 process of whether or not they may wish to testify or not
9 testify.

10 THE COURT: What record, if any, are you maintaining that
11 can be introduced as to his credibility and believability and
12 for that purpose only?

13 MS. BAILEY: Beg the Court's indulgence for one moment,
14 please.

15 THE COURT: All right. All right. What next?

16 MS. BAILEY: Your Honor, this is his first adult charge.
17 However, he has several juvenile --

18 THE COURT: Not going to use the juvenile.

19 MS. BAILEY: Your Honor, I believe we have a case on
20 point I'd like Your Honor to look at. Our Deputy Solicitor
21 went --

22 THE COURT: What's the adult charge?

23 MS. BAILEY: I'm sorry?

24 THE COURT: Go ahead and tell me what the charges are.

25 MS. BAILEY: His juvenile record?

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1 THE COURT: Is there any record? You said there was some
2 adult record.

3 MS. BAILEY: There's no adult record. He was 17 when it
4 happened.

5 THE COURT: Okay. Now, when was the -- when was the
6 juvenile record?

7 MS. BAILEY: He has a juvenile record from 2010 dating
8 back to 2006.

9 THE COURT: How old was he at the time in 2006?

10 MS. BAILEY: I don't know.

11 MR. HAZZARD: He would have been, in 2006, he would have
12 been 13. His date of birth is

13 THE COURT: What juvenile records do you propose to
14 introduce as to credibility and believability?

15 MS. BAILEY: Your Honor, there is one, two, three, four
16 -- there are five various levels of assault charges. There's
17 an ABHAN. There's a simple assault. There's assault and
18 battery with intent to kill. There is also a malicious
19 injury.

20 THE COURT: Which ones do you propose to introduce?

21 MS. BAILEY: Your Honor, I would submit that all of them
22 would be admissible.

23 THE COURT: Not the magisterial simple assault, and what
24 case do you --

25 MS. BAILEY: Your Honor, he's also -- since he's been

1 incarcerated on this charge he's pled to threatening the life
2 of a public official and throwing bodily fluids.

3 THE COURT: I'm not going to let the bodily fluid come
4 in. That doesn't go to --

5 MS. BAILEY: Your Honor, here's what the State would
6 request. The State would request that without going into the
7 specific charges that we be able to say, "Isn't it true that
8 you've been convicted of a felony," and leave it at that.

9 THE COURT: What case do you have that permits me to let
10 that juvenile record in?

11 MS. BAILEY: Your Honor, the deputy solicitor went to get
12 it for me.

13 THE COURT: I want to read it. I would -- that -- if I
14 go at all that would be how far I go and I'm not sure I'm
15 going to do that. I'll give -- I'll let Mr. Hazzard know in
16 the morning prior to trial or this afternoon. You got a
17 position on that, Mr. Hazzard?

18 MR. HAZZARD: Your Honor, obviously, I would move to
19 exclude any record whatsoever, always, at any time.

20 MS. BAILEY: Now, Your Honor, to be clear, I think we
21 have two things confused. One, he has the juvenile record.

22 THE COURT: Yes.

23 MS. BAILEY: Now, since he's been incarcerated on this
24 charge, he has been convicted of assault on a corrections
25 officer and the throwing bodily fluids. Those were as an

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1 adult, and the State would seek to just simply say on those
2 matters, "Isn't it true that you've been convicted of a
3 felony," and not go into what the felony is.

4 MR. HAZZARD: Actually, I think it was two counts of
5 throwing bodily fluids that was run consecutive.

6 THE COURT: What you say about that Mr. --

7 MR. HAZZARD: I believe that it was actually two counts
8 of throwing bodily fluids that was run consecutive. I don't
9 believe he has a conviction for assault. I think it was two
10 counts of throwing bodily fluids, and Mr. Johnson says in his
11 recollection you were the judge that sentenced him. So he
12 seems pretty sure.

13 THE COURT: Says what?

14 MR. HAZZARD: He believes that you were the judge that
15 sentenced him on the two counts of throwing bodily fluids
16 consecutive, but anyway, we can take that matter up. We can
17 get that straight in the morning before we start. That's no
18 problem.

19 THE COURT: Let's -- we'll do that. I have some concerns
20 with that because that doesn't -- that -- it's not a like
21 stealing or burglary or something.

22 MR. HAZZARD: Yes, sir. That's right.

23 MS. BAILEY: Yes, Your Honor. But the jury should know
24 that he has felony convictions. It's the State's --

25 THE COURT: It's what?

1 MS. BAILEY: -- it's the State's position that the jury
2 should know that he has felony convictions.

3 THE COURT: Well, I don't think the statute says that.
4 Doesn't the statute limit it to cases that go to credibility
5 and believability?

6 MS. BAILEY: Or cases from the last ten years, any
7 conviction from the last ten years.

8 MR. HAZZARD: Well, that carries a year or more
9 incarceration.

10 THE COURT: Well, we'll take that up in chambers.

11 MR. HAZZARD: Very well, Your Honor.

12 THE COURT: I want to see your case that permits. That
13 minor, I've got real concerns with the minor.

14 MS. BAILEY: Yes, Your Honor. We'll get that for you.

15 THE COURT: Okay. And I have some concerns with your
16 convictions, too.

17 MR. HAZZARD: So do I, Judge, concerns, very concerned.

18 THE COURT: But we'll take a look at it. Get that
19 statute for me and let's talk about it in chambers and I'll
20 rule on it.

21 MS. BAILEY: Thank you, Your Honor.

22 THE COURT: I want the exact statute because --

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: -- your language doesn't necessarily agree
25 with my -- I hadn't looked at the statute in the last year,

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1 but I want to. It's limited as to what you can do even with
2 prior records. I'm not sure the words or felony is in there.

3 MS. BAILEY: We'll pull it for you, Your Honor.

4 THE COURT: Please do.

5 MR. HAZZARD: Yes, sir.

6 THE COURT: All right. What's next?

7 MR. HAZZARD: And we have -- we've got time to, we've got
8 time to figure that out. This -- it really isn't going to
9 come up till the end of the State's case in chief anyway.

10 Next motion, Your Honor, Senior Assistant Bailey is
11 always very good at getting discovery to me as soon as she
12 receives it. However, in this particular case, she received
13 approximately I think it's about 300 pages of jail
14 disciplinary records on Mr. Johnson. She received those on
15 April 11th, provided them to me on April 11th, which would have
16 been, you know, three days or I got them on the 11th. I think
17 she got them on the 10th. I would move to exclude them. First
18 of all, I do not think his disciplinary records at the
19 detention center are relevant.

20 THE COURT: I don't either. Let me -- are they -- you
21 -- I assume you got them for investigative purposes?

22 MS. BAILEY: Yes, Your Honor. I provide everything to
23 the Defense that's come to me.

24 THE COURT: Well, his disciplinary records not an issue
25 in this case.

1 MS. BAILEY: Your Honor, I do not intend to introduce
2 them to a jury. I do think that if the Defendant is convicted
3 that Your Honor -- I wanted Your Honor to be able to talk
4 about those records.

5 THE COURT: That's fine. I understand, but for purposes
6 of this trial they're not coming in.

7 MS. BAILEY: Correct. Yes, Your Honor.

8 THE COURT: That answers your question, Mr. Hazzard?

9 MR. HAZZARD: It does, Your Honor.

10 THE COURT: All right. No. They would be pertinent
11 inquiry --

12 MS. BAILEY: Now --

13 THE COURT: -- if convicted, obviously.

14 MS. BAILEY: -- Your Honor, to be clear, the disciplinary
15 records are not coming in. However, Mr. Johnson, we discussed
16 this in chambers, that he wrote grievance letters to the
17 jailers and those were used as handwriting samples.

18 THE COURT: That's a different. That's a total different
19 issue.

20 MS. BAILEY: Yes.

21 THE COURT: We'll discuss in a minute.

22 MS. BAILEY: Thank you, Your Honor.

23 THE COURT: That has nothing to do with disciplinary
24 issues. That letter that I'm, I'm aware of has nothing to do
25 with disciplinary issues. It's another issue. Can't we agree

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1 with that?

2 MS. BAILEY: Yes, Your Honor.

3 THE COURT: Sure.

4 All right. What's next, Mr. Hazzard?

5 MR. HAZZARD: Okay. Your Honor, I have had a motion for
6 production of recorded interviews. One is of Yia Hao Arnold
7 Zhong, Z-H-O-N-G. I have been provided with that, the August
8 24th, 2011, interview of Mr. Zhong. I've been provided with
9 that this afternoon, but the incident reports also indicate
10 there was a recorded interview of a Kwok Sung Chung, C-H-U-N-
11 G, goes by the name Daniel, on August 25th, 2011, at Georgetown
12 Memorial Hospital. I have never been provided with that
13 recorded interview.

14 THE COURT: What was that about?

15 MS. BAILEY: Your Honor, I don't believe that interview
16 exists.

17 THE COURT: Pardon me?

18 MS. BAILEY: It's my understanding from meeting with the
19 police department that that interview does not exist.

20 THE COURT: Was it ever, was it ever available?

21 MS. BAILEY: Not that I'm aware of.

22 THE COURT: Was it ever done?

23 MS. BAILEY: I would have to let one of the officers talk
24 about that. I don't believe it was recorded. Did they speak
25 with that man in the hospital? Yes.

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1 THE COURT: Well, who is, who is the person they
2 allegedly interviewed?

3 MS. BAILEY: That's our victim.

4 THE COURT: The what?

5 MS. BAILEY: That would be one -- our male victim.

6 THE COURT: Can anybody speak to the absence or presence
7 of that video, and if not, why not?

8 MS. BAILEY: Well, we'd have to ask them.

9 THE COURT: Well, have him stand up. If he's here he can
10 answer.

11 MS. BAILEY: Well, the victim can't because he doesn't --

12 THE COURT: I'm talking about the detective who allegedly
13 took it.

14 MS. BAILEY: Okay.

15 THE COURT: Is he here?

16 MS. BAILEY: Well, let's -- did -- were either of you all
17 at the hospital?

18 MR. SPARKMAN: Yes, Your Honor. I was.

19 THE COURT: Come around, please.

20 (Complies with request.)

21 THE COURT: Thank you for being present. Let me ask you
22 this. May I have your name for the record?

23 MR. SPARKMAN: John L. Sparkman.

24 THE COURT: And what is your position?

25 MR. SPARKMAN: Right now I'm currently a corporal

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1 training officer on a patrol division.

2 THE COURT: What were you on the date of this alleged
3 interview?

4 MR. SPARKMAN: Investigator.

5 THE COURT: Sir?

6 MR. SPARKMAN: An investigator.

7 THE COURT: Was it -- well, did you make such an
8 interview with one of victims?

9 MR. SPARKMAN: Myself and the supervisor at that time.

10 THE COURT: Was there a video taken?

11 MR. SPARKMAN: No, Your Honor.

12 THE COURT: There was never one?

13 MR. SPARKMAN: No. No video, not at the hospital.

14 THE COURT: Was there a written statement taken?

15 MR. SPARKMAN: We took a statement from him.

16 THE COURT: Was that provided, counsel, to Defense?

17 MS. BAILEY: Your Honor, I believe there's some
18 confusion. I don't -- the Defendant -- I mean, the victim,
19 the person they interviewed couldn't write English.

20 THE COURT: Yes.

21 MS. BAILEY: So, there's -- it's not a written statement.

22 THE COURT: Okay. Mr. Hazzard, they say no such video
23 exists.

24 MR. HAZZARD: As long they're saying it on the record.

25 THE COURT: Well, here's the officer says so, and if, if

1 it comes up they're not going to play it because they said
2 it's not -- I accept this officer's word. Yes, sir. Thank
3 you. You may be seated. What next?

4 MR. HAZZARD: Your Honor, and based on the incident
5 reports, I'm looking for a little bit of clarification as to
6 whether there was ever any out-of-court identification. In
7 chambers when we discussed this earlier, I believe that Senior
8 Solicitor Bailey indicated that there was no out-of-court
9 identification of Mr. Johnson prior to this, this trial today,
10 and if that is the case, then I'm fine with that, but if there
11 was some out-of-court identification then I would submit ---

12 THE COURT: You mean identification at the actual scene
13 of the crime?

14 MR. HAZZARD: No, sir. Not at the scene of the crime.
15 There were several people who apparently were interviewed at
16 different points in time. The incident reports indicate,
17 somewhat obliquely, that some folks were shown line-ups, some
18 may have been, some may not have, and I'm just trying to get
19 clarification whether there's going to be someone who's going
20 to jump up and say --

21 THE COURT: Can you clarify that for us, Ms. Bailey?

22 MR. HAZZARD: -- that they picked Mr. Johnson out of a
23 line-up.

24 MS. BAILEY: Okay. There's one person who picked Mr.
25 Johnson out of a line-up, and that's the Co-Defendant, Isiah

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1 Green, who previously knew Mr. Johnson. So the line-up was
2 unnecessary anyway.

3 THE COURT: I got you. So there is no line-up to be used
4 in the trial of this case?

5 MS. BAILEY: No, Your Honor.

6 THE COURT: That answers that, Mr. Hazzard?

7 MR. HAZZARD: Yeah. It does, Your Honor.

8 THE COURT: All right, sir.

9 MR. HAZZARD: Those are all of the Defense pretrial
10 motions at this time.

11 THE COURT: All right. Ms. Bailey.

12 MS. BAILEY: Thank you, Your Honor. The two --

13 THE COURT: Mr. Hazzard, I appreciate the very detailed
14 motions made by you.

15 MR. HAZZARD: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MS. BAILEY: The two victims in this case speak Mandarin
18 and Cantonese. We -- as the Solicitor's Office, Office of
19 Victim Services, has hired a translator for them for the
20 purposes of this trial for two reasons, one for their
21 testimony so that they may be translated to the jury, but
22 second of all, so that as they sit here in the courtroom they
23 can understand everything that's happening. I believe that
24 the proper procedure is that Your Honor qualify that
25 translator. There is -- we were -- we began this process by

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1 asking Court Administration for a list of certified Cantonese
2 or Mandarin translators in the state. None exist. Okay.
3 There are none on the court list. So we had to find a
4 translator who has not previously worked in the courts but is
5 otherwise qualified and get her to -- in here to translate.

6 THE COURT: All right. If I find she's qualified we will
7 swear her now and also swear her again in the presence of the
8 jury.

9 MS. BAILEY: Thank you, Your Honor.

10 THE COURT: Have her come forward, please.

11 Swear this witness.

12 (Jian Qin sworn by Court.)

13 THE COURT: All right. Where do you live?

14 MS. QIN: I live in Myrtle Beach, South Carolina.

15 THE COURT: And what qualifies you to be a translator in
16 -- is their language -- what is it?

17 MS. QIN: I speak Chinese, Mandarin Chinese. I was born,
18 raised in China.

19 THE COURT: China -- Chinese what?

20 MS. QIN: Mandarin Chinese.

21 THE COURT: All right. Are they Mandarin, these two
22 Defendants [sic]?

23 MS. QIN: Yes, sir. They speak Mandarin Chinese as well.

24 THE COURT: Okay. You were born and raised in -- how old
25 are you now?

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1 MS. QIN: I am going to be 35.

2 THE COURT: And how long have you been in this country?

3 MS. QIN: I've been here for 14 years.

4 THE COURT: Fourteen years?

5 MS. QIN: Yes, sir.

6 THE COURT: And you speak fluently Mandarin?

7 MS. QIN: Yes, sir. That's correct. I speak, read and
8 write Chinese Mandarin.

9 THE COURT: How far did you go in school in China?

10 MS. QIN: I graduated from high school in China and I
11 went to college in the States. I went to Coastal Carolina
12 University.

13 THE COURT: Have you ever been qualified as an expert in
14 interpreting this language?

15 MS. QIN: I am a member of the American Translators
16 Association, but I have never interpreted in courtroom before.

17 THE COURT: What, what, what association was that?

18 MS. QIN: American Translators Association.

19 THE COURT: What qualifies you to be a member of that
20 organization?

21 MS. QIN: It's just being natural born Chinese citizen.

22 THE COURT: Do you feel like that you are competent and
23 capable of fully, intelligently interpreting the language of
24 these two Defendants?

25 MS. QIN: Yes, sir.

1 THE COURT: Do you have any difficulty whatsoever?

2 MS. QIN: Not I can think of.

3 THE COURT: Okay. Counsel for the Defense, would you
4 care to examine her on this issue?

5 MR. HAZZARD: Yes, sir, Your Honor. Very briefly.

6 THE COURT: Come on have a -- come stand --

7 MS. QIN: Yes, sir.

8 THE COURT: -- come take the witness stand for me,
9 please. I hope you understand that our rules just require --

10 MS. QIN: Right.

11 THE COURT: -- that I make a determination as to your
12 qualifications simply because you have not been certified.
13 Let me ask you this.

