

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

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ANTRELL RASHAWN FELDER,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001173

APPENDIX

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1 don't notice he's scared.

2 Guess what else he told? And this is in evidence.

3 You know when he told it? He told just a few hours later
4 to these officers. You're going to have it, it's in
5 evidence. I can't find it, but it's in evidence. It's in
6 here. Antrell's statement.

7 I don't read it all to you. You all will have it,
8 ladies and gentlemen. He was walking up, turned on
9 Highland. He's already talked about meeting Mr. McKenzie.
10 He kept walking. A car pulled up to the shoulder of the
11 road on the side the other guy was walking. He's already
12 left. Remember, he said he went that way, we kept going
13 straight?

14 The car was an all white 4-door Buick. That's what he
15 tells them just a few hours later. It looked like it may
16 have been a 90s. It had a light tint on the window. The
17 dude stopped walking and we stopped walking. I saw the
18 driver get out of the car.

19 You know, this testimony, it's almost like a -- he sat
20 there looking at the victim. He said we kind of looked at
21 each other.

22 He remembered what he wore, a gray sweat pants and
23 white shirt. He just was looking at him. The car drives
24 up, the driver gets out of the driver's side. The driver
25 was a black male in his late 20s, about 5'7" 190, 195

1 pound. Low cut fade. Was wearing a read and white
2 Philllies hat, a white wife beater, and light blue jeans.

3 Well, it's not a Philllies hat. St. Louis hat. But,
4 there, again, that's one of those things -- is there any
5 doubt it's a hat? That's not a reasonable doubt. It's a
6 hat. He got the wrong team, but it's a hat with this label
7 on it, and he saw the shooter wearing this, the shooter
8 dropping it. The police say, he showed it to me.

9 And you know what else comes out? Blue jeans, white
10 shirt, hat, white Buick.

11 Ladies and gentlemen, you're going to have that in
12 there with you. You can't make that up, all the
13 computerized related data. 12:49. 10 minutes -- 10
14 minutes -- less than 10 minutes after the shooting.

15 5'7" 190, blue jeans, white shirt, red and black
16 shirt. So you've got the hat, a little different. Red and
17 white, red and black -- there's a description. There's a
18 description from Mr. McFadden.

19 Look at the rest of his statement. What does he say?
20 I submit to you he says in there I might be -- I probably
21 be able to pick him out if I see him again. He says that
22 down here.

23 They show him 2 line-ups. I brought it up. We
24 brought it out to show to you. He looks at the line-up. I
25 may know 2 and 4. Give the wrong nicknames. He said this

1 is Little Roger or Main or something, so he doesn't have
2 the right name. May have recognized 2 who they are. It's
3 early morning hours, I don't know. I know he was wearing a
4 red hat, white shirt, dark pants. But I can't tell if he
5 was in there or not; that's not a reasonable doubt, ladies
6 and gentlemen. Please, don't -- I mean, I'm out there. I
7 saw this person, but I can't pick him out.

8 That is what it is. But I saw him in this hat. I saw
9 him in this car.

10 What happens next? Well, the hat is collected. They
11 send it for processing. Send it to processing.

12 Statements that morning. Kayla and Antrell go down to
13 the law enforcement center and start taking statements.
14 You'll have his statement. She gave a statement of the
15 description. But the person testified to the victim.
16 They're leaving. And you've seen this -- but you can't
17 take this back. They're leaving. They come and taking
18 them back home.

19 And what do they see? Somebody sees -- somebody says,
20 that looks like the car. Now, they can't know that car is
21 going to be coming that when they're leaving from law
22 enforcement. That looks like the car. They can't take
23 them -- these officers can't chase the car because they've
24 got 2 witnesses in there. It's protocol, that just makes
25 sense.

1 So they call -- the testimony is. They call Officer
2 Geddings, he goes to Willow Morand Apartments, goes and
3 gets -- finds the white vehicle. Registered to Ida Mae
4 Felder, driven by Stacey Caughman. Gathers some names of
5 some people that were there.

6 And he goes back to the law enforcement center. This
7 is July 18.

8 You think we don't care about this case? They're
9 working. They're going up. They get back to law
10 enforcement. They put it together. Stacey Caughman, that
11 was the burglary that was called in -- those 2 -- 2 and a
12 half, whatever, minutes prior to this murder. And it's a
13 white Buick with tinted windows.

14 When they saw that car, they said, it had tinted
15 windows. Tinted windows. Tinted windows; that's what the
16 victims -- the witnesses said. Tinted windows, dark white
17 -- white Buick, tinted windows.

18 Law enforcement center. They figure out and put it
19 together, well, this might be related. It might be
20 related; that's when we first get to Willow Morand, Harry,
21 and then the Felder case.

22 So what happens? Later on that day, out in the
23 afternoon at 7/18, the individuals that have been
24 identified -- Officer Geddings came out in testimony, the
25 officer talked to them at that time. They meet at law

1 enforcement center.

2 It came out through the testimony of these officers,
3 established, everybody was over at Willow Morand. The call
4 came from somebody, the house had been broken into, 39
5 Harry. They go over to . The defendant is in his
6 white Buick, 4-door Buick which he drives. His mother, I
7 believe was in another car. There was another car that
8 came, Ms. Sada Isaac. They go over there to Harry. What
9 happens? The defendant leaves -- I submit to you he leaves
10 right after the 911 call, point 3 miles.

11 He leaves. They take statements.

12 Here's what they do, ladies and gentlemen, it's adding
13 up to prove fact -- chain of facts. That car. Then he
14 drives -- and why did he leave the car -- you'll have his
15 statement. I'll get that in a minute. Why did he change
16 cars? He distanced himself from that car.

17 That car had tint on it. They tried to take the tint
18 off now. Why would you do that? You don't want it to be
19 the same car the witnesses have described; that's good
20 evidence. Circumstantial and direct.

21 I'm going to get away from this car. Let's change
22 this car, get the tint off it. They didn't get it off.
23 They saw it.

24 The car is in the impound now. They processed it.

25 So what did they do then? Well, they go look for Mr.

1 Felder. Well, he was there, he left right after in a white
2 car. So what did they do? Go to Spanish Gardens where Ms.
3 Ida Mae Felder is living.

4 Hello. Mr. Antrell Felder please.

5 Not here.

6 One officer says he said his brother's name, Tavaras.
7 The officer can't remember what name he said, but it wasn't
8 Antrell Felder.

9 It's not me. No, sir. He's not here.

10 Why lie? Why not tell you all, this isn't me. Why
11 that statement there. Why did you tell us you were your
12 brother?

13 It's not me. That's evidence of guilt.

14 Still, he doesn't know what they have. Knows he's
15 lost his hat. He doesn't know what law enforcement has.
16 That's real.

17 So they leave.

18 Fingerprint comes back on that hat. Who does it come
19 back to? Antrell Felder. It was the hat with the pointing
20 finger -- whichever is the middle finger. Is that
21 consistent with how you put a hat on?

22 There's some other prints on that that may be
23 duplicative -- duplicative. There's some on there that you
24 can't -- I believe Ms. Hodge said one of them you just --
25 it wasn't enough ridge detail to determine. Whose hat is

1 that? It was Antrell Felder's hat that he was wearing.

2 Then they get a warrant. Back out to Spanish Gardens.

3 The real Tavaras Felder is there. That's not the fellow
4 they talked to earlier. Is the defendant there? No, sir.

5 No, ma'am, he's not.

6 We move on into July -- later on July 18. Go back.

7 The defendant is not there.

8 The next day -- the next day he turns himself in.

9 Word's out they're looking for him. Turns himself in.

10 Then what happened? This has been processed. DNA.

11 Who does it come back to? We've got DNA evidence. We've
12 got DNA. We've got forensic evidence. We've got witnesses
13 describing the car and the person who's wearing this.

14 There's DNA, major contributor, the defendant. Minor
15 contributor -- you heard the officer say, you wouldn't be
16 able to tell if it's a man or woman. Could have been
17 anybody. There's no way you can tell -- that's not a
18 reasonable doubt. That's certainly not reasonable doubt.
19 That's a smoke screen.

20 We have good evidence. In this case they'll to try to
21 take you away from that DNA, and from that fingerprint and
22 take you on some expedition away from that killing, which
23 is what you've got to stay focused on. His DNA.

24 What if we didn't have the DNA or the fingerprint?

25 You knew it matches. Who gets fingerprint, DNA on it?

1 They did.

2 He goes to law enforcement, gives a statement. And
3 there's no issue -- without objection, there's rights read,
4 he understood his right, waived his rights. Voluntary
5 statement. Not an issue. You all don't have to decide
6 whether it's freely and voluntarily given. It was
7 stipulated coming in.

8 What does he say in his statement? You'll have it
9 back there along with all of this.

10 There was something about did you take a picture of
11 him when he gave you the wrong name? Talks when they got
12 back and had him in there now, the same person that told
13 him he was somebody else -- well, this is Antrell Felder.

14 Did you do an incident report on it when he gave you
15 the wrong name?

16 This is evidence. You'll have it back there. Talks
17 about him going on the 18th, being met at the door by an
18 African male who told them he was Antrell's brother
19 Tavaras. When the detectives returned later that day, they
20 learned the person identified himself as Tavaras was in
21 fact Antrell Felder. They confirm that with their own eyes
22 when they meet him the next day, served a warrant on him.

