

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Cherokee County

J Derham Cole, Circuit Court Judge

RECEIVED

MAY 25 2012

S C. Supreme Court

JUSTIN O BYERS,

PETITIONER,

-
V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)	
 The State,)	
)	TRANSCRIPT OF RECORD
-vs-)	2008-GS-11-183,-184,-185,186
)	
Justin Byers,)	
)	March 20, 2009
Defendant)	Gaffney, South Carolina

B E F O R E

HONORABLE J MARK HAYES, II, JUDGE

A P P E A R A N C E S

MICHAEL DAVID MORIN, ESQ
Attorney for the State

DON A THOMPSON, ESQ
Attorney for the Defendant

Margaret A Woods -
Circuit Court Reporter

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NO EXHIBITS INTRODUCED

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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1 (Whereupon, the defendant is sworn)

2 MR MORIN Please the Court, Your Honor Before you is
3 Justin Byers He's pleading guilty to four indictments
4 2008-GS-11-184 is murder, 2008-GS-11-185 is burglary in the
5 first degree, 2008-GS-11-186 is possession of a vi -- a weapon
6 during the commission of a violent crime, 2008-GS-11-183 is
7 armed robbery He's represented by Don Thompson There's no
8 recommendations in this case

9 MR THOMPSON Your Honor, as a housekeeping matter,
10 there was an evaluation ordered and I'll hand up a copy of the
11 evaluation

12 EXAMINATION BY THE COURT

13 Q You're Mr Byers?

14 A Yes, sir

15 Q All right Mr Byers, you intend to plea today to armed
16 robbery?

17 A Yes, sir

18 Q And to murder?

19 A Yes, sir

20 Q And to burglary in the first degree?

21 A Yes, sir

22 Q And to possession of a weapon during the commission of a
23 violent crime?

24 A Yes, sir

25 Q All right Sir, if ever during this process you wanna

1 talk to your lawyer, you just let me know and I'll allow you
2 to speak to your lawyer in private, okay?

3 A Yes, sir

4 Q Now, sir, I need to let you know we are making a
5 recording of everything that happens in here This lady down
6 there (indicating) she's a court reporter, she needs to be
7 able to hear you and so do -- as well as I do and you're
8 speaking sort of softly so try to speak up and if ever during
9 this process you can't hear me, let me know and I'll speak up
10 as well, all right?

11 A Yes, sir

12 Q Thank you How old are you, sir?

13 A Twenty-one

14 Q How far did you go in school?

15 A Twelfth grade

16 Q Did you get a diploma?

17 A No, sir

18 Q Did you ever get your GED?

19 A Yes, sir

20 Q Presently are you married? single? divorced? widowed?

21 A Yes, sir

22 Q Which one?

23 A My wife's right there (indicating)

24 Q Do you have any children?

25 A Yes, sir

1 Q How many?

2 A Four

3 Q How old are they?

4 A Six, four, two and seven months

5 Q Prior to your arrest did you have a job?

6 A No, sir

7 Q How were you supporting yourself financially?

8 A I sold drugs, sir

9 Q Ever serve in the military?

10 A No, sir

11 Q On this particular charge how long have you been in
12 jail?

13 A Um, a year

14 MR THOMPSON January January 4th of last year, 2008

15 EXAMINATION BY THE COURT

16 Q Excuse me Within the last twenty-four hours have you
17 consumed any type of substance that is adversely or negatively
18 affecting your ability to understand what we're doing today?

19 A No, sir

20 Q Have you ever been treated for any type of drug or
21 alcohol abuse?

22 A Yes, sir

23 Q When was that?

24 A Uh, ---

25 Q Approximately

1 A 2007

2 Q Where did you receive that treatment?

3 A Turbeville

4 Q And was it for drugs, alcohol, or both?

5 A Both

6 Q And was it successful at the time?

7 A Yes, sir

8 Q Are you satisfied with the work that your lawyer has
9 done?

10 A Yes, sir

11 Q Do you feel like you've had enough time to talk to him
12 about the facts that are behind these cases, the legal
13 elements of the offenses and that you or that -- for which you
14 are charged and also any possible defenses you might have?

15 A Yes, sir

16 Q Beyond that which might have been stated in in this
17 courtroom has anybody come to you and threatened you in any
18 way or made you any promises in order to get you to make the
19 decision to enter the plea to these charges?

20 A No, sir

21 Q Your decision to enter the plea to all of these charges
22 has been made freely and voluntarily?

23 A Yes, sir

24 Q Sir, I need for you to understand that under the law you
25 are presumed innocent of all of these charges and you do have

1 a right to have a jury trial on any or all of these charges
2 that you may wish At any trial that would take place, it
3 would be the State that has the burden of proof and the State
4 would have to convince all twelve members of a jury that you
5 are in fact guilty beyond a reasonable doubt of all of these
6 charges or of any of these charges Now, do you understand
7 that you have a right to that trial to any charge that we have
8 before you today?

9 A Yes, sir

10 Q And do you wish to waive your right to all of the charges
11 that are against you?

12 A Yes, sir

13 Q You don't want a trial on any of 'em?

14 A No, sir

15 Q Sir, I need for you to understand that in addition to
16 giving up your right to a jury trial in order to enter a plea
17 you also have to give up other very important constitutional
18 rights You have to give up your right to confront and
19 cross-examine the State's witnesses

20 A Yes, sir

21 Q You also have to give up your right to present evidence
22 which you or your lawyer may feel would establish some type of
23 defense to these charges

24 A Yes, sir

25 Q You also have to give up your right to remain silent and

1 you have to give up your right of subpoena

2 A Yes, sir

3 Q Now, sir, do you understand all of those rights?

4 A Yes, sir

5 Q And you wish to give up all of those rights and proceed
6 with entering a plea to all of these charges?

7 A Yes, sir

8 Q All right Sir, if you would, the gentleman over here
9 (indicating) is a solicitor, he is going to give us the facts
10 that are behind these cases I need for you to please listen
11 to him Thank you

12 THE COURT Yes, sir

13 MR MORIN Your Honor, on January 4th 2008 Furman
14 Armstrong was visiting his brother at [REDACTED] Fleming Road here in
15 Cherokee County Furman and his girlfriend, Ivey, had gone to
16 bed in one bedroom of the home, Kendrick and his girlfriend,
17 Camille, had gone to bed in another bedroom of the home
18 Around 1 30 that morning the defendant, Justin Byers, entered
19 the front door of the home He was armed with a Mossberg
20 Maverick 12-gauge shotgun When he got to the first bedroom,
21 Furman had gotten up hearing someone enter the home The door
22 opened, Mr Byers pointed the shotgun at Mr Fur -- at
23 Furman's head screaming, "Give it up " According to Furman's
24 girlfriend, Ivey, Furman went to raise his hands and said, "I
25 don't have any " At that point he was shot in the face

1 killing him instantly According to autopsy only a brain stem
2 and a small quantity of brain tissue was left in the occipital
3 region He basically was decapitated

4 Mr Byers then moved to the next bedroom where Kendrick
5 had heard the shot and he got up and told his girlfriend to
6 hide under the bed When he got to the door, he was
7 confronted by Mr Byers in the same manner his brother had
8 been, however, in this case as he was screaming, "Give it up,"
9 Kendrick gave him between 2 and \$3,000 that he had Mr Byers
10 fled the home Kendrick reports he heard a car drive off
11 shortly after he left At that point Mr Kendrick Armstrong
12 realized his brother had been fatally shot Mr Byers fled
13 with four other co-defendant's in this case He's the first
14 one to come before the Court That would be facts of the
15 case The State would, along with the victim's mother and the
16 victim of the armed robbery and burglary, we'd like to speak
17 at the appropriate time as to sentencing

18 EXAMINATION BY THE COURT

19 Q Mr Byers, were you able to hear the solicitor when he
20 gave me the facts?

21 A Yes, sir

22 Q Now do you believe that as he stated the facts that he is
23 substantially correct?

24 A Yes, sir I would like to speak

25 Q All right I'll be more than happy to hear from you I

1 always allow the defendant to speak I usually allow the
2 defendant to speak last and make any comments that that he
3 would make -- that he would like to make At this point I'm
4 simply trying to assure myself that you are fully aware of all
5 of your constitutional rights and that the State has a
6 substantial factual basis to pursue the charges against you
7 and that there is agreement with you or agreement from you as
8 to the factual basis for the charges against you, so if you
9 will be -- I'll be more than -- I welcome any comments that
10 you will have if you will just reserve them for later, okay?

11 A Yes, sir

12 Q But again if ever during this process you wanna speak to
13 your lawyer, you just let me know and I'll allow you to do so,
14 okay?

15 A Yes, sir

16 Q You need to talk to your lawyer now?

17 (Whereupon, a discussion was held off the record)

18 MR THOMPSON No, sir

19 EXAMINATION BY THE COURT

20 Q Okay All right, sir, with there being an agreement from
21 you that there is a substantial factual basis for these pleas
22 I need to also see if you understand the possible sentences
23 that this court could impose today Now, sir, do you
24 understand that to the armed robbery charge that today I could
25 sentence you between 10 and 30 years today?

1 A Yes, sir

2 Q And, sir, do you also understand that any sentence that
3 is imposed under the armed robbery charge that that will carry
4 the classifications of violent and also carry the
5 classification of most serious?

6 A Yes, sir

7 Q Now, sir, have you been able to talk to your lawyer as to
8 the consequences and ramifications of that of -- of the
9 classifications of violent and most serious?

10 A Yes, sir

11 Q Understanding the possible sentence I could impose
12 between 10 to 30 years as well as the classifications of
13 violent and most serious consequences and ramifications under
14 the classification, do you still wanna enter that plea to the
15 armed robbery charge?

16 A Yes, sir

17 Q Now, sir, on the murder charge you do understand that
18 that carries a sentence of 30 years to life at the department
19 of corrections?

20 A Yes, sir

21 Q And, sir, you -- like with the armed robbery charge the
22 murder charge is classified as a violent offense and also a
23 most serious offense And again, you've been able to talk to
24 your lawyer as to the consequences of the murder charge being
25 classified as a violent and a most serious offense?

1 A Yes, sir

2 Q And you understand those ramifications?

3 A Yes, sir

4 Q And you still wanna enter the plea to the murder charge
5 understanding the possible sentence as well as those
6 classifications and ramifications of those classifications?

7 A Yes, sir

8 Q And, sir, on the burglary in the first, burglary in the
9 first degree charge, sir, you understand that on the burglary
10 first charge I can sentence you between 15 years and life at
11 the department of corrections?

12 A Yes, sir

13 Q And, sir, as with the murder and the armed robbery
14 charge, you understand that the burglary in the first degree
15 charge is classified as a violent offense and also as a most
16 serious offense under the law?

17 A Yes, sir

18 Q And again, you've been able to talk to your lawyer as to
19 the consequences and ramifications of the burglary in the
20 first degree charge being classified as violent most serious
21 and most serious and the consequences and ramifications of
22 those classifications?

23 A Yes, sir

24 Q You still wanna enter the plea to that charge?

25 A Yes, sir

1 Q And, sir, you do understand that the use of a weapon
2 during the commission of a violent crime carries 5 years and
3 would run consecutive to any of the other sentences that would
4 be imposed that arise out of that same offense?

5 A Yes, sir

6 Q And with that understanding you still wanna enter the
7 plea to that charge?

8 A Yes, sir.

9 Q Sir, are you are you in fact guilty of murder as indicted
10 under Indictment 2008-GS-11-184?

11 A Yes, sir

12 Q And are you also guilty of armed robbery as indicted
13 under Indictment 2008-GS-11-183?

14 A Yes, sir

15 Q And, sir, are you also guilty of burglary in the first
16 degree as indicted under Indictment 2008-GS-11-185?

17 A Yes, sir

18 Q And, sir, are you also guilty as indicted under
19 Indictment 2008-GS-11-186 of possession of a weapon during the
20 commission of a violent crime?

21 A Yes, sir

22 Q Sir, have you been able to hear all of my questions?

23 A Yes, sir

24 Q Have all of your answers been truthful and honest?

25 A Yes, sir

1 THE COURT Discovery has been shared with the defense?

2 MR MORIN Yes, sir

3 THE COURT Prior record?

4 MR MORIN Has a common law robbery conviction from 2004
5 or let me confirm that, Your Honor I believe it was 2004

6 MR THOMPSON Correct

7 MR MORIN Yes, 2004

8 THE COURT All right Give me just a moment to read
9 this report

10 MR MORIN Yes, sir

11 (Pause)

12 THE COURT All right I've reviewed the report prepared
13 by the South Carolina Department of Mental Health Forensic
14 Evaluation Services on Mr Byers and the report admitted in
15 this proceeding will be made a part of the record of this
16 proceeding

17 (Medical evaluation report marked Defendant's Exhibit
18 No 1)

19 THE COURT We have a prior record Did you say that
20 some people did wish to address the Court on behalf of the
21 victim?