14 MS. QIN: Yes, Your Honor.

15 THE COURT: Have you ever asked to be certified?

16 MS. QIN: No, sir.

17 THE COURT: Have you ever actually asked to do any
18 interpretation either in or out of court?

19 MS. QIN: Actually, yes, sir. I have done --

20 THE COURT: Pardon me?

21 MS. QIN: I have done translation works before.

22 THE COURT: You've done what?

23 MS. QIN: Translation works before.

24 THE COURT: For who?

25 MS. QIN: For a company called ISA, International Special

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1 Attractions. They hire Chinese artisans to come perform in
2 the United States or all around the world. I was their on-
3 site manager and a translator. I, I was accompanying -- I
4 accompanied them for the U.S. tour in 2010 and also went to
5 South Africa to do the touring over there during World Cup.

6 THE COURT: For this same company?

7 MS. QIN: Yes, sir.

8 THE COURT: Doing interpreting?

9 MS. QIN: That's correct.

10 THE COURT: You -- you are primarily fluent in Mandarin
11 Chinese?

12 MS. QIN: That's correct, sir.

13 THE COURT: Okay. Be seated, please, and thank you.

14 MS. QIN: Thank you.

15 THE COURT: So you are saying to me under oath that
16 you've interpreted extensively for this company. What's the
17 name of this company?

18 MS. QIN: International Special Attractions.

19 THE COURT: What, what is their primary workload? What
20 do they do?

21 MS. QIN: They hire Chinese performers or artisans to
22 come to the United States to perform. For example, like
23 circus shows and things like that.

24 THE COURT: I see, and so you interpreted for them? They
25 spoke no English?

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1 MS. QIN: That's correct.

2 THE COURT: And you interpreted for them to be hired or
3 not?

4 MS. QIN: No. They were already hired, and they hired me
5 to accompany them through the show as their on-site manager.

6 THE COURT: Okay. And how long did you do this?

7 MS. QIN: I did that a whole year in 2010.

8 THE COURT: I got you, and have you done any interpreting
9 since then?

10 MS. QIN: I work for -- well, my job, our company has
11 clients in China as well. So I do, you know, translating jobs
12 --

13 THE COURT: All right. What company do you work for?

14 MS. QIN: I work for Klausner Trading USA. It's a lumber
15 trading company. It's an Austrian, Germany company.

16 THE COURT: And so you are using your --

17 MS. QIN: Language skills in --

18 THE COURT: -- to do that sort of work, too?

19 MS. QIN: -- in work. That -- that's correct, sir.

20 THE COURT: So you have been using your skills in this
21 field for several years now and are using it today?

22 MS. QIN: Yes. That's correct, sir.

23 THE COURT: Thank you, and I appreciate your response.
24 Yes, sir.

25 MR. HAZZARD: Oh. Thank you, Your Honor. May it please

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1 the Court?

2

EXAMINATION

3 BY MR. HAZZARD:

4 Q Please state your full name and spell your last name for
5 the record.

6 A My first name is Jian, J-I-A-N, last name is Qin, Q-I-N.

7 Q And you indicated that Mandarin is your native language;
8 correct?

9 A That's correct.

10 Q Okay. Now, the victims in this case, do they speak
11 Mandarin or do they speak Cantonese?

12 A They speak both.

13 Q Okay. And they speak Mandarin clearly enough so that you
14 can carry on a conversation with them; is that correct?

15 A That's correct.

16 Q Okay. You can tilt that down if you need to.

17 A Sorry.

18 Q Okay. Now, so is your interaction with them done in
19 Mandarin or Cantonese or both?

20 A In Mandarin only.

21 Q Okay. Now, when you're speaking with them and you are
22 relaying to them what's going on here in court --

23 A That's correct.

24 Q -- are you interpreting or are you translating?

25 A I am interpreting word by word.

1 Q Okay. Now, let's be clear we're talking about the same
2 thing here. If you're interpreting then you're interpreting
3 your own personal spin on what's being said. Whereas,
4 translation would be to actually take what is said and to
5 relay it word for word. So which are you doing?

6 A Well, I'm translating basically word by word what is
7 talked about in court.

8 Q Okay.

9 A So I don't give my personal opinions and things like that
10 involved.

11 Q Okay. Do you understand that if you are -- if the Judge
12 finds you qualified as a translator in this case that your
13 responsibility will be to translate word for word what is
14 said, what is asked?

15 A That's correct. I understand.

16 Q Okay. Do you feel based on your training and your
17 experience that you have the capability of translating word
18 for word what is said and what is asked?

19 A I think so.

20 Q Okay. But you're not a hundred percent sure because you
21 have never actually been in this position before; is that
22 correct?

23 A That's correct.

24 Q All right.

25 MR. HAZZARD: I have no further questions.

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1 THE COURT: For the record, you inquired of the state
2 with reference to qualified interpreter on their list?

3 MS. BAILEY: Yes, Your Honor. We contacted Ms. Desiree
4 Allen, who not only schedules court reporters, but also keeps
5 a state-wide master list of all certified translators.

6 THE COURT: Yeah.

7 MS. BAILEY: And she indicated there is not a Mandarin or
8 Cantonese translator in the state that is certified by the
9 courts. So we did the next best thing we knew how to do,
10 which was --

11 THE COURT: I understand.

12 MS. BAILEY: -- you know, find somebody who we felt was
13 otherwise duly qualified who could be, who could be certified.

14 THE COURT: You are saying to me, and you obviously were
15 raised in China, went to school in China.

16 MS. QIN: Yes, sir.

17 THE COURT: And have been engaged in your profession of
18 translating even today. Are you saying to me under oath that
19 if I qualify you you will translate not from your
20 interpretation but on a word-for-word basis?

21 MS. QIN: That's correct, sir.

22 THE COURT: And you feel competent that you can do that?

23 MS. QIN: Yes, sir.

24 THE COURT: You have any further thoughts?

25 MR. HAZZARD: Nothing further from the Defense.

1 THE COURT: Okay. I conclude having examined this
2 potential witness in detail that she was born in China, raised
3 in China, educated in high school in China, and even since in
4 this country has used her translating skills in her work
5 before and even today and would conclude in the absence of a
6 certified translator in this language in the State of South
7 Carolina, based on her testimony and experience, I find her
8 fully qualified to be an examiner in this particular language
9 for these two Defendants in this case.

10 Now --

11 MS. QIN: Yes, sir.

12 THE COURT: -- as long as they're in the courtroom and we
13 are having proceedings, please let them know what's going on.

14 MS. QIN: Yes, sir.

15 THE COURT: And at the trial of the case, your
16 responsibility is to translate exactly what they say, not your
17 interpretation, but what they say.

18 MS. QIN: Yes. Yes, sir. I understand.

19 THE COURT: Do you have any questions?

20 MS. QIN: No, sir.

21 THE COURT: If anything develops today or later in the
22 trial of the case that you have some concerns, you let me know
23 and I'll deal with it. Okay?

24 MS. QIN: Thank you, sir.

25 THE COURT: And we appreciate your being here and look

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1 forward to working with you.

2 MS. QIN: Thank you.

3 MR. HAZZARD: Your Honor.

4 THE COURT: Yes, sir.

5 MR. HAZZARD: I would ask, before the witness steps down,
6 I would ask the Court to inquire of her that based on what's
7 gone on so far this morning or earlier today, are there any
8 issues that she foresees as far as particular terms, legal
9 terms that we use? Are there any problems translating those
10 or --

11 MS. QIN: Well, I mean, so far, you know, there's not a
12 legal term that I didn't understand. I mean, consider the
13 fact I do have a bachelor degree in business but --

14 MR. HAZZARD: I apologize. Don't want you --

15 MS. QIN: Oh. It's okay.

16 MR. HAZZARD: I don't want to -- I don't want you to
17 misunderstand me.

18 MS. QIN: No.

19 MR. HAZZARD: I'm not saying terms you don't understand.

20 MS. QIN: Right.

21 MR. HAZZARD: I'm saying terms that may not have any
22 ready translation into Mandarin.

23 MS. QIN: Well, I mean, if it's the law then most of the
24 case you will have, but however what I was trying to say is
25 during the actual hearing, you know, because I am not a law

1 major. So there may be terms that I -- that the --
2 professional terms that you guys may use that I may have
3 questions, but if I ask could you please to explain to me in
4 the simpler terms that I normally will use in the daily basis?

5 THE COURT: We can work that out as we go. She's fully
6 qualified. There's been no legal terms here that would be
7 confusing this afternoon that I know of, but during the,
8 during the translation if any issues arise just stop and let
9 me know. Okay?

10 MS. QIN: Yes, sir. I will do.

11 THE COURT: All right. Thank you.

12 MS. QIN: Thank you.

13 THE COURT: All right. What's next, Mr. Hazzard?

14 MR. HAZZARD: Those are all --

15 THE COURT: I believe you had concluded your motions.
16 Had you not?

17 MR. HAZZARD: Yes, sir. We were on the State's motions.

18 THE COURT: We're on -- at the State's case. Now, that
19 witness will be sworn before the jury tomorrow, but the record
20 will reflect given, given the absence of no qualified
21 interpreter of this language on the state rolls I find her
22 fully qualified by education and experience. What further
23 motions does the State have?

24 MS. BAILEY: None from the State, Your Honor.

25 THE COURT: All right, sir. Then we're ready to proceed

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1 at 9:30 in the morning, and come forward, gentlemen, come
2 forward before they leave.

3 MR. HAZZARD: Yes, sir.

4 (Whereupon, a bench conference is held.)

5 THE COURT: All right. Thank you.

6 OFF THE RECORD

7 (On the record, April 15, 2014. The following takes
8 place outside the presence of the jury.)

9 THE COURT: All right, sir. Are we ready to proceed?

10 MS. BAILEY: Yes, Your Honor. The State -- we're on the
11 record with 2011-GS-22-1185, that's a true-billed indictment
12 for armed robbery; 2011-GS-22-1187, that's a true-billed
13 indictment for attempted murder; and 2011-GS-22-1186, another
14 true-billed indictment for attempted murder. It's my
15 understanding that the Defendant, Dwaine Lamark Johnson, Jr.,
16 intends to enter a guilty plea as charged to each of these,
17 and the State is not making any recommendation or negotiation.
18 For the record, we are in trial posture. We actually have
19 begun a trial and have picked a jury and were about to start
20 opening statements. All of the witnesses are here.

21 THE COURT: Mr. Hazzard, you, of course, represent this
22 Defendant?

23 MR. HAZZARD: Yes, sir, Your Honor.

24 THE COURT: And the State of South Carolina indicates
25 that he desires to plead to these charges; is that correct?

1 MR. HAZZARD: That is my understanding, sir.

2 THE COURT: Give me a factual basis for the charge of
3 armed robbery and the two attempted murders.

4 MS. BAILEY: Thank you, Your Honor. On August 24th of
5 2011 in the City of Georgetown at the Szechuan Restaurant on
6 Highmarket Street the Defendant, along with a Co-Defendant,
7 Isiah Green, walked into that restaurant at approximately 9:50
8 at night. Once they walked into the restaurant, Dwaine
9 Johnson, Jr., pointed a gun at the female proprietor of the
10 restaurant, who was standing up front. He began to argue with
11 her. The male proprietor of the restaurant came out from the
12 back of the restaurant. At that point, Dwaine Johnson shot
13 the male proprietor. He fell to the ground. The female
14 proprietor turned around and attempted to tend to her husband
15 who had just been shot, and at that point Dwaine Johnson, Jr.,
16 shot the female proprietor as well. He then turned around and
17 was able to get the cash drawer out, and according to the Co-
18 Defendant, took about \$350.

19 Dwaine Johnson and Isiah Green then fled on foot. They
20 exited the restaurant, went through the neighborhood behind
21 the restaurant, went straight to Isiah Green's house, which
22 was on Railroad Avenue. Once at Railroad Avenue, Dwaine
23 Johnson, Jr., then changed clothes. His friend, Isiah Green,
24 gave him some clothes and then Isiah made him leave. Where he
25 went from there we do not know. However, testimony would show

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1 that we had cell phone records indicating that the two of them
2 had had contact and had agreed to meet up shortly before the
3 incident, that Mr. Johnson was not at all on his cell phone
4 during the time of the incident. We also had DNA evidence
5 that we were prepared to present that linked Isiah Green, Jr.,
6 to the crime scene. Isiah Green, Jr., was prepared to testify
7 as to what he saw and his participation in this event, and we
8 also had some letters from the jail that were intercepted that
9 were from Mr. Johnson to his Co-Defendant, Mr. Green. Now,
10 Mr. Green never received those letters because we intercepted
11 them, but in those letters Mr. Johnson asked Mr. Green to lie
12 on the stand, and so we were prepared to present those letters
13 along with a handwriting expert who would testify that those
14 letters were, in fact, penned by Mr. Johnson.

15 Mr. Johnson was 17 at the time that this crime was
16 committed. So he has no adult record. He does have a
17 significant juvenile record for multiple assaults that goes
18 all the way back to 2006 when he was 13 years old. He also,
19 while he has been incarcerated on this crime awaiting trial,
20 has racked up a disciplinary file at the jail that is quite
21 thick. He pled to two counts of throwing bodily fluids on a
22 correctional officer, was sentenced to consecutive time on
23 each of those, went and did some time at SCDC. SCDC actually
24 accidentally released him instead of sending him back here to
25 our jail. We then had to conduct a week-long manhunt to find

1 him and get him back in the jail house.

2 We got him back in the jail house. He had to go back to
3 SCDC to serve some more time. When he was transferred from
4 SCDC to our jailhouse, he actually brought a weapon along with
5 him, and shortly after his arrival, he stabbed a fellow
6 inmate. So he currently has pending an assault and battery
7 charge and a possession of a weapon by a prisoner charge. The
8 long and short of it is, Your Honor, I wanted you to know his
9 full disciplinary history from the time that he's been out at
10 the jail. He has been such a problem for them that they've
11 actually been housing him in Effingham.

12 THE COURT: Let me ask you this in fairness to the
13 Defendant, does this guilty plea clean up all pending charges
14 against him and including those two new charges?

15 MS. BAILEY: Yes, Your Honor. It does.

16 THE COURT: The jailhouse charge -- the Defendant's
17 entitled to know that on the record though. I note for the
18 record his record. As I remember from pretrial, and we've had
19 a pretrial hearing on yesterday, the Co-Defendant Green has
20 fully admitted his guilt; is that correct?

21 MS. BAILEY: He has. As soon as Mr. Green -- the break
22 in the case came when we received an early CODIS hit on some
23 DNA collected at the scene and that DNA linked Isiah Green to
24 the crime scene. As soon as Mr. Green was arrested, a short
25 while later, he gave a full statement to law enforcement. He

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1 also signed a proffer agreement with the State and has met
2 with me and my investigator to participate in getting ready
3 for this trial. He was prepared to testify.

4 THE COURT: And he implicated the Defendant Green, is
5 that correct, Johnson, rather?

6 MS. BAILEY: He did, and I would also note for the record
7 that his recounting of events is completely consistent with
8 the victims' recounting of events, which is that the victims
9 were prepared to testify and have always said that it was the
10 shorter of the two Defendants who had the gun, it was the
11 shorter of the two Defendants who did the robbing, and it was
12 the shorter of the two Defendants who actually pulled the
13 trigger on that gun, and Isiah Green is taller than Mr.
14 Johnson. So Isiah Green's testimony was consistent --

15 THE COURT: As I recall from the testimony the DNA came
16 from a glass that the Defendant Green was drinking.

17 MS. BAILEY: That's correct, Your Honor, while --

18 THE COURT: And that the victims have said that the other
19 person was the one who had the gun?

20 MS. BAILEY: Yes, Your Honor. The victims have, have
21 always maintained and would have maintained at trial that the,
22 that the Defendant who entered the restaurant who went and
23 fixed the cup where the DNA came from that linked to Isiah
24 Green was not the same Defendant who brought the gun in who
25 shot them.

1 THE COURT: Well, for my purposes it doesn't make a lot
2 of difference who had the gun or who did the shooting under
3 the hand of one the hand of all. Both participants are
4 equally guilty in my view.

5 Mr. Hazzard ---

6 MR. HAZZARD: Yes, sir, Your Honor.

7 THE COURT: --- we've had yesterday a protracted pretrial
8 hearing and, of course, as always, you have represented this
9 Defendant very diligently, and I congratulate you as public
10 defender for that type of representation. It always makes me
11 feel proud of our judicial system when an individual can get a
12 good lawyer at no cost to him where he's charged with serious
13 offenses and then securing your services here absolutely free
14 to him, he has had an excellent lawyer, and I was impressed
15 very much on yesterday the way in which you handled the
16 various motions, and I thank you for that.

17 MR. HAZZARD: Thank you, Your Honor.

18 THE COURT: Mr. Hazzard, I need to know for the record, I
19 know that you have, but for the record, I want you to recite
20 the fact that you have given to him his constitutional rights.