23 Why did he not want to tell them who he was on the
24 18th?

25 And then he starts -- go back through it. He says he

1 lives on Brown Street. Then later on he talks about after
2 a phone call went back to his house on Harry Street.

3 I forgot one thing about the burglary, but I'll come
4 back to that.

5 Talks about going from where they were in Willow
6 Morand with all these folks back to Harry, and then leaving
7 in his own car.

8 What's he saying about leaving? What does he say? He
9 said, I went the back way, not the way toward Highland
10 Avenue. Which way did you go? I mean, you live over
11 there. Your street -- you don't know the streets where you
12 live? Couldn't tell them which way he left the back way,
13 because he didn't leave that way?

14 Who were you with? Boo. Boo. Who's Boo? Well,
15 that's my cousin. What's Boo's name? I don't know his
16 name. Don't know his cousin's name. Boo doesn't exist,
17 that's why he didn't know his name -- trying to come up
18 with a story that doesn't fit.

19 But here, look at it. Read it. Felder said he and
20 Boo arrived on Red Bay -- why are you taking somebody else
21 and leaving?

22 He goes on. He got it away so he could get the tint
23 off and distance yourself from it.

24 He says, got to Red Bay between 12:25 and 12:35 a.m.
25 No, sir. No, ma'am.

1 12:37 -- that doesn't even fit. That couldn't happen.
2 He can't get his time right because they weren't right,
3 trying to be somewhere else.

4 Tell me about Boo. Give me the last name of Boo.

5 Felder said he didn't know his real name or where he
6 lived.

7 Left his car at Sada's house with keys on the front
8 floor board.

9 Ladies and gentlemen, the victim's DNA. The
10 defendant's camera. No gunshot residue. The last money
11 he had on him. Here's his picture. This is him.

12 I don't know who broke in that house -- broke in that
13 house or not. I tell you one thing, when the officer
14 responded -- remember that nice young man up here, Mr.
15 Blackwell. He came up. He responded to the house broken
16 into. The air conditioner was pulled out. What did she
17 tell you about what was stolen? 5 pair of kids shoes.

18 Had she told you whether she'd been in or not?

19 She said she hadn't been in.

20 Well, how did she know what would have been stolen?

21 He said, well I asked her that.

22 And then she goes inside and said it was 5 pairs of
23 mens Jordans. Nothing about anything else.

24 I don't know what was stolen there.

25 The statement about getting rid of anything he was

1 holding. You need to leave. You need to get your weed
2 out.

3 Was there money stolen? What was stolen?

4 Reasonable inference. They knew each other. They had
5 a business relationship. Is that why he left? Is that why
6 he left?

7 She can't explain what was stolen. She tried to say
8 it's kids shoes, but hadn't been there. Then later we get
9 this statement. He says, oh, I had some hats stolen. I
10 had some hats stolen.

11 Who steals a hat? He's worried about that hat.
12 Worried about the hat.

13 I don't know if he did it or not -- McKenzie did the
14 break in or not. But circumstantially, he did. But he was
15 denied his day in court; that's what this case is about.
16 You got to care. You got to care about -- you have to
17 care.

18 But even if you didn't care -- which I think you do,
19 you have to care, you just do. Everybody is entitled to
20 the same justice, everybody. That's what this system is
21 for. That's what you all are for, what the judge is for.
22 If he did it, should he have spent a little time in jail?
23 A month? A year? I don't know. Maybe so. But he
24 shouldn't spend eternity dead. That's the decision he
25 made. He made it, and he didn't have the right to make

1 that decision; that's a jury's decision. Your decision.

2 That's why this case is important.

3 No fault to Solicitor Finney -- my friend has been

4 here all week. He and the clerk are somewhere else in the

5 state. They wanted to be here. He wanted me to apologize

6 on his behalf. They're looking at other courthouses.

7 We're building one. They're looking at another one. Had

8 it arranged. Thought we'd be through with this in time.

9 Looking at a another courthouse to see about some different
10 offices.

11 I almost want to call them and say, you all come on

12 back because -- come on back because if -- if -- if this

13 conduct is allowed, we don't need a new courthouse. Stop

14 building it. Put the money somewhere else. Tear this

15 down. We don't need it. That's what this case is about.

16 The courthouse is here, it's there with the judge. It's

17 not on Highland Street. You can't have justice on the

18 street. It's time for the street to have justice where it

19 should be, the courtroom; that's what this case is about.

20 That's why we need courthouses. If not, it's the wild

21 west. Have a courtroom on every street where it is and let

22 justice be decided.

23 No, sir. No, ma'am. It's time to stop.

24 Ladies and gentlemen, on July 18th of 2008, the

25 defendant heard somebody broke into his house, had

1 something stolen, was angry, went, left in his car, went
2 point 3 miles to Highland Street, was described by folks
3 that saw him there, get out and shoot. No dispute that
4 bullet -- there's a picture of it -- killed him. Came back
5 to his DNA.

6 The car had tint, no tint. Came back fingerprint on
7 the hat. And on that spot on Highland Street, the body is
8 on the side. Hat's in the middle. He just dropped his
9 hat. He knew he dropped his hat. He gets out. And he
10 becomes Officer Felder, Detective Felder, Investigator
11 Felder, Magistrate Felder, Grand Jury Foreman Felder,
12 Bailiff Felder, Judge Felder, Juror Felder, Executioner
13 Felder.

14 William McKenzie was entitled to his day in court.

15 It's now Mr. Felder's day in court. What's your
16 verdict?

17 THE COURT: Mr. Kent.

18 MR. KENT: Thank you, Your Honor. May it please The
19 Court.

20 THE COURT: Yes, sir.

21 MR. KENT: Solicitor Meadors.

22 CLOSING STATEMENTS BY MR. KENT ON BEHALF OF THE DEFENDANT:

23 Last night after I left the courtroom -- I actually
24 still live in Summerville, South Carolina. I practice law
25 in Manning, but I live down in Summerville. People say,

1 why do you live in Summerville and don't live in Manning?
2 My mom has made it very clear I am not moving to Manning,
3 South Carolina until I get married and start having
4 children, so that's why I live that far away and commute
5 every day.

6 I was driving down on my drive home. I do the same
7 ritual every Thursday. I went and I got my hair cut. I
8 work out, hit some golf balls. Then I go home and I did
9 some work.

10 My mom is a Baptist minister. On Thursday she likes
11 to come over to my house and she likes to say that she's my
12 maid. I never told her she's my maid, but she likes to
13 assume she's my maid. What she does is she goes through
14 and she cleans my house -- even if it doesn't need to be
15 cleaned. She cleans my house, goes through all of my
16 stuff. And the way she gets paid -- she tells me -- is she
17 takes whatever money she finds; that's the way my mom gets
18 paid when she cleans my house.

19 I don't understand it. She's been doing it for years
20 and years and years.

21 Well, getting my hair cut, doing a bunch of stuff, my
22 mom calls me up and she says, I found a couple of hundred
23 dollars. Can I have it?

24 You can't have it. How do you just find a couple
25 hundred dollars if it's my house? She said, I found it.

1 Can I have it?

2 What are you talking about? No, you can't have it.

3 Just leave it on the counter. I'll come get it when I get
4 home. We'll talk about it. Love you. I'll talk to you
5 later.

6 I leave the barber shop, talk to the barber, say good
7 bye. Stopped and talked to a couple of friends. Drive
8 home. Get in the parking lot. Get in my garage. Go
9 inside. I read my mail.

10 I'm sitting around watching Sons of Anarchy on DVR,
11 was watching it on television. Grab some pistachio ice
12 cream, and just start eating. Then I go, I wonder where
13 that money is? For some reason it hit me. So I go and
14 look around the room. No money. Open up the refrigerator.
15 My mom leaves me some food in the refrigerator, so I know
16 she's been there. Still no money.

17 I looked everywhere. I looked upstairs, looked
18 downstairs, and no money. No money.

19 So believe it or not, I'm actually getting upset at
20 this point in time. That woman actually took my money.
21 She'd been in my house -- because she'd done it before. I
22 know she took my money. I made an assumption. Just
23 assumed it had to be her.

24 I call her up. I say, where's the money, woman? And
25 I said it just like that, where's the money, woman?

1 She's like, I don't know what you're talking about.

2 I said, come on. You told me that you had some money.

3 Where did you put it? You got it on you somewhere. You
4 took it.

5 She said, I did not take your money. Of course, this
6 is me accusing a Baptist minister of stealing from me. So
7 I keep saying, where is it? Where is it?

8 She said, did you look in the envelope that I put next
9 to your bed that said -- had a little cash thing on it?

10 I said, what? So I go and I look and there's the
11 money just sitting there. I made a crazy assumption. I
12 looked at the facts. I made an initial assumption and I
13 just assumed that's the way it had to be.

14 She said she was at the house. I'm sure her
15 fingerprints would have been all over. She was in the
16 house before. The money was missing. It had to be her.
17 It just made perfect sense. I made an assumption. I
18 didn't really investigate. I didn't really look in to
19 things. I didn't look in to anything at all, I just made
20 an assumption.