22 MR MORIN Yes, sir, but before we do that there's a
23 housecleaning matter that I -- that's come up during this He
24 reported to you, I think, and I may have misunderstood, that
25 he had a 7-month-old child which he's been in jail for 14

1 months so I don't know maybe I misheard him but I think we
2 need to make sure he understands what's going on and maybe
3 that needs to be explained at some point

4 MR THOMPSON I can explain that

5 MR MORIN Okay

6 MR THOMPSON I, when I talked with Mr Byers, the first
7 time I talked with him, Judge, he he advised me that his
8 girlfriend was pregnant at the time he was arrested, ---

9 MR MORIN Okay

10 MR THOMPSON --- and that that was ---

11 MR MORIN Okay I guess you can make it that way All
12 right Your Honor, I'd I'd like to go first Also present is
13 his mother Sarah Jackson and as I stated the victim, Kendrick
14 Armstrong, who is the brother

15 Your Honor, in this case Mr Byers while he was
16 committing these crimes didn't wear a mask or conceal his
17 identity in any way, and his burglary first is a little
18 strange in that it has four aggravators it occurred at
19 nighttime, it occurred while he was armed with a deadly
20 weapon, it occurred while he committed a robbery, and it it
21 resulted during the burglary someone was injured And as you
22 stated you know -- you have his record, however, during --
23 once he returned to the vehicle with the other co-defendants,
24 one of the co-defendants, Tomaine Deal, who was driving the
25 vehicle, reported that Mr Byers said, "I'm a goon I'm a

1 real goon I had shot somebody but he got the money "

2 Your Honor, Sarah Jackson, Furman's mom's here and other
3 family members are present on the right side of the courtroom
4 Furman was 24-years-old, Your Honor, and Ms Jackson has in
5 her hand what may be one of the saddest things I've seen, that
6 is Furman's diploma from Southern Wesleyan College, this
7 occurred on a Friday January 4th, and he was to return to
8 Southern Wesleyan for the last semester of his senior year and
9 he was gonna graduate and Ms Jackson had to go to that
10 graduation in May of 2008 and instead of seeing her son
11 graduate she got a diploma for him, and I've never seen a
12 diploma that has at the bottom, "Granted posthumously," but
13 for a 24-year-old, Furman was trying to live right He
14 graduated from Broome High School, he'd gone to Southern
15 Wesleyan, he was on track to graduate Toxicology reports on
16 him shows that he didn't have alcohol or any other substance
17 in his system The four people that were present in that home
18 that night just got through watching a ball game and were
19 gonna have a nice weekend I have since spoken to Tomaine --
20 Camille, the girlfriend of Kendrick's, as we were getting
21 ready for this trial She's presently a student at
22 Charleston, College of Charleston and it took me a while to
23 explain to her what was going on because she had to stop
24 several times 'cause she was cryin'

25 Oftentimes, the media reports home invasion and I don't

1 really care for the term because it's a sensational term for
2 the most part In this case it applies There was some
3 discussion in the vehicle by one of the other co-defendants
4 when they drove up about not going in because one of the women
5 in there was his sister and when he realized his sister was
6 there, he said, "Maybe we ought not do this," but they went
7 ahead They divided up the 2,000 or \$3,000 that was taken
8 from Kendrick and that that would have been the end of the
9 case but all four of them are charged with all these crimes
10 With Mr Byers's testimony, I've already informed the family
11 that the next vic -- the next defendant Kendrick -- I mean,
12 Kelvin Dawkins, who provided Mr Byers with the gun and helped
13 plan what they were gonna do, he'll be tried in July There
14 was so much potential lost Mr Byers is just a little
15 younger than what Mr Armstrong was when he died and
16 Mr Armstrong was doing everything that we always want our
17 children to do and he -- and they probably grew up both here
18 in Cherokee County for the most part and they both chose
19 different paths and the State believes that a significant
20 sentence and beyond the minimum 30-year sentence is called for
21 in the case I'll leave it to Ms Jackson and Mr Armstrong
22 if they have anything to add I know Mr Armstrong does I
23 don't know if Ms Jackson will be able to speak

24 THE COURT All right I'll be I'll be more than happy
25 to hear from anyone that would like to address the court I

1 need to just let you know the lady down front, right in front
2 of you, is a court reporter She is making a recording of
3 everything that happens here Even though she's closer to
4 ya'll than she is to me, I need you to speak up loud enough so
5 that both she and I can hear you and if you would, when you
6 speak, start by giving us your full name so she can get it --
7 so she can write it down Be more than happy to hear from
8 you Sir, you wanna go first?

9 MR ARMSTRONG Your Honor, I'm Kendrick Armstrong

10 THE COURT Yes, sir, Mr Armstrong

11 MR ARMSTRONG I was a victim in the case Your Honor,
12 I think that the defendant -- well, I think that Justin should
13 get a life sentence because he committed a murder and armed
14 robbery or in armed robbery which it's can -- it can be
15 considered as a capital punishment which is -- that's the
16 death penalty and my brother was at the peak of his life, Your
17 Honor I mean, he worked hard his whole life Me and my
18 brother always worked hard and when he was at the peak of his
19 life I was graduating from college I mean, that's all my
20 mother wanted I mean, my brother he had a twin brother and
21 every time I look down at my other brother, all I can think
22 about is him, Your Honor, and I think I think that he should
23 hold a life sentence which he was telling you he was sellin'
24 drugs and he already has a armed robbery from 2004 and for him
25 to take an innocent person life, and he was trying to take

1 mine too as well, and, I mean, 30 -- and feel that 30 years
2 that's a slap on the wrist for a person like that 'cause
3 they're dangerous to society

4 THE COURT Thank you, sir

5 MR MORIN Ms Jackson is -- can't talk

6 THE COURT All right

7 MR MORIN I think I've covered what you need -- she
8 wanted me to say about her son

9 MS JACKSON Yeah

10 THE COURT Anything else from the S -- anything else
11 from the State?

12 MR MORIN No, sir

13 THE COURT Yes, sir, Mr Thompson

14 MR THOMPSON Thank you, Your Honor Judge, this is,
15 I'm gonna be honest with ya, Judge, I've had this case for a
16 little bit over a year and this case has weighed on me
17 There's nothing that I can say here today that's gonna change
18 anything that's happened There's nothing that I can say here
19 today that's gonna justify anything that's happened and I'm
20 I'm I'm sorry and and Mr Byers expressed his remorse to me
21 and his -- Mr Byers' family is sorry to the Armstrong family
22 for what's happened

23 Judge, it appears that that Mr Byers when he was
24 arrested he gave a statement to the police and he's pretty
25 much always stood by that statement The other people that

1 were arrested gave statements also and and pretty much all
2 four of 'em have given essentially the same statement as to
3 what happened I understand that Mr Dawkins may be at this
4 point in time realizing he shouldn't have given a statement,
5 may be trying to change his, but what it appears happened that
6 that day is that Mr Dawkins, who is older than Mr Byers or
7 either of the other two co-defendants, Tomaine Deal or Chas
8 Smith, apparently he ran into Mr Byers that day and and in
9 talking I think Mr Byers asked him what he was up to and he
10 said, "I'm out to hit a lick," and apparently in street slang
11 hit hit a lick means we're gonna rob somebody and he asked
12 Mr Byers if Mr Byers had a gun and Mr Byers had a pellet
13 gun which Mr Dawkins took from him Well, apparently Chas
14 Smith's sister, and I'm not saying that that is true but I'm
15 telling you this is what they were operatin' on, Chas Smith's
16 sister had told Mr Dawkins that Mr Kendrick Armstrong was a
17 drug dealer and had a lotta money, as I say I'm not saying
18 that's true, I'm just tellin' ya that's what information they
19 were operatin' on, and that Mr Dawkins decided that we were
20 gonn rob -- they were gonna rob Mr Kendrick Armstrong Well
21 they didn't have a way to get to his house so Mr Dawkins
22 recruited Mr Tomaine Deal, who had a car, to get everybody
23 there Somewhere during the course of going to the house
24 Mr Dawkins went to a relative's house of his and for lack of
25 a better word I'll use the word "exchanged" but got rid of the

1 pellet gun and got a shotgun They got in the car,
2 Mr Dawkins gave the shotgun to Mr Byers, told Mr Byers to
3 go in the house and and rob Mr Kendrick Armstrong Mr Chas
4 Smith I think was in the car because he knew where
5 Mr Kendrick Armstrong lived, knew the directions and Mr Deal
6 was driving the car 'cause he had the car On the way there
7 someone, and I suspect I know who but it's not clear, someone
8 gave Mr Byers some ecstasy to take, so by the time they got
9 there Mr Byers was un -- not only under the influence of the
10 marijuana he had smoked earlier that day and I believe you
11 told me you'd taken those pills earlier that day, is that
12 correct, ---

13 THE DEFENDANT (Nodded in the affirmative)

14 MR THOMPSON --- yeah, but he was also under the
15 influence of ecstasy that he'd been given in the car
16 Mr Byers got out, went in the house, the other three told
17 him, "Ya got 15," or somebody told him, the other three stayed
18 in the car, somebody told him "Ya got 15 minutes We'll be
19 back to pick ya up in 15 minutes " He went in the house He
20 tells me when he went in that a male, the first male he ran
21 into that that sort of in front of him says he reached up and
22 grabbed the end of the shotgun, I mean, he went in the house
23 to rob 'em there's no question, says the male reached up and
24 grabbed the end of the shotgun and when he did that the gun
25 went off and and the results are Mr Furman Armstrong died

1 immediately Then Mr Kendrick Armstrong came outta the back
2 or out of another room and Mr Byers robbed him, I don't know
3 if there was -- I don't think there was another shell in the
4 shotgun, I think it was a -- had one shell in it, but
5 Mr Byers robbed him He took the money back outside, saw the
6 car coming down the road that that brought him there, got in
7 the car, they split up the money, I think he gave it to
8 Mr Mr Dawkins and Mr Dawkins apportioned it out to people
9 in accordance to what he thought people deserved, and they
10 went separate ways They were all arrested I -- and I I
11 believe it was Mr Chas Smith, I may be wrong, but I think
12 Mr Chas Smith immediately went and called the police and
13 s -- told what happened, I believe it was Chas Smith, it was
14 either him or Mr Deal, it was one of the two Mr Deal or
15 Mr Smith One of 'em was was so scared they immediately went
16 and called the police, that's what put the police on these
17 four people so quickly and then they were just in short order
18 arrested That's the events of that day, Judge, and I don't
19 know how to -- I wish there was some way we could go back and
20 change it but there's not

21 The report that I handed up to you from the Department of
22 Mental Health Forensic Evaluation Service in looking at it
23 there's two things I I wanna point out to Your Honor and I
24 know you've sat there and read it, took a few minutes to read
25 it, number one, it indicates that there is Cannabis

1 dependence, alcohol dependence and hallucin abuse which
2 basically plays right into the facts that I just told you in
3 this case It shows that there's basically been a -- I mean,
4 he's 21-years-old and it shows there's been a long history of
5 that It also shows a, I I don't know whether to call it a a
6 number of significant events in his childhood or a lack of
7 significant events in his childhood that have led him to be
8 the person that that he is today as far as the the the type of
9 childhood he led, childhood that he had He had a problem in
10 school, he he was hyper, had difficulty concentratin' and
11 focusin', he was on Ritalin, he he basically apparently lived
12 in a very, this says he's from Greenville and I think he lived
13 back and forth between Greenville and Cherokee and apparently
14 he lived in a -- had a childhood that was a rough childhood
15 and and that unfortunately made an impression on him, it it it
16 it made -- they've got him diagnosed now with Anti-Social
17 Personality Disorder, that may have been the cause of that,
18 that that rough childhood He had a number of, I won't say a
19 number of hospitalizations, but he had a hospitalization in
20 2004 where he lost consciousness and that, a number of fights
21 as a child, seizures from alcohol withdraw as a child, those
22 type things have have I guess just sort of all piled into one
23 ball His his employment he he did at one time work at
24 Ryan's Prior to his incarceration early last year he had
25 worked at Ryan's for a period of time

1 I met him, first time I met him he was in Turbeville
2 Correctional doing a -- he'd been -- he had that YOA sentence
3 on that common law robbery and they arrested him on this and
4 immediately sent him from the jail here to Greenville County
5 to deal with a parole violation and he was sent away I went
6 to see him in the jail just a few days after his arrest and I
7 was assigned to him and he was already gone and sittin' in
8 Turbeville, so I mean, it was short order from arrest on this
9 charge to parole violation to Turbeville, so I went down and
10 talked with him in Turbeville, talked with the I wanna say the
11 deputy warden but I may be wrong, make sure I'm not telling
12 you wrong here, well, associate warden not deputy warden but
13 Linda Bradshaw the associate warden at Turbeville At that
14 point in time, what she told me was that he was not a problem
15 prisoner and that she was -- didn't know about these charges
16 but that that, you know, he he was there on a robbery charge
17 and and was not a problem at Turbeville at all

18 What he's asked me to ask the Court for, and I'll ask the
19 Court, I've explained to him that that a life sentence means
20 you die in the department of corrections, I've explained to
21 him my feelings on what type a sentence I think he's probably
22 gonna get, he's asked me to ask the Court in his in his
23 terminology to give him a number, instead of a life sentence
24 to give him a number of years I've explained to him that if
25 the Court were to do that, I don't think the Court would go to

1 the 30 years which is the minimum on the murder, might might
2 consider 35 or 40, he's gonna have to do it day for day, he's
3 not -- there's -- he's -- he was under the belief when I
4 talked with him the other day again, to sign him up on this
5 plea, that he was looking at 85 percent and I told him, "No,
6 on a murder charge it's day or day, it's not 85 percent If
7 you get 30 years, you do 30 years If you get 35, you do 35
8 If you get 40, you do 40 " I would ask you to consider a --
9 an amount of time somethin' less than a life sentence If he
10 were to get 30 years, he'd be an old man like me when he got
11 out, anything o -- more than that he'd be even older when he
12 got out Hopefully at that point in time he really wouldn't
13 be a problem on society anymore other than maybe in an old
14 folks home havin' to keep him up or something but that might
15 be, might be cheaper than the department of corrections I hate
16 to say that, but it might give him some incentive to realize
17 that he he has some hope down the road even though it's a long
18 ways down the road and it would be very near the end of his
19 life, so I would ask you to consider somethin' less than a
20 life sentence, Judge

21 His father's standing here, his grandmother's standing
22 here, his wife's here with me, they have other friends and
23 relatives sitting out in the back of the courtroom I don't
24 know -- his father's name is James Byers Do you wish to say
25 anything, Mr Byers?