21 MR. HAZZARD: Your Honor, in the course of representing
22 Mr. Johnson, and I have been representing him now since
23 sometime in April or May of 2012, so for approximately two
24 years now, in the course of that representation and over the
25 past week, he and I have discussed at length his rights under

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1 the Fourth, the Fifth, the Sixth and the 14th Amendment and
2 under the South Carolina Constitution, specifically that he's
3 got the right to due process under the law, he has the right
4 to a trial by a jury, a jury of his peers who have no friends
5 to reward, no enemies to punish. He has the right to confront
6 any and all witnesses and evidence against him and the right
7 to examine all evidence against him. He has the right to
8 testify, and conversely, I've explained to him he has the
9 right to remain silent and not testify. I've explained to him
10 that the burden of proof has always been on the State to
11 prove, if they can, his guilt. I've always explained to him
12 that this Court would explain to the jury, as it already has
13 done, even though they are not sworn yet, that with regard to
14 this case, in his case he has the constitutional right for the
15 jury to understand that he is presumed innocent unless and
16 until proven guilty. I've explained all of that to him. We
17 have gone over all of the discovery that has been provided,
18 and Senior Solicitor Bailey has provided it as quickly as it
19 has been provided to her, and I would submit to the Court that
20 one of the delays in the disposition of this case has been,
21 unfortunately, the fact that there have been a lot of issues
22 with gathering up all the discovery and providing it in a
23 timely fashion, and Mr. Johnson wants the Court to know that
24 had the discovery that was provided yesterday and today been
25 provided to him two years ago, this matter may have been

1 disposed of quite some time ago. He doesn't want the Court to
2 feel as if he was jerking you around or jerking the justice
3 system around, but as, as the Judge well knows, the Defendant
4 has the absolute right to examine the discovery and evidence
5 against him, and Mr. Johnson wanted that opportunity. The
6 Court has provided it, and as a result, now we stand here and
7 he has executed sentence sheets. I've explained to Mr.
8 Johnson everything about how a trial works. We had that talk
9 in Effingham a couple of weeks ago as far as the role of the
10 Court and my role as his attorney, the Prosecutor's role, you
11 know, witnesses being, being sworn to testify and our right to
12 confront them and cross examine them, that he had the right to
13 testify if he wished. I explained to him that if he chose to
14 place evidence on the record in trial, that that would allow
15 the Prosecutor the right to not only cross examine that
16 evidence but also to a rebuttal case if they chose. I've
17 explained everything that I know about a trial of a case,
18 about the facts of this case, about his rights and then what
19 he's facing.

20 With regard to the sentencing sheets that he has signed,
21 I have explained to him that these are violent offenses, and
22 specifically, most serious offenses and that there are three
23 most serious offenses. I've explained to him that if he is
24 ever in the future convicted of a serious or most serious
25 offense again, that the Prosecutor upon that conviction will

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1 be able to ask a Circuit Court Judge to impose a sentence of
2 life in prison and that the Circuit Court Judge will have no
3 choice under our law but to give him a sentence of life in
4 prison on that subsequent serious or most serious conviction.

5 I've explained everything I know to explain to him, Your
6 Honor, and it is my understanding based on my dealing with him
7 that he has understood. He has asked many questions. We have
8 talked at length, and it is my understanding that this
9 decision to enter this plea is his decision freely and
10 voluntarily made and intelligently made after a great deal of
11 thought, sir.

12 THE COURT: Thank you. In reference to the turning over
13 of discovery material, I have discussed with Captain Small my
14 concern with the investigator in this case waiting till last
15 night to review his files. That is unacceptable, but
16 fortunately, that last video, which was simply a video of the
17 victims, was turned over, and you had the full opportunity to
18 review it this morning, but I suggest to Captain Small that in
19 the future follow the rules and turn this discovery material
20 over promptly, and he has assured me that that will occur.

21 MR. HAZZARD: Yes, sir, Your Honor.

22 THE COURT: Mr. Johnson, I am aware of the fact that on
23 this sad occasion you were only 17 years of age. Having said
24 that though, armed robbery and attempted murder are serious,
25 serious charges. Your lawyer -- you understand, you were here

1 yesterday, and you know that we have selected a jury, who will
2 remain unsworn in a jury room waiting to come out and give you
3 and the State a fair trial. You understand that? Is that
4 true, Mr. Johnson?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Okay. The Solicitor indicates and your
7 distinguished attorney affirms that it is your decision to
8 plead guilty to the armed robbery and two attempted murders;
9 is that correct?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: On that occasion, did you and the Defendant
12 Green go into that restaurant armed for robbery and shoot two
13 people?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: I thank you for your candor and for your
16 answer and to these charges you are pleading freely and
17 voluntarily?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: You have been sworn -- he has been sworn, has
20 he not?

21 THE CLERK: Not this morning.

22 THE COURT: Huh?

23 THE CLERK: Not this morning.

24 THE COURT: Please swear him.

25 (Defendant is sworn by the clerk.)

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1 THE COURT: Mr. Johnson, your answers to the previous
2 questions are true and correct under oath; is that correct?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: Your attorney -- you are entitled to some
5 valuable constitutional rights which you are free to accept or
6 you are free to waive. In accepting, in, in desiring to plead
7 guilty, you are waiving various constitutional rights as
8 explained to you by your attorney. You understand that?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: You had the absolute right to a trial by
11 jury, got a jury waiting. Do you understand that?

12 MR. JOHNSON: Yes, sir.

13 THE COURT: You had the right to confront the witnesses
14 against you, including your Co-Defendant Green. You
15 understand that?

16 MR. JOHNSON: Yes, sir.

17 THE COURT: You had a right to testify in your own behalf
18 and call any witnesses you wanted. You understand that?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: If you had decided not to testify, I would
21 charge the jury that that is your absolute right, that there's
22 no adverse inference against you. I would further charge the
23 jury that your failure to testify could not even be entered in
24 the discussion in the jury room. You understand that?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: Now, in pleading guilty, you are waiving
2 various rights that you may have had under our constitution
3 and that's your decision. Now, it is your decision and not
4 your attorney's to plead guilty to these three charges; is
5 that correct?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: And you are under oath saying to me that you
8 and the Defendant Green robbed that restaurant?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: You apparently were the one, ones that had
11 the weapon; is that correct?

12 MR. JOHNSON: Yes, sir.

13 THE COURT: Now, these are very serious charges, and I
14 recognize that you were only 17 at the time.

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Do you have any questions about what I'm
17 saying to you?

18 MR. JOHNSON: No, sir.

19 THE COURT: You have none.

20 Mr. Hazzard, I -- are you satisfied with Mr. Hazzard's
21 services?

22 MR. JOHNSON: Oh, yes, sir.

23 THE COURT: He's done everything you've asked him to do?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Called all the witnesses you wanted?

Guilty Plea

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1 MR. JOHNSON: Yes, sir.

2 THE COURT: Reviewed with you any discovery, including
3 the videos this morning?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: You've seen all that?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: You're happy with Mr. Hazzard?

8 MR. JOHNSON: Yes, sir.

9 THE COURT: He's done an excellent job for you, no
10 question about that?

11 MR. JOHNSON: Yes, sir.

12 THE COURT: I conclude having examined this Defendant
13 under oath that his plea is freely, knowingly, intelligently,
14 voluntarily made. He's had the experiences of an excellent
15 lawyer with whom services he says he's satisfied. I conclude
16 beyond a reasonable doubt that it's proper to accept his plea
17 of guilty, one, as to armed robbery, two, as to attempted
18 murder, three, as to attempted murder.

19 Mr. Hazzard, I'll hear from you in just a moment. Did
20 the victims wish to be -- they are here. Did they wish to
21 testify?

22 MS. BAILEY: No, Your Honor. I would note for the record
23 that the victims are here in the courtroom and present for
24 this sentencing and this guilty plea. They were here and
25 prepared to testify. I also want to note for the record that

1 their injuries were severe. They were in the hospital for
2 quite some time. They both actually still have bullets inside
3 of them that were unable to be removed and --

4 THE COURT: Is there anything further from the Defendant
5 -- the State at this time?

6 MS. BAILEY: No, Your Honor.

7 THE COURT: Okay. Mr. Hazzard, I did note on yesterday
8 and I see this morning that the Defendant Johnson's family was
9 here in Court as they are today, and I'm glad to see that he
10 will have good family support in the future, and I thank his
11 family for being here on this unfortunate day. I'll be glad
12 to hear from you.

13 MR. HAZZARD: Thank you very much, Your Honor.

14 As the Court has noted, Dwaine was 17 years old when this
15 incident occurred. He has had a pretty rough life, Judge,
16 because when I first met with him back on April 27th of 2012 at
17 the detention center he indicated at that point that he never
18 had the opportunity even to attend high school because he was
19 locked up at age 14 for assault and battery, but that he was
20 trying and working at that time on obtaining his equivalency
21 diploma. His mother, Luranda [spelled phonetically], has
22 worked for many years as a housekeeper, and his father,
23 Dwaine, Sr., has worked and I believe still does work for
24 Screen Tight plant. They make screen doors. Dwaine does not,
25 to my knowledge, have any children. He's never been in the

Guilty Plea

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1 military. I believe he's obviously a young man who is very,
2 very bright, but also appears to have anger issues, and I'm
3 not sure where they stem from. He was evaluated in 2008, and
4 at that time he would have been 15 years old for those anger
5 issues arising from, as the Prosecutor mentioned, as a
6 juvenile some assault and battery type charges and convictions
7 that came up, and I think even then they were trying to figure
8 out, you know, where this anger stems from. I do not know.

9 He is here accepting responsibility for his actions, the
10 actions of he and his Co-Defendant Isiah Green. We ask that
11 the Court not punish him for his failure to take a plea offer
12 that was discussed when he had never been given the
13 opportunity to review all of the evidence against him. As the
14 Court recalls, the plea offer that was placed on the record
15 yesterday, and we understand that that plea offer had been
16 withdrawn, of course, at the time the trial began, was 10 to
17 15 on one count of armed robbery, and we understand we're
18 obviously here and Dwaine is pleading to all three counts,
19 that being also the two attempted murders, but we would ask
20 that the Court seriously consider a plea in that range of 10
21 to 15 on all three charges and run them concurrent and to give
22 him credit. He was arrested September 9th of 2011, and he has
23 been incarcerated since that time except for a brief period
24 when he was improperly released. So I would ask that the, the
25 sentence sheets denote credit for time served from September.

1 9th of 2011 until the present day, Your Honor, and that by my
2 count is approximately 948 days.

3 THE COURT: The sentence that I propose is without
4 regards to any alleged plea negotiations that were or were not
5 withdrawn, that is not for my concern.

6 MR. HAZZARD: Yes, sir.

7 THE COURT: I'm concerned in several ways. First, I'm
8 concerned with the seriousness of a crime for armed robbery,
9 two attempted murders. This young man easily could be
10 standing before me for murder for life in prison, serious,
11 serious charges.

12 On the other hand, I am concerned with the fact that at
13 the time he was only 17 years of age. I'm not going to hold
14 against him the fact that he did not accept any purported
15 negotiations because simply the investigating officers in this
16 case failed to do that which they should have done, and he
17 didn't have an opportunity to review some of the evidence
18 against him until this morning, and that's unacceptable, and
19 Captain Small assured me that process will be corrected, but
20 clearly, and he had the full opportunity to review that video
21 which, as I understand it, was the, was the statements of the
22 victims; isn't that correct?

23 MR. HAZZARD: Yes, sir, Your Honor. It was an audio disk
24 of the female victim's statement at the hospital shortly after
25 the incident.

Guilty Plea

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1 THE COURT: All right, Mr. Johnson, given the fact that
2 at the time you were only 17, I don't want you to have to
3 spend the rest of your life in jail, though the seriousness of
4 your charge against you would suggest that. Some day in the
5 future I want you to have an opportunity to get out of jail
6 and to have a productive life. I do suggest to you that your
7 conduct in the city jails here is not conducive to you getting
8 out any time on probation or parole. The State of South
9 Carolina and our corrections people are not going to permit
10 that sort of conduct, and you ought to be aware of it. Given
11 the fact that you're 17 years of age and for the reasons that
12 I have stated, I conclude that the proper sentence for these
13 horrendous crimes is as follows: upon the charge of armed
14 robbery, the sentence and judgment of this Court is that you
15 be confined in the state penitentiary for a period of 15
16 years. With reference to the first attempted murder, I
17 sentence you to 15 years concurrent, and with reference to the
18 second attempted murder, I again sentence you to 15 years
19 concurrent. It is my judgment given the fact that you were
20 only 17 at the time, those are serious charges, that a
21 sentence of 15 years is appropriate in these cases, and it is
22 so ordered.

23 Thank you, Mr. Hazzard.

24 MR. HAZZARD: Thank you, Your Honor.

25 THE COURT: Thank you, Solicitor.

1 MR. HAZZARD: For the record, will the Court give Mr.
2 Johnson credit for the time that he has served?

3 THE COURT: Yes. He will have credit for the time
4 served.

5 MR. HAZZARD: Thank you, Your Honor.

6 MS. BAILEY: Thank you, Your Honor.

7 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Dwaine Lamark Johnson, Jr., held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on April 14-15, 2014.

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

Grace L. Hurley
Grace L. Hurley, CVR-CM-M
Official Reporter

February 10, 2015.

Georgetown County Circuit Court

RANDOM STRIKE SHEET

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JUDGE NAME : Edward B. Cottingham

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : DWAIN JOHNSON

DESCRIPTION : 2011GS2201185-1187 & 2014GS2200073-1 Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Hamel, Martha L	74	W	F	(X)	()	()	
2 Roberts, Matthew M	148	W	M	(✓)	(✓)	()	
3 Hunyadi, Thomas J	86	W	M	()	()	()	
4 Stecz, Robert S	166	W	M	(✓)	(X)	()	
5 Rollins, Ramona L	151	W	F	(✓)	(X)	()	
6 Hilton, Ivory A	80	B	M	(X)	()	()	
7 Robb, Bernard S	147	W	M	(✓)	(X)	()	
8 Jones, Candace M	92	W	F	(✓)	(✓)	()	
9 Craft, Joanne I	36	W	F	(✓)	(X)	()	
10 Hudson, Krista S	84	B	F	(X)	()	()	
11 Bryant, Walter E	23	W	M	(✓)	(X)	()	
12 Moore, Donna M	120	W	F	(✓)	(X)	()	
13 Chapman, Elting L III	29	W	M	(✓)	(X)	()	
14 Shackelford, Sylvester	156	B	M	(X)	()	()	
15 Keith, Beverly B	95	B	F	(✓)	(✓)	()	
16 McCray, Charles S	110	W	M	(✓)	(X)	()	
17 McCray, Jonathan H	112	B	M	(✓)	(✓)	()	
18 La, Sane Anastasia C	98	B	F	(✓)	(✓)	()	
19 Frank, Walter L	47	W	M	(✓)	(X)	()	
20 Palazzo, Margaret	136	W	F	(✓)	(✓)	()	
21 Bennett, Merideth W	10	W	F	(✓)	(✓)	()	
22 Conley, Nanci L	35	W	F	(✓)	(X)	()	
23 O'dell, Marvin R	130	W	M	(✓)	(✓)	()	
24 Moore, Latarsha R	121	B	F	(✓)	(✓)	()	

Georgetown County Circuit Court RANDOM STRIKE SHEET

101

JUDGE NAME : Edward B. Cottingham
JUDICIAL TYPE : Criminal
PANEL ID : DWAIN E JOHNSON
COURTROOM CTR

Sorted by: Random Nbr

DESCRIPTION : 2011GS2201185-1187 & 2014GS2200073-7 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Lindamood, Stephen A	103	W	M	(✓)	(✓)	()	
26 Abrams, Joni A <i>Relate</i>	1	W	F	(✓)	(✓)	()	
27 York, Curtis I	200	B	M	(X)	()	()	
28 Cameron, Lisa M (Oct. 1)	24	W	F	(✓)	(✓)	()	
29 Celentano, Richard E	28	W	M	(✓)	(X)	()	
30 Olson, Karen P	131	W	F	(✓)	(X)	()	
31 Bryant, Lisa F (Oct. 2)	22	B	F	(✓)	(✓)	()	
32 Tisdale, Charlene T	174	B	F	(✓)	(✓)	()	
33 Simmons, Victoria R	160	B	F	()	()	()	
34 Gates, Sandra M	56	W	F	()	()	()	
35 Nesbit, Bernice G	127	B	F	()	()	()	
36 Smith, Nikia L	161	B	F	()	()	()	
37 Michenon, Jean P	118	W	M	()	()	()	
38 Waterman, Sheryn E	187	W	F	()	()	()	
39 Grimmage, Kevin T	72	B	M	()	()	()	
40 Bruce, Melanie G	21	W	F	()	()	()	
41 Anderson, Kiyanna M	3	B	F	()	()	()	
42 Wilder, Dreamer C	191	W	M	()	()	()	
43 Mccutcheon, Brandon K	115	W	M	()	()	()	
44 Ryals, Suzanne	153	W	F	()	()	()	
45 Locasale, Robert J	105	W	M	()	()	()	
46 Richardson, Montez D	145	B	F	()	()	()	
47 Casselman, Melanie T	27	W	F	()	()	()	
48 Rincione, Shari K	146	W	F	()	()	()	

**Georgetown County Circuit Court
RANDOM STRIKE SHEET**

JUDGE NAME : Edward B. Cottingham

Sorted by: Random Nbr

CASE TYPE : Criminal

PANEL ID : DWAIN JOHNSON

DESCRIPTION : 2011GS2201185-1187 & 2014GS2200073- Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
49 Hardee, Cassidy H	76	W	F	()	()	()	