21 Ladies and gentlemen, that's what this case is about.
22 It's an assumption. And I'm not even going to sit here and
23 pretend that I can't understand why law enforcement made
24 the assumption that they made. Because when you do and
25 you're in an experience of thought, you make an initial

1 assumptions. You have to make initial assumptions, because
2 that's how you get leads and that's how you figure stuff
3 out.

4 But when you make your initial assumption, what you
5 have to do next is you have to investigate that assumption
6 to see if it's realistic, to see if it's possible, to see
7 if it actually fit.

8 Solicitor Meadors when he started his opening
9 statement one of the first things that he told you when you
10 all came up here, you sat here, and you looked at us. We
11 stared at you, both, and decided if we were going to keep
12 you or let you go. We put you on the stand and we talked
13 about you bring your common sense in with you. We talked
14 about the fact that when you walk into a courtroom and you
15 leave these doors, your common sense comes in with you.

16 Your common sense spoke to you on that jury panel.
17 You sit there with this common sense in closing, and you
18 keep that common sense throughout the course of the trial.
19 But it's not just common sense. The one thing you don't
20 bring in there with you is evidence. Yes, you have common
21 sense. But you don't have evidence; that's what the state
22 of South Carolina with all their power, with all their
23 money, with all their resources, with all the people, all
24 these investigators, all of this equipment, they bring the
25 evidence to you.

1 And let's talk about the evidence that they brought to
2 you in this trial based on their assumption.

3 The first 2 witnesses they gave to you, Kayla McFadden
4 and Trell McFadden.

5 What did Kayla McFadden testify? She said, we got
6 there. We were walking down the road. I saw a car that
7 wasn't going very fast. That's important. The car was not
8 going very fast. She testified she saw a individual get
9 out of a white car with tinted windows, bend over the car,
10 shoot, bam. Her testimony. Their witness. Get out, go
11 around the front of the car, shoot again. Kick a couple of
12 times. Get back around the car and drive off at a high
13 rate of speed. Her testimony. Their witness.

14 Second witness. Trell McFadden. And they're trying
15 to dance around Trell McFadden's testimony. And this was
16 testimony on direct examination. They directly ask Mr.
17 McFadden, you saw the shooter throw that red hat?

18 What did he say to them? No. He said, no.

19 So they asked him again. Did he drop a red hat? No.

20 Assumptions. They assumed that Mr. McFadden would say
21 the exact same thing that he said in their summary of oral
22 statement. It's not in Mr. McFadden's handwriting. It's
23 something that they wrote up. Assumptions.

24 They talked to Mr. McFadden about everything that
25 happened out there.

1 Mr. McFadden's testimony, I saw a white car, tinted
2 windows.

3 Was it going at a high rate of speed? No. About 20
4 miles an hour.

5 The vehicle comes up. The individual gets out of the
6 car. Was he wearing a hat? I don't know.

7 Was it a red hat? I don't know.

8 Gets out of the car. He says he kicked him, 1, 2
9 times. I don't remember. But he shot.

10 How far away were you from him, Mr. McFadden? I asked
11 him that. Around 30 feet.

12 What did you tell the officers? I probably could
13 identify the person I saw again.

14 I didn't put that in his mind. In evidence. You'll
15 read it. Their eyewitness, the second witness the state of
16 South Carolina called, I probably could identify the
17 shooter if I saw him again.

18 So what do these officers do? Build a line-up. Shows
19 him the line-up. Showed them 2 line-ups. What does he
20 say? Hey, man, I know 2 people in this line-up. I know
21 No. 2 and I know No. 4. He said that. I know 2 people in
22 the line-up.

23 Detective Lyons told you No. 2 in the line-up was
24 Antrell Felder. He told you No. 2 was Antrell Felder. He
25 was in the line-up. The eyewitness knew him. Did he say,

1 that's him, that's the shooter, that's the person I saw?

2 No.

3 What did he say? I can't identify the shooter. The
4 shooter's not in the line-up. I don't see the shooter.

5 But what he says ---

6 THE COURT: What's your objection?

7 MR. MEADORS: That's an improper character. He did
8 not say the shooter was not in the line-up.

9 THE COURT: All right.

10 MR. KENT: That's fine, Judge.

11 THE COURT: It's a reasonable inference from the
12 testimony.

13 MR. KENT: Thank you.

14 THE COURT: He can comment on reasonable inferences
15 from the testimony.

16 MR. KENT: He doesn't pick the shooter out of the
17 line-up. Doesn't pick him out, and he knows someone in
18 there.

19 So what do they try to tell you? Well, his street
20 name is really not Little Daddy. His street name is so
21 forth.

22 I tell you, everywhere I go, everywhere I practice,
23 unfortunately, every time someone sees me, they say, you
24 know who you look like? You look like that guy from that
25 80s T.V. show, Dwayne Wayne.

1 I tell you what, if Dwayne Wayne commits a murder in
2 the streets of Sumter and someone says, well, Dwayne Wayne
3 is in a line-up, Shaun Kent's not. The guy looked like No.
4 2. He looked like Dwayne Wayne, and Dwayne Wayne is out
5 there shooting people; that's not what happen. He could
6 not pick out Antrell Felder from the line-up.

7 What did he tell them? A guy 5'7".

8 I asked him, how tall am I? 5'7". A guy my height
9 was the shooter.

10 I asked him how much did I weigh? About 170, 185
11 pounds.

12 So a guy 195 pounds, so that's about 10 pounds heavier
13 than me, my height was the shooter -- who is not in the
14 line-up, a line-up that included somebody he knew; that's
15 not reasonable doubt? What this is all about? What is it?

16 Their eyewitness said he wasn't there. He picks out a
17 person who is a totally different height than I am. He's
18 my height, the shooter.

19 Assumptions. Assumptions. That's what the state of
20 South Carolina, all their power, all their money, all their
21 resources have to give you, a bunch of assumptions. They
22 have no one whatsoever who puts this individual at the
23 scene.

24 We talk more so about Antrell McFadden, their star
25 witness. Polite. I completely agree with the solicitor.

1 Very honest on the stand and told you everything he knew.

2 He said the car had tinted windows. No doubt about it.

3 So what did they try to do? They gave him a picture
4 actually -- you were here. They gave him a picture of the
5 car that Mr. McFadden -- Mr. Felder was in. They showed
6 him the picture and they said, is this the picture of the
7 car?

8 What did he say? No, that's not it.

9 So now he can't pick the person out. He knows Antrell
10 Felder. And it's not the white car. But that's not
11 reasonable doubt.

12 Why is that not reasonable doubt? Because they don't
13 want it to be, because it doesn't fit their assumption.
14 They can't have it be reasonable doubt. They need it not
15 be. Doesn't fit. Doesn't fit their assumption.

16 They make this big -- let's go back to the tinted
17 windows in the white vehicle. Everyone agrees the window
18 has tint on it. The vehicle they show had tint on it. It
19 was a tinted vehicle. It was a tinted vehicle. It had
20 tinted windows.

21 You're going to have the evidence. Look at the
22 pictures. They're not tinted. The windows are not tinted.

23 So what do they need to do? We need a tinted car. We
24 need a tinted car. This thing happened in 2008. There was
25 nothing in our evidence whatsoever about someone trying to

1 remove the tint from the windows, so what should we say?
2 The State of South Carolina, all their power, all their
3 money, all their resources, all their investigators,
4 everyone sitting at this table, all their technology, not
5 one person wrote on a report 4 years ago, looks like
6 somebody removed the tint from this window. These windows
7 were tinted at some point in time. There's cleaning agent
8 all over the inside of the car. Somebody is trying to hide
9 some evidence. Is that written anywhere at all? It's not
10 because it didn't happen.

11 And it's not impossible. They want us to believe that
12 the great Antrell Felder, the sneakiest human in the entire
13 world, what did he do? He came up with a master plot.
14 Here's what we're going to do. We're going to drive
15 around. Someone's going to burglarize our house -- or
16 maybe not burglarize the house. The state can't decide
17 they want the burglary to be there or not be there. So
18 we're going to confuse the state on a burglary that may or
19 may not have existed. And then what we're going to do is
20 in a short period of time -- because as the state says, he
21 is the greatest investigator, he is the greatest detective,
22 he is the greatest judge, he is the greatest bailiff -- he
23 is going to solve the burglary in 2 minutes. He's going to
24 find the person -- they couldn't even tell me where the
25 person lived. I directly asked the state, who's William

1 McKenzie? Where did he live?

2 I don't know. 4 years and they don't know where he
3 lives.

4 So Antrell solves it in 2 minutes. The State of South
5 Carolina, all their power, all their money, all their
6 resources, and that's what they have to offer you?
7 Assumptions. Not based upon fact, but based upon pure
8 guesses.

9 The medical examiner testified William McKenzie died
10 of exsanguination. He bled to death. Shot. Shot in his
11 aorta. Shot in his heart. He bled to death. That means
12 there would have been blood everywhere.

13 The person that they testified about got out of the
14 car, went around the car, shot once, shot him again, kicked
15 him, said something to him, got back inside of the car.

16 What did the evidence tell you? Zero evidence
17 whatsoever inside of the car of the victim. No blood of
18 the victim. No gunshot residue inside of the car showing
19 that someone had shot the car in or around the car. He
20 testified to all of that -- there's nothing in that car
21 whatsoever -- whatsoever that points to the victim.