1 MR BYERS Yes

2 MR THOMPSON Give her your full name Okay, I'll

3 I'll ---

4 THE COURT Give me just one moment

5 EXAMINATION BY THE COURT

6 Q All right Mr Justin Byers, were you able to hear the
7 statements that were just made by your lawyer?

8 A Yes, sir

9 Q Now you agree with everything that he has stated so
10 far?

11 A Yes, sir

12 Q All right

13 THE COURT All right Sir, if if you would, I need to
14 let you know as well we are making a recording of everything
15 that happens here so now you're on the opposite side of the
16 courtroom from the court reporter so please speak up loud
17 enough so that she and I both can hear you and if you would,
18 start by giving us your full name so she can take it down

19 MR BYERS James Lamar Byers

20 THE COURT Yes, ma'am -- yes, sir

21 MR BYERS Your Honor, first of all I'd like to say that
22 I stand here in support because he's my child I don't stand
23 here condoning anything he have done but most of all I'd like
24 to say to Ms , uh, ---

25 MR THOMPSON Armstrong

1 MR BYERS --- Ms Armstrong, I mean, after seeing her
2 face here I kn -- I realize who she is, I know her I've had
3 the chance to meet her son deceased before when he was a young
4 man comin' up I had a time to even say some things to him He
5 was a fine young man He was an example what every young man
6 should be but I stand here today with my son because he is my
7 son and I hate what have happened and I feel sorry for the
8 Armstrong family and what they're going through I feel their
9 pain but I can't say why he did what he did and like he said
10 he had a very hard childhood At the time that he was born,
11 he lived with me until the time he was 3-years-old, he was
12 kidnapped and taken away I wouldn't press charges and have
13 them brought back 'cause he was with his mother and I didn't
14 know where they were at the time When I finally found out
15 where my son was, he was 14-years-old sittin' in the
16 department of juvenile justice Once he was released at the
17 age of 16 they released him to his mother She released him,
18 at that time she brought him to me but all the years in
19 between she wanted me to have nothin' to do with him All she
20 wanted was the child support money That child he never did
21 get the fatherly love I never got the chance to be the
22 father and raise my child like Ms Armstrong did, you know
23 I'm not making any excuses for what he did because what he
24 done is wrong, I've talked to him about it 'cause it hurt me
25 more than to see him go to jail but, you know, on behalf of

1 what the lawyer already said, I mean, even 40 or 50 years it
2 give him hope, I mean, the daughter that he has, he never even
3 had a chance to even hold the baby, see the baby But once
4 again I I don't ask for no mercy I just, you know, like his
5 lawyer said even if he get 45, 50 years when he come out he
6 gonna be too old to to do anything but maybe that child will
7 be around and just once get to see her father and spend some
8 time with him just once, but like I say to the family I feel
9 sorry and I apologize for what my child has done to ya'll and
10 I hope that ya'll find it in your heart to, you know, one day
11 forgive but I feel your pain also and I do not condone what he
12 have done I've talked to him, I told him the day before all
13 this happened when I found out he was hangin' around with this
14 Kelvin guy, I told him to stay away from that guy he noth --
15 was nothin' but bad news but he's always been easily
16 influenced by others especially after they got got him on the
17 drugs, you know, but that's all I'd like to say Thank you

18 THE COURT. Thank you, sir

19 MR THOMPSON This is his grandmother, Ms Maytox
20 (phonetic) I'm sorry

21 MS BYERS Mary Byers

22 MR THOMPSON Mary Byers I'm sorry Do you wish to
23 address the Court? No, she doesn't wish to address the Court
24 Ms -- the wife doesn't wish to either, so at this point in
25 time I guess the only thing I have left, Your Honor, is

1 whatever Mr Byers would like to tell the Court

2 THE COURT Mr Byers, I'll be more than happy to hear
3 anything that you would like to say or would like for me to
4 know or consider

5 THE DEFENDANT Yes, sir Your Honor, may name is Justin
6 Byers I'm 21-years-old Um, I like to say I'm sorry for
7 what I done but at the time I was -- I wasn't aware of what
8 really I was doin' I wa -- I thought that I was really
9 helpin' myself, I wasn't really thinkin' about I was hurtin'
10 someone When I went to do this, I was under influence of a
11 drug that I've been doing since beginnin' a time, since I I
12 knew of drugs, and now I read the Bible and I know that the
13 Bible says that you can do anything through Christ Jesus that
14 strengthens you and right now, Lord, I I walk with God and I
15 like to tell the family, the guy that's here, his mom, that
16 whatever that I've done to hurt them and their family that I'm
17 sorry, to the family that's here that I'm sorry Whatever I
18 can say to take back what has happened I do that, whatever, it
19 don't matter This ain't for what I can be beneficial for
20 you, this is for me for what I have in my head and God I think
21 I think about this every day and I know that I can't take back
22 what's already done but what I can do is plan for the future
23 and my future is in God and I I know that he can help me
24 'cause I know he's helped other people in the past and what
25 God says goes through anybody and right now I'm just filled

1 with the Holy Spirit right now, you know I I like to say
2 that my wife, my grandma, my father, I'd like to say I'm sorry
3 to them, to my kids, to all the rest of my family I'd like to
4 say I'm sorry to them I can't believe that I'm going through
5 somethin' like this but I know and that the Bible says that
6 the trials and tribulations you go through will make you
7 stronger and that's what I have to say, Judge

8 THE COURT Thank you, sir

9 THE DEFENDANT Please be lenient on me

10 MS JACKSON You should have been lenient on Furman

11 THE COURT I'll find that there's a substantial factual
12 basis for the plea I'll find that the defendant's decision
13 to enter the plea has been made freely, voluntarily, knowingly
14 and intellectually by him I will find that he has received
15 the services from a very competent and able legal counsel,
16 services that he has indicated to the Court that he is
17 satisfied with and that he has obviously relied on in reaching
18 the decisions that he has made today, therefore I am going to
19 accept the plea On Indictment 2008-GS-11-184 and 185, I have
20 considered very seriously the request that has been made by
21 your lawyer and the pleas that have been made by your father
22 but I cannot accept their pleas The heinousness of this
23 offense and the circumstances of how it happened I believe
24 justifies a life sentence Even if I gave you a number, I do
25 not believe that the number would put you in a position to

1 where you would be released from the department of
2 corrections Since I feel like that the life sentences are
3 justified I will sentence you to life for the offense of
4 murder and also for the offense of burglary in the first
5 degree I've indicated a 30-year sentence on the armed
6 robbery and also a 5-year sentence on the possession of a
7 weapon during the commission of a violent crime Good luck to
8 ya, sir

9 MR THOMPSON Thank Your Honor

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CERTIFICATE OF REPORTER

I, Margaret A Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on March 20, 2009 at the time and place heretofore set forth, and that the foregoing pages numbered from 4 through 32, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action

February 6, 2010

Margaret A. Woods

Margaret A Woods, Court Reporter
in and for the State of South Carolina at Large

COPY

STATE OF SOUTH CAROLINA)
 County of Cherokee)
Justin D. Byers #310267)
 Full name and prison number if any of applicant.)
 v)
The State of South Carolina)
 Name of Respondent)

In the Court of Common Pleas

009 CP-11 1232

APPLICATION FOR

POST-CONVICTION RELIEF

2009 DEC 23 4 10 31
 BRAD D WOODBEE

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1 Place of detention Lieber Corr Inst / PO Box 205,
Ridgeville, S.C. 29472

2 Name and location of Court which imposed sentence Cherokee County Court,
Seventh Judicial Circuit

3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
 (a) 08-GS-11-184 (d) 08-GS-11-186
 (b) 08-GS-11-183
 (c) 08-GS-11-185

4 The date upon which sentence was imposed and the terms of the sentence
 (a) 3-20-2009 Life (d) 3-20-2009 5yrs
 (b) 3-20-2009 30yrs.
 (c) 3-20-2009 Life

5 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

6 Did you appeal from the judgment of conviction or the imposition of sentence? I requested that my attorney appeal but he failed to do so.

7 If you answered "yes" to (6), list

(a) the name of each Court to which you appealed

- I _____
- II _____
- III _____

(b) the result in each such Court to which you appealed

- I _____
- II _____
- III _____

(c) the date of each such result

- I _____
- II _____
- III _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

- I _____
- II _____
- III _____

8 If you answered "no" to (6), state your reasons for not so appealing

- (a) After informing my attorney that I wanted to appeal
- (b) I was under the impression that he filed the appeal
- (c) I recently found out my attorney didn't file a notice of appeal

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

- (a) Ineffective assistance of counsel
- (b) In custody in violation of Art 12 §2 S.C Constitution.
- (c) Coerced guilty plea

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel informed me that I could receive the death penalty for the crimes But the State did not seek that penalty

(b) See attached arguement Concernin Article 12 section 2 of the South Carolina Constitution

(c) Guilty plea not freely and intelligently made because of coerced threat of receiving the death penalty.

11 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12 If you answered "yes" to any part of (11), 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 N/A
- II " "
- III " "
- IV " "

(d) the date of each such disposition

I N/A
 II " "
 III " "
 IV " "

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

I N/A
 II " "
 III " "
 IV " "

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify

(a) which grounds have been presented

I _____
 II _____
 III _____

(b) the proceedings in which each ground was raised

I _____
 II _____
 III _____

15 If any ground set forth in (9) 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) See No. # 6 and 8

(b) _____

(c) _____

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

N/A

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

i Don A Thompson
ii 310-B, No Limestone Street / P.O. Box 8008
iii Gaffney SC 29340

(b) the proceedings at which each such attorney represented you

i Guilty plea 3-20-2009
ii _____
iii _____

18 State clearly the relief you seek in filing this application

I'm seeking to have the sentence's and plea vacated
and/or reversed

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

NO

DO THE LAWS ENACTED AFTER THE PASSAGE OF SOUTH CAROLINA CONSTITUTION ARTICLE XII, SECTION 2 WHICH EITHER RESTRICT OR DENY MEANINGFUL ACCESS TO REHABILITATION AND REHABILITATIVE PROGRAMS FOR OFFENDERS RENDER THE SENTENCE IMPOSED UNCONSTITUTIONAL?

A. South Carolina Constitution Article XII, Section 2 does place substantial limitations on the manner by which the state must treat its prisoners

In the early 1970's, the General Assembly and the people of this State amended the South Carolina Constitution to mandate that the State provide specific services to its prisoners. The Amendment reads as follows:

Article XII

§2. Institutions for the confinement of persons convicted of crimes

The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, education, and rehabilitation of inmates, (1970 (56) 2683; 1971 (57) 46.)

Article XII, section 2 utilizes the words "shall provide..." In this context, "shall" is mandatory. See US v Myers, 106 F.3d 936, 941 (CA10 1997).... It is basic canon of statutory construction that the use of the word "shall" indicates a mandatory intent. Association of Civilian Technicians v Federal Labor Relations Authority, 22 F.3d 1150, 1153 (D.C. Cir 1994)

The legal meaning of REHABILITATION is found in Black's Law Dictionary. It states:

Investing or clothing again with some right, authority or dignity. Restoring person or thing to a former capacity, reinstating; qualifying again

40' In re Coleman, D C Ky., 21 F Supp 923, 924 Restoration of individual to his greatest potential, whether physically, mentally, socially or vocationally Jones v. Grinnel Corp, 362 A 2d 139, 143.

Accordingly, there can be no doubt that rehabilitation in the context of Art XII §2 means restoring the prisoner to a capacity where he can physically, mentally, socially and vocationally reenter society as a productive member

Furthermore, to ensure that the commands of the Constitution were abided by, the General Assembly and the people of South Carolina left no doubt as to their intentions in this regard by placing severe restrictions on the activities of all branches, agencies, departments, and subdivisions of State government, thus limiting their authority to that allowed by the Constitution

Article I

§23 Provisions of Constitution Mandatory

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where made directory or permissive by its own terms (1970 (56) 2684, 1971 (57) @ 315)

In short the government must abide by and is limited to the terms granted to it in the Constitution

By not having programs to "physically, mentally, socially and vocationally" integrate offenders back into society, the Constitutional rights of South Carolina prisoners are presently being violated

The guilty plea in this case was not knowingly, intelligently and voluntarily entered into because neither the petitioner or counsel knew that the conditions

of confinement to which he was being sentenced 41
: were unconstitutional,

That counsel was ineffective in failing to research the Law and facts surrounding the imposition of the sentence as the Conditions to which the petitioner was sentenced clearly violated the United States and State Constitution as alleged.

A guilty plea to accept a sentence on punishment cannot be knowingly, intelligently, and voluntarily entered if it is later learned that the sentence itself is unconstitutional and must be vacated in the interest of justice US v. Bell 917 F.Supp 681, 684 (1996) A plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts" Petitioner was informed that he could receive a death sentence if he didn't take a plea. The law clearly states that the judge could still give petitioner a death sentence because of his plea of guilty

Next, S.C. Const. Art XII § 2 has been a Constitutional Command since 1971. Additionally, most of the laws and practices of the Department of Corrections which form the basis of these claims were in place at one time Hence, they should have been available to counsel at the time of sentence Moreover, it is well understood that an attorney cannot render reasonably effective assistance unless he has acquainted himself with the law and facts of the case

Further, the conditions of confinement violated the State and Federal Constitutions at the time of sentencing, thus

42. making the sentence unconstitutional. As such the Court lacked jurisdiction to impose the sentence. "An unconstitutional law is void and is not Law. A conviction under it is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. Ex parte Hollman, 79 SC 9, 60 SE 19 1908 Ex parte Siebold, 100 US 373, 25 L Ed 717 (1879)

In any event, even if the conditions of confinement were considered constitutional at the time of sentencing, they are unconstitutional at the present time. Therefore, these claims are directly related to the sentence, the lawfulness of the custody and constraint, and are properly before the Court. Simmons v State 446 SE.2d 436, 437 (1994)

CONCLUSION

Since the conditions of confinement are in violation of the South Carolina and United States Constitutions, the sentence must be corrected, vacated, or set aside, or the conditions of confinement must be corrected such that there is a reasonable probability that the prisoner receives sufficient rehabilitation so he will be physically, mentally, socially and vocationally able to be a productive member of society upon his ultimate release from custody.