Total Number of Jurors: 49

** END OF REPORT **

**Georgetown County Circuit Court
RANDOM STRIKE SHEET**

103

2nd draw

DGE NAME : Edward B. Cottingham
TRIAL TYPE : Criminal
PANEL ID : DWAIN JOHNSON
COURTROOM CTR

Sorted by: Random Nbr

DESCRIPTION : 2011GS2201185-1187 & 2014GS2200073-7 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Roberts, Matthew M	148	W	M	(✓)	(✓)	()	
2 O'dell, Marvin R	130	W	M	(✓)	(✓)	()	
3 Keith, Beverly B	95	B	F	(✓)	(✓)	()	
4 Locasale, Robert J	105	W	M	(✓)	(✓)	()	
5 Jones, Candace M	92	W	F	(✓)	(✓)	()	
6 Simmons, Victoria R	160	B	F	(X)	()	()	
7 Bryant, Walter E	23	W	M	(✓)	(✓)	()	
8 Richardson, Montez D	145	B	F	(✓)	(✓)	()	
9 Mccray, Charles S	110	W	M	(X)	(X)	()	
10 Cameron, Lisa M	24	W	F	(✓)	(✓)	()	
11 Rincione, Shari K	146	W	F	(✓)	(X)	()	
12 Rollins, Ramona L	151	W	F	(✓)	(✓)	()	
13 Hardee, Cassidy H	76	W	F	(✓)	(X)	()	
14 Shackelford, Sylvester	156	B	M	(X)	()	()	
15 Mccray, Jonathan H	112	B	M	(X)	()	()	
16 Michenon, Jean P	118	W	M	(✓)	(X)	()	
17 Waterman, Sheryn E	187	W	F	(✓)	(✓)	()	
18 Conley, Nanci L	35	W	F	(✓)	(✓)	()	
19 Gates, Sandra M	56	W	F	(X)	()	()	
20 La, Sane Anastasia C	98	B	F	(✓)	(✓)	()	
21 Frank, Walter L	47	W	M	(✓)	(X)	()	
22 Moore, Latarsha R	121	B	F	(✓)	(X)	()	
23 Stecz, Robert S	166	W	M	(✓)	(✓)	()	<i>alt. 1</i>
24 Wilder, Dreamer C	191	W	M	(✓)	(✓)	()	<i>alt. 2</i>

Georgetown County Circuit Court

RANDOM STRIKE SHEET

DGE NAME : Edward B. Cottingham
 RIAL TYPE : Criminal
 PANEL ID : DWAIN JOHNSON
 COURTROOM CTR

Sorted by: Random Nbr

DESCRIPTION : 2011GS2201185-1187 & 2014GS2200073-7, Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Lindamood, Stephen A	103	W	M	()	()	()	
26 Bruce, Melanie G	21	W	F	()	()	()	
27 Chapman, Elting L III	29	W	M	()	()	()	
28 Hilton, Ivory A	80	B	M	()	()	()	
29 Craft, Joanne I	36	W	F	()	()	()	
30 Moore, Donna M	120	W	F	()	()	()	
31 Abrams, Joni A	1	W	F	()	()	()	
32 Mccutcheon, Brandon K	115	W	M	()	()	()	
33 Bryant, Lisa F	22	B	F	()	()	()	
34 Anderson, Kiyanna M	3	B	F	()	()	()	
35 York, Curtis I	200	B	M	()	()	()	
36 Olson, Karen P	131	W	F	()	()	()	
37 Ryals, Suzanne	153	W	F	()	()	()	
38 Palazzo, Margaret	136	W	F	()	()	()	
39 Hamel, Martha L	74	W	F	()	()	()	
40 Celentano, Richard E	28	W	M	()	()	()	
41 Bennett, Merideth W	10	W	F	()	()	()	
42 Smith, Nikia L	161	B	F	()	()	()	
43 Casselman, Melanie T	27	W	F	()	()	()	
44 Hudson, Krista S	84	B	F	()	()	()	
45 Tisdale, Charlene T	174	B	F	()	()	()	
46 Robb, Bernard S	147	W	M	()	()	()	

Total Number of Jurors:

46

** END OF REPORT **

FORM 5

STATE OF SOUTH CAROLINA

County of

Georgetown

Dwayne Lamark Johnson / 34386

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-22-01128

APPLICATION FOR

POST-CONVICTION RELIEF

ALMA Y. WHITE
CLERK OF COURT

2014 DEC -9 A 9:08 9

FILED
GEORGETOWN COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Inst. 990 Winckley Hwy
Bishopville SC 29010
2. Name and location of Court which imposed sentence Georgetown County
General Sessions Court House
3. Name(s) of co-defendant(s) (if any) Isiah Greene
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Am Kalamu * 2011-GB22-01185
 - (b) 2 COUNTS Attempted Murder * 2011-GB22-01186

- (c) 2011-GS22-01187
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 15 2014
- (b) 15 years for all 3 charges ran concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty (✓)
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trail counsel did not file notice of appeal on
- (b) my behalf

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Prosecutor Misconduct, Ineffective assistance counsel, Mental Health,
- (b) invalid warrant, improper line up, flawed indictment, tampering
- (c) with evidence,
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) prosecutor lied to the judge, Attorney was ineffective, mental health
- (b) learning disade, Ann Gabeary warrant invalid, line up was improper,
- (c) indictment has flaws, law enforcements tampering with interview CD's
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

ND

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? _____
 (c) your sentencing? (✓)
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Kenneth Hazard, P.O. Box 2898, Georgetown
D.C. 20542
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. At plea sentencing
 ii. _____
 iii. _____

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

*The sentencing + conviction and grant applicant
a new trial*

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

No

STATE OF SOUTH CAROLINA

County of

Georgetown

VERIFICATION

2014-CP-22-01128

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

[Signature]

SWORN to and subscribed before me this

day of

Nov.

17, 2014.

[Signature]
Notary Public

(L.S.)

My Commission Expires:

11-4-2015

FILED
GEORGETOWN COUNTY, S.C.

2014 DEC -9 A 9:08

ALMA Y. WHITE
CLERK OF COURT

2014-CP-22-01128

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

I, Dwaine Johnson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dwaine Johnson
Applicant

SWORN or affirmed to and subscribed before me this

12 day of Nov, 2014.

Debra Smith
Notary Public

My Commission Expires: 11-4-2015

FILED
FORGETOWN COUNTY, S.C.
2014 DEC -9 A 9:08 AM
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Dwaine L. Johnson Jr., #343186,

Applicant,

V.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-22-1128

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief filed December 9, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In November 2011, the Georgetown County Grand Jury indicted Applicant for two counts of murder/attempted murder (2011-GS-22-1186; -1187) and armed robbery (2011-GS-22-1185). Ronald Hazzard, Esquire, represented Applicant. On April 15, 2014, Applicant pled guilty as indicted. The Honorable Edward B. Cottingham sentenced Applicant to fifteen (15) years imprisonment for each charge to be served concurrently. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Attorney was ineffective"
 - b. "[W]arrant invalid, line up was improper, flaws indictment [sic]"
 - c. Failure to move to suppress/object to evidence

- i. "Law enforcement tampering with interview"
- 2. Prosecutorial Misconduct
 - a. "Prosecutor lied to the judge"
- 3. Incompetency
 - a. "[Applicant has] mental health learning disable [sic]"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel 1(a) and 1(c) is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at

687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

IV.

The Applicant alleges in claim 1(b) ineffective assistance of counsel for "invalid warrant, improper line up, flaws [sic] indictment." The Respondent asserts that the claim is not cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An

Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however*, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

[Emphasis in original.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

Applicant's allegations regarding prosecutorial misconduct should be dismissed. PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b). See also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for [PCR] is not a substitute for an appeal."). Applicant could have raised this issue

at trial or on appeal. In failing to do so, he has waived this allegation as ground for relief. Therefore, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6), SCRCP.

VI.

Applicant's allegations regarding mental illness and learning disabilities should be dismissed. To sustain a claim of incompetency in fact at a plea, applicant in a PCR proceeding must show by the preponderance of the evidence he was incompetent at the time of plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim counsel was ineffective for failing to request a competency hearing, an Applicant must show a reasonable probability petitioner would have been found incompetent. Id.

VII.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

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VIII.

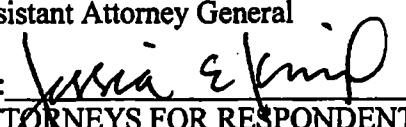
WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
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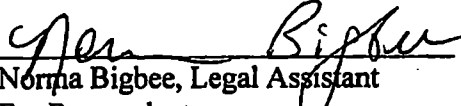
Feb. 2, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2014-CP-22-1128
	)	
DWAINE L. JOHNSON, JR., #343186	)	
	)	
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 by depositing same in the United States mail, postage prepaid:

Steven W. Fowler, Esquire
 1019 Highway 17 South #222
 North Myrtle Beach, SC 29582

DATED this 2ND day February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) NO: 2014-CP-22-01128

3 PCR HEARING

4 B E F O R E: The Honorable Brooks Goldsmith
5 November 16, 2016

6
7 DWAIN L. JOHNSON, JR.,

8 Petitioner,

9 vs.

10 STATE OF SOUTH CAROLINA,

11 Respondent.

12
13 APPEARANCES:

14 Steven Fowler, Esq.
15 For the Petitioner.

16
17 Valerie Giovanoli, Esq.
18 For the Respondent.

19

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21

Court Reporter:
Natalie Dahl, RPR

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 ORIGINAL

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I-N-D-E-X

WITNESS

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EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

P-R-O-C-E-E-D-I-N-G-S

MS. GIOVANOLI: This is Dwaine Johnson, Junior, versus the State of South Carolina, Case No. 2014-CP-22-1218. We are before the Court on an application for post-conviction relief that was filed on December 9, 2014. Applicant is presently confined in the South Carolina Department of Corrections. In November of 2011, the Georgetown County Grand Jury indicted applicant for two counts of murder -- or, excuse me, attempted murder, Case No. 2011-GS-22-1186 as well as 1187, and armed robbery 2011-GS-22-2285. Ronald Hazzard represented the Applicant, and on April 15, 2014, Applicant pled guilty as indicted. The Honorable Edward Cottingham sentenced Applicant to 15 years imprisonment for each charge to be served concurrently. Applicant did not appeal his plea or sentence.

State is present and ready to proceed. Applicant is present and represented by Steve Fowler. I'll let Counsel take it from here.

MR. FOWLER: Before we get started, to be clear, this is part of the record I believe, but I want to be sure that I ask the Court to take judicial notice of the transcript of record from April 14 and 15, 2014 in this case 2011-GS-22-1185.

DWAINE JOHNSON - DIRECT EXAMINATION

1 THE COURT: I have that.

2 MR. FOWLER: You do have a copy? It has been
3 provided by the Attorney General's Office. I would
4 call Dwaine Johnson to the stand at this time, Your
5 Honor.

6 (DWAINE JOHNSON, having been duly sworn,
7 testified as follows:)

8 DIRECT-EXAMINATION

9 BY MR. FOWLER:

10 Q Good afternoon. State your name for the Court.

11 A Dwaine Johnson.

12 Q Do you know your SCDC number?

13 A (Witness shakes head.)

14 Q You don't? Okay. Where are you from, Mr.
15 Johnson, what town or city or area are you from?

16 A Crosstown.

17 Q We are here to talk about the performance of your
18 attorney and how he represented you in this matter,
19 correct? Is that right? We're here to discuss your
20 attorney's representation of you; is that correct?

21 (A brief pause in the proceedings.)

22 Q Mr. Hazzard, right?

23 A (Witness mumbles.)

24 Q Could you say that again?

25 A Yeah, I believe, sir.

DWAINE JOHNSON - DIRECT EXAMINATION

1 MR. FOWLER: May we approach?

2 THE COURT: Yes, sir.

3 (Whereupon, a bench conference was had.)

4 Q (MR. FOWLER) You and I have spoken on this case
5 previously?

6 A Yeah.

7 Q You and I spoke about this?

8 A Yeah, we did.

9 Q And we spoke by telephone several weeks ago,
10 right?

11 A Yeah.

12 Q And you and I have had conversations in the back
13 as well about this matter, right, earlier today,
14 correct?

15 A I believe so.

16 Q So we're here to talk about Mr. Hazzard's
17 representation of you in this case?

18 A Yeah (laughing).

19 Q You remember filling out the post-conviction
20 relief application, right?

21 A Yeah, I think. If I can remember, yeah, I did.

22 Q And it has your signature on it, right? So you
23 filled this out or you had it filled out for you,
24 right?

25 A Yeah.

DWAINE JOHNSON - DIRECT EXAMINATION

1 Q So in that you remember talking about several
2 things that you feel like he did incorrectly in
3 representing you; is that right?

4 A Yeah.

5 Q And one of those things is some factors that
6 might come in, things that might be talked about is
7 prosecutorial misconduct; is that right?

8 A Yeah (laughing).

9 Q And one of the things you privately mentioned is
10 that the prosecutor didn't provide the discovery for
11 you, correct?

12 A Yeah.

13 Q Is that right?

14 A Yeah.

15 Q And you are familiar with the transcript, we
16 talked about this in the back, correct?

17 A Yeah.

18 MR. FOWLER: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21 Q (MR. FOWLER) You remember this transcript,
22 right? We spoke about this in the back?

23 A Yeah.

24 Q And we spoke about it previously, right?

25 A Uh-huh.

DWAINE JOHNSON - DIRECT EXAMINATION

1 Q And some of the things in here that you have a
2 question about is the discovery, right?

3 A Yeah.

4 Q And do you know what discovery is, right? How
5 would you describe it?

6 A (Witness mumbles.)

7 Q Say that again?

8 A Is that what it is?

9 Q Well, the thing about it is -- I don't want to
10 answer the question -- I'm just saying there is
11 information that you should have perhaps gotten from
12 your attorney, isn't that right, about your case?

13 A Rule 5?

14 Q Yeah, Rule 5, exactly. Did you get your Rule 5
15 from your attorney in this matter?

16 (A brief pause in the proceedings.)

17 A No. No.

18 Q (MR. FOWLER) So you don't remember getting
19 Rule 5, right?

20 A No. No. No, I don't even know what you are
21 talking about.

22 Q Okay. All right. And some of it came late,
23 right? Is that correct?

24 A Yeah, it did.

25 MR. FOWLER: If I may approach the witness, Your

DWAINE JOHNSON - DIRECT EXAMINATION

1 Honor?

2 THE COURT: Yes.

3 Q (MR. FOWLER) Mr. Johnson, you have difficulty
4 reading. You expressed to me you can't read well?

5 A No, I'm illiterate.

6 Q If you would, look at Page 89. It says, In
7 reference to turning over discovery material, I've
8 discussed with -- this is from the Court, Page 89,
9 Lines 12 through 20. It says, In reference to turning
10 over discovery material, I've discussed with Captain
11 Small my concern with the investigator in this case
12 waiting until the -- til last night to review his
13 files. That is unacceptable. But, fortunately, that
14 last video was simply a video of the victims you turned
15 over, and you had the full opportunity to review it
16 this morning, but I suggest to Captain Small that in
17 the future, follow the rules and turn this discovery
18 material over promptly, and he has assured me he will.

19 Do you remember that being said in court that
20 day?

21 A Yeah.

22 Q So some of the discovery was not given until the
23 day you pled, right, the day of the trial?

24 A Uh-huh.

25 Q So do you think that hurt you in terms of getting

DWAINE JOHNSON - DIRECT EXAMINATION

1 -- knowing the full wake of the evidence against you?

2 You think it hurt you, right, or did it?

3 A It did.

4 Q How did it do that?

5 A Prejudice.

6 Q How?

7 A Prejudice.

8 Q All right. You also said that in your
9 application you went over, you said it was
10 prosecutorial misconduct; is that what you were
11 referring to in this matter, that they didn't turn over
12 discovery until, basically, the last minute?

13 A Yeah. You say prosecutorial misconduct,
14 Rule 407?

15 Q Yeah.

16 A Yeah.

17 Q Well -- yeah. I'm going by your words in terms
18 of prosecutorial misconduct, they didn't provide the
19 information until the day of trial and -- or day
20 before, and that is what you are referring to?

21 A They obstructed justice.

22 Q You said ineffective assistance of counsel as
23 well; what do you mean by that? I mean, did Mr.
24 Hazzard not do everything he was supposed to or did he
25 not communicate?

DWAINE JOHNSON - DIRECT EXAMINATION

1 A He violated the rules of the court, which means
2 -- contempt of court.

3 Q You and I went over these previously, right, this
4 information?

5 A Yeah, I did. Yeah, I got it.

6 Q Okay. So you and I went over that. Now, you
7 also mentioned mental health in there. Are you under a
8 disability or anything like that? When you say "mental
9 health" on your application, what do you mean?

10 A I got autism. My mind goes all over the place,
11 this way, that way, up that way. It goes all over the
12 place (laughing).

13 Q So you think you needed assistance with talking
14 with your attorney, or not, or what?

15 A I may need Zoloft.

16 Q You mentioned the invalid warrant, do you
17 remember any specific about that? Do you think it was
18 improper?

19 A Yeah, it was invalid.

20 Q Could you tell me more about that? Do you
21 remember specifically what was invalid about it?

22 A The money that they say was taken (sic).

23 Q So you are saying that the money -- was that the
24 wrong amount, or by you, or what specifically are you
25 talking about there?