22 He talked about transference. I specifically asked
23 him, somebody walks through blood and walks through a crime
24 scene and contaminate the crime scene, can they transfer
25 that stuff to a car? Well, yeah.

1 Where's anything whatsoever that tie this crime scene,
2 tie this blood, exsanguination, bled to death. Blood
3 everywhere. Transfers it to the white car with no tinted
4 windows that the victim -- or that the eyewitness said
5 wasn't even the car that was involved.

6 The state got up in front of you and they said in
7 their opening statement, we want to tell you everything.
8 We're going to give you everything. There's nothing to
9 hide. We're going to tell you everything out there. So
10 why did I have to fight so hard to get them to admit that
11 there was an eyewitness out there, who we hadn't heard
12 from, who said that the white car that I said had silver
13 handles? Where's that silver handled vehicle? Where's
14 that eyewitness? I wonder why they didn't want you hear
15 from him?

16 So now we have a white car, tinted windows, with
17 silver handles that I had to get them to admit to and we
18 still haven't heard about. It's a different car, people.

19 There's no evidence of anything inside of this
20 vehicle. So they bring their fingerprint expert who says,
21 a-ha, Antrell Felder's blood and fingerprints are in his
22 own car. We got him.

23 Guess what? My fingerprints are in my car. Your
24 fingerprints are in your car. Your fingerprints are in
25 your car. That's where fingerprints go, in stuff you own.

1 Why wouldn't it be in our car? But they make a big deal
2 out of it. He got on the stand, and was asked, where are
3 the fingerprints? In the car.

4 THE COURT: No, sir. Mr. Kent, step down.

5 MR. KENT: They got on the stand, that's what they
6 told you trying to make it a bigger deal than it is. It's
7 just an assumption.

8 He's exactly right. You walk in there and you kept
9 your common sense with you the entire time. Don't lose it
10 now, because they don't have any evidence.

11 We talk about the burden. I specifically asked these
12 officers, specifically asked them, do you usually go out
13 and tell people stuff that's missing or stuff that's
14 important to crime scenes? Do you tell people what you
15 have? Do you tell somebody what ties them into a scene?

16 No, not usually.

17 Antrell wouldn't have known that the hat was
18 important. He voluntarily the next day went and gave a
19 statement. He gave a statement to law enforcement. He
20 told them what was missing. He told them what was stolen
21 and what was taken from his home.

22 They're trying to make a big deal of it. I want you
23 to pay attention to this. They're saying, ha, he only told
24 us shoes. Well, he didn't tell them anything. Stacey
25 Caughman, who you didn't hear from, they didn't put her on

1 the stand. She only told was shoes. But then in the next
2 vein, but we know that a camera was stolen. A camera was
3 found in the victim's pocket.

4 Well, they didn't mention the camera either. They
5 can't have their cake and eat it too. It's one or the
6 other.

7 They didn't tell them everything -- she didn't tell
8 them everything that was stolen. Why? Because her house
9 was just now broken into. She told them what she knew.
10 She didn't go search it. She didn't go estimate. That's
11 why Mr. Chandler asked the question, how long were you
12 there? What does your report say? 20 minutes. Weren't
13 even there that long.

14 They can't have their cake and eat it too. The
15 burglary either happened or the burglary didn't happen.

16 In one respect they're saying the burglary was the
17 motivation for the murder. The next respect they're
18 saying, we're not even sure the burglary happened. They're
19 lying about the stuff that was stolen from the house. They
20 can't even choose because they can't figure out what
21 assumption to make. The State of South Carolina, all their
22 power, all their detective, all their resources, all their
23 money. And they can't pick a theory of the case to give
24 you.

25 The big thing is this red hat that was found on the

1 scene. Now, don't forget, you have Mr. McFadden's
2 statement. But on the stand he told you a bunch of
3 different things about this hat.

4 It's probably Antrell Felder's hat. His DNA is in the
5 hat. His fingerprint is on the hat.

6 But -- and I had to ask this question. There's DNA of
7 a third unknown person in the hat? Someone we haven't
8 looked in to. But it's clear -- the testimony, you have it
9 in evidence. You will look at the report -- the SLED
10 report is very clear. It has a mixture of 2 types of DNA
11 inside of that hat. One is Antrell Felder. He's a major
12 contributor. It's his hat. He's going to be the major
13 contributor. But there's a minor contributor in that hat;
14 it's not the victim, William McKenzie. There's someone
15 else. DNA in the hat.

16 I don't share my hat. I don't let people borrow my
17 hat. It's my hat, you're not going to borrow my hat.

18 But there's somebody's DNA inside of that hat. Maybe
19 someone about 6 foot tall, my height. Maybe the person ---

20 MR. MEADORS: Objection.

21 THE COURT: What's the objection?

22 MR. MEADORS: There's no evidence anybody else in
23 this ---

24 THE COURT: All right. No evidence -- confine your
25 argument to matters that are in the record ---

1 MR. KENT: Thank you, Judge.

2 THE COURT: --- Mr. Kent.

3 MR. KENT: Thank you, Judge.

4 And let's get to the most important thing that we
5 have. The State of South Carolina, their job is to try to
6 prove their case beyond a reasonable doubt. What they're
7 proving beyond any doubt is not who did it, they're proving
8 who didn't do it, Mr. Felder.

9 Let's go over some simple math. I don't have all this
10 technology, all this stuff. I'm going to borrow this from
11 the public defender's office. I'm going to steal their
12 chart. Let's do some simple math.

13 State's Exhibit No. 51. You're going to have this,
14 all of it. You're going to have it.

15 State's Exhibit No. 51. This is the CAD sheet. This
16 is the 911 call sheet that shows the time of which things
17 happen. On the CAD sheet -- and you can look at it. When
18 you call 911, it's registered automatic. You can't just
19 call 911. That's how some times you've heard people call
20 911 by accident, then the 911 operator calls you right
21 back. They know when you're calling 911. They know the
22 time that you called and when the call is transmitted and
23 then they know when they pick up.

24 On State's Exhibit No. 51 is the 911 call time of when
25 the call from Harry Street was reported. Call 12:36 and 53

1 seconds of when a call started. The call was received at
2 12:37 and 14 seconds. That's the time the call is
3 received. That's the time the 911 operator picks up the
4 phone. You've heard it. They've played it for you. He's
5 right, Antrell Felder is at the house. He's there. You
6 hear him in the background. That call last for 24 seconds.

7 That turns our time now into 12:37 and 38 seconds.

8 Let's give the state the benefit of the doubt. Let's
9 say, Antrell Felder gets off the phone, gets angry, solves
10 this burglary, figures it out, and takes off to try to find
11 the person. Antrell Felder.

12 MR. MEADORS: Objection.

13 THE COURT: Yes, sir.

14 MR. MEADORS: Antrell Felder was not on the phone,
15 Your Honor. I object.

16 THE COURT: All right.

17 MR. KENT: I was -- never mind, Judge.

18 THE COURT: They have the right to -- if it's --
19 ladies and gentlemen of the jury, you are to -- you are the
20 judges of the facts, not what the attorneys say the facts
21 are in this case. You are the ones who are supposed to
22 evaluate the testimony, evaluate the facts, and take the
23 facts as you believe them.

24 The attorneys have the right to comment on what they
25 think the facts show or reasonable inferences from the

1 facts. But in the final analysis, you and you alone make
2 the determination of the facts in this case.

3 And I caution all the lawyers to confine their
4 arguments to matters that are reasonably inferrable from
5 the facts that have been introduced into evidence.

6 All right. Proceed.

7 MR. KENT: Go back and listen to the 911 tape if you
8 want to. There's a male voice inside of the 911 tape. I
9 submit to you, that's Antrell Felder. That's what they've
10 been arguing about. He was angry. I'm telling you, that's
11 him. He was angry. He's on the tape. Listen to it. The
12 tape lasts 24 seconds.

13 That takes our time to 12:37 and 38 seconds.

14 Let's give the state the benefit of the doubt that
15 Antrell Felder leaves the house, gets angry, solves this
16 burglary, takes off. Let's say it takes -- give them the
17 benefit of the doubt. It takes 10 seconds. That takes us
18 to 12:37 and 48 seconds.

19 The evidence by stipulation -- let me explain to you
20 what a stipulation is. A stipulation is evidence that the
21 state and defense have agreed to. It is evidence. It is
22 the evidence. It is the evidence that you rely upon.

23 Exhibit 54 is the map, the last thing the state put
24 in. What did he tell you? He read it to you. The
25 distance between and Street is point

1 3 miles. It also says about 2 minutes -- it's a 2 minute
2 drive. That's the stipulation. That's the evidence. It's
3 a 2 minute drive.

4 So it's 2 minutes -- 2 minutes. I'm going to stop --
5 it takes 2 minutes from one to the other; that's the
6 stipulation, that's the evidence -- that's the evidence the
7 state put in, and we stipulated to.

8 We have the other 911 call. The other 911 call is
9 State's Exhibit 52. The same thing. They note the initial
10 time the initial call came -- you've have this in evidence.
11 And we know the time it was received. That 911 phone call
12 means that's when someone was dialing the phone calling
13 911. 12:38 and 51 seconds. 12:38 and 51 seconds is when
14 the 911 call was coming in.