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

VERIFICATION

2009 DEC 23
11:40 31
BIR, HDY
NOBLE

I, Justin Byers, 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

Justin Byers

Sworn to and subscribed before me

This 2 day of December, 2009

[Signature] LS
Notary Public for South Carolina

My Commission Expires 27 June 2012

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

I, _____, 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 proceeding or give security therefor

Applicant

Sworn to and subscribed before me

This 2 day of December, 2009

[Signature] LS
Notary Public for South Carolina

My Commission Expires 27 June 2012

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE)	
)	
Justin O Byers, #310267,)	2009-CP-11-1232
)	
Applicant,)	
)	
v)	RETURN
)	
State of South Carolina,)	
)	
Respondent)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 23, 2009, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the March 2008 term of the Cherokee County Grand Jury for armed robbery (08-GS-11-0183), murder (08-GS-11-0184), burglary – 1st degree (08-GS-11-0185), and possession of a firearm during commission of a violent crime (08-GS-11-0186). He was represented by Donald A. Thompson, Esquire. On March 20, 2009, the Applicant pled guilty as indicted to all charges. He was sentenced by the Honorable J. Mark Hayes II to confinement for a term of life for murder and for burglary – 1st degree, thirty (30) years for armed robbery, and five (5) years for possession of a weapon during the commission of a violent crime, all sentences to run concurrent. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II

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

- 1 Ineffective assistance of counsel, in that,
 - a "Counsel informed me that I could receive the death penalty for the crimes. But the State did not seek that penalty;
- 2 In custody in violation of Art. 12, §2, S.C. Constitution, and
- 3 Coerced guilty plea, in that,
 - a "Guilty plea not freely and intelligently made because of coerced threat of receiving the death penalty.

III

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment Strickland, 466 U S 668 The Applicant must overcome this presumption in order to receive relief Cherry v State, 300 S C 115, 386 S E 2d 624 (1989)

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel First, the Applicant must prove that counsel's performance was deficient Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms " Cherry, 300 S C at 117, 386 S E 2d at 625, citing Strickland Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Cherry, 300 S C at 117-18, 386 S E 2d at 625 With respect to guilty plea counsel, the Applicant must show that 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, 106 S Ct 366, 88 L Ed 2d 203 (1985)

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute Accordingly, the 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

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel Al-Shabazz v State, 338 S C 354, 527 S E 2d 742 (1999) A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial Roscoe v. State, 345 S C 16, 546 S E 2d 417 (2001) A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases " Hill v Lockhart, 474 U S 52, 56, 106 S Ct 366, 369 (1985) A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements Crawford v U S, 519 F 2d 347 (4th Cir 1975), Edmonds v Lewis, 546 F 2d 566 (4th Cir 1976)

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record Accordingly, Respondent requests an evidentiary hearing on this allegation Sharper v State, 305 S E 2d 247

V

Based on information submitted in the application, Respondent interprets Applicant's second allegation to be one that the conditions in which he is being held are unlawful because of a lack of rehabilitative programs Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence Al-Shabazz v State, 338 S C 354, 527 S E 2d 742 (2000) A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post conviction relief proceeding Id

Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application Jernigan v State, 340 S C 256, 531 S E 2d 507 (2000)

Here, the Applicant complains that the Department of Corrections (SCDC) has instituted unlawful conditions of confinement because Applicant does not have access to rehabilitative programs. The statutory right to sentence related credits is a protected “liberty” interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated Wolff v McDonnell, 418 U S 539, 94 S Ct 2963, 41 L Ed 2d 935 (1974). Because SCDC’s disciplinary and grievance procedures are consistent with the standards delineated in Wolff v McDonnell, *supra*, inmates may seek review of such claims under the Administrative Procedures Act (APA) Al-Shabazz, 338 S C 354

This Court finds that the Applicant’s allegations all concern matters that should first be raised through SCDC’s disciplinary or grievance procedure. If the Applicant is dissatisfied with the decision rendered by SCDC, then he may seek review of the decision under the APA. See, Al-Shabazz, 338 S C 354/Furtick, *supra*. Therefore, Respondent submits that this allegation should be summarily dismissed.

VI

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

VII

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held


Respectfully submitted,

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March 31, 2010

1 STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
 2 COUNTY OF SPARTANBURG)
 3
 4 Justin O Byers,)
) TRANSCRIPT OF RECORD
 5 Applicant,) 2009-CP-11-1232
)
 6 -vs-)
)
 7 The State) April 8, 2011
) Spartanburg, South Carolina

8
9

10

B E F O R E

11

HONORABLE J DERHAM COLE, JUDGE

12

13

14

A P P E A R A N C E S

15

D ALAN LAZENBY, ESQUIRE
Attorney for the Applicant

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SUZANNE H WHITE, ESQUIRE
Attorney for the State

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Linda D Moffitt
Circuit Court Reporter

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Justin O Byers
Direct examination by Mr Lazenby

- 1 THE COURT Are you Justin Byers?
- 2 THE APPLICANT Yes, sir
- 3 THE COURT Mr Lazenby is your lawyer
- 4 THE APPLICANT Yes, sir
- 5 THE COURT Are y'all ready to proceed on the
6 application?
- 7 MR LAZENBY We're ready to proceed, Your Honor I
8 would call Mr Byers as a witness
- 9 THE COURT Okay
- 10 JUSTIN O BYERS, having been
11 first duly sworn, testified as follows
- 12 DIRECT EXAMINATION BY MR LAZENBY
- 13 Q Mr Byers, can you state your full name, please?
- 14 A My name is Justin O'Bryant Byers
- 15 Q And what's your date of birth?
- 16 A [REDACTED]
- 17 Q Okay And where did you grow up?
- 18 A I grew up in Gaffney, South Carolina
- 19 Q Okay I want to ask you some background questions
20 first about your upbringing, and then I'm going to ask
21 about, about the charges that we're here for
- 22 A Okay
- 23 Q First of all though, for what charges are you
24 currently in the department of corrections?
- 25 A Murder, armed robbery, first degree burglary and

Justin O Byers
Direct examination by Mr Lazenby

1 possession of a firearm during the commission of a violent
2 crime

3 Q And you were given a sentence of true life

4 A Yes, sir

5 Q Do you have a parole date?

6 A No, sir

7 Q You've alleged in an application several reasons why
8 you believe your trial counsel was ineffective

9 A Yes, sir

10 Q We're going to go over all of those in depth I want
11 to just let the Court know what your circumstances were

12 A Yes, sir

13 Q Okay Tell me about your childhood Did you live
14 with your mama or your daddy?

15 A Both, not together Just, just a certain amount, a
16 couple of years here, a couple of years there

17 Q Parents were divorced?

18 A Yes, sir

19 Q How far did you in school?

20 A To the 12th grade

21 Q Did you have any work, employment after graduation?

22 A Yes, sir, I did

23 Q What did you do?

24 A At Ryan's

25 Q Did you ever have any substance abuse problems?

Justin O Byers
Direct examination by Mr Lazenby

- 1 A Yes, sir, I did
- 2 Q Tell me about that
- 3 A I had a problem with Ecstasy and marijuana and
4 alcohol
- 5 Q And have you -- in the past had you had before this
6 incident, had you had treatment for those problems?
- 7 A Yes, sir
- 8 Q Okay Where was that?
- 9 A That was at, uh, uh, uh, uh --
- 10 Q Turbeville?
- 11 A Yes, sir
- 12 Q And why were you in Turbeville?
- 13 A I had a common-law robbery
- 14 Q Did that incident involve the use of guns or any
15 weapons?
- 16 A No, sir
- 17 Q Have you ever had any history of any violence with
18 guns or weapons?
- 19 A No, sir
- 20 Q I want to talk about the -- your case for which we're
21 here
- 22 A Yes, sir
- 23 Q You pleaded guilty on March 20 of 2009, correct?
- 24 A Yes, sir
- 25 Q Tell me why you pleaded guilty

Justin O Byers
Direct examination by Mr Lazenby

1 A I was under the impression that the state was seeking
2 the death penalty on my case

3 Q Were you made a promise that if you pleaded guilty
4 that you would not get the death penalty?

5 A Yes, sir

6 Q Did your attorney at any time recommend that you not
7 plead guilty?

8 A No, sir

9 Q Did you meet with your attorney at Turbeville and also
10 in Cherokee County before you pleaded guilty?

11 A Yes, sir

12 Q Did y'all discuss the state's case and the allegations
13 against you?

14 A Yes, sir

15 Q Did Mr Thompson ever discuss any possible defenses
16 with you?

17 A No, sir

18 Q Did he discuss any possible theories or ways that he
19 would try the case?

20 A No, sir

21 Q In fact, did he tell you that you had no defenses to
22 this case?

23 A Yes, he did

24 Q In this case you had three codefendants, correct?

25 A Yes, sir

Justin O Byers
Direct examination by Mr Lazenby

1 Q Tell me about those codefendants

2 A One is Tomain Deal, one is Kelvin Dawkins, and one is
3 Chad Smith

4 Q Now, before the date of the incident in question did,
5 did you know or hang out with these people?

6 A I mean, it wasn't no, no friendship or so to say
7 It's just I knowed them

8 Q Now, were they all friends with each other?

9 A Yes, sir

10 Q Did they hang around?

11 A Yes, sir

12 Q Now, did Mr Thompson go over with you the evidence
13 that the state had against you in this case?

14 A Yes, sir

15 Q Have you had a chance to review that evidence now?

16 A Yes, sir

17 Q The state had testimony from the eye witness or from
18 the codefendants that you were involved

19 A Yes, sir

20 Q Is that right?

21 A Yes, sir

22 Q To your knowledge was there any other physical
23 evidence that tied you to this crime?

24 A No, sir

25 Q There were I believe -- under the facts of this, of

Justin O Byers
Direct examination by Mr Lazenby

1 this charge, is the allegation that a black male shot
2 Mr Armstrong, the victim, in the head with a shotgun

3 A Yes, sir

4 Q And that there was lots of blood present

5 A Yes, sir

6 Q There were footprints

7 A Yes, sir

8 Q There was an investigation done by the Cherokee County
9 Sheriff's Office

10 A Yes, sir

11 (Evidence list marked Applicant's Exhibit No 1 for
12 Identification)

13 Q Justin, I'm going to show you what's been marked as
14 Applicant's Exhibit No 1 Do you recognize that document
15 as the evidence key, which is the evidence that the state
16 had investigating this crime?

17 A Yes, sir

18 Q Did you review this document?

19 A Yes, sir

20 Q This document shows photographs of several footprints,
21 physical evidence, fingerprints, blood evidence, clothing,
22 all total 44 different pieces of evidence Was there a
23 single piece of evidence that was ever tied to you?

24 A No, sir

25 Q Did you ever discuss this fact with your lawyer as a

Justin O Byers
Direct examination by Mr Lazenby

1 possible defense in this case?

2 A Yes, sir

3 Q What did he say?

4 A He said it doesn't matter

5 MR LAZENBY Your Honor, I'd like to move this into
6 evidence as Applicant's 1

7 MS WHITE No objection, Your Honor

8 (Evidence list marked Applicant's Exhibit No 1)

9 Q Did you discover after the fact that the main
10 witnesses against you received deals in order to testify
11 against you?

12 A Yes, sir

13 Q And tell me about that

14 A Well, my codefendants to my knowledge, they received
15 a, a, a lesser sentence to testify against me, which they
16 didn't have to do because my lawyer informed me that there
17 was no reason to go to trial because I was going to lose
18 it, so, and the state was seeking the death penalty, so

19 Q If you had known that your codefendants were offered
20 deals to plead or to testify against you would that have
21 affected your decision to plead guilty?

22 A Yes, it would

23 Q Would that have provided some evidence by which your
24 attorney could have impeached the testimony of those
25 codefendants?

Justin O Byers
Direct examination by Mr Lazenby

- 1 A Yes, sir, it would
- 2 Q Mr Byers, you gave a, a statement in this matter to
3 police, is that correct?
- 4 A Yes, sir
- 5 Q Okay Why did you give a statement?
- 6 A Because, No 1, the, the people who I would give, I
7 gave my statement to, they knew that I was nervous, and
8 they offered me something to give my statement
- 9 Q At the time were you using drugs?
- 10 A Yes, sir, I was
- 11 Q Did you have a dependency on drugs and cigarettes?
- 12 A Yes, sir
- 13 Q And did they promise you cigarettes if you would sign
14 the statement?
- 15 A Yes, sir, they did
- 16 Q Is that the only reason that you signed the statement?
- 17 A Yes, sir, it is
- 18 Q In that statement did you indicate that this incident
19 was an accident?
- 20 A Yes, sir, I did
- 21 Q Did you indicate that you did not know the gun was
22 loaded?
- 23 A Yes, sir, I did
- 24 Q Did you indicate that the victim reached and grabbed
25 for the weapon and that a scuffle ensued?

Justin O Byers
Direct examination by Mr Lazenby

1 A Yes, sir, I did

2 Q And that was evidence that would have come into --
3 that that is -- that document or that description would
4 have come into evidence if you went to trial

5 A Yes, sir, it would

6 Q Did your attorney ever discuss with you the fact that
7 you might be able to argue to the jury for a lesser
8 included offense?

9 A No, he didn't

10 Q Did you plead guilty because you thought you would get
11 the death penalty if you did not plead guilty?

12 A Yes, sir, I did

13 Q If you believed that the death penalty was not on the
14 table would you have gone to trial?

15 A Yes, sir, I would There would be no reason why

16 Q If your attorney would have told you if you plead
17 guilty you're going to get a true life sentence, would you
18 have opted for a trial?

19 A Yes, sir, I would

20 Q Is that -- is there any reason why you wouldn't plead
21 guilty in that situation?

22 A No, sir I would because there would no -- be no
23 reason, because if I went to trial it would be the same
24 results

25 Q In fact, did Mr Thompson tell you -- did y'all

Justin O Byers
Direct examination by Mr Lazenby

1 discuss judges that you should plead in front of to try to
2 get the best offer?

3 A Yes, sir, we did We went in front of Mark Hayes
4 because Mr Thompson told me that Mark Hayes would be the
5 best judge to take my plea in front of because he is a
6 proqortionate (sic) judge That was his words

7 Q So you had already decided that because you were
8 facing the death penalty you had to plead guilty, is that
9 right?