DWAINE JOHNSON - DIRECT EXAMINATION

1 A He said it wasn't taken (sic), but that was in
2 the warrant.

3 Q So you are saying that the warrant was incorrect,
4 right?

5 A Yeah, it was --

6 Q Basically, because of the dollar amount in the
7 warrant, right?

8 A Yeah.

9 Q Improper line-up, that is another thing you
10 mentioned in your application. Was there an issue with
11 the improper line-up?

12 A Yeah.

13 Q How so?

14 A When I got my -- they went all the way around the
15 city, all over the place talking about -- just showing
16 my picture, knowing well that if you show my picture,
17 of course a person is going to say I did it.

18 Q So you are saying that basically there was an
19 improper identification procedure, right?

20 A Yeah. It was, yeah. It was, you know.

21 Q Now, you also mentioned on your application a
22 flawed indictment. What exactly are you referring to
23 there? The indictment was wrong as well?

24 A Yeah. That is how I feel.

25 Q Do you remember anything specifically about it

DWAINE JOHNSON - DIRECT EXAMINATION

1 that was a problem?

2 A I know Ron had to try to get the warrant dropped,
3 trying to get it dismissed, but the judge wouldn't let
4 him dismiss it for some reason.

5 Q Do you think he should have done more for you on
6 that, or not, in terms of trying to get it dismissed?

7 A Yeah, because that was the first plea. They
8 dropped both attempted murders, and I plead guilty to
9 armed robbery, 10 to 15, but he managed to slip two
10 more charges on there and let me sign off on it. I
11 guess I just signed my life over.

12 Q So you are saying there was additional charges
13 from when you were originally charged with this; is
14 that what you are saying?

15 A Originally charged?

16 Q You said there were charges added. Do you
17 remember saying that just a second ago? Is that what
18 you said?

19 A Yeah, it was charged -- yeah.

20 Q So you are basically saying there was some
21 problems in terms of you knowing what you were charged
22 with; is that correct?

23 A Yeah.

24 Q Mr. Hazzard didn't explain that to you?

25 A If he explained it to me?

DWAINE JOHNSON - DIRECT EXAMINATION

1 Q Did he? Do you remember that?

2 A I don't -- I really ain't -- no, I ain't....

3 Q And then finally in your application you
4 mentioned tampering with evidence. Do you remember
5 what you meant by that in terms of putting that on the
6 application? Who tampered with evidence in your
7 opinion?

8 A Keith Small.

9 Q Did Mr. Hazzard bring that to the Court's
10 attention?

11 A No, he failed to object.

12 Q Okay. And tell me about that in terms of
13 tampering with the evidence, what was the -- you said
14 the person's name that tampered with it?

15 A Keith Smalls.

16 Q Who is he with, do you remember? Law
17 enforcement?

18 A Yeah, he was a law enforcement officer.

19 Q So you are saying that there was perhaps some
20 tampering of evidence. Did Mr. Hazzard ever bring that
21 to the Court's attention, to your recollection?

22 A No. He failed to do any of that.

23 Q How often did you and Mr. Hazzard meet before the
24 eventual sentencing?

25 A We met plenty of times, just that he failed to do

DWAINE JOHNSON - DIRECT EXAMINATION

1 what he said he was going to do in the courtroom. He
2 ain't did it.

3 Q Part of that is some of the things that we went
4 over just today, right, in your application, right?

5 A Yeah.

6 Q Is there anything else that you can think of
7 that, you know, felt like there was a problem in him
8 representing you or something he should have done that
9 he didn't do?

10 A Yes, sir. Ask him for yourself, he's right
11 there. Where he go -- he can't go around the truth.

12 Q Very good. Is there anything else you want to
13 tell the Court about this situation with your PCR?

14 A He violated the rules of court, obstructed
15 justice. He needs to be held accountable for what he
16 did.

17 Q Are you referring to Mr. Hazzard, or are you
18 referring to someone else? You said he violated the
19 rules of court, who are you referring to?

20 A The judge. I mean, the judge violated it, too.
21 He knew it was wrong.

22 Q You are saying that Mr. Hazzard didn't object to
23 that properly; is that correct?

24 A Yeah.

25 Q Is there anything else about this PCR you want to

DWAINE JOHNSON - CROSS-EXAMINATION

1 mention today?

2 A I mean, he had five strikes, I had 10 strikes --
3 I mean I ain't racist, but, you know, I felt like I had
4 to see something through clear eye view, because she
5 (sic) was steady picking -- you know, she (sic) ain't
6 nobody judging nobody else, just throwing people in the
7 jury, you know. What you doing, you know.

8 Q All right.

9 MR. FOWLER: If you don't have anything else,
10 that is my line of questioning. We've gone over the
11 PCR application in terms of your grounds, so I have no
12 further questions. If you would, answer any questions
13 that the Attorney General might have.

14 CROSS-EXAMINATION

15 BY MS. GIOVANOLI:

16 Q Good afternoon, Mr. Johnson. You mentioned you
17 had mental issues, could you remind me what those are?

18 A Autism.

19 Q Autism. Do you remember when you were diagnosed
20 with autism?

21 A Is what they say. I got a learning disability.
22 I guess that's what it is, ain't it?

23 Q Who is "they"?

24 A Mental health.

25 Q That was during your time in Department of

DWAINE JOHNSON - CROSS-EXAMINATION

1 Corrections?

2 A I mean, ever since I was a little boy.

3 Q Okay. Did you ever mention those mental health
4 issues to your attorney, your lawyer?

5 A He know that. He know that. He -- it's his job
6 to check backgrounds. It is his job to do that.

7 Q But you didn't tell him?

8 A I didn't tell him?

9 Q You didn't tell him any of your issues that you
10 had?

11 A It was in the motion of discovery, he knew that.

12 Q Can you explain what you mean by "in the motion
13 for discovery he knew that"?

14 A It was in the Rule 5, in the Brady motion.

15 Q You also stated that you thought the warrant was
16 invalid because it mentioned an improper dollar amount;
17 is that correct?

18 A Yeah.

19 Q Was it improper because it is not how much you
20 actually took?

21 MR. FOWLER: Objection, Your Honor.

22 MS. GIOVANOLI: I'll withdraw.

23 Q (MS. GIOVANOLI) You also mentioned Lieutenant
24 Smalls tampering with the evidence, and you state that
25 Mr. Hazzard didn't bring that up in court; is that

DWAINE JOHNSON - CROSS-EXAMINATION

1 correct?

2 A Yeah, he didn't bring that up.

3 Q So you don't recall during the trial that Mr.
4 Hazzard brought up the issue of the missing discovery?

5 A He never brought that up.

6 MS. GIOVANOLI: I respectfully draw the Court's
7 attention to Page 65, Line 5 where Mr. Hazzard does
8 actually address one of the audio recordings that is
9 missing from his file.

10 A He must have done that at another court -- at
11 another court hearing.

12 Q (MS. GIOVANOLI) Okay. And then at the end of
13 your testimony with Mr. Fowler you mentioned 10
14 strikes, but you weren't a racist; to what were you
15 referring?

16 A What I was referring?

17 Q Did you strike 10 white jurors?

18 MR. FOWLER: Objection --

19 A I mean, I didn't know. I didn't knew (sic) what
20 was -- I didn't knew at the time the rules of court. I
21 didn't knew nothing. I was ignorant to the system.

22 Q (MS. GIOVANOLI) So why did you strike them?

23 A Me being like the type that actually go by
24 reasonable doubt.

25 Q What do you mean by the type that goes by a

DWAINE JOHNSON - REDIRECT EXAMINATION

1 reasonable doubt?

2 A I mean you have to judge people's character. You
3 have to see through a clear eye view.

4 Q Based on that, how did you judge their character?

5 A Huh?

6 Q How did you judge their character?

7 A I felt they were racist. That is how I feel. I
8 mean I can't help how he feel or you feel, I mean I'm
9 going by how I feel.

10 MS. GIOVANOLI: Nothing further.

11 THE COURT: Redirect?

12 REDIRECT-EXAMINATION

13 BY MR. FOWLER:

14 Q So you are basically saying that Mr. Hazzard did
15 not go over discovery with you totally before you went
16 to trial on this matter, correct? He didn't go over
17 the discovery with you, did he?

18 A No. I mean, I wouldn't -- I mean he just pled
19 his position as far as give me to the State.

20 Q And she mentioned something about judging
21 character. You were there while the jury was selected?

22 A Yeah, he started off selecting a jury, but I told
23 him no.

24 Q Why did you tell him no?

25 A Huh?

DWAINE JOHNSON - REDIRECT EXAMINATION

1 Q You told him no, why did you tell him no?

2 A Because I wanted to pick my jury. I had a right
3 to pick my jury myself.

4 Q And you wanted to pick the jury yourself?

5 A Yeah, because I wanted to go to trial. But, you
6 know, he coerced me because I was under -- under
7 discretion (sic) that, you know, it was going to be
8 over with, so I'm going to get an ID (sic), so I rather
9 just come back and do that.

10 Q Okay. So you said -- since you mentioned this,
11 you said he coerced you; how did he coerce you on that
12 matter?

13 A I asked that he put that --

14 MS. GIOVANOLI: Objection. This is not in the
15 scope of this hearing.

16 THE COURT: Overrule.

17 Q (MR. FOWLER) Go ahead, I'm sorry. You mentioned
18 that he coerced you?

19 A I was under the discretion (sic), you know -- I
20 felt like I had no win in the courtroom at that time,
21 so ain't no need to really go do a trial. It was like
22 a lose-lose situation.

23 Q And that was because of Mr. Hazzard you think?

24 A Yeah, he would have gotten me down. He would
25 have gotten me hit in the head, so I did what I needed

1 to do.

2 MR. FOWLER: Thank you very much.

3 MS. GIOVANOLI: Briefly, I would like to call the
4 Court's attention and counsel to Page 92 of the
5 transcript, because the Applicant stated he is
6 illiterate, this goes back to the not reviewing
7 discovery?

8 MR. FOWLER: I think it is my client's job to
9 answer discovery, not the Attorney General's. We
10 already took judicial notice of the transcript. She
11 can bring something up on her ledger, but at this
12 point we're still speaking with my client.

13 THE COURT: Overrule -- I mean I sustain.

14 MS. GIOVANOLI: So Page 90 -- sustained, I'm
15 sorry.

16 MR. FOWLER: Yeah, sustained.

17 MS. GIOVANOLI: I heard overruled and then -- I'm
18 sorry.

19 THE COURT: You can come back down. Any other
20 witnesses?

21 MR. FOWLER: No, sir.

22 MS. GIOVANOLI: State calls Ronald Hazzard to the
23 stand.

24 MR. FOWLER: Mr. Hazzard provided me information,
25 can I take a second to look at it and review it before

RONALD HAZZARD - DIRECT EXAMINATION

1 we proceed? I mean, I don't know if it is coming from
2 the AG's office or Mr. Hazzard, but I would like to
3 look at this.

4 MS. GIOVANOLI: Those are just Mr. Hazzard's
5 notes. He provided them to me as well. I have not
6 thoroughly read them. I don't intend to point
7 anything specifically from those notes, but he may
8 refer them to refresh his recollection, if need be.

9 MR. FOWLER: As long as they are not entered into
10 evidence.

11 MS. GIOVANOLI: I have no intention.

12 THE COURT: All right. Go ahead.

13 (RONALD HAZZARD, having been duly sworn,
14 testified as follows:)

15 DIRECT-EXAMINATION

16 BY MS. GIOVANOLI:

17 Q Good afternoon, Mr. Hazzard. Thank you for being
18 here and for your patience. How long have you been
19 practicing law?

20 A I was sworn in in 1988.

21 Q How many of those years have been devoted to
22 criminal law?

23 A All of them.

24 Q Can you briefly describe your work history?

25 A Sworn in in 1988. Since 1993, qualified to do

RONALD HAZZARD - DIRECT EXAMINATION

1 everything you can do from death penalty on down.

2 Practiced before the supreme court, before the court of
3 appeals, before the Fourth Circuit Court of Appeals,
4 before the federal district court, emphasis on criminal
5 defense. I currently, as of April 13 of 2012 to
6 present day, I'm the circuit -- chief public defender
7 for Georgetown County. I work under Orrie West who is
8 the circuit public defender for the 15th Circuit,
9 Horry and Georgetown Counties.

10 Q Were you at the Public Defender's Office during
11 the time of April of 2014?

12 A Yes, ma'am. As I indicated, I took over that
13 office on April 13th. I acquired Mr. Johnson's case
14 from Richard Colvan, who was the previous public
15 defender for Georgetown County.

16 Q Do you remember how you came to represent the
17 Applicant in this case?

18 A I acquired his file as well as Mr. Colvan's
19 files. He had a medical issue and had to step down, so
20 I took over his caseload.

21 Q So you were appointed counsel?

22 A Yes, ma'am.

23 Q Do you recall the first time you met with the
24 Applicant, Mr. Johnson?

25 A Somewhere around April 27th of 2012, I believe.

RONALD HAZZARD - DIRECT EXAMINATION

1 And --

2 Q And --

3 A I'm sorry.

4 Q That's okay. You can refer to your notes.

5 A On April 17th, four days after I took over down
6 in Georgetown, I met with Assistant Solicitor Bailey
7 regarding the case, reviewed the file and met with
8 Dwaine at the Georgetown Detention Center on
9 April 27th of 2012. That was the first time I met
10 with him.

11 Q At that meeting, do you recall what your
12 discussion was with the Applicant?

13 A As I would do with any client meeting for the
14 first time, we discuss the facts of the case, his
15 personal history, the situation or the posture of this
16 case. I believe he was very concerned about the issue
17 of bond. He previously was denied bond, but the judge
18 apparently indicated in his ruling that if there was no
19 movement in this case in six months, that we could come
20 back before the court, and so we discussed that.

21 In discussing his personal history, and I will
22 say this, discussing personal history and dealing with
23 him, dealing with his mother and his father, never any
24 indication that he had any particular mental health or
25 emotional issues.

RONALD HAZZARD - DIRECT EXAMINATION

1 Q To be fair, he never brought up his mental
2 issues?

3 A Never appeared to have any mental issues back in
4 2012.

5 Q Did you ever have any problems communicating with
6 him?

7 A None, whatsoever.

8 Q And at that time, the first meeting, did you
9 actually have discovery in the case?

10 A I had some of the discovery. I don't remember --
11 unfortunately, it always seems to come in -- trickles
12 in as far as time goes on, but I'm sure I had some
13 discovery at that time, because at that point he was
14 already almost a year into having been charged. So I'm
15 sure I had a good amount of the discovery at that
16 point, and we would have gone over all of that.

17 Q So at that time, you did go over the discovery
18 that you had in your possession at that time?

19 A Yes, ma'am.

20 Q And after that meeting -- about how long was that
21 meeting?

22 A Based on his charge, I would say probably over an
23 hour.

24 Q And you mentioned his parents. Were the parents
25 present at that meeting?

RONALD HAZZARD - DIRECT EXAMINATION

1 A No, ma'am.

2 Q Did you meet personally with his parents?

3 A Yes, ma'am.

4 Q Where did that take place?

5 A In the courthouse -- or in the courtroom and in
6 my office. Because one of the big issues was -- as
7 Dwaine has alluded to -- the offer -- initial offer of
8 disposition was plead to one count of armed robbery,
9 dismiss two counts of attempted murder with a cap of 15
10 years, meaning an effective plea range of 10, 15 years
11 on the armed robbery. Dwaine always indicated
12 initially that he did not want to accept the plea,
13 which is his absolute right; however, based on the
14 evidence against him and based on his parents reaching
15 out to me and their concerns, I discussed it fully with
16 them in the hopes that they could speak with him and
17 make him feel comfortable with whatever decision he was
18 going to make.

19 So, yes, I spoke at great length with his mother
20 and father, both together and separately, on multiple
21 occasions.

22 Q And do you recall how many meetings you had with
23 the Applicant in total?

24 A I would say -- between April of 2012 and his plea
25 in April of 2014, I would say 15, 20 times.

RONALD HAZZARD - DIRECT EXAMINATION

1 Q Do you recall where all of those meetings took
2 place?

3 A All over the place, Georgetown Detention Center,
4 they took place in the courtroom, lockup. Any time we
5 had a motion hearing or status conference, he was
6 normally transported for those. We would meet before
7 and after those meetings and discuss whatever came up
8 and whatever was new in the case. Then he was
9 transferred to Effingham, because he kept getting into
10 trouble in Georgetown, went out to the Florence County
11 Detention Center in Effingham and met with him there.
12 Anywhere he was, we talked about his case.

13 Q With regard to discussing his case, did you
14 discuss his right to a jury trial with him?

15 A Yes, ma'am.

16 Q And did you discuss his other Constitutional
17 rights, right to call witnesses in his favor, as well
18 as right to confront witnesses against him?

19 A Yes, ma'am.

20 Q And his right to testify or not to testify?

21 A Yes, ma'am.

22 Q Did you also -- now taking you to the actual
23 trial. Do you feel you had adequate time to prepare
24 for this trial?