15 Again, using our benefit of the doubt, using common
16 sense, you don't call 911 while a crime is happening. It's
17 going to take a little bit. The crime happens. The
18 shooting happens. From their own testimony, shots happen,
19 the individual goes around the front of the car, kick,
20 kick, shoot, goes around the car, drives off, then the 911
21 call; that's giving the benefit of the doubt again if that
22 only took 10 seconds -- huge benefit of the doubt. That
23 turns it backwards into 12:38 and 41 seconds.

24 Simple math means that white car would have had to
25 have a flux capacitor in it, and then a Deloraine have been

1 able to back in time, because that's a minute and 37
2 seconds. It takes 2 minutes just to get there. It's not
3 possible.

4 You'll have all this. You can do the math yourself.
5 This isn't me doing blue math or anything of that nature.
6 Go back there and do it to yourself. It's 2 minutes away.

7 The times are so close, it just didn't happen. But
8 they made that assumption, and they haven't even done the
9 math.

10 Assumptions. And that's what they want you to convict
11 somebody. An assumption.

12 Antrell voluntarily went to the police station and
13 gave them a statement. Lawyers usually tell clients --
14 I'll tell you candidly, we don't go give statements to
15 officers. We just don't do it. He voluntarily. He went.
16 He gave a statement. I agree with John Meadors. Told the
17 officers everything. Told them what hats were stolen. But
18 he also told them, look, I had weed. I had marijuana on
19 me. I had weed. I had to beat feet and get out of there.

20 Stacey -- we still haven't heard from -- told them,
21 don't look -- if you're holding something, if you've got to
22 leave, you need to get out of here; that's why he left.
23 That's why he was angry; that's what I submit to you. Why
24 was he angry? Why was he upset? I got weed and you just
25 called the cops to come over to my house. I got to get out

1 of here. That's what happened.

2 Does it fit the state's theory? No. Does it fit
3 their assumptions? No.

4 Read this caption. Read the area. Read the area that
5 it says there's normal gang activity around there. Read
6 these sheets. Read all of this evidence. Look at it.
7 Compare the times. Use your common sense -- as the state
8 likes to say -- and try to figure out exactly what
9 happened.

10 I'll tell you candidly, I don't know what happened. I
11 wasn't out there. Solicitor Meadors wasn't out there.

12 This is tragic. This is awful. I do believe in the
13 system. I believe in the system very much. I believe it
14 works because when the state puts in valid evidence that is
15 documented, the system works. When they do not, it does
16 not work.

17 Someone broke into that house. Someone stole stuff
18 out of that house. Someone stole hats out of that house.

19 What the state has proven to you, they haven't proven
20 that Antrell did it. They proven to you there's no way he
21 could have.

22 The judge is going to talk about reasonable doubt, and
23 I keep mentioning it. I will tell you, I graduated -- now
24 that I'm practicing law, about 13 years now. I graduated
25 law school. I went to law school in Michigan. And when I

1 was in law school, I will tell you honestly, I did not
2 understand reasonable doubt. I didn't understand it the
3 entire time I graduated law school and actually started
4 prosecuting down in Charleston. Still did not really
5 understand reasonable doubt.

6 Actually lived with my parents when I got out. I
7 stayed there with my little brother. His name is Terry.
8 He's not little any more, but at the time he was still
9 living at home. He had the definition of bad attitudes.
10 He had a bad attitude. He got in trouble all the time. He
11 had this horrible habit of every single time he got in
12 trouble, he would go upstairs to his room and he would slam
13 the door.

14 Oh, my dad used to get so angry at him. He'd tell
15 him, don't slam that door when you go upstairs. Don't slam
16 that door when you go upstairs.

17 I remember one day I was sitting at home. I was
18 hanging out. I was talking to my mom. I'll never forget
19 the day. It was a spring day. Windows were all open in
20 the house. Pollen floating around in the air. It was one
21 of those days you have your hay fever going. My dad had
22 Percy Sledge, When a Man Loves a Woman was playing in the
23 background. I heard it. We were all sitting there
24 talking. And my brother had done something that made my
25 dad just completely angry.

1 My dad told him, go upstairs and do not slam the door
2 when you go upstairs.

3 My brother got all angry. Stormed upstairs. And all
4 of a sudden, all we heard a door slam. I knew what was
5 about to happen. My dad was going to march up those stairs
6 and he was going to wail my little brother up. He's going
7 to tear his hide.

8 So being the awful big brother that I am, I wanted to
9 go up there and watch him get a beating. So my dad goes
10 upstairs and I go upstairs right after him. My mom is
11 coming upstairs. She's the Baptist minister. Please don't
12 hurt him. Please don't hurt him. And so she's going
13 upstairs right behind us. We're all going up there.

14 My dad opened the door to his bedroom and there's my
15 brother in the middle of the floor just sitting there with
16 tears in his eyes. I didn't slam the door. Just sitting
17 there, Dad, I didn't slam the door.

18 And my dad is not believing it. He's not thinking it.
19 He's not hearing it. My dad comes over to him with his
20 hand raised about to whack -- and at that moment, the
21 window's open, Percy Sledge playing, some wind comes in and
22 hits my dad's hand. And I saw my dad look at his hand and
23 look at my brother and he paused. And at that point in
24 time I realized what reasonable doubt was. It's that
25 pause. It's that hesitation. It's that I just don't know.

1 You're not allowed to talk about the case all week
2 since you've been in this trial. You're actually going to
3 be allowed to talk about the case with one another in
4 probably about 20 or 30 minutes. You're going to go home.
5 You're going to talk about your families. You're going to
6 talk about the trial you sat on, talk about that attorney
7 who looked like Dwayne Wayne, who was on his knees with his
8 hands in the air. You're going to tell everything you've
9 done on this case.

10 Ladies and gentlemen, when you start talking about a
11 case, someone your spouse, maybe in a week, maybe in 5
12 years, maybe in 10 years is going to ask you. You may talk
13 about doubts that you had. That's not the time to have
14 doubts, tonight, 5 weeks from now -- those aren't the
15 times. If you have doubts, have them now, because it's too
16 late later.

17 Thank you very much.

18 THE COURT: I'm going to send them out.

19 All right. Ladies and gentlemen, you have now heard
20 all the evidence in this case. And there is only one thing
21 that remains to be done, and that is for me to instruct you
22 on the law. However, before we do that, I want to take
23 about -- you've been in the courtroom about an hour and 10
24 minutes. And I think we should take about a 10-minute
25 recess, a very short recess, before I instruct you on the

1 law.

2 So I'm going to ask you to go to your jury room for
3 just a few minutes, 5 to 10 minutes. Take a very brief
4 recess. Do not discuss the case among yourselves. It's
5 still premature for you to begin any discussion because I
6 have not instructed you on the law, and I'm going to do
7 that in just a minute. But we'll take 10 minutes before we
8 do that. But don't discuss the case among yourselves, and
9 we'll send for you very shortly.

10 Thank you. You may go with the bailiff.

11 (The jury retires to the jury room at 10:48 a.m.)

12 THE COURT: All right. Let's take a 10-minute recess.
13 Be ready to start back at 11:00 o'clock. Thank you.

14 (A recess was taken.)

15 THE COURT: Back on the record with regard to the
16 matter of The State versus Felder. Mr. Felder is present
17 in court with his attorney, Mr. Kent. The state is present
18 represented by Mr. Meadors.

19 Bring the jury in please.

20 (The jury returns to the courtroom at 11:02 a.m.)

21 BAILIFF: Your Honor, we have all the jurors present
22 in the courtroom.

23 THE COURT: All right. Thank you very much.

24 CHARGE OF THE COURT:

25 All right. Mr. Foreman and ladies and gentlemen of

1 the jury, if you would give me your attention.

2 You have followed very patiently and listened very
3 attentively to the presentation of the evidence in this
4 case and also to the able arguments made by the solicitor,
5 Mr. Meadors, on behalf of the state, and by Mr. Kent on
6 behalf of the defendant. And I thank you for that.

7 It now becomes the duty of the trial judge under the
8 constitution of this state to charge and instruct you in
9 the law applicable to this case. And it is your duty as
10 jurors to accept and apply the law as The Court will now
11 state it to you.

12 And as jurors, it is your exclusive duty to decide all
13 of the issues of fact in this case. And for that purpose,
14 to determine the effect, the value, the weight, and the
15 truth of the evidence.

16 Both the state and the defendant have the right to
17 expect that you will consciously consider and evaluate the
18 evidence and apply the law thereto, to the end that both
19 the state of South Carolina and the defendant will receive
20 and obtain a fair and impartial trial in this case.

21 Now, when I use the word defendant, I refer, of
22 course, to Mr. Antrell Rashawn Felder.

23 The state of South Carolina by the bill of indictment
24 in this case which I hold in my hand charges the defendant,
25 Mr. Felder, with 2 offenses. The first offense he's

1 charged with is the crime of murder. And the indictment
2 alleges that Mr. Felder did in Sumter County on or about
3 July 18, 2008 feloniously, wilfully, and with malice
4 aforethought either expressed or implied kill one William
5 McKenzie by means of shooting him with a shotgun -- a
6 handgun and the said William McKenzie did die as a
7 proximate result thereof.