10 A Yes, sir

11 Q And so at that point you were trying to find the best
12 judge possible?

13 A Yes, sir, I did

14 Q Now, were you surprised after you received a life
15 sentence?

16 A Sir?

17 Q Were you surprised after you received a life sentence?

18 A Yes, sir, I was

19 Q Were you upset?

20 A Yes, sir, I was

21 Q Was your attorney upset?

22 A No, sir, he wasn't

23 Q Well, did you, did you say anything to your attorney
24 after the --

25 A Yes, sir, I did I told him that I didn't like it and

Justin O Byers
Direct examination by Mr Lazenby

1 I wanted an appeal

2 Q Did your attorney file an appeal?

3 A No, he didn't

4 Q Are you also asking the Court if the Court doesn't
5 grant you a new trial -- are you asking the Court to at
6 least grant you an appeal?

7 A Yes, sir Could I say that even if there is a new --
8 there is not a new trial -- I would at least, I mean, if
9 it's possible could I read my arguments?

10 Q Just at the end I'm going to ask you if you have
11 anything else to, to tell the Court, and you can do it at
12 that point

13 A Okay, okay

14 Q So did the police ever get any physical evidence from
15 you that tied you to the crime?

16 A No, sir

17 Q Were you wearing bloody shoes that they took from you?

18 A No, sir

19 Q Bloody clothing?

20 A No, sir

21 Q They didn't tie anything to this crime

22 A No, sir

23 Q Justin, you filed an application for post conviction
24 relief, and I want to be sure that I've gone over all the
25 allegations that you wanted to tell the Court today

Justin O Byers
Direct examination by Mr Lazenby

1 A Okay

2 Q You've alleged that your trial counsel was
3 ineffective And you write in paragraph 10-A, "Counsel
4 informed me that I could receive the death penalty for the
5 crime, but the state did not seek the death penalty "

6 A Exactly

7 Q And that is at the time that you pleaded guilty you
8 believed that if you didn't plead guilty you would, you
9 would be subject to the death penalty

10 A Exactly

11 Q Is there anything else regarding this allegation that
12 you'd like to tell the Court?

13 A Being that my lawyer informed me that the state could
14 kill me for this charge, that is why I considered to go in
15 front of Mr Mark Hayes for a plea And obviously they
16 called Mr Mark Hayes Honeybun Hayes or whatever And when
17 I went in front of him I was under the impression that he
18 would give me a proportionate sentence for my crime

19 Q You thought you would get a number

20 A Exactly And my lawyer asked for this

21 Q And you also allege that your guilty plea was not
22 freely and intelligently made because of the coerced threat
23 of receiving the death penalty

24 A Exactly

25 Q Have you told me about all the facts that support that

Justin O Byers
Direct examination by Mr Lazenby

1 claim?

2 A Yes, sir, in part

3 Q Okay Tell me the rest

4 A Okay This is my motion to amend under, pursuant to,
5 rule 59(e) of the rules of court

6 "Applicant contends that trial counsel never spoke or
7 represented him with the relevant facts to a, to agreed
8 plea arraignment In fact, counsel never informed
9 applicant that his codefendants would receive a lesser
10 sentence facing the same charge as this applicant
11 Although this applicant and his codefendants were charged
12 with what is known to the courts as the hands of one is the
13 hands of all, the record clearly shows that not to be the
14 case here, whereas this applicant received more time than
15 the rest of his codefendants for the same offense Such
16 failure by counsel to inform this applicant, then
17 defendant, that his plea arraignment wasn't equivalent to
18 his codefendants cannot be seen as strategic because it
19 denies the applicant a chance to make a rational decision
20 whether or not if he wanted to take a plea or face a jury,
21 were, whereas, if found guilty he would," excuse me,
22 "receive the same sentence that was handed down to him at
23 the plea arraignment Applicant contends that such
24 unprofessional error would not have been made by a
25 reasonable, competent attorney acting as, acting di --

Justin O Byers
Direct examination by Mr Lazenby

1 acting as diligence, diligent, and consistent or conscious
2 advocate," excuse me, "and when you in the light of
3 reasonable competence in the reasonable contempt test
4 constitutes ineffective assistance of counsel, that did
5 prejudice my cause, Cooper vs State, Cooper vs
6 Fitzgerald -- Fitzharris

7 Q All right Justin, do you recall going into court and
8 having the guilty-plea hearing?

9 A Yes, sir

10 Q And you were asked a lot of questions about whether
11 you understood what you were doing Do you recall that?

12 A Yes, sir

13 Q And you were asked specifically whether you were
14 threatened or coerced or promised anything in any way to
15 plead guilty

16 A Yes, sir

17 Q Okay What did you tell the Court?

18 A I told them what my lawyer told me to tell them

19 Q Which was what?

20 A Which is tell them that you were not promised
21 anything

22 Q Did you believe that if you told them that you were
23 promised something that you would not get -- you would get
24 a worse sentence?

25 A Yes, sir

Justin O Byers
Cross-examination by Ms White

1 Q So were you, in fact, coerced?

2 A Yes, sir, I was

3 Q You've also made allegations based upon Article 12,
4 Section II, of the South Carolina Constitution regarding
5 the conditions of your confinement And those facts and
6 arguments are spelled out in your application which the
7 Court is going to consider

8 Are there any other facts or evidence that you would
9 like the Court to consider with regard to that allegation?

10 A No, sir I wouldn't

11 Q Justin, is there any other allegation or fact? This
12 is your last opportunity Is there any other thing that
13 you'd like to tell the Court in support of your case?

14 A No, sir I think I've covered everything

15 Q Please answer any questions that the state's attorney
16 may have

17 A Okay

18 CROSS-EXAMINATION

19 BY MS WHITE

20 Q Mr Byers, I want to talk with you a little bit about
21 some of the testimony you've given

22 You testified that your attorney had always told you
23 that you should plead guilty

24 A Yes, sir -- yes, ma'am

25 Q So that's okay So you never talked with him about

Justin O Byers
Cross-examination by Ms White

1 going to trial?

2 A No, ma'am, I didn't

3 Q And he never advised you to go to trial and not to
4 plead guilty to murder?

5 A No, ma'am

6 Q Okay You did testify that you met with him prior to
7 the charges and -- or prior to and discussed the charges

8 A Yes, ma'am

9 Q Did y'all discuss the possibility of the sentences
10 y'all could receive or you could receive?

11 A Yes, ma'am, we did

12 Q And, in fact, he talked with you about the fact that
13 there was a high chance you would get life, didn't he?

14 A Yes, sir, he did

15 Q Okay And he told you that if you got life it was day
16 for day, it wasn't 85 percent or anything, right?

17 A My lawyer informed me that the state could give me
18 life, and that is why we went in front of Mr Mark Hayes,
19 because the state was seeking the death penalty If we
20 went in front of Mark Hayes, he would be a better judge to
21 take my plea

22 Q But I want to ask you about what your attorney told
23 you Did he tell you there was a chance you could get
24 life?

25 A Yes, he did tell me that

Justin O Byers
Cross-examination by Ms White

1 Q All right And you did give a statement to the
2 police And you've testified you did

3 A Yes, ma'am

4 Q And your testimony is you did that because they
5 want -- they agreed to give you cigarettes if you --

6 A Yes, ma'am And I -- I'm pretty sure I'm very sure
7 that they will tell you that too

8 Q Okay Now, and the statement does testify you were
9 the one that went into the house with a shotgun, is that
10 right?

11 A Yes, ma'am

12 Q None of the other three codefendants were in the house
13 at the time of the shooting

14 A No, ma'am, no, ma'am

15 Q And you testified that you didn't think the gun was
16 loaded But you went into the house with a shotgun with
17 the intent of robbing the residents of the house, is that
18 right?

19 A Ma'am, there was no intention of the robbery When we
20 went to the residence there was intentions of buying drugs,
21 which is stated in every single of my codefendants'
22 statements, and mine

23 Q Okay But, but somehow you ended up going in with a
24 shotgun by yourself

25 A Okay, ma'am

Justin O Byers
Cross-examination by Ms White

1 Q So you weren't intending to buy drugs when you went in
2 with a shotgun by yourself, were you?

3 A Ma'am, no That is, that is, that is not correct
4 When you do go buy drugs on the street there is a
5 possibility of something going wrong, so you do carry a gun
6 in to buy drugs

7 Q Okay And you carry in an unloaded gun?

8 A Ma'am, when you buy -- when you buy drugs -- when
9 somebody sees a gun they'll be, I mean, it's, it's almost
10 evident that there will be, they would know that it's a
11 possibility that you could shoot this gun

12 Q Okay All right Now, in regards to the testimony,
13 there's no physical evidence There was never any
14 question You had always told your attorney and you had
15 told the police that you did the crime, is that right?

16 A Okay Like I say, the, the statements made by me were
17 under coercion That is my, my major ground in this case,
18 it was coercion

19 Q Okay But you told your attorney you did it, didn't
20 you?

21 A Okay I told my attorney that a whole lot of stuff,
22 and he did not tell, and he did not do these things that I
23 asked him

24 Q And my question is did you tell your attorney that you
25 were the one that went in with the shotgun, and whether

Justin O Byers
Cross-examination by Ms White

1 accident or not, shot the person

2 A Okay Yes, ma'am, I did

3 Q Okay, okay In regards to talking about any kind of
4 lesser included offense or, you know, going to trial, did
5 the state to your knowledge ever file a notice of intent to
6 seek the death penalty?

7 A Okay Ma'am, that's another thing This is how I
8 found out that the state did not seek the death penalty
9 How I got these arguments is studying How I got to know
10 things about my case is studying And when I did study my
11 case I found out that without the, the, the paperwork, the,
12 that the state is going to seek the death penalty that
13 you've signed, if you do not sign this paperwork therefore
14 the state is not seeking the death penalty That's how I
15 knew that I was under coercion

16 Q Okay So at the time your testimony is you didn't
17 know if they had filed a notice --

18 A No, ma'am I didn't

19 Q -- or you didn't know that they were required to file
20 a notice

21 A No, ma'am, I didn't

22 Q Okay All right And you wanted an appeal, your
23 testimony is, from your guilty plea

24 Did the judge make any rulings? Have you talked with
25 your attorney? Are there any actual rulings or issues that

Justin O Byers
Cross-examination by Ms White

1 you have that you can raise on appeal to your knowledge?

2 A Okay Yes, ma'am, it is, because, No 1, coercion
3 (sic) of my counsel, and it was somebody If my counsel
4 did coerce (sic) me, why would he file this appeal?

5 Because if you really think about it, it would be on him

6 Q And, and that's an issue that you can raise here in

7 P C R And obviously I know -- and you're not an attorney,
8 right?

9 A Exactly

10 Q But there has to be a ruling of the Court during your
11 case when you -- whether or not evidence came in or
12 testimony came in And in your case you pled guilty

13 A Okay

14 Q So other than the issue of feeling coerced to plead
15 guilty and maybe coerced to make a statement, were there
16 any other issues you think you could have raised on appeal?

17 A Okay I could have been found guilty of a lesser
18 included offense if I went to trial

19 Q And that's had you gone to trial But in regards to
20 your guilty plea

21 A No, ma'am

22 Q Okay All right

23 MS WHITE And I think that's all I have for this
24 witness, Your Honor

25 MR LAZENBY Your Honor, just a few, redirect

Justin O Byers
Redirect examination by Mr Lazenby

1 REDIRECT EXAMINATION

2 BY MR LAZENBY

3 Q Justin, whether you did this crime or not or whether
4 you were present, would you have pleaded guilty had you
5 known that the death penalty was not an option?

6 A No, sir, I wouldn't

7 Q And, Justin, you aren't a lawyer, are you?

8 A No

9 Q You had a high school education when you pleaded
10 guilty?

11 A No, sir, I didn't

12 Q Did you rely on your attorney when he told you that
13 you could get the death penalty if you did not plead
14 guilty?

15 A Yes, sir, I did

16 Q Did you have any reason not to trust him?

17 A No, sir, I didn't That's the only thing that I had

18 Q And did you rely on your attorney when you asked him
19 to file an appeal of a guilty plea, did you rely on your
20 attorney to investigate that and to raise the grounds that
21 you could raise?

22 A Yes, sir, I did

23 MR LAZENBY Thank you, Your Honor That's all the
24 questions

25 MS WHITE The state has nothing further for this

Don Thompson
Direct examination by Ms White

1 witness

2 THE COURT Step down

3 MR LAZENBY Your Honor, that's the applicant's case

4 MS WHITE The state would call Don Thompson, Your
5 Honor

6 DON THOMPSON, having been
7 first duly sworn, testified as follows

8 DIRECT EXAMINATION BY MS WHITE

9 Q Mr Thompson, how did you end up representing
10 Mr Byers in this case?

11 A I was the chief public defender in Cherokee County,
12 and I was appointed

13 Q Okay And do you recall how many times maybe you met
14 with him or --

15 A The first time I met with him was at Turbeville
16 Right after I was appointed I went to the jail to meet with
17 him, and he had already been transferred from Cherokee
18 County to Greenville County for a probation violation or a
19 parole violation I think it was a parole Y O A And they
20 had sent him to Turbeville on that

21 So it was a couple of months before I made it to
22 Turbeville to talk with him But I met with him in
23 Turbeville And I met with him -- after he got back from
24 Turbeville he was in the jail for two or three or four
25 months there And I met with him half a dozen times or so

Don Thompson
Direct examination by Ms White

1 there

2 Q And in meeting with him what were your discussions in
3 regards to whether or not this case should go to trial
4 versus should be a guilty plea?