25 A Yes, ma'am.

RONALD HAZZARD - DIRECT EXAMINATION

1 Q What exactly was your trial strategy?

2 A The strategy was this. It was going to be a
3 razor's edge case. It was either going to go really
4 good, or really poorly. I had a codefendant, Isaiah
5 Green. Supposedly, two individuals went into a Chinese
6 restaurant. One of the individuals shot two of the
7 workers in the Chinese restaurant, and the two
8 individuals robbed the Chinese restaurant. There was
9 forensic evidence, DNA evidence tying Isaiah Green to
10 the restaurant. The folks in the restaurant recognized
11 Isaiah Green. The folks in the restaurant did not
12 recognize the second person, and there was no forensic
13 evidence tying Dwaine Johnson. Isaiah Green decided --
14 probably a good strategy for him -- that he was going
15 to be a witness for the State.

16 So, really, the only evidence against Dwaine
17 Johnson was Isaiah Green. So it came down to whether
18 we could discredit Isaiah, or not. No question the
19 robbery happened. No question that Isaiah Green was
20 involved. The question was who was the second person
21 with the gun. All throughout Dwaine said I'm not
22 pleading guilty to anything, no way, shape or form.

23 Now, he brings up the issue of improper line-up.
24 There was no improper line-up. No one in the
25 restaurant identified Dwaine Johnson from any line-up.

RONALD HAZZARD - DIRECT EXAMINATION

1 During the time of my representation of him, Dwaine
2 kept getting into trouble at the Georgetown Detention
3 Center. He kept catching charges for throwing bodily
4 fluids, assaulting detention officers.

5 MR. FOWLER: Objection. I don't know that this
6 is related to a line-up. It is what it is. It's
7 either a line-up, or not. I don't think his alleged
8 behavior at Georgetown Correctional has anything to do
9 with--

10 MS. GIOVANOLI: I think he will tie it in.

11 THE COURT: I'll overrule the objection, assuming
12 he can tie it all in.

13 A Yes, sir. So he caught these charges. We --
14 Dwaine and I reached an agreement to go ahead, plead to
15 those, get him up the road to the Department of
16 Corrections, get him out of Georgetown for a little
17 bit. So while he was in the Department of Corrections,
18 the Department of Corrections apparently improperly
19 released him early. I mean, it was only a one-year
20 sentence, so it wasn't the biggest thing in the world,
21 but they released him early.

22 Now, when they released him, for some reason the
23 folks in Georgetown lost their minds because they
24 thought he was on the loose. So you had his face
25 plastered all over the TV, all over the newspapers

RONALD HAZZARD - DIRECT EXAMINATION

1 saying, hey, looking for this guy charged with these
2 two counts of attempted murder and armed robbery at
3 the Suez Wan Chinese Restaurant. In Dwaine's mind,
4 the improper line-up is that the --

5 MR. FOWLER: Objection. He's offering what is in
6 Dwaine's mind. I don't think he can -- even as a
7 former attorney of his, I don't think he can
8 accurately state what is in Dwaine's mind.

9 A I can state --

10 MS. GIOVANOLI: I think his testimony speaks to
11 the improper identification, the fact that his picture
12 was plastered all over TV, and what have you.

13 MR. FOWLER: The language in Dwaine's mind, I
14 mean, that is kind of specific language. I mean, he
15 can note what his own recollection is of what he might
16 think the improper line-up is.

17 THE COURT: It is obviously not offered for truth
18 of the matter asserted.

19 MS. GIOVANOLI: Right.

20 THE COURT: Overruled.

21 A Based on our discussions at the time with Dwaine,
22 his concern, my concern was that the two victims of the
23 restaurant shooting, who had never before ever been
24 able to identify the gunman, after he was improperly
25 released, and after his picture was all over the TV and

RONALD HAZZARD - DIRECT EXAMINATION

1 all over the newspaper, then they suddenly claimed, oh,
2 that's the guy who shot us. That is the issue with
3 regard to my knowledge of the claim of a line-up.
4 There was no line-up, it was the identification after
5 the fact. However, Dwaine and I discussed it at great
6 length, and I tried to explained to him at great
7 length, that even without a prior identification, the
8 victims are still allowed to come in and point their
9 finger if they think they know the person who did it at
10 the time of the trial.

11 Q Thank you for that. So before we get into the
12 identification, I'm going to go ahead and start -- do
13 you recall the day of the trial?

14 A Yes, ma'am.

15 Q And you made a number of pretrial motions; do you
16 recall those motions?

17 A Yes, ma'am.

18 Q One of which was your motion to quash the
19 indictment for insufficiency; do you remember making
20 that motion?

21 A Yes, ma'am.

22 Q And another motion was you move for sequestration
23 of the witnesses; do you remember that?

24 A Yes, ma'am.

25 Q After of that, you moved for the criminal records

RONALD HAZZARD - DIRECT EXAMINATION

1 of all the witnesses that were going to testify; do you
2 recall that?

3 A Yes, ma'am.

4 Q You also made a quasi motion, if you will, to
5 clarify what parts of the defendant's criminal history
6 was going to come in, if he chose to testify; do you
7 remember doing that?

8 A Yes, ma'am.

9 Q You also made a motion regarding never receiving
10 a recorded victim's statement that was mentioned in a
11 law enforcement report, but you never received that; do
12 you remember addressing that with the Court?

13 A Yes, ma'am.

14 Q Finally, the improper identification, if you
15 will; do you remember addressing that prior to trial to
16 the Court?

17 A Yes, ma'am.

18 Q Do you remember if all of those motions were
19 ruled upon?

20 A For the most part, yes. Judge Cottingham covered
21 all of them, yes, ma'am.

22 Q Thank you for that. And going back to the mental
23 health issue, I can't remember if I asked you, did his
24 parents mention that he had any mental health issues?

25 A No, ma'am.

RONALD HAZZARD - DIRECT EXAMINATION

1 MR. FOWLER: Objection, that is hearsay.

2 THE COURT: Overruled. Go a head.

3 A To answer your question fully, what I will say is
4 at one point during my representation of Dwaine, while
5 these charges were pending, we actually had a hearing
6 before Judge Steven H. John regarding whether Dwaine
7 needed to have a mental health evaluation. So the
8 Court questioned him and found him to be just fine and
9 said that no evaluation was necessary.

10 Q (MS. GIOVANOLI) Thank you for volunteering that
11 information. After all of those motions were heard,
12 the Court took a recess, and then when you came back,
13 according to the transcript, was the time that the
14 Applicant decided to plead guilty. Did you have any
15 discussions with him during that recess?

16 A Yes, ma'am. The issue was whether or not the
17 recorded -- the incident reports indicated that one or
18 both of the victims had been interviewed at the
19 hospital, and those interviews had been recorded. We
20 were never able to get our hands on them, and when I
21 say "we," I mean me nor the prosecutor, Erin Bailey,
22 were ever able to get our hands on it. The police kept
23 telling her that they were in the process of going from
24 one recording system to another, and that something had
25 gone wrong, either they tried to enter it into the

RONALD HAZZARD - DIRECT EXAMINATION

1 diagonal data system incorrectly, or it was corrupted,
2 but they kept saying it was not available.

3 The day we were scheduled to start the trial,
4 they actually found it. So I asked Judge Cottingham
5 for a recess so Dwaine and I could review it. I
6 actually reviewed it the night before or early that
7 morning, and I immediately asked the Court, when court
8 started, to allow Dwaine to review, as is his right.
9 Judge Cottingham allowed it. We went in lockup. I
10 had it on a laptop, played it and immediately after
11 playing it he said he wanted to speak in private, so
12 we went into one of the lockup rooms.

13 The reason we were not in a lockup room initially
14 is because they don't have electricity for the laptop,
15 so we stepped in the hallway. After that he said
16 let's go in the room and talk. We went in the room
17 and talked, and he said I want to enter a plea of
18 guilty, which surprised me, but that is how that went
19 down.

20 Q Was the solicitor -- at that point, what did you
21 advise him when he told you he wanted to plead guilty?

22 A I made sure that he understood a series of
23 things. One, I made sure that he understood the plea
24 protocol, specifically that if he was pleading guilty,
25 he was saying that he was guilty, acceptance of

RONALD HAZZARD - DIRECT EXAMINATION

1 responsibility. I made sure that he understood that.
2 I always tell my clients, and I told him, I don't plead
3 innocent people guilty. If you didn't do that, we need
4 a trial. One, are you saying you are guilty? Two, was
5 with regard to what he was pleading guilty to. The
6 plea offer had been to one count of armed robbery,
7 dismiss everything else; that was off the table the
8 moment the trial or before the trial started.

9 Q And you knew that -- did he know that?

10 A Yes, ma'am, he knew that. I went through it with
11 him, that he understood he was pleading to one count of
12 armed robbery, two counts of attempted murder, that
13 basically all three strikes he had, he was using them
14 up on this one plea, and if he was ever convicted of a
15 serious or most serious offense in his lifetime, he
16 would definitely face life in prison without
17 possibility of patrol. So those were the things we
18 definitely wanted to cover as far as the plea protocol
19 and that he understood the significance of the pleas.

20 Q After that discussion, was there any hesitancy on
21 the part of the Applicant to plead guilty?

22 A No, ma'am.

23 Q Did you encourage him to plead guilty?

24 A No, ma'am. We were there to try the case.

25 MS. GIOVANOLI: Nothing further.

RONALD HAZZARD - CROSS-EXAMINATION

CROSS-EXAMINATION

1
2 BY MR. FOWLER:

3 Q So, initially, he had one count of armed robbery
4 and dismissing everything else before the trial or --

5 A That was the offer that had been banting about,
6 and if you read the transcript, that is what is
7 discussed in the transcript between me, the judge and
8 the prosecutor, that if he entered a plea to one count
9 of armed robbery, that the two counts of attempted
10 murder would be dismissed with a cap of 15 years, thus
11 effectively having a sentencing range of 10 to 15.

12 Q But once you got into trial, then he changed his
13 mind and talked with you about pleading guilty to all
14 three counts; is that correct?

15 A He had no choice. He was talking about pleading
16 guilty once he heard the recording of one of the
17 victims at the hospital, but the offer of pleading to
18 one count was off the table, and he knew that. That
19 was no longer an option.

20 Q So you are saying that he had no choice once he
21 heard the audio recording?

22 A It was an audio recording on a disk.

23 Q So they got to trial, trial starts, then this
24 mystery audio tape shows up the day before the trial
25 was to happen; is that correct?

RONALD HAZZARD - CROSS-EXAMINATION

1 A I received it the morning that we -- the morning
2 of the day that we picked the jury.

3 Q So you are telling me that before the trial
4 happened, he had an options in terms of going to trial,
5 but once this tape comes in, or recording, or you
6 received knowledge about it, then his options go from
7 some options to no options at all; is that what you are
8 saying?

9 A No, sir, not at all. I didn't think the tape
10 actually changed anything. I think his options were
11 still the same.

12 Q You said a few moments ago that because this tape
13 came in, that he had no choice to do that. My notes
14 say that you said something like when you found out
15 about the tape, or the audio recording, he had no
16 choice but to plead guilty; is that what you said?

17 A No, sir. What I said was when he decided to
18 plead guilty after the start of the trial, once he
19 decided at that point to plead guilty, the prosecutor
20 was going -- if he was going to plead guilty, he was
21 going to plead guilty to everything. The offer that
22 had been bantered about and was definitely available to
23 him before the start of the trial, was one count of
24 armed robbery, dismiss two attempted murders.

25 In the transcript, we discussed it at great

RONALD HAZZARD - CROSS-EXAMINATION

1 length, Judge Cottingham asks him and the prosecutor
2 says, yes, that offer is no longer out there, we are
3 about to start the trial. This is when we were
4 dealing with pretrial motions. Once Dwaine decided
5 that he wanted to enter a plea of guilty, his only
6 choice in entering that plea was to plead for all
7 three things. As far as that recording, the thing
8 that surprised me is his decision to plead guilty was
9 there wasn't anything on the recording that implicated
10 him.

11 Q And once again, when did you receive that
12 recording?

13 A I received that recording I believe the morning
14 of the 14th.

15 MR. FOWLER: May I approach?

16 THE COURT: If you would like.

17 Q So the Court has taken judicial notice of the
18 transcript, and on Page 65 -- Page 65, Line 12, it says
19 that you've never been provided with that recorded
20 interview. Is that still correct? That is that you
21 said to the Court at that time. Is that still correct,
22 that you were never provided a copy of that tape?

23 MR. HAZZARD: Court's indulgence, Your Honor.

24 A (Witness examines document.) That is correct
25 because we did the motions and jury selection I believe

RONALD HAZZARD - CROSS-EXAMINATION

1 on the 14th, and we were going to start the trial on
2 the morning of the 15th, and that is when Dwaine
3 decided to enter a plea.

4 Q So that was one piece of evidence that you did
5 not have, and it was a fairly substantial piece of
6 evidence; is that correct?

7 A Actually, I didn't find anything substantial
8 about it at all. Again, the victim didn't identify
9 Dwaine, said she didn't know who shot her, had no clue
10 who it was.

11 Q But to be fair, it could be substantial in terms
12 of it doesn't name him as a guilty party, correct? It
13 doesn't point the finger at him, it shows even more his
14 innocence; is that correct?

15 A Well, it corroborated everything else we had in
16 all of the rest of the discovery that no one said it
17 was Dwaine Johnson.

18 Q So that audio tape that was provided at the last
19 moment, relatively speaking, showed his innocence?

20 A It showed that they didn't have additional
21 evidence where anyone or anyone said that it was him
22 that did it.

23 MR. FOWLER: May I approach?

24 THE COURT: You may.

25 Q This is something that I mentioned earlier,

RONALD HAZZARD - CROSS-EXAMINATION

1 Page 89, where the Court indicates lines -- Page 89,
2 Lines 12 through 20, that indicates that the Court in
3 terms of this -- it says, That is unacceptable, but
4 fortunately the last video is a video of the victims
5 was turned over. So the Court basically told the law
6 enforcement agency that they did an unacceptable -- to
7 use the Court's words, not mine -- they did an
8 unacceptable job in turning over discovery; is that
9 correct?

10 A Yes, sir. Judge Cottingham said that.

11 Q Did you think about doing a mistrial or take
12 measures to stop the proceeding to have additional time
13 to review that tape and how it relates to other issues?

14 A No, sir. I knew how it related to the issues.
15 Again, it was not something -- it was really pretty
16 much a non-event. There were definitely things in
17 there that if these folks -- victims attempted to
18 testify that they recognized Dwaine as the individual,
19 obviously I was in a position to cross-examine them
20 saying you were asked about did you know who shot you,
21 did you recognize who shot you, could you point out who
22 shot you, and you said the night of the incident that,
23 no, you could not and said that all through every
24 subsequent interview with the police up to that point.
25 So I felt fully comfortable having that material for

RONALD HAZZARD - CROSS-EXAMINATION

1 the purpose of cross-examination and impeachment.

2 Q Earlier on direct examination you mentioned
3 Isaiah Green. Just to -- he was a codefendant with my
4 client -- or tell me about Isaiah Green; who was he? I
5 don't want to put words in your mouth, and I want to be
6 sure who he was in relation to this case. Who was he
7 in relation to this matter?

8 A That was Mr. Johnson's codefendant. They were
9 both charged with robbing the Chinese restaurant.

10 Q And how much time did Mr. Green get?

11 A I don't recall.

12 Q Did your office represent him as public
13 defenders?

14 A No, sir.

15 Q But you are saying there was DNA testing done on
16 Isaiah Green, correct?

17 A There was a cup with a straw in it on the counter
18 and it tested and the DNA came back to Mr. Green. The
19 two victims said that they recognized Mr. Green, but I
20 think that was from him having been a previous customer
21 of the establishment.

22 Q Straw in the cup, was the only thing? Was there
23 gun powder residue testing, to your knowledge?

24 A I don't recall whether they did any gun powder
25 testing on him or not.

RONALD HAZZARD - CROSS-EXAMINATION

1 Q Was there any gun powder testing on my client in
2 this regard?

3 A No, sir.

4 Q So as you said earlier, there was no forensic
5 evidence pointing him to the crime in any way; is that
6 correct?

7 A That's correct.

8 Q In terms of prosecutorial misconduct, perhaps the
9 lay in discovery served as a misconduct by the
10 prosecution, did you ever mention that to him as a
11 possible defense or possible matter that needs to be
12 brought up in court, any kind of misconduct -- the
13 scope could be large, either by delaying the discovery
14 or some other activity, did you ever go over that with
15 him, some kind of misconduct by the prosecution?

16 A Not as far as couching it as "misconduct," no,
17 sir.

18 Q In terms of mental health, to be clear, are you
19 saying that he had some testing done while he was
20 incarcerated on these charges, or done before?

21 A I didn't say either of those. I said that there
22 was a hearing before Judge Steven John regarding
23 whether the Court deemed it necessary to have Mr.
24 Johnson tested to determine his competency prior to
25 trial, and Judge John made the determination, after

RONALD HAZZARD - CROSS-EXAMINATION

1 extensive colloquy with Mr. Johnson, that Judge John
2 did not believe that an evaluation was necessary.