8 The second crime charged in the indictment is
9 possession of a firearm during the commission of a violent
10 crime and alleges that Mr. Felder did in Sumter County on
11 or about July the 18th have in his possession or visibly
12 display a knife or a firearm during the commission of a
13 violent crime of murder; and that is a charge of a separate
14 crime of possession of a weapon during the commission of a
15 violent crime.

16 To these indictments or to these charges in this one
17 indictment the defendant has entered a plea of not guilty.
18 This plea of not guilty by the defendant places the burden
19 of proof on the state to prove by evidence the guilt of the
20 defendant beyond a reasonable doubt before you, the jury,
21 can find the defendant guilty.

22 The defendant, Mr. Felder, is presumed in the law
23 innocent of the charge contained in the indictment. It is
24 a cardinal and fundamental rule of the law of evidence that
25 a defendant irrespective of the enormity of the charges.

1 against him will always be presumed innocent of the crime
2 for which he is indicted unless and until the guilt of the
3 defendant has been proven by evidence which satisfies you,
4 the jury, of his guilt beyond a reasonable doubt.

5 The presumption of innocence is not a mere legal
6 theory, it is not just a legal phrase. The presumption of
7 innocence is a substantial right to which every accused is
8 entitled.

9 Our Supreme Court has declared that the presumption of
10 innocence is like a robe of righteousness placed about the
11 shoulders of the defendant and it remains with him and
12 assigns to him that class, the innocent until that
13 presumptive robe of righteousness has been stripped from
14 his person by evidence satisfying you, the jury, of his
15 guilt beyond a reasonable doubt.

16 The presumption of innocence accompanies the defendant
17 from the time of his arraignment and appearance in this
18 court and continues with the defendant after you retire to
19 your jury room to deliberate your verdict.

20 The presumption of innocence remains with the
21 defendant until you have concluded from the evidence that
22 he is guilty beyond a reasonable doubt.

23 Now, the state -- let's talk about this. What is a
24 reasonable doubt? It is not an imaginary or fanciful doubt
25 or a weak doubt. It is a substantial doubt. It is a doubt

1 which the words imply. A doubt for which you can give or
2 assign a reason based on the testimony and the evidence in
3 this case.

4 A reasonable doubt is not any sort of a doubt. You
5 and I know from everyday life experiences that you may have
6 a sort of doubt about any matter that arises, no matter how
7 trivial it may be or how serious it may be.

8 A reasonable doubt is a doubt which makes an honest,
9 sincere, conscientious juror in search of the truth
10 hesitate to act.

11 Proof beyond a reasonable doubt is proof which leaves
12 you firmly convinced of the defendant's guilt. If you have
13 a reasonable doubt for which you can give or assign a
14 reason as to the guilt of the defendant, then he is
15 entitled to a verdict of not guilty.

16 Reasonable doubt may arise from evidence which is in
17 the case or from the lack of evidence in the case.

18 You, the jury, must make the determination of whether
19 or not reasonable doubt exists as to the guilt of the
20 defendant.

21 The very fact, however, that the jury engages in a
22 full and free discussion of the issue of guilt or non-guilt
23 in this case with the normal conversational ebb and flow on
24 these issues does not automatically mean that reasonable
25 doubt exist in this case or in any other case.

1 The state is not required to prove the guilt of the
2 defendant beyond all doubt or beyond every doubt, but
3 beyond a reasonable doubt.

4 A reasonable doubt is the kind of doubt that would
5 cause a reasonable person to hesitate to act.

6 I charge you that the defendant is entitled to every
7 reasonable doubt arising in the whole case or arising in
8 any defenses asserted by the defendant.

9 If upon any issue of fact essential to conviction and
10 a verdict of guilty you have a reasonable doubt as to how
11 that issue should be resolved, it would be your duty to
12 resolve that doubt in favor of the defendant.

13 A defendant, ladies and gentlemen, is not required to
14 prove his innocence. But the state is required by law to
15 prove every essential element in the offense charged
16 against the defendant by evidence which satisfies you, the
17 jury, of the guilt of the defendant beyond a reasonable
18 doubt before you can convict the defendant and find him
19 guilty.

20 If then upon the whole case you have a reasonable
21 doubt as to the guilt or innocence of the defendant, he is
22 entitled to that reasonable doubt and would be entitled to
23 an acquittal and a verdict of not guilty.

24 But on the other hand if upon the whole case you find
25 that the state has proven by evidence which satisfies you,

1 the jury, of the guilt of the defendant beyond a reasonable
2 doubt, then in such circumstances it would equally be your
3 duty to convict the defendant and find him guilty.

4 Now, I instruct you that the indictment in this case
5 which I do have in my hand is not evidence and cannot be
6 considered by you as evidence in this case. The indictment
7 is simply the formal charge against the defendant -- the
8 formal instrument which contains the charge against the
9 defendant and it serves as a formal document by which this
10 matter is brought to trial.

11 During this trial each of us, you and I, have certain
12 duties to perform. As the trial judge, it is my
13 responsibility to preside over the trial of this case. And
14 I also have the duty to rule upon or pass upon the
15 admissibility of evidence offered during the progress of
16 this trial.

17 You are to consider only the evidence before you, and
18 you are to disregard and disabuse from your mind any
19 testimony ordered stricken from the record of this case
20 during the progress of this trial if there be any, and you
21 are to consider only the testimony which has been presented
22 from the witness stand, together with any exhibits admitted
23 into the record of this case and any stipulations counsel
24 made into the record of this matter.

25 I have the additional duty to charge you the

1 applicable law in this case. As the presiding judge, I am
2 the sole judge of the law in this case. And it is your
3 duty to accept and apply the law as I now state it to you.

4 If you have a preconceived idea as to what the law is
5 or what the law ought to be in this case and it does not
6 agree with what I tell you the law is, you are obligated
7 under your oath to abandon this preconception on your part
8 because you are sworn to accept and apply the law precisely
9 as I state it to you.

10 In every case tried in this court before a jury, the
11 jury becomes the sole and exclusive judge of the facts of
12 the case.

13 You, the jury, are the exclusive judge of the facts in
14 this case.

15 The Court is the judge of the law. The constitution
16 of this state has declared that the trial judge shall not
17 intimate, state, comment upon, or make any statement to a
18 trial jury about the facts. You are not to infer from
19 anything that I have said during the progress of this trial
20 or anything that I say during the course of this
21 instruction to you that I have any opinion about the facts
22 of the case. I do not. The law does not permit me to have
23 an opinion about the facts of the case.

24 This is a matter solely for you, the jury, to
25 determine. As jurors then it is your duty to determine as

1 I have stated the effect, the value, the weight, and the
2 truth of the evidence presented during the course of this
3 trial.

4 Necessarily, then, you must assess the credibility of
5 the witnesses who have testified in this case. Credibility
6 is simply a legalistic term meaning believability. It
7 becomes your duty then to analyze and evaluate the evidence
8 and to determine that evidence which convinces you of its
9 truth.

10 I charge you that in determining the question of
11 credibility or believability of the witnesses, you may
12 believe one witness as against several witnesses or several
13 witnesses as against one witness.

14 You may believe a part of the testimony of a witness
15 and reject the remaining part of the testimony of that same
16 witness.

17 You may believe the testimony of a witness in its
18 entirety or you may reject the testimony of a witness in
19 its entirety.

20 You may consider whether any witness has exhibited any
21 interest, any bias, or any prejudice in the case.

22 And you may consider the demeanor of a witness; that
23 is, the appearance of a witness from the witness stand.

24 And you may consider the opportunity for knowledge
25 concerning those things about which a witness testified.

1 These considerations you do not exercise arbitrarily,
2 but if in your good judgment there is sound reason in the
3 record for so doing. Because your objective, ladies and
4 gentlemen, is to find the truth, whether it comes from a
5 witness or witnesses for the state of South Carolina or
6 whatever witnesses in this case. And in doing so, in
7 exercising your mental processes and in determining what
8 you consider to be true, the law simply requires that you
9 exercise your good judgment, your common sense, your sense
10 of logic and reason, and your experiences in life.

11 You then apply these attributes of ability to the
12 evidence and determine what you consider to be the truthful
13 evidence. And to these true state of facts as determined
14 by you, the jury, you take and apply the law as I will now
15 state it to you and thus arrive at a true verdict in this
16 case.

17 Now, the defendant in this case is charged with the
18 offense of murder. What is murder? Murder is defined as
19 the wilful and felonious killing of a human being by a
20 human being with malice aforethought; that malice being
21 either express or implied malice.

22 Section 16-3-10 of the code of laws of South Carolina
23 provides as follows: Murder is, quote, the killing of any
24 person with malice aforethought either express or implied,
25 end quote.

1 The state must prove beyond a reasonable doubt that
2 the defendant killed another person with malice
3 aforethought.

4 The presence of malice is a required element of
5 murder. Malice as defined as being hatred or ill-will.
6 Malice in its legal sense does not necessarily import ill-
7 will toward the individual injured, but signifies rather a
8 general, malignant recklessness of the lives and safety of
9 others or a condition of the mind which shows a heart
10 regardless of social duty and fatally bent on mischief.

11 Malice is the wrongful intent to injure another
12 person. It indicates a wicked or a depraved spirit intent
13 on doing wrong.

14 Malice is a legal term implying wickedness and
15 excluding a just cause or excuse. It is the doing of a
16 wrongful act intentionally and without just cause or
17 excuse.