5 A Initially prior to my being appointed the state -- by
6 the state I'm talking about the solicitor's office --
7 contacted me and wanted to know if I had -- if I were
8 representing him And I told him no, I hadn't been
9 appointed yet

10 They wanted to get an attorney appointed for him
11 because they told me that they were of the opinion this was
12 going to be a death penalty case, and they were going to
13 fast-track it

14 When I went to Turbeville I knew nothing different
15 than what they had told me, and I told Mr Byers that

16 When it came back -- when he came back from Turbeville
17 to the Cherokee County Jail they had never filed a notice
18 of the death penalty They were talking about trying the
19 case in April of 2009

20 And at that point in time I realized they were not
21 going to seek the death penalty, and I advised Mr Byers of
22 that

23 Q So you did tell the applicant that the state was not
24 seeking the death penalty at this time

25 A That's correct

Don Thompson
Direct examination by Ms White

1 Q Okay

2 A And-but to answer your first question I guess,
3 initially when we thought it was going to be death penalty
4 we were talking trial No question

5 Once he came back and they were going to try it in
6 April, given the facts of the case as bad as it was, I was
7 still under the impression he should go to trial I didn't
8 see any benefit in a plea whatsoever because I thought
9 there'd be a life sentence with a guilty plea

10 Q Okay

11 A And we talked about that

12 Q So your advice to him at the time was to actually
13 proceed to trial?

14 A He had nothing to lose in my opinion by going to
15 trial And he might have actually -- something may have
16 happened in trial that may have given him an issue for
17 appeal or something

18 Q Now, do you normally advise clients that are facing
19 murder charges to plead guilty?

20 A Not unless it's a death penalty case and they've made
21 an offer to not execute them if they'll plead

22 Q All right And did you have a chance to negotiate or
23 attempt any negotiations in this case?

24 A I tried it, but Mr Morin who was the prosecutor
25 refused to negotiate on the case

Don Thompson
Direct examination by Ms White

1 Q Okay Now, in regards to the facts of the case and
2 discovery, did you file a discovery motion with the state?

3 A I did

4 Q And did you receive all of the discovery materials to
5 your knowledge?

6 A To my knowledge, I did

7 Q Okay And did you review those with the applicant?

8 A When I went to Turbeville I took him a copy and gave
9 to him a copy of the discovery I had

10 When he came back to Cherokee County I wasn't certain
11 that I had received everything by the time I went to
12 Turbeville So at that point in time I made him a copy of
13 all of the discovery and gave it to him again

14 Q Okay And was physical evidence an issue in this
15 case?

16 A No

17 Q All right In fact, I believe he's testified that he
18 actually gave a voluntary statement to the police

19 A He gave a voluntary statement to the police, as did
20 the other three involved

21 Q And to your understanding how actually was Mr Byers
22 developed as a suspect in the case?

23 A One of the codefendants, Chad Smith, when he realized
24 what had happened as far as the killing, once he got away
25 from the other three of them, he had called the police and

Don Thompson
Direct examination by Ms White

1 told them what went on

2 Q Okay And so he -- that's how Mr Byers was
3 ultimately picked up on the case

4 A Yes

5 Q Now, had you gone to trial would you have argued
6 against the voluntariness of the statement or --

7 A I would have, but I'm going to be honest with you I
8 really don't see much legal standing that his statement was
9 coerced, because they let him smoke when he gave it but --

10 Q Okay So he didn't -- he never alleged to you that
11 they had made any promises of cutting him a deal

12 A No

13 Q Made any other promises

14 A No

15 Q It was simply to get cigarettes

16 A That they would let him smoke a cigarette

17 Q Okay And in regards to proceeding to the guilty plea
18 you were aware -- I mean, there was no question that --
19 that he had gone into the house with the shotgun and was
20 the one that had killed the victim in this case

21 A Yes And he always admitted that to me He never
22 denied that

23 Q Okay And was this a pretty tough case, I guess, in
24 regards to what you were -- what he was facing, the facts
25 and the folks involved?

Don Thompson
Direct examination by Ms White

1 A It was not a winnable case, and it was a very -- it
2 was a very gruesome case The shotgun blast was from close
3 range

4 The man that was killed was a student in college who
5 happened to be staying at -- I believe it was a relative --
6 it may have been a friend's house -- and was sleeping on
7 the couch that night

8 Mr Byers went in The guy got up off the couch The
9 gun was stuck in his face, the shotgun The man was shot
10 And the autopsy and all basically shows that the only thing
11 sticking out from his shoulders was a piece of spinal cord
12 It blew his head completely off his shoulders

13 Q And although you say it was a tough case and not a
14 winnable case, would you still have preferred to take it to
15 trial versus allowing him to plead guilty to murder?

16 A Well, if they're getting a life sentence -- and I
17 honestly felt he was getting a life sentence on a guilty
18 plea too -- then you got nothing to lose by going to trial

19 Q And so you did talk with him about the fact that if he
20 pled guilty he was going to potentially receive life

21 A Oh, yes We even argued over the fact of whether life
22 meant day for day Or Mr Byers was convinced it only
23 meant 65 or 85 percent I explained to him, no, on murder
24 it's day for day

25 Q And in regards to the appeal, did you ever talk with

Don Thompson
Cross-examination by Mr Lazenby

1 him about filing an appeal from this guilty plea?

2 A Not after the guilty plea, no

3 Q Were there any issues to your understanding that you
4 could have even raised on appeal?

5 A No

6 Q Okay Thank you

7 MS WHITE That's all I have for this witness, Your
8 Honor

9 MR LAZENBY May it please the Court

10 THE COURT Yes

11 CROSS-EXAMINATION

12 BY MR LAZENBY

13 Q Mr Thompson, did -- do you recall Mr Byers or Justin
14 telling you that he wanted to appeal from that guilty plea?

15 A No I was never told he wanted to

16 Q Okay

17 A If, if --

18 Q Do you deny it or do you just don't recall?

19 A Well, let me tell you what my policy is I mean, I
20 guess I'm basically denying it

21 If I go to trial with a client and they lose, I don't
22 even ask them if they want to appeal I file it
23 automatically, and I let appellate defense handle it

24 On a guilty plea I only file it if I think there's a
25 problem with the plea or if the client tells me to But if

Don Thompson
Cross-examination by Mr Lazenby

1 a client tells me to, I automatically file it So the fact
2 that there was no automatic filing of a plea here, that
3 means I would say I wasn't told

4 Q Well, isn't it possible you just neglected to do it?

5 A No

6 Q You don't ever neglect anything?

7 A Well, I'm not saying I don't ever neglect anything,
8 but I don't think I've ever neglected filing an appeal

9 Q Okay Is there anything worse that could have
10 happened to Mr Byers at this guilty-plea hearing?

11 A No

12 Q This is the worst possible thing

13 A That's right That's why --

14 Q If you don't appeal this, what would you appeal?

15 A Well, there were no grounds for an appeal

16 Q Did you ever investigate it? Did you ever study it?

17 A Ever study?

18 Q At the time of the hearing did you sit down and think
19 about it, what grounds do I have for an appeal?

20 A Yeah There was no grounds for an appeal

21 Q So you did consider it

22 A Yeah Well, you know, I'm not going to sit down and
23 say afterwards I sat down and said, well, now, what do we
24 do here, here and here I didn't do that But there
25 was -- there was no issues that came up during the --

Don Thompson
Cross-examination by Mr Lazenby

1 during the course of the guilty plea that would have been
2 appealable

3 Q Was Mr Byers surprised when he got this sentence?

4 A He says he is I, I can't answer that

5 Q Does it seem reasonable that he would have asked for
6 an appeal if he gotten the harshest possible sentence he
7 could possibly get?

8 A Some people do, some don't

9 Q You've, you've given testimony that you advised and
10 counseled Mr Byers to take this case to trial

11 A Yes, sir

12 Q You told him that you knew for a fact or you were
13 certain that he was going to get a true life sentence if he
14 pleaded guilty

15 A I didn't tell him I knew for a fact, because I didn't
16 know for a fact

17 What I told him was based on my experience and based
18 on the facts of this case I felt fairly certain that he
19 would get a true life sentence

20 Q Let's say you had to try this case

21 A Okay

22 Q You've gone back and reviewed your file, correct?

23 A I have

24 Q You reviewed the state's evidence

25 A It's been a while, but yes, sir

Don Thompson
Cross-examination by Mr Lazenby

1 Q The fact that Mr Byers told you that he was present,
2 does that mean anything with regard to taking this case to
3 trial?

4 A I'm not sure I follow your question

5 Q Well, are they going to call you to the witness stand
6 and make you say that he did it?

7 A Oh, no, no, no

8 Q Are they going to call -- can they call him to the
9 witness stand and make him admit that he was there?

10 A No All they --

11 Q That's not evidence at all

12 A No All they can do is put his statement in

13 Q The fact that he told you that he was there means
14 nothing with regard to the evidence that prove him guilty
15 in a case, correct?

16 A No That's right

17 Q All right How would you try this case? How would
18 you defend it? What's the evidence against Mr Byers?

19 A Mr Byers -- the evidence against him is his own
20 statement and the statements of his codefendants And
21 that's the only evidence they had against him

22 Q Okay The only evidence is his own statement and the
23 evidence of the codefendants The codefendants -- did you
24 investigate their background?

25 A Yes

Don Thompson
Cross-examination by Mr Lazenby

1 Q Were they unsavory characters?

2 A Mr Dawkins was

3 Q Could you have impeached their credibility?

4 A Somewhat

5 Q All of them are charged with the same crimes?

6 A I believe they're all charged initially with the same
7 crime, yeah

8 Q And all of them eventually got sentences that were
9 significantly less than Mr Byers

10 A I know that Mr Smith cooperated I know Mr Smith
11 cooperated from the very beginning And I don't know what
12 Mr Dawkins got, and I don't know what the -- Mr Hill got

13 Q So we've got Mr Byers' statements, and we've got the
14 statements of the codefendants And Mr Byers'
15 statement -- he -- and whether he wrote it or whether a
16 police officer wrote it and he signed it, but that
17 statement indicates facts that would support a charge for a
18 crime less than murder, correct?

19 A Possibly

20 Q So if you took this case to trial you would have
21 argued that this case -- you would have argued to the jury
22 a lesser included offense

23 A Yes, because Mr Byers a few days before he did his
24 guilty plea when we were talking, he gave me a different
25 scenario of what happened that night So that's -- had he

Don Thompson
Cross-examination by Mr Lazenby

1 gone to trial that's the scenario we would have presented
2 as a defense Of course, now, I did tell them in order to
3 present that scenario he was going to have to take the
4 stand and testify

5 Q Why couldn't you get it in through his statement?

6 A Because it was different than his statement

7 Q But, no, his statement indicated that he did not
8 intend to shoot, that he thought the was gun unloaded

9 A Oh, yeah

10 Q And that the shot happened as a result of a scuffle
11 That was on the statement

12 A That's right

13 Q You could have gotten a lesser included charge based
14 on the statement alone, do you agree?

15 A I agree possibly

16 Q And that's a -- that's a defense Yes?

17 A Yes

18 Q Do you agree that there was no physical evidence tying
19 Mr Byers to this crime?

20 A I agree

21 Q This was a bloody crime scene, was it not?

22 A It was

23 Q You described a -- described an event that would
24 certainly cause a lot of blood

25 A If I recall, the room was just full of blood

Don Thompson
Cross-examination by Mr Lazenby

- 1 Q And there were several bloody footprints
- 2 A I don't recall whether there was or not
- 3 Q Did you look at the video?
- 4 A I haven't in a while
- 5 Q Show you Exhibit 1 I'm sorry Applicant's Exhibit
- 6 No 1
- 7 A Yeah The No 6 on here says a photo of bloody
- 8 footprints on the carpet at the end of hall in living room
- 9 Seven is a photo of a bloody shoe print on carpet at the
- 10 end of hall in the living room No 8, photo of bloody
- 11 footprint on carpet in hallway at living room And there's
- 12 two or three more on other
- 13 Q The police surely looked at the shoes Ms Byers was
- 14 wearing, didn't they?
- 15 A If I recall, in their statements they said they
- 16 changed clothes
- 17 Q They surely would have gone and checked where
- 18 Mr Byers was living at the time to see if there's any
- 19 evidence, any blood evidence, there
- 20 A I would think probably they would have, but, now,
- 21 whether or not they did, I don't know They may have just
- 22 simply gone on his statement
- 23 Q I'm asking you questions the way you would tell a
- 24 jury Wouldn't you think it's kind of probable that a
- 25 police officer or someone investigating this crime, given

Don Thompson
Cross-examination by Mr Lazenby

1 the amount of blood, would go to where Justin Byers stayed,
2 where he went right after this, and spray -- what's that
3 stuff that --

4 MS WHITE Your Honor --

5 Q That shows up?

6 MS WHITE -- I just want to object based on the fact
7 that this is speculation He doesn't know what the police
8 are going to do

9 This didn't go to trial This was a guilty plea He's
10 already testified that he did advise him to go to trial
11 But I don't think we can speculate on what or would not --
12 the police would have done or what would have or would not
13 have happened had it gone to trial

14 MR LAZENBY Your Honor, I'm trying to establish how
15 Mr Thompson would try this case

16 As he stated, he recommended that the case be tried and
17 not -- and not -- not a guilty plea And I want to see all
18 the ways that Mr Thompson would have tried the case and
19 then see if Mr Byers recalls that ever being discussed, and
20 also show this will be impeached by other testimony

21 THE COURT All right Overruled

22 Go ahead

23 Q Okay Mr Thompson, in a case like this that's really
24 bloody you're defending somebody

25 A Yes, sir

Don Thompson
Cross-examination by Mr Lazenby

1 Q If there is no physical evidence --

2 A I would have raised that issue in a trial

3 Q In fact, would you be waving your hands and yelling
4 and screaming in the middle of the courtroom about the fact
5 that there was no physical evidence?