3 Q Did you ever enlist any mental health
4 professionals to go over Mr. Johnson's mental health?

5 A No, sir. In my dealing with Mr. Johnson at that
6 time, from April 27 of 2012 through the plea date of
7 April 15, 2014, he seemed perfectly fine and perfectly
8 competent to me. He understood everything we
9 discussed, seemed very clear what was going on, very
10 lucid, very capable. In dealing with his parents,
11 neither indicated any concerns of him having any
12 history of any mental illness.

13 Q Earlier he mentioned there perhaps was an invalid
14 warrant; are you familiar with any inaccuracies of the
15 warrant?

16 A No, sir. No, I'm not.

17 Q Are you saying that the improper line-up was not
18 a police or law enforcement line-up, but some confusion
19 about my client's name and face being put on the
20 television? Could you clarify the improper line-up --
21 let me rephrase it. Was he ever in a law enforcement
22 line-up to be picked up by any of the victims or anyone
23 else?

24 A Yes, multiple line-ups.

25 Q Are you saying there was any irregularities in

RONALD HAZZARD - CROSS-EXAMINATION

1 any of those line-ups?

2 A No, sir. The only person who picked him out of
3 the line-up was Isaiah Green, who already knew Mr.
4 Johnson. That is what I'm saying. I mean, the folks
5 in the restaurant didn't pick him out of the line-up,
6 the customers in the restaurant. So when he says an
7 improper line-up, based on our discussions during that
8 time, all I'm left to conclude -- based on my
9 interaction with Mr. Johnson -- is the fact that the
10 victims, after he was improperly released from the
11 Department of Corrections and his face was placed on
12 the news and television, then it was my understanding
13 that the two victims suddenly said, yeah, we recognize
14 him as the guy that shot us.

15 Q In regards to the indictment, did you see any
16 flaws in the indictment or any issues he might have
17 raised with you -- let me rephrase that. Did he raise
18 any issues with you about the indictment?

19 A Did Dwaine?

20 Q Yes.

21 A No, sir. The pretrial motions regarding the
22 sufficiency were my motions.

23 Q And the tampering with evidence, he indicated
24 earlier that there may have been tampering with
25 evidence; are you familiar with any evidence tampering

RONALD HAZZARD - REDIRECT EXAMINATION

1 in this matter, potentially?

2 A None that I'm aware of.

3 MR. FOWLER: Nothing further.

4 REDIRECT-EXAMINATION

5 BY MS. GIOVANOLI:

6 Q So you did bring it to the Court's attention
7 there was a recording missing?

8 A Yes, ma'am.

9 Q And the Court ruled on that, correct?

10 A Yes, ma'am.

11 Q And do you recall how it ruled?

12 A The way Judge Cottingham initially ruled was the
13 posture that it was in at that time was that the
14 State's best judgment, best knowledge, best information
15 as provided by the assistant solicitor was that the
16 recording was not available, that it had been destroyed
17 or somehow had been messed up. The night before, I
18 think it was -- I think my notes say it was 7:00 p.m.
19 -- Court's indulgence, Your Honor.

20 (A brief pause in the proceedings.)

21 A We began the trial April 14th, jury selection,
22 pretrial motions, notified around 7:00 p.m. via text by
23 Senior Solicitor Erin Bailey that the State had an
24 audio recording of female victim statements given to
25 police while in hospital following the incident.

RONALD HAZZARD - REDIRECT EXAMINATION

1 So the way Judge Cottingham initially ruled on
2 the 14th was if it is not available, there is
3 nothing really for me to rule on. Once it was brought
4 to his attention the morning of the 15th that the
5 recording was available, he immediately allowed me as
6 much time as I needed to go over that with Mr.
7 Johnson.

8 Q (MS. GIOVANOLI) You were aware if he pled
9 guilty, he waived his right to challenge that evidence
10 coming in or that ruling?

11 A Yes, ma'am.

12 Q And knowing that, you still felt comfortable with
13 him pleading guilty?

14 A Yes, ma'am, I mean....

15 Q Is that because the recording was not exculpatory
16 or inculpatory?

17 A Yes, ma'am.

18 MS. GIOVANOLI: Nothing further. State rests.

19 MR. FOWLER: Nothing further besides closing.

20 THE COURT: I'll hear closing.

21 MR. FOWLER: We have gone through my client's
22 application, and my client and I have had what I feel
23 to be thorough discussions on this matter. We have
24 gone over various issues that he raised on his
25 application including prosecutorial misconduct,

RONALD HAZZARD - REDIRECT EXAMINATION

1 ineffective assistance of counsel, potential mental
2 health issues that my client has, a potential invalid
3 warrant, the line-up that may have been improper,
4 indictment potential flaws and tampering with
5 evidence, according to his application.

6 I discussed these with my client on the witness
7 stand and gone over these with Mr. Hazzard who has
8 been here today, Your Honor, gone over these as well
9 to the best of his knowledge, I assume. We feel that
10 we have met our burden of proof on this and ask for a
11 ruling in our favor on this matter.

12 THE COURT: Thank you.

13 MS. GIOVANOLI: Thank you, Your Honor.

14 Notwithstanding the fact that Counsel addressed all of
15 these issues prior to trial, the South Carolina Code
16 on Section 27-27-20(b), issues that could have been
17 raised at trial or on appeal, are not allowed in a
18 PCR. PCR is not a substitute for a direct appeal, and
19 the issues that Counsel is arguing are not cognizable
20 as far as PCR is concerned. Whether or not counsel
21 addressed those issues was abundantly clear from Mr.
22 Hazzard's testimony, and not only did he address each
23 and every one, you can see in the transcript they were
24 ruled upon. By pleading guilty afterwards, he waived
25 any right to contest those rulings, to appeal those

RONALD HAZZARD - REDIRECT EXAMINATION

1 rulings.

2 As far as the mental health issues, Counsel
3 testified that there was no indication that he
4 suffered from any mental health issues, and his
5 parents didn't mention it either. The State would
6 argue that the Applicant failed to meet his burden of
7 proof, failed to allege any error committed by
8 Counsel. Any issues regarding prosecutorial
9 misconduct is invalid, the warrant, line-up, improper
10 identification, flawed indictment, failure to suppress
11 and object to evidence, all of those were addressed by
12 Counsel or are issues that could have been raised at
13 trial or on appeal; therefore, the applicant has
14 failed to meet his burden of proof under Strickland,
15 and State would request that you deny this application
16 for post-conviction relief.

17 THE COURT: Thank you. After considering all of
18 these matters, the Court agrees with the position of
19 the Attorney General finding that the Applicant failed
20 to meet his burden of proof. Application is denied,
21 and I'll ask you to prepare an order.

22 MS. GIOVANOLI: May I request 30 days?

23 THE COURT: 28.

24 MR. FOWLER: Thank you, Your Honor.

25 THE COURT: Good luck to you.

RONALD HAZZARD - REDIRECT EXAMINATION

(Whereupon, the proceedings concluded.)

CERTIFICATE OF REPORTER

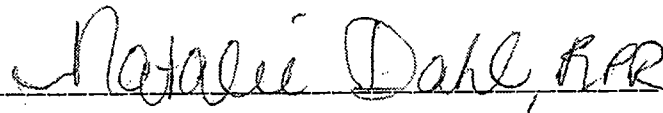
State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for 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 matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 16th day of November, 2016.

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

May 1, 2017



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Dwaine L. Johnson, #343186,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2014-CP-22-1128

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, SC
2016 DEC 14 PM 1:27
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 9, 2014. Respondent made its return on February 2, 2016. An evidentiary hearing into the matter was convened on November 16, 2016, at the Horry County Courthouse. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying was Applicant's trial counsel, Ronald W. Hazzard, Esquire. The Court had before it the trial transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In November 2011, the Georgetown County Grand Jury indicted Applicant for two counts of murder/attempted murder (2011-GS-22-1187) and (2011-GS-22-1186) and armed robbery (2011-GS-22-1185). Ronald W. Hazzard, Esquire, represented Applicant. On April 15, 2014, Applicant pled guilty to the two

charges of murder/attempted murder and the charge of armed robbery. The Honorable Edward B. Cottingham sentenced Applicant to fifteen (15) years imprisonment for each charge of murder/attempted murder and armed robbery, to be served concurrently. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Attorney was ineffective"
 - b. "[W]arrant invalid, line up was improper, flaws indictment [sic]"
 - c. Failure to move to suppress/object to evidence
 - i. "Law enforcement tampering with interview"
2. Prosecutorial Misconduct
 - a. "Prosecutor lied to the judge"
3. Involuntary Guilty Plea
 - a. "[Applicant has] mental health learning disable [sic]"

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

I. Summary of Testimony

Applicant testified to the following: The prosecutor of Applicant's case failed to provide discovery. Some discovery was not given until the day of trial which Applicant felt prejudiced

him. Applicant suffers from autism. He does not remember if or when he was diagnosed. Applicant takes Zoloft to treat his disorder. Applicant did not mention his disorder to his trial counsel, Ronald Hazzard, because he stated that is counsel's job to tell Applicant about that. Applicant stated that the indictment was invalid because the dollar amount was incorrect. There was also an improper identification procedure used in his case. Applicant was also unaware of additional charges that were brought against him. Applicant claims Lieutenant Smalls tampered with evidence and Hazzard never brought that up. Applicant remembers meeting with Hazzard plenty of times. He claims the trial judge violated rules of court, but failed to explain how. Applicant explained that he took over the jury striking process and could not explain his reasoning for using all ten (10) of his strikes against white jurors. Applicant also claimed Hazzard coerced his guilty plea. Applicant seemed confused and disoriented and at times had difficulty conveying his thoughts and answering questions.

State's witness, Ronald Hazzard, testified as follows: Ronald Hazzard was admitted to practice law in 1988 and all of his practice has been devoted to criminal law, with an emphasis on criminal defense. Hazzard has been qualified to defend in death penalty cases since 1993. He has served as Chief Public Defender of Georgetown since April 13, 2012. Hazzard came to represent Applicant on his underlying charges by inheriting the case from his predecessor.

Hazzard first met with Applicant on April 27, 2012, in which they discussed facts of the case and Applicant's personal history and situation. Hazzard represented Applicant from April 2012 through the date of his trial/plea in April 2014 and never had any indication that Applicant had mental health issues or emotional issues. Neither applicant nor parents ever indicated that he suffered from autism or any other mental health issue. Hazzard never had any problem



communicating with Applicant. Furthermore, Judge John held a competency hearing and found that Applicant was competent to stand trial and found no evaluation was necessary.

Upon receipt of discovery, Hazzard reviewed it and discussed it with Applicant for over an hour. He also met with Applicant's parents in the courtroom and in his office and discussed the case with them. Hazzard conveyed to Applicant the State's initial offer which was a guilty plea on the charge of armed robbery in exchange for the dismissal of two counts of attempted murder. Applicant did not want to accept the offer. Over the course of representation, Hazzard and Applicant had 15-20 meetings, all occurring at the detention center and the courtroom. In those meetings, Hazzard advised Applicant of his constitutional rights, including his right to a jury trial, his right to call witnesses to testify on his behalf, his right to confront the witnesses against him, and his right to testify or not to testify.

Hazzard detailed his trial strategy. Because there was no forensic evidence against Applicant, the case essentially hinged on the credibility of the co-defendant who was going to testify against Applicant. Hazzard was prepared to try the case. Hazzard made many pre-trial motions, including a motion to quash the indictments, sequester witnesses, receive criminal records of testifying witnesses, and to clarify what parts of Applicant's criminal history were admissible. He also addressed a potential discovery violation that involved a missing recorded statement by a victim and an improper identification issue. The court addressed or ruled upon every concern or motion raised by Hazzard.

Although the missing recording was provided the day of trial, the Court gave Hazzard and Applicant ample opportunity to review it. The recording was neither inculpatory nor exculpatory and thus was not a substantial or important piece of evidence in the opinion of



counsel. The recording contained the victim's statement to the investigator in which the victim indicated they could not identify the shooter. Nevertheless, Applicant changed his mind after reviewing the recording and decided to plead guilty. Hazzard was shocked at his decision, but made sure he understood a series of things: that Applicant would have to say he was guilty, that Applicant was pleading to one count of armed robbery and two counts of attempted murder, and that these three convictions would constitute three strikes and if convicted of a serious offense again, Applicant could face life without parole. Hazzard did not encourage Applicant to plead guilty.

With regard to the alleged line-up identification issue, Hazzard stated that there was no issue. Only the co-defendant had identified Applicant from a line-up and the co-defendant already knew Applicant.

II. Ineffective Assistance of Counsel

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

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. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386

S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant failed to meet his burden of proving that trial counsel rendered ineffective assistance. To the extent Applicant claims that his warrant was invalid, the line-up was improper, and the indictment flawed, this Court finds that testimony not credible and refuted by the record. During Applicant's plea trial, Hazzard addressed the validity of the indictments (Plea Tr. 46:4-49:11) and the alleged improper identification procedure (Plea Tr. 68:4-69:7). This Court also finds the Applicant failed to meet his burden of proving trial counsel

failed to move to suppress or object to evidence. Hazzard made a motion to the court regarding the Solicitor's failure to produce certain discovery that had been requested (Plea Tr. 63:10-68:3). Hazzard testified that an audio recording of the victim's statement was later provided to him and the court gave him and Applicant ample time to review the recording. Hazzard also testified that there was nothing significant about the recording and did not inculcate nor exculpate Applicant. This Court notes Hazzard is an experienced criminal defense attorney and his testimony is more credible on this point. Regardless, this Court finds the information revealed by the testimony at the PCR hearing would likely not have changed the decision of the Applicant to plead guilty. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. Accordingly, this Court finds that this allegation must be denied and dismissed with prejudice.

III. Prosecutorial Misconduct

This Court further finds that Applicant is not entitled to post-conviction relief based on his allegations of prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-



conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that the Applicant has not carried his burden of proving actual prosecutorial misconduct as there was no evidence presented to support that claim. Accordingly, this Court finds that this allegation must be denied and dismissed with prejudice.

IV. Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431

U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that Applicant failed to meet his burden of proving that his guilty plea was entered involuntarily. Applicant testified that his trial counsel coerced his guilty plea. Hazzard is a trial practitioner who has twenty-eight (28) years of experience in the trial of serious criminal offenses. Hazzard conferred with the Applicant in which counsel discussed the pending charges, what the State was required to prove, Applicant's constitutional rights, Applicant's concerns and desires. Furthermore, the record demonstrates that Hazzard was fully prepared to proceed to trial on Applicant's case when Applicant abruptly changed his decision to plead guilty.

During Applicant's plea hearing, Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court more than once that he was satisfied with his attorney. The record reflects, and this Court so holds, that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 450 F.2d 327 (4th Cir. 1985).

A. Competency of Applicant

This Court finds that Applicant was competent to enter his guilty plea. Competency to enter plea is no more stringent than competency to stand trial. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980). To sustain a claim of incompetency in fact at a plea, applicant in a PCR proceeding must show by the preponderance

of the evidence he was incompetent at the time of the plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability petitioner would have been found incompetent. Id. Counsel may reasonably rely on his own perceptions in deciding a client is competent to stand trial. Id.

Applicant had difficulty understanding and answering questions asked during the PCR hearing. Applicant was able to testify that he had suffered from Autism since childhood. However, Hazzard testified that he had never had any indication that Applicant suffered from any mental health issues. Hazzard also testified that neither Applicant nor Applicant's parents mentioned autism or any other mental or emotional problems. Hazzard never had any trouble communicating with Applicant over the course of their 15-20 meetings. Not only did Hazzard rely on his own perceptions in deciding his client was competent for trial, Judge John held a competency hearing in which he found Applicant was competent to stand trial and did not require an evaluation.

Therefore, this Court finds Applicant has failed to meet his burden to prove either that he was incompetent at the time of his guilty plea or that Hazzard was ineffective for failing to address any competency issues. Accordingly, this Court finds that this allegation must be denied and dismissed with prejudice.

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 the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant



waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

[Remainder of page left intentionally blank]

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

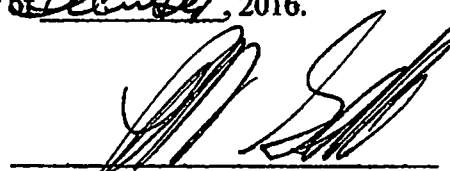
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of December, 2016.

 , South Carolina.


 Honorable Brooks P. Goldsmith
 Presiding Judge
 Fifteenth Judicial Circuit



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Columbia, SC 29211

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Law Firm

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Steven W. Fowler
Licensed in NC & SC

Wilmington 910-509-7160
Myrtle Beach 843-663-0006
www.myfowlerlaw.com

February 17, 2017

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

FEB 24 2017

S.C. SUPREME COURT

RE: Gibson v. State of SC 2015-CP-26-530
Vanderhorst v. State of SC 2015-CP-22-0787
Bell v. State of SC 2015-CP-26-5512
Johnson v. State of SC 2014-CP-22-1128

Dear Sir or Madam:

Enclosed for filing are Notices of Appeal for the above four (4) cases.