18 The term malice indicates a formed purpose and design
19 to do a wrongful act under the circumstances that exclude
20 any legal right to do it.

21 Malice may be either express or implied. The words
22 express or implied add nothing to the meaning of the word
23 malice. They do not imply different kinds of malice, but
24 merely the manner in which the only kind of malice may be
25 shown to exist; that is either by positive evidence or by

1 inference.

2 Express malice is where there is a deliberate
3 intention to unlawfully take the life of another.

4 Implied malice is when circumstances demonstrate a
5 wanton or reckless disregard for human life or a reasonably
6 prudent man would have known that according to common
7 experience there was a plain and strong likelihood that
8 death would follow the contemplated act.

9 The law says that if one intentionally kills another
10 with a deadly weapon, the implication of malice may arise.
11 If facts are proven beyond a reasonable doubt sufficient to
12 raise an inference of malice to your satisfaction, this
13 inference would be simply an evidentiary fact to be taken
14 into consideration by you, the jury, along with the other
15 evidence in this case. And you may give it such weight as
16 you determine it should receive.

17 A deadly weapon is any article, instrument, or
18 substance which is likely to cause death or great bodily
19 harm. Whether an instrument or an object has been used as
20 a deadly weapon depends upon the facts and circumstances of
21 each case.

22 Now, although malice must be aforethought, there's no
23 requirement that it must exist for any appreciable length
24 of time before the commission of the act. It may be
25 conceived at the very moment the act occurs. There must be

1 a combination of the evil intent and of the act producing
2 the result.

3 Now, the defendant is also charged in the indictment
4 with possession of a firearm during the commission of a
5 violent crime. Section 16-23-490 of the South Carolina
6 code of laws provides, if any person is in possession of a
7 firearm or visibly displays what appears to be a firearm
8 during the commission of a violent crime and is convicted
9 of committing or attempting to commit a violent crime as
10 defined in section 16-1-60, he is guilty of the separate
11 crime of possession of a firearm during the commission of a
12 violent crime.

13 Firearm is defined as any machine gun, automatic
14 rifle, revolver, pistol, or any weapon which will or is
15 designed to or may readily be converted to expel a
16 projectile.

17 Now, section 16-1-60 of the South Carolina code of law
18 provides that murder is a violent crime within the meaning
19 of the statute.

20 For you to find the defendant guilty of the separate
21 offense of possession of a firearm during the commission of
22 a violent crime, you must first find the defendant guilty
23 of either committing a violent crime or attempting to
24 commit a violent crime. In this case, the crime of murder.

25 If you find the defendant guilty of murder, you must

1 then decide whether the state has proven beyond a
2 reasonable doubt that the defendant was in possession of a
3 firearm or visibly displayed what appeared to be a firearm
4 during the commission of a violent crime.

5 Now, ladies and gentlemen, there are generally 2 types
6 of evidence which are presented during a case; direct and
7 circumstantial evidence.

8 Direct evidence is the testimony of a person who
9 asserts or claims to have actual knowledge of a fact, such
10 as an eyewitness.

11 Circumstantial evidence is proof of a chain of facts
12 and circumstances indicating the existence of a fact.

13 The law makes absolutely no distinction between the
14 weight or value to be given to either direct or
15 circumstantial evidence. Nor is a greater degree of
16 certainty required of circumstantial evidence than of
17 direct evidence.

18 You should weigh all of the evidence in this case.
19 And after weighing all of the evidence, if you are not
20 convinced of the guilt of the defendant beyond a reasonable
21 doubt, you would find the defendant not guilty.

22 On the other hand, after weighing all of the evidence
23 if you are convinced of the guilt of the defendant beyond a
24 reasonable doubt, you would find the defendant guilty.

25 Now, there has also been testimony offered in this

1 case from expert witnesses. Although lay witnesses are
2 limited to testifying about facts within their knowledge
3 and are not allowed to give opinions, certain witnesses who
4 by their training, education, or experience are considered
5 experts in a particular field may give their opinions in
6 that field based upon the facts of a matter and their
7 conclusions.

8 These opinions constitute evidence to be considered by
9 you in connection with all of the other testimony and
10 evidence in the case.

11 You may consider the expert's opinion just as you do
12 all other evidence in this case. It is for you, the jury,
13 to give it such weight as you in your experience and
14 discretion may determine.

15 You must weigh such evidence and accept or reject it
16 in the same manner that you treat all other evidence in
17 this case.

18 The testimony of experts is to aid and assist the
19 jurors, not to determine or control you in your decision on
20 questions of fact.

21 The opinions and deductions from the evidence before
22 you and their judgments and opinions do not preclude yours.
23 You are required to decide disputed questions after
24 comparison and consideration of all the evidence in this
25 case.

1 So you should consider expert opinions received in
2 this case and give it such weight as you feel it deserves.

3 Now, ladies and gentlemen, I want to tell you now and
4 I want to emphasize to you this instruction regarding the
5 constitutional rights of the defendant.

6 The defendant in this case has not testified. This is
7 his constitutional right. It is not a circumstance you can
8 take into consideration or leave it -- or even allow it to
9 enter your discussions in the jury room.

10 Under the Constitution of South Carolina and the
11 United States's Constitution, it is the defendant's
12 constitutional right not to testify. The burden of proof
13 is on The State of South Carolina to establish the guilt of
14 the defendant by competent evidence by beyond a reasonable
15 doubt.

16 The fact that the defendant did not take the witness
17 stand and testify in his own behalf does not create any
18 inference against him, and you, the jury, must not permit
19 that fact to weigh in the slightest degree against this
20 defendant, nor should this fact enter into the discussion
21 or deliberations of the jury in any manner whatsoever.

22 Now, ladies and gentlemen, I am about finished my
23 instructions to you, and I would tell you that you are not
24 partisans or advocates for The State of South Carolina or
25 for the defendant. You do not serve on the jury to reward

1 your friends or punish your enemies. Obviously, such a
2 perverted system of justice would be intolerable.

3 You have been selected by both The State of South
4 Carolina and this defendant as fair and impartial jurors.
5 It is your duty then by your joint deliberations to
6 determine the truth in this case, giving to the defendant
7 the benefit of each and every reasonable doubt on each and
8 every issue. And then to the facts which you determine to
9 be true, you then take and apply the law which The Court
10 has given to you. And then you arrive at a verdict which
11 does speak the truth in this case.

12 The word verdict, ladies and gentlemen, has a Latin
13 derivative. It comes from the Latin verb veridicto, meaning
14 to speak the truth or truth saying.

15 And when you have accomplished these responsibilities,
16 you will have satisfied your oath as jurors and you will
17 have discharged your duty to this court.

18 Now, I want to instruct you on your forms of verdict
19 in this case.

20 If the state has failed to prove the guilt of the
21 defendant beyond a reasonable doubt, your verdict would be
22 on each charge two words, not guilty.

23 If the state has proven the guilt of the defendant
24 beyond a reasonable doubt, your verdict would be one word,
25 guilty.

1 The verdict that you render in this case must be the
2 verdict of each and every juror. It must be your unanimous
3 verdict. All 12 of you must agree on the verdict which you
4 authorize the foreman to write.

5 Now, Mr. Foreman, I have prepared a form of verdict
6 for your use, and it is on this form here and I'm going to
7 go over it with you right now. But before I go over this,
8 I want to tell you that the order in which I have put the
9 possible verdicts on this form has absolutely no
10 significance whatsoever. You should not infer from the
11 order in which I have put the possible verdicts on this
12 form that I have any opinion as to what your verdict should
13 be. I do not. The law does not allow me to have an
14 opinion; that is a matter that is solely up to you.

15 But, obviously, when putting something down on a piece
16 of paper, I had to put something first and something
17 second.

18 Across the top up here we have the caption of the
19 case, the name of The State versus the defendant, Antrell
20 Rashawn Felder. And on the right verdict. And, of course,
21 the case number.

22 And on count 1, I have written this: We, the jury, by
23 unanimous agreement on the charge of murder find the
24 defendant, Antrell Rashawn Felder, guilty or not guilty.
25 And you would place a check mark or an X -- depending on

1 which one of those 2 was your verdict in this case.

2 It goes on to say. If you find the defendant guilty
3 of murder, consider count 2. If you find the defendant not
4 guilty of murder, do not consider count 2. Skip to the end
5 of the verdict form where you would sign your name.

6 But if you find the defendant guilty of murder, then
7 you would consider count 2, which is the possession of a
8 firearm during the commission of a crime. And, again, we,
9 the jury, on the charge of possession of a firearm during
10 the commission of a violent crime find the defendant,
11 Antrell Rashawn Felder, guilty or not guilty. Choose one.
12 Put the date here. Sign it, and notify the bailiff, and we
13 will return you to the courtroom.

14 Now, I'm going to send you to the jury room. Going to
15 ask that you not begin your deliberations just yet. I have
16 to take up certain matters of law with the attorneys. If
17 it is not necessary for me to bring you back into the
18 courtroom for additional instructions, the bailiff will
19 bring you the verdict form. He will also bring you the
20 exhibits and tell you to begin your deliberations.

21 A bailiff will be stationed outside of your jury
22 room door, for your security during the process of
23 deliberations.