6 A Well, I'm not that dramatic when I try a case, but,
7 yeah, I would have raised that issue

8 Q It's a pretty strong issue

9 A Yeah But I guess you say you want to find out how I
10 would have tried the case Based on what Mr Byers told me
11 a few days earlier before his plea we would probably have
12 tried the case differently than that

13 Q How many times did you meet with Mr Byers at --

14 A I met with him once at Turbeville I met with him
15 five or six times at the Cherokee County One time I went
16 to meet with him at Cherokee County he refused to come out
17 and talk to me

18 Q So you met with him a total of three times

19 A No Once at Turbeville and five or six in Cherokee

20 Q Did you take notes every time you met with Mr Byers?

21 A No

22 Q You met with Mr Byers at Turbeville on June 20th of
23 2008?

24 A That's about right

25 Q Did you take notes of that meeting? I can short

Don Thompson
Cross-examination by Mr Lazenby

1 circuit this process Let me just ask you a question
2 first

3 A Okay

4 Q I believe you testified that at this meeting you told
5 him the state was seeking the death penalty

6 A I believe I did yes, sir

7 (Case file detail marked Applicant's Exhibit No 2 for
8 Identification)

9 Q Mr Thompson, I'm going to show you what's been marked
10 as Applicant's Exhibit No 2

11 A Okay

12 Q Would you please review that?

13 (Pause)

14 A This is our notes from defender or a copy of our notes
15 from defender data

16 Q There's a narrative of a meeting that took place on
17 June 20th of 2008

18 A Yes

19 Q Is that -- are those your notes?

20 A Yeah I would have been the person that would have
21 typed that in

22 Q You did not mention anything about Mr Byers facing
23 the death penalty, did you?

24 A In these notes, I don't But in the actual notes,
25 handwritten notes, I have from when I went to Turbeville

Don Thompson
Cross-examination by Mr Lazenby

- 1 I've got on here murder is either life or death, or 30
2 years to life
- 3 Q Okay That's discussing the possible --
- 4 A That's right
- 5 Q But you didn't tell him that the state told you that
6 they were going to fast-track this and seek the death
7 penalty
- 8 A I'm pretty sure I did I'm pretty sure I did
- 9 Q Not in your notes
- 10 A Well
- 11 Q Not in the handwritten notes and not on your
12 typewritten notes
- 13 A No But I'm still pretty sure that I told him that at
14 that time
- 15 Q Now, you had had a chance at this point, June 20th of
16 2008, to review some discovery material
- 17 A Yes But I don't think I had it all at that time
- 18 Q Did you see in the note where you tell him, "I told
19 him he really didn't have any defense to these charges"?
- 20 A Yeah
- 21 Q That's not true, is it?
- 22 A Well, you know, that's just a quick little note I made
23 there And these notes were made after the fact when I got
24 back from Turbeville a day or two later probably I don't
25 know if there's a date on here as to when they were done or

Don Thompson
Cross-examination by Mr Lazenby

1 not

2 Q Are you saying these notes aren't reliable?

3 A No I'm just saying that that's not exactly word for
4 word of what I told him And I probably did tell him that
5 based on what he had told me I really didn't see a defense
6 to the charge at that time

7 Q You were setting up at this point early on that he
8 needed to plead guilty to these charges

9 A No, sir In fact, even when it come time for a plea I
10 was still telling him I thought he just needed to go to
11 trial

12 Q I believe your notes from January 23 of 2009 and your
13 notes from March 18th of 2009 support your testimony that
14 you told Mr Byers that he needed to -- that he needed to
15 go to trial

16 A Let me see, now What dates did you say?

17 Q March 18 and January 23

18 A My March 18th notes, what I've got written here, is
19 that he had advised me earlier today that he wanted to
20 enter a guilty plea to his charge even though I advised him
21 that I thought he would get a life sentence

22 Q And on the second page of those notes I think you
23 reiterated that

24 THE COURT Excuse me just a minute

25 Let me ask you to move that microphone so you don't

Don Thompson
Cross-examination by Mr Lazenby

1 keep brushing against it

2 THE WITNESS Keep hitting it

3 A Let's see The second paragraph I've got on here,
4 again I told the defendant that given the facts of the case
5 I felt he would a life sentence even on a guilty plea I
6 advised him again that I had talked with his dad and that
7 his dad was of the same opinion

8 Q And then you also -- that's March 18th

9 A Okay

10 Q And then January 23

11 A Let me see if I can find January 23's notes

12 January 23 Okay

13 Q Same thing Did you also tell him on January 23 that
14 you felt like that he would get a life sentence if he
15 pleaded guilty?

16 A Let's see Advised him of the state's intention to
17 call the case for trial in April He told me he didn't
18 want to go to trial He'll plead if the state'll reduce
19 the charge I had talked with the state They weren't
20 willing to do that We discussed a different scenario than
21 what we had talked about before Unless I'm missing
22 something on those notes I don't see where I told him

23 Q You testified earlier under direct examination that
24 you told him initially at Turbeville that the state was
25 fast-tracking the case and going to seek the death penalty

Don Thompson
Cross-examination by Mr Lazenby

1 A That's what I'd been told, yes

2 Q And then when you met with him subsequently you
3 advised him that the case was not going to be fast-tracked
4 and not going to be subject to the death penalty

5 A When they were going to try the case in April and had
6 never notice, I mean, it's painfully obvious at that point
7 in time they're not seeking the death penalty

8 Q You didn't put in your notes from either of those
9 conversations on January 23 or March 18 that you advised
10 Mr Byers that the state was not going to seek the death
11 penalty

12 A No, I didn't put it in my notes

13 Q But you're sure you told him that

14 A Yes

15 Q But you do admit and you do agree that you told
16 Mr Byers that the state was going to seek the death
17 penalty and going to fast-track That's this case

18 MS WHITE Your Honor, I think that's been asked and
19 answered

20 A That's what I told him

21 MR LAZENBY Beg the Court's indulgence for a minute,
22 please

23 (Pause)

24 MR LAZENBY That's all the questions I have, Your
25 Honor

Don Thompson
Redirect examination by Ms White

1 MS WHITE If I could just briefly, Your Honor

2 REDIRECT EXAMINATION

3 BY MS WHITE

4 Q Just to follow up on Mr Lazenby's line of questioning
5 regarding the -- what you would have done at trial, you
6 mentioned a couple of times that there was a different
7 scenario

8 Can you just give us a little information as to what
9 the different scenario was that you think you might have
10 presented at trial?

11 A Well, Mr Byers elaborated on it during his testimony

12 His statement to the police -- while he says the gun
13 accidentally went off -- in his statement to the police and
14 the other codefendants' statements, they went to the house
15 to rob the people because they thought there was money
16 there

17 Now, on January the 23rd -- because I was looking at
18 these notes -- at that point in time he told me that
19 Peabody -- and I don't remember which one of them was
20 Peabody It was one of the codefendants -- had bought some
21 drugs from the guy in the house and that they were going
22 back to buy drugs, which is what Mr Byers testified to on
23 the stand But that's the first time I had heard that
24 story So if that were the case we would have had a
25 different defense there

Don Thompson
Redirect examination by Ms White

1 Q Okay So you would have pursued perhaps the fact that
2 they were going in simply to buy drugs and there was a
3 scuffle or --

4 A And a scuffle and the gun went off as opposed to going
5 in to rob him and there was a scuffle and the gun went off

6 Q Okay All right And --

7 A Because that would have affected the armed robbery and
8 it would have also affected the burglary if he was invited
9 in the house to purchase drugs as opposed to breaking in
10 the house to rob somebody

11 Q Okay And in regards to knowing what would have
12 happened about arguing lesser included, you know what your
13 practice normally is in regards to fighting cases

14 How long have you been practicing law?

15 A I was admitted in November of 1980 So, what, coming
16 up on my 31st year

17 Q Okay And have you been practicing criminal defense
18 predominantly?

19 A For the last 20 years

20 Q Okay And have you had cases where you've represented
21 people charged with murder, burglary first, armed robbery?

22 A I have I have had five death penalty cases

23 Q And you've taken numerous ones to trial with those
24 charges

25 A I have

Don Thompson
Recross-examination by Mr Lazenby

- 1 Q Okay
- 2 MS WHITE That's all I have at this time, Your
3 Honor
- 4 MR LAZENBY Your Honor, if I may just briefly
- 5 RECROSS-EXAMINATION
- 6 BY MR LAZENBY
- 7 Q Lesser included offenses You didn't discuss that
8 with Mr Byers, did you?
- 9 A I can't honestly say that I did
- 10 Q It's not in your notes, is it?
- 11 A No And I can't honestly say that I did
- 12 Q Theories of how you would try the case, you didn't
13 discuss that with Mr Byers, did you?
- 14 A We discussed it when he gave me this set of facts
15 there But he went away from that immediately and was back
16 to the guilty plea
- 17 Q You don't have in your notes indication that you
18 discussed theories of trying the case with Mr Byers
- 19 A No
- 20 MR LAZENBY Your Honor, I would move into evidence
21 Applicant's No 2
- 22 MS WHITE No objection, Your Honor
- 23 (Case file detail marked Applicant's Exhibit No 2)
- 24 Q Why would Mr Byers plead guilty?
- 25 A Mr Byers told me that he had to take a gamble one way

Don Thompson
Recross-examination by Mr Lazenby

- 1 or the other and that he felt that the gamble was to plead
2 guilty and hope to get less than a life sentence, to get --
3 in his words, to get a number And that's what we tried to
4 do I didn't agree with it, but I understood his thinking
5 Q Doesn't make any sense, does it?
6 A Well, yeah, it does I mean, if he's sitting there --
7 if he goes -- if he goes to trial and gets convicted and
8 I'm sitting here telling him you're probably going to get a
9 life sentence on a guilty plea, then I think he probably
10 realized that if you go to trial and get convicted you're
11 going to get a life sentence too He felt that his only
12 way to get something less than a life sentence was a guilty
13 plea So that does make sense in that regard
14 Q So it's crucial then for him to understand how he
15 could try the case, how you could try the case and defend
16 him It'd be crucial for him to know if he had any
17 defenses
18 A Okay
19 Q It'd be crucial for him to know if there were any
20 lesser included offenses that you could argue to the jury,
21 right?
22 A Right
23 Q Instead all he had to go on was what you told him
24 And if you told him that he was going to get a life
25 sentence if he pleaded guilty, why wouldn't he have tried

Don Thompson
Recross-examination by Mr Lazenby

1 the case?

2 A Why would he have tried it?

3 Q Why wouldn't he have tried the case?

4 A Well, that was, that was what I was trying to tell
5 him I thought we needed to try it But he felt that the
6 better gamble was to plead and take the chance and hope to
7 get a number

8 Q Thank you

9 MR LAZENBY Those are all the questions I have

10 MS WHITE Nothing further from the state

11 THE COURT Thank you You may step down

12 MS WHITE The state has no other witnesses, Your

13 Honor

14 MR LAZENBY Your Honor, may I have just a minute to
15 talk with Mr Byers about whether he will offer reply
16 testimony?

17 THE COURT Yes

18 (Pause)

19 MR LAZENBY Your Honor, the applicant rests

20 THE COURT All right I will review the record and
21 issue an order

22 END OF REQUESTED TRANSCRIPT OF RECORD

23

24

25

Certificate

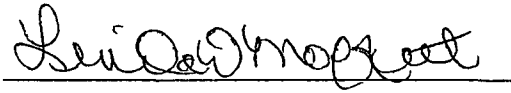
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CERTIFICATE

I, the undersigned Linda D Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 8th day of April 2011

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

December 23, 2011

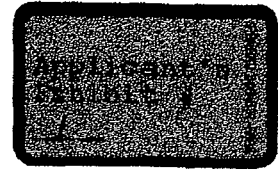


Linda D Moffitt
Circuit Court Reporter

EVIDENCE KEY

CASE #2008-000042

SO #	DESCRIPTION	SLED #
#1	BLACK PLASTIC BAG CONTAINING 2 SWISHER SWEETS CIGARS, LOOSE TOBACCO, AND A GLASSINE BAGGY	
#2	PHOTO OF BLACK COAT LYING ON KITCHEN FLOOR	
#3	PHOTO OF TV REMOTE LYING ON FLOOR AT FRONT DOOR	
#4	NEWS PAPER FROM LIVING ROOM FLOOR	
#5	SPORTIN WAVES CANISTER	
#6	PHOTO BLOODY FEET PRINTS ON CARPET AT END OF HALL IN LIVING ROOM	
#7	PHOTO BLOODY SHOE PRINT ON CARPET AT END OF HALL IN LIVING ROOM	
#8	PHOTO BLOODY FOOT PRINT ON CARPET IN HALLWAY AT LIVING ROOM	
#9	PHOTO BLOODY PRINT ON CARPET AT POOL OF BLOOD IN HALLWAY (LIVING ROOM SIDE)	
#10	PHOTO BLOODY SHOE PRINT ON CARPET IN FRONT OF HALL BEDROOM	
#11	PHOTO BLOODY SHOE PRINT ON CARPET IN FRONT OF HALL BEDROOM	
#12	PHOTO BLOODY PARTIAL PRINTS ON CARPET AT HALL BEDROOM	
#13	WHITE CUP FROM HALL	
#14	BLACK REMINGTON 12 GA SPENT SHOTGUN SHELL FROM FLOOR AT VICTIM	#1
#15	SHOTGUN SHELL WADDING - METAL SHOT FROM FLOOR AT VICTIM	
#16	SHOTGUN SHELL WADDING FROM FLOOR AT VICTIM	
#17	GREEN REMINGTON 12 GA SPENT SHOTGUN SHELL FROM FLOOR IN HALLWAY	#2