FOWLER LAW FIRM

Patti

Patricia F. Clapper
Advanced Certified Paralegal
NC Certified Paralegal

cc: Ms. Valerie Garcia Giovanoli
Horry County Clerk of Court
Georgetown County Clerk of Court

WITNESSES

Georgetown Police Department

DOCKET NO. 2011-GS22-01185 ✓

The State of South Carolina

County of Georgetown

Erin Bailey

11G00839

COURT OF GENERAL SESSIONS

NOVEMBER, 2011 TERM

REST WARRANT NUMBER

J538952

CDR: 0139 §16-11-0330(A)

DOI: August 24, 2011

THE STATE

vs.

DWAINE LAMARK JOHNSON JR.



DOB

ACTION OF GRAND JURY

ATTORNEY: Colvin, Richard F.

Indictment for

ARMED ROBBERY

J. Gregory Hembree, Solicitor

TRUE BILL

Richard C. Holmes

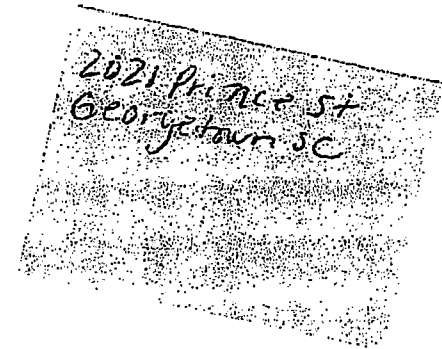
Foreperson of Grand Jury

Date: 11-16-11

VERDICT

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 16, 2011, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Dwaine Lamark Johnson Jr., along with a co-defendant, did in Georgetown County on or about August 24, 2011, while armed with a deadly weapon, to wit: the defendant demanded money at gunpoint from the victim, he did take and carry away personal property of Kwok Chung from or in the immediate presence of Kwok Chung with intent to deprive Kwok Chung of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

J-538952 ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

GEORGETOWN COUNTY, S.C.

Georgetown

2011 SEP 21 PM 3:42
THE STATE 11008932

against

ALMA Y. WHITE
CLERK OF COURT

Dwayne Lamark Johnson, Jr.

Address: [REDACTED]

Phone: [REDACTED]

Sex: M Race: B Height: 5 6 Weight: 145

City: [REDACTED] State: [REDACTED]

Agency ORI #: SC0220200

Prosecuting Agency: Georgetown Police Department

Prosecuting Officer: Johnell Sparkman - 0513

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

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

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 the law.

(L.S.)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to

defendant Dwaine L. Johnson Jron 9/9/11 1840

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P. O. Box 479

401 Cleland Street, Room 115

Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

80

☐ County/ ☒ Municipality of

Georgetown

AFFIDAVIT

April 21, 2003
SCCA 519Personally appeared before me the affiant Johnell Sparkmanbeing duly sworn deposes and says that defendant Dwaine Lamark Johnson, Jr.did within this county and state on or about 08/24/2011

violate the criminal laws of the

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Georgetown

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponI 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:On August 24, 2011, at approximately 9:50 PM, the defendant Dwaine Lamark Johnson and a co-defendant entered the Szechuan
Restaurant located at 1923 Highmarket Street, within the city limits of Georgetown, South Carolina while armed with a handgun.
The defendants demanded money at gun point with the intent to deprive the owners of their property. During the commission of the
robbery, two employees were shot at point blank range and approximately \$900.00 was taken from the cash register.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Affiant's Address 2222 Highmarket StreetGeorgetown, SC 29440-Affiant's Telephone (843)545-4300

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 or about 8/24/2011 defendant Dwaine Lamark Johnson, Jr.

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Georgetown

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponHaving 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 09/09/2011

Signature of Issuing Judge

Robert Harry O'Donnell

Judge Code: 6217Judge's Address 2222-B Highmarket StreetGeorgetown, SC 29440-3254Judge's Telephone (843)545-4020

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

80

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.

Mr. Dwaine Lamark Johnson Jr.

AKA:

R BLACK Sex: M Age: 18

DOB:

Address:

City, S:

DL#: SID#: SC01969178

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS22-01185

A/W#: J538952

Date of Offense: 8/24/2011

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ 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:

Bailey, Brian

SCB76016

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 15 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: 2011 GS 2201186 + 2011 GS 2201187☒ 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. 9/9/11☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cn	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3 rd County (if paid in installments)		\$ 3.90
TC		\$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning 1 Mo after Release

\$ 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/ Clerk

Sentence Date: 4/15/14

WITNESSES

Georgetown Police Department

ARREST WARRANT NUMBER

J538953

CDR: 3410 §16-03-0029

DOI: August 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Richard C. Holmes
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS22-01186 ✓

The State of South Carolina

County of Georgetown

Erin Bailey

11G00839

COURT OF GENERAL SESSIONS

NOVEMBER, 2011 TERM

THE STATE

vs.

DWAINE LAMARK JOHNSON JR.



B/M

ATTORNEY: Colvin, Richard F.

Indictment for

MURDER/ATTEMPTED MURDER

J. Gregory Hembree, Solicitor

2021 Penn St.
Georgetown SC

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

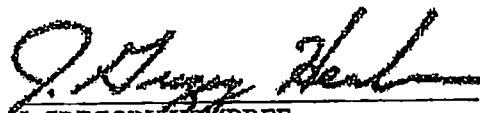
At a Court of General Sessions, convened on November 16, 2011, the Grand Jurors of Georgetown County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Dwaine Lamark Johnson Jr., along with a co-defendant, did in Georgetown County on or about August 24, 2011, did with malice aforethought and with intent to kill Rui Mei Dong with a handgun causing life threatening injuries during the commission of a robbery, in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

ARREST WARRANT

J-538953

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality ofFILED
GEORGETOWN COUNTY, S.C.

Georgetown

2011 SEP 21 PM 3:42

THE STATE

11008932

against

ALMA Y. WHITE
CLERK OF COURT

Dwaine Lamark Johnson, Jr.

Address

Phone:

Sex: M Race: B Height: 5 6 Weight: 145

DL State: DL #:

Agency ORI #: SC0220200

Prosecuting Agency: Georgetown Police Department

Prosecuting Officer: Johnell Sparkman - 0513

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on 9/19/11 11:50

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Box 479
401 Cleland Street, Room 115
Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Personally appeared before me the affiant Johnell Sparkman

being duly sworn deposes and says that defendant Dwaine Lamark Johnson, Jr.

did within this county and state on or about 08/24/2011

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Georgetown

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

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:On August 24, 2011, at approximately 9:50 PM, at Szechuan Restaurant located at 1923 Highmarket Street, within the City limits
of Georgetown. The defendant Dwaine Lamark Johnson did with malice aforethought and with the intent to kill, enter the
Szechuan Restaurant armed with a handgun and did shoot victim Rui Mei Dong causing life threatening injuries during the
commission of a robbery.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Georgetown

Affiant's Address 2222 Highmarket Street
Georgetown, SC 29440-

Affiant's Telephone (843)545-4300

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 or about 8/24/2011 defendant Dwaine Lamark Johnson, Jr.

did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Georgetown) as set forth below.

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

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 09/09/2011

Signature of Issuing Judge
Robert Harry O'Donnell

Judge Code: 6217

Judge's Address 2222-B Highmarket Street

Georgetown, SC 29440-3254

Judge's Telephone (843)545-4020

Issuing Court: ☐ Magistrate ☒ Municipal☐ Circuit

107

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS.

Mr. Dwaine Lamark Johnson Jr.

AKA:

BLACK Sex: M Age: 18

DOB:

Address:

City, State, Zip:

DL#: SID#: SC01969178

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS22-01186

A/W#: J538953

Date of Offense: 8/24/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ 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:

SCB76016

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 15 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 formonths/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: 2011-GS22-01185 + 2011-GS22-01187The 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. Since 9/9/11☐ 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 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
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§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ 5.00
County (if paid in installments)	\$ 3.90
Total	\$ 133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/B beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 20.00 beginning 1 Mo after Release

\$ 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: 2041

Sentence Date: 4/15/14

WITNESSES

Georgetown Police Department

ARREST WARRANT NUMBER

J538954

CDR: 3410 §16-03-0029

DOI: August 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Richard C. Holmes

Foreperson of Grand Jury

Date: 11-16-11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS22-01187 ✓

The State of South Carolina

County of Georgetown

Erin Belley

11G00839

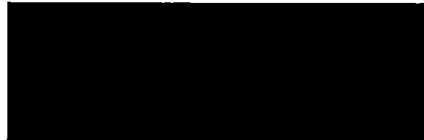
COURT OF GENERAL SESSIONS

NOVEMBER, 2011 TERM

THE STATE

VS.

DWAINE LAMARK JOHNSON JR.



ATTORNEY: Colvin, Richard F.

Indictment for

MURDER/ATTEMPTED MURDER

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

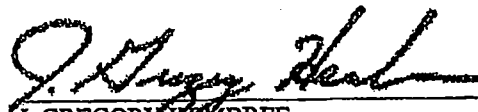
At a Court of General Sessions, convened on November 16, 2011, the Grand Jurors of Georgetown County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Dwaine Lamark Johnson Jr., along with a co-defendant, did in Georgetown County on or about August 24, 2011, did with malice aforethought and with the intent to kill, shoot victim Kwok Sang Chung with a handgun causing life threatening injuries during the commission of a robbery, in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

ARREST WARRANT

J-538954

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality ofFILED
GEORGETOWN COUNTY, S.C.

Georgetown

2011 SEP 21 PM 3:42

THE STATE

11008932

against

ALMA Y. WHITE
CLERK OF COURT

Dwayne Lamark Johnson, Jr.

Address:

Phone:

Sex: M

145

State:

Agency ORI #: SC0220200

Prosecuting Agency: Georgetown Police Department

Prosecuting Officer: Johnell Sparkman - 0513

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on

Dwayne L. Johnson Jr
9/19/11 1650

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P. O. Box 479

401 Cleland Street, Room 115

Georgetown, SC 29442

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Georgetown

Personally appeared before me the affiant Johnell Sparkman

being duly sworn deposes and says that defendant Dwayne Lamark Johnson, Jr.

did within this county and state on or about 08/24/2011

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Georgetown

In the following particulars:

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Szechuan Restaurant armed with a handgun and did shoot victim Kwok Sang Chung causing life threatening injuries during the
commission of a robbery.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Georgetown

Affiant's Address 2222 Highmarket Street
Georgetown, SC 29440-

Affiant's Telephone (843)545-4300

ARREST WARRANT

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on or about 8/24/2011 defendant Dwayne Lamark Johnson, Jr.

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Georgetown

) as set forth below:

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soon thereafter as is practicable
Sworn to and subscribed before me

on 09/09/2011

Signature of Issuing Judge

Robert Harry O'Donnell

Judge Code: 6217

Judge's Address 2222-B Highmarket Street

Georgetown, SC 29440-3254

Judge's Telephone (843)545-4020

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuitb.16. Arrest Warrant
April 21, 2003
SCCA 518ORIGINAL
FILED
2011 SEP 21 PM 3:42
GEORGETOWN COUNTY, S.C.

101

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS.

Mr. Dwaine Lamark Johnson Jr.

AKA:

R/ BLACK Sex: M Age: 18

DOB:

Address

City, St

DL#:

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

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

TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS22-01187

A/W#: J538954

Date of Offense: 8/24/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/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:

Bailey, Erin

SCB76015

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 15 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: 2011GS2201187 2011GS2201186☐ 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. Since 9/9/11☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 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	\$ 5.00
3% County (if paid in installments)	\$	\$ 2.90
TO:	\$	\$ 133.90

PTUP.

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/B beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 20.00 beginning 1 Mo after Release

\$ 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:

SCC017 (03/2011)

Presiding Judge

Judge Code: 2041

Sentence Date: 4/15/14

SCANNED

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 06/24/15
OMCOMITA RELEASE DATE SCREEN C056368
SCDC# > 343186 LOC: LEE
JOHNSON JR, DWAIN L SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N
015-00-000 CURRENT SENT START DATE: 09/09/2011
PROJECTED COMPLETION DATES
MAXOUT DATE: 06/03/2025 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000102 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001383 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Wednesday, June 24, 2015

Classification Summary Reports

Inmate Number

Classification Summary Report for JOHNSON JR, DWAIN E L :

CLASSIFICATION SUMMARY REPORT DATED 06/24/2015

SCDC# 00343186

JOHNSON JR, DWAIN E L

FBI# 231477KD6

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 SECURITY
DETENTION

CURR INCARC 15 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS: ☒ SEPREQ:Y

MED
CLASS:

INST
RESTRICT:

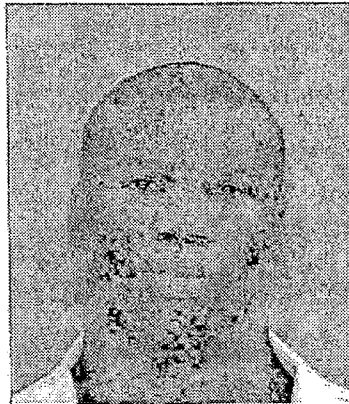
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 21



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: ASU 0151 B

PROJ MAXOUT 06/03/2025
DATE:

PROJ PAROLE DATE: -

EWC JOB: NO CURRENT JOB

ASSIGNMENT: LOCKED - UP

EWC
LEVEL: 0 EEC LEVEL:

EDUC
PGM: SPECIAL EDUCATION

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	SENTENCE	V/NV	CAT	INDICT

ARMED ROBBERY	15	0	0	GEORGETOWN	09/09/2011 V	4	11GS2201185
ATTEMPTED MURDER	15	0	0	GEORGETOWN	09/09/2011 V	4	11GS2201187
ASSLT & BATT W/INTNT KIL	0	0	0	GEORGETOWN	03/20/2009 V	4	09JU22035

	SENTENCE				SENTENCE		
COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	V/NV CAT	INDICT
THROW BODY FL. CORR. EMP	0	6	0	GEORGETOWN	02/26/2013 N	4	12GS2200568
THROW BODY FL. CORR. EMP	0	6	0	GEORGETOWN	02/26/2013 N	4	13GS2200254

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

THREAT LIFE/FAM PUBL OFF	WANTED	PRESIDING JUDGE	CATEG:4
ASSAULT & BATTERY 2ND	WANTED	JUDGE SCOGGINS	CATEG:2
ASSLT & BATT W/INTNT KIL	WANTED	ADAM SMITH, SCDPPPS	CATEG:4
ARMED ROBBERY	WANTED	JUDGE O'DONNELL	CATEG:4
ATTEMPTED MURDER	WANTED	JUDGE O'DONNELL	CATEG:4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

09/20/2013 ASSAULT & BATTERY 2ND

ASSAULTIVE DISCIPLINARIES:

01/07/2015 POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
09/11/2014 POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
04/30/2014 STRIKING AN INMATE WITH/WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT N
09/20/2013 ASSAULT/BATTERY OF INMATE TO KILL/INJURE	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT N
06/26/2013 POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
06/03/2013 A & B OF AN EMP, ETC W/INT KILL/INJURE	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT Y
04/14/2013 STRIKING AN INMATE WITH/WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

09/11/2014 POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
05/31/2013 REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
02/16/2011 OUT OF PLACE	CLOSED	OTHER ACTION TAKEN/INFORM

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

07/10/2014	LEE	INCARCERATED	ADMINISTRATIVE
07/10/2014	KIRKLAND	INCARCERATED	MEDICAL
05/19/2014	LEE	INCARCERATED	ADMINISTRATIVE
05/08/2014	KIRKLAND	INCARCERATED	RETURN FROM COURT
05/08/2014	JASPER CO	AUTH ABSENCE (AWL)	TO COURT
04/16/2014	KIRKLAND	INCARCERATED	R&E PROCESSING
04/16/2014	LIEBER	INCARCERATED	NEW ADMISSION
11/01/2013	UNK	RELEASE	EXPIRATION OF SENTENCE
10/28/2013	GEORGETOWN CO	AUTH ABSENCE (AWL)	TO COURT
05/06/2013	RIDGELAND	INCARCERATED	ADMINISTRATIVE
03/28/2013	KIRKLAND	INCARCERATED	ADMINISTRATIVE
03/27/2013	LEE	INCARCERATED	RE-ADMITTED/IMPROPER RELE
03/20/2013	GEORGETOWN CO	AUTH ABSENCE (AWL)	RE-ADMITTED/IMPROPER RELE
03/20/2013	UNK	RELEASE	EXPIRATION OF SENTENCE
03/06/2013	KIRKLAND	INCARCERATED	NEW SEN W/OUT YOA-PAR-REV
03/15/2011	WILLIAMSBURG CO	YOA PAROLE - CONDITIONAL	PAROLE BOARD ACTION
03/07/2011	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
03/07/2011	DEPT JUVENILE JUSTICE	AUTH ABSENCE (AWL)	PAROLE HEARING
12/07/2010	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
10/15/2010	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER	05/07/2013	06/04/2013	PLACED IN ST/SP CUSTODY	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	05/07/2013	06/04/2013	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	12/10/2010	03/07/2011	INSTIT TRANSFER

***** END OF REPORT *****

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