S O #	2008-000042 DESCRIPTION	SLED#
#18	VERIZON CELL PHONE – VICTIM'S	
#19	EXCEDRIN PACK – 2 COATED TABLETS	
#20	COMFORTER	
#21	CUTTING FROM SHEET	
#22	AREA RUG	
#23	ONE PAIR OF BLUE JEANS FROM JUSTIN BYERS	#3
#23	GREEN JACKET FROM JUSTIN BYERS	#4
#23	RED/WHITE T-SHIRT FROM JUSTIN BYERS	#5
#23	BLACK 49ERS T-SHIRT FROM JUSTIN BYERS	#6
#23	BLACK/WHITE BOXERS FROM JUSTIN BYERS	#7
#23	WHITE TANK TOP FROM JUSTIN BYERS	#8
#23	ONE PAIR WHITE SOCKS FROM JUSTIN BYERS	#9
#23	WHITE/RED/YELLOW NIKE SHOES-JUSTIN BYERS	#10
#23	ONE BLACK BELT FROM JUSTIN BYERS	#11
#24	650 DOLLARS CASH – CHAS SMITH	
#25	CHAS SMITH – NIKE AIR TENNIS SHOES	
#26	BLUE JEANS FROM KELVIN DAWKINS	#12
#26	WHITE T-SHIRT FROM KELVIN DAWKINS	#13
#26	RED T-SHIRT FROM KELVIN DAWKINS	#14
#26	WHITE TANK TOP FROM KELVIN DAWKINS	#15
#26	BLACK M&M JACKET FROM KELVIN DAWKINS	#16
#26	BLUE TOBOGGAN FROM KELVIN DAWKINS	#17
#26	BLACK BELT FROM KELVIN DAWKINS	#18
#26	DARK BLUE NIKE AIR SHOES – KELVIN DAWKINS	#19
#26	RED SHOE STRINGS FROM KELVIN DAWKINS	#20
#27	YELLOW BRACELET – KELVIN DAWKINS	#21
#28	NOKIA CELL PHONE – KELVIN DAWKINS	
#29	407 37 DOLLARS CASH – KELVIN DAWKINS	
#30	MOSSBERG 12 GA PUMP ACTION SHOTGUN	#22
#31	BLUE “STARTER” JACKET	#23
#32	PELLET PISTOL	#24
#33	BLACK PLASTIC BAG	
#34	LIVE BLACK REMINGTON 12 GA PETERS SHOTGUN SHELL	#25
#35	LIVE BLACK REMINGTON 12 GA PETERS SHOTGUN SHELL	#26

2008-000042		
S O #	DESCRIPTION	SLED#
#36	LIVE RED FEDERAL 12 GA SHOTGUN SHELL	#27
#37	LIVE BLACK REMINGTON 12 GA SHOTGUN SHELL	#28
#38	BROWN STOCKING DOO RAG	#29
#39	WHITE STOCKING DOO RAG	#30
#40	BLACK TOBOGGAN WITH BILL	#31
#41	PLASTIC DOOR RUNNER	#32
#42	REAR DOOR PANEL	#33
#43	HEAD REST COVER	#34
#44	REAR FLOOR CARPET	#35

7th Circuit Defender
Case File Detail

Page 2 of 2

11/09/2010

4) Charge Weapons/Pos dur vlcrm if not sen 2 Lw/oP/D Statute 16-23-0490

Ticket/Warrant H993930 Indictment 2008-GS-11-186

Disposition Plea/Charged 03/20/2009

Disp Charge Weapons/Pos dur vlcrm if not sen 2 Lw/oP/D Statute 16-23 0490

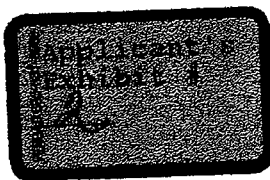
Sentence SCDC 03/20/2009

Created

Note

06/20/2008

Today I went to Turbeville Correctional to see def I reviewed discovery with def and gave him a copy of the discovery Def indicated that what he said in his statement is what happened I told def that I had talked with the solicitor and that the solicitor was not willing to reduce any charge but that he might negotiate on sentence if def would testify against co-def -- however the minimum sentence for murder was 30 years and I got the impression from the solicitor that he would not agree to 30 years but might consider 35 years Def said that he couldn't do that much time I told him that he really didn't have any defense to the charges Def told me that DOC had done an evaluation on him and that they had told him that he wasn't "really sane" I advised def that I would try to get an order to have him evaluated, and that I would try to get a copy of whatever medical records the DOC had I advised def that the solicitor had told me that the case might be called for trial in October --- def thought that Oct was mighty quick. Def advised me that he was going to talk with his family about getting him a private attorney I advised him that would be fine but that I was going to continue working on his case until such time a he was able to hire a private attorney



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Justin O Byers, #310267,)
)
 Applicant,)
)
 v)
)
 State of South Carolina,)
)
 Respondent)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2009-CP-11-1232

ORDER OF DISMISSAL

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY S C
 2011 SEP 12 A 9 00
 ANDREW MCBEE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 23, 2009. The Respondent made its Return on or about March 31, 2010. An evidentiary hearing into the matter was convened on April 8, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by D Alan Lazenby, Esquire. Suzanne H White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Don A Thompson, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the March 2008 term of the Cherokee County Grand Jury for armed robbery (08-GS-11-0183), murder (08-GS-11-0184), burglary – 1st degree (08-GS-11-0185), and possession of a

firearm during commission of a violent crime (08-GS-11-0186) He was represented by Donald A Thompson, Esquire On March 20, 2009, the Applicant pled guilty as indicted to all charges He was sentenced by the Honorable J Mark Hayes II to confinement for a term of life for murder and for burglary – 1st degree, thirty (30) years for armed robbery, and five (5) years for possession of a weapon during the commission of a violent crime, all sentences to run concurrent The Applicant did not appeal his guilty 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, in that,
 - a “Counsel informed me that I could receive the death penalty for the crimes But the State did not seek that penalty,
- 2 In custody in violation of Art 12 §2 S C Constitution, and
- 3 Coerced guilty plea, in that,
 - a “Guilty plea not freely and intelligently made because of coerced threat of receiving the death penalty

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)

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) (citing Rule 71 1(e), SCRCPP) Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result" Strickland v Washington, 466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 692 (1984), Butler v State, 286 S C 441, 334 S E 2d 813 (1985)

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

First, the Applicant must prove that counsel's performance was deficient Under this prong, attorney performance is measured by its "reasonableness under professional norms" Cherry, 300 S C at 117, 385 S E 2d at 625, citing Strickland Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" Cherry, 300 S C at 117-18, 386 S E 2d at 625 "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)

Applicant testified that he met with Counsel and discussed the charges as well as reviewed the discovery materials, including the statements from each of the three co-defendants and eyewitnesses However, Applicant testified that Counsel never discussed any defenses with

Applicant or discussed going to trial Applicant also testified that Counsel never discussed seeking a lesser-included offense with Applicant However, Applicant also acknowledged that he told Counsel that he was the one who entered the home with the shotgun and shot the victim in the head Applicant also acknowledged that he gave police a statement in exchange for cigarettes in which he stated that it had been an accident because he did not know the shotgun was loaded Applicant also acknowledged that none of the three co-defendants entered the home However, Applicant testified that the police had no physical evidence against him Applicant entered into evidence the evidence key of the police, indicating the evidence recovered from the scene, which included photos of bloody shoe prints (Exhibit #1) Applicant also introduced a page from Counsel's case file notes following a meeting with Applicant in June 2008 (Exhibit #2)

Counsel testified that he had been practicing law for over thirty years with over twenty years in criminal defense work Counsel testified that he met with the Applicant at least six times and reviewed all discovery materials with Applicant Counsel agreed that there was no physical evidence against Applicant, but there was the Applicant's voluntary statement and the statements of the three co-defendants Counsel also testified that one of the co-defendants called police following the murder and confessed and named the other co-defendants Counsel testified that although he discussed the difficult facts and defense with Applicant, had the case proceeded to trial, Counsel would have raised the issue of the lack of physical evidence at that time Counsel also testified that it was damaging because the Applicant's story had changed in that in an earlier statement he stated that they were going to rob the home, but then later said they were going to buy drugs However, Counsel said that he would have argued at trial for a lesser-included offense Counsel testified that he had attempted negotiations with the State and they

were not willing to offer a lesser-included offense or the minimum sentence for murder

This Court finds that Applicant has failed to meet his burden of proof as to any claim of ineffective assistance of counsel. This Court finds that Counsel is an experienced attorney who met with the Applicant and reviewed the charges and discovery with Applicant, discussing all potential options. This Court finds that the extensive guilty plea record speaks for itself as to the competency of counsel. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977), Strickland, supra, Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Therefore, this Court finds that this claim should be denied and dismissed.

Involuntary Guilty Plea

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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed 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 U S, 519 F 2d 317 (4th Cir 1975), Edmonds v Lewis, 546 F 2d 566 (4th Cir 1976)

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial Roscoe v State, 345 S C 16, 546 S E 2d 417 (2001), Richardson v State, 310 S C 360, 426 S E 2d 795 (1993)

Applicant alleges that he only pled guilty because his Attorney advised him that the State intended to seek the death penalty, but promised that if he pled guilty, they would take the death penalty off the table Applicant testified that he would have gone to trial if he knew that the death penalty was off the table and never would have pled guilty if he knew that life was an option However, Applicant later acknowledged that Counsel did tell him that a life sentence was a possibility Counsel testified that he did tell Applicant that the State intended to seek the death penalty because that was what he was told by the prosecutors, however, he also told the Applicant when the State did not file the Notice and it was clear that they were not seeking the death penalty Counsel testified that he always believed that Applicant should go to trial because there was nothing to lose Counsel testified that he had advised Applicant that he felt fairly

certain that if he pled guilty he would receive a life sentence, however, Counsel testified that Applicant informed him that if he had to gamble either way, he would rather plead and receive a “number ”

This Court finds Counsel’s testimony to be more credible than Applicant’s as to this issue Counsel presented all options to the Applicant and Applicant chose to plead freely and voluntarily, as the record reflects The Applicant testified that he was not under the influence of any alcohol or drugs Judge Hayes informed Applicant of the maximum penalty of the charges he faced and informed him of his right to remain silent as well as his right to a jury trial and other associated jury trial rights Applicant subsequently affirmed that he was guilty and that no one promised him anything or threatened or mistreated him in order to get him to plead guilty Applicant stated that he was pleading guilty freely and voluntarily and that he was satisfied with the services of his lawyer

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered Boykin v Alabama, 395 U S 238 (1969), Vickery v State, 258 S C 33, 186 S E 2d 827 (1972)

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant’s testimony has failed to establish any meritorious claim sufficient to grant his application This Court further finds the record reflects that counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that counsel’s conduct does not fall below the objective standard of

reasonableness

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

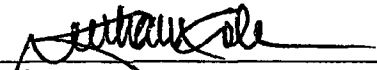
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S C 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71 1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED

- 1 That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 8 day of September, 2011



J Derham Cole
Presiding Judge

113

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

H993918

TRUE BILL
ACTION OF GRAND JURY

Foreperson of Grand Jury -
Date 3/6/08

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO.

08-GS-11-183

The State of South Carolina

County of Cherokee

Trey Gowdy, *Solicitor*

COURT OF GENERAL SESSIONS

MAR 9 5 2008

TERM

THE STATE
vs

Justin Byers

Indictment for

ARMED ROBBERY

SC Code 16-11-330 (A)
CDR Code 139
Class FEL/A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

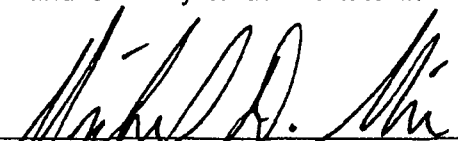
MAR 06 2008

At a Court of General Sessions, convened on _____ the Grand Jurors of Cherokee County present upon their oath

ARMED ROBBERY

That Justin Byers did in Cherokee County on or about January 4, 2008, while armed with a pistol, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Kendrick Armstrong, by means of force, violence, and/or intimidation, goods or monies of Kendrick Armstrong, such goods or monies being described as follows monies, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

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

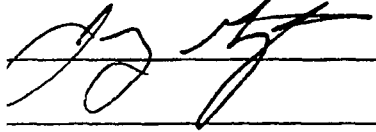


ASSISTANT SOLICITOR

15
1

WITNESSES

Cherokee County Sheriff's Office



ARREST WARRANT NUMBER

H993921

~~TRUE BILL~~
ACTION OF GRAND JURY

Foreperson of Grand Jury

Date 3/6/08

VERDICT

Foreperson of Petit Jury

Date

08-GS-11-184

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 06 2008

TERM

THE STATE

vs

Justin Byers

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR CODE 116

CLASS FEL-EXM

WITNESSES

Cherokee County Sheriff's Office

[Handwritten signature]

ARREST WARRANT NUMBER

H993922

ACTION OF GRAND JURY

[Handwritten signature]
Foreperson of Grand Jury
Date *3/6/08*

VERDICT

Foreperson of Petit Jury
Date

DO 08 GS-11-185

The State of South Carolina
County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

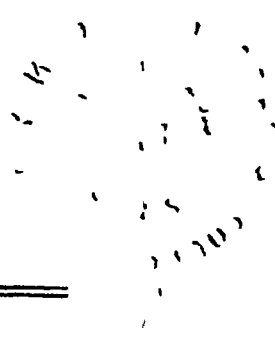
MAR 06 2008 TERM

THE STATE
vs

Justin Byers

Indictment for
BURGLARY, FIRST DEGREE
(Dwelling)

SC Code 16 11 0311
CDR Code 0079
Class FEL/EXM (V)



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on MAR 06 2008, the Grand Jurors of Cherokee County present upon their oath

BURGLARY, FIRST DEGREE

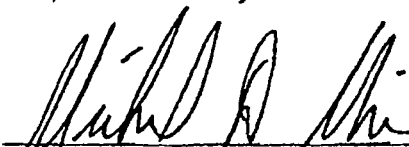
(DWELLING)

That the Defendant Justin Byers did in Cherokee County, on or about January 4, 2008, willfully and intentionally enter the dwelling belonging to Kendrick Armstrong located at [REDACTED] Fleming Road, Gaffney, South Carolina without consent and with the intent to commit a crime therein, and either

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime
 - (a) was armed with a deadly weapon or explosive or
 - (b) caused physical injury to any person who was not a participant in the crime, or
 - (c) used or threatened the use of a dangerous instrument, or
 - (d) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, or
- (2) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both, or
- (3) the entering or remaining occurred in the nighttime,

in violation of §16-11-311 Code of Laws of South Carolina (1976) as amended

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


 ASSISTANT SOLICITOR