24 And the other thing I want to tell you is that there
25 are some exhibits in this case that require technology. If

1 you want to hear any of the tapes or view any of the things
2 that were done with the television and the computer, you
3 advise -- give us a note in writing and advise us, and
4 we'll bring you back to the courtroom and have those keyed
5 up and played for you.

6 You will not have the equipment in the jury room to
7 play those things, but we will make them available to you
8 if you wish to hear them in more detail or to view them in
9 more detail, just let us know exactly what you wish to hear
10 or wish to see, and we will make sure that that can be
11 played for you.

12 Otherwise, all of the other exhibits will be taken
13 into the jury room with you.

14 With that, I'm going to ask the 12 members of the
15 principal jury to go to your jury room. Do not begin your
16 deliberations just yet. I'm going to ask the 2 alternates
17 to keep your seats while the jury goes to the jury room.

18 Thank you. You may go with the bailiff.

19 (The jury retires to the jury room at 11:30 a.m.)

20 THE COURT: Any additions or exceptions on behalf of
21 the state, Mr. Meadors?

22 MR. MEADORS: No, sir.

23 THE COURT: On behalf of the defense?

24 MR. KENT: Not from defense.

25 THE COURT: All right.

1 (The alternates were excused.)

2 THE COURT: If you will now check the exhibits so that
3 we can make sure that the exhibits go to the jury, only
4 those things that have been introduced into evidence.

5 Mr. Bradley, here's the verdict form. And when you
6 get the exhibits, you can tell the jury to begin their
7 deliberations.

8 (Pause.)

9 MR. MEADORS: Judge, we'll send the CDs back. And if
10 they want to hear them ---

11 THE COURT: Yes, send them back. That way it will
12 keep it in their mind. And then if they want to hear it,
13 we'll make arrangements to play it.

14 (The verdict form and exhibits were sent to the jury
15 to begin deliberations at 11:37 a.m.)

16 THE COURT: All right. Mr. Bradley, if you will take
17 the exhibits to the jury.

18 Counsel, I have told -- the bailiffs said we had a
19 couple smokers on the jury. They can take them down, but
20 tell the jurors not to begin any deliberations until all
21 12 of them are back in place. But I am allowing them to
22 do that.

23 Okay. All right. We'll be in recess until we hear
24 from the jury.

25 (The court is at ease awaiting a verdict of the jury.)

1 (A bench conference was held off the record.)

2 THE COURT: Ask the foreman to come here just a
3 minute, and ask them to refrain from discussing on the case
4 while Mr. Brooks is here.

5 (The foreman enters the courtroom at 12:55 p.m.)

6 THE COURT: Mr. Brooks, I'm going to come in just a
7 minute and give you some direction on these questions that
8 were asked. But before I do that, it's almost lunch time.
9 I want the jury to feel like they have as much time as they
10 would like to deliberate all the issues in this case and
11 want to know if you think the jury would like for us to
12 send out for lunch? It will take us about 30 minutes to
13 get it here.

14 FOREMAN: Probably. I can ask them.

15 THE COURT: Check and ask them if they'd like for us
16 to send out for lunch. If you think it's going to take you
17 longer than 30 or 40 minutes -- it will take us about that
18 long to get lunch here. Please don't feel like you're
19 under any pressure to make a decision. We'll be glad to
20 bring lunch in.

21 FOREMAN: From what they were saying ---

22 THE COURT: Don't tell me what they're saying.

23 FOREMAN: They want to know that ---

24 THE COURT: These questions, I'll answer these
25 questions for you in just a minute. In fact, maybe I ought

1 to answer these questions and then you -- go back with you
2 and answer these questions, and then you tell me whether
3 you would like for us to send out for lunch.

4 FOREMAN: Okay.

5 THE COURT: Okay. All right. I'll be right there.

6 (The foreman returns to the jury room at 12:57 p.m.)

7 (Pause.)

8 THE COURT: All right. Let the record reflect that
9 the foreman came in. I'm going to have this note marked as
10 the next Court's Exhibit. And I have already shared the
11 note with the lawyers in this case.

12 (Court's Exhibit No. 1 marked for identification.)

13 THE COURT: The questions were, No. 1. The night
14 officers took witnesses home and thought they saw a car,
15 were windows tinted?

16 And my response to that would be that that is a
17 factual issue that they will just have to rely upon the
18 testimony -- factual issue that I cannot comment on and
19 they'll just have to rely on their recollection of the
20 testimony on that.

21 Second question is: Can we have the statement of
22 Kayla McFadden?

23 And my response to that would be that that statement
24 is not in evidence.

25 I would propose simply going to the jury room door and

1 telling them those 2 factors.

2 Any objection to handling it that way on behalf of the
3 state, Mr. Meadors?

4 MR. MEADORS: No, Your Honor.

5 THE COURT: On behalf of the defense?

6 MR. KENT: Not from the defense, Your Honor.

7 THE COURT: All right. We'll do that. At the same
8 time I will tell them to let me know if they would like for
9 us to send out for lunch.

10 MR. KENT: Thank you.

11 MR. MEADORS: Thank you, sir.

12 (Pause.)

13 THE COURT: Just a minute until we hear from the
14 foreman as to what they want to do about lunch.

15 Let the record reflect that I did convey to the jury
16 that the answer to the first question was that was a
17 factual question. They would have to rely upon their own
18 recollection of the testimony. And the third (sic) was the
19 statement was not in evidence. And so it was not available
20 to them.

21 All right. Let's see what they want to do about
22 lunch.

23 (The court is at ease awaiting a verdict of the jury.)

24 THE COURT: He's going to ask the jurors if they've
25 made a decision about what they want to do about lunch.

1 Any objection to that?

2 MR. CHANDLER: No, sir.

3 MR. MEADORS: No, sir.

4 THE COURT: All right. Go ahead.

5 (Pause.)

6 THE COURT: No lunch. Okay. All right. The jury has
7 advised that they do not wish for us to order lunch, so
8 we'll stay right here.

9 (The court is at ease awaiting a verdict of the jury.)

10 THE COURT: Back on the record in the matter of The
11 State versus Felder. Get Mr. Felder back in the courtroom,
12 please. I've been advised that the jury has reached a
13 verdict.

14 (Pause.)

15 THE COURT: All right. Let the record reflect that
16 Mr. Felder is present in the courtroom with his counsel,
17 Mr. Chandler and Mr. Kent. The state is present,
18 represented by Mr. Meadors.

19 I've been advised that the jury has reached a verdict.

20 Before I bring the jury in, let me speak to all the
21 spectators in the courtroom, both the victim's family and
22 the defendant's family.

23 I know this is a matter of great importance to
24 everybody who is here today, and I know that everyone is
25 very much emotionally involved in this matter. But I am

1 going to have to tell you that this is a court of law, and
2 I'm going to require that order and decorum be maintained
3 in the courtroom when the verdict is read.

4 If there is anyone in the courtroom who thinks that
5 they cannot sit quietly and accept the verdict without any
6 shows or demonstration of emotion in any manner whatsoever,
7 whether it's clapping, shouting out loud or anything else
8 or any shows of emotion whatsoever, if there's anyone who
9 thinks they cannot sit quietly when the jury's verdict is
10 published, then I would require that you leave now.

11 Because if there are any disturbances in the courtroom, I
12 will treat them as contempt of court.

13 If anybody cannot sit quietly, please leave now.

14 (Pause.)

15 THE COURT: All right. That being the case then, if
16 you'll bring the jury in for me please.

17 (The jury returns to the courtroom at 1:16 p.m.)

18 BAILIFF: Your Honor, we have all the jurors present
19 in the courtroom.

20 THE COURT: All right. Thank you very much. And, Mr.
21 Foreman, have you reached a verdict?

22 FOREMAN: Yes, sir.

23 THE COURT: Is that verdict unanimous?

24 FOREMAN: Yes, sir.

25 THE COURT: Would you hand it up to the bailiff

1 please.

2 (Pause.)

3 THE COURT: All right. From the standpoint of form,
4 the verdict appears to be correct.

5 Mr. Chandler, Mr. Kent, would you and your client rise
6 please. And, Mr. Clerk, you may publish the verdict.

7 VERDICT OF THE JURY:

8 CLERK: Okay. The State of South Carolina, the
9 County of Sumter, in the Court of General Sessions, Docket
10 No. 2009-GS-43-59, The State of South Carolina versus
11 Antrell Rashawn Felder, defendant. As to count 1, we, the
12 jury, by unanimous agreement on the charge of murder find
13 the defendant, Antrell Rashawn Felder, guilty.

14 As to count 2, we, the jury, on the charge of
15 possession of a firearm or knife during the commission of a
16 violent crime find the defendant, Antrell Rashawn Felder,
17 guilty.

18 Signed, Albert Brooks, foreperson. Dated November 18,
19 2011.

20 Ladies and gentlemen, if this is your verdict, so say
21 you all by raising your right hand please.

22 (All hands raised.)

23 CLERK: Thank you.

24 THE COURT: Mr. Kent, Mr. Chandler, you all may be
25 seated.

1 MR. KENT: Thank you, Judge.

2 THE COURT: Anything before the jury is discharged,
3 Mr. Chandler, Mr. Kent?

4 MR. KENT: Yes, we'd like to poll the jury, Your
5 Honor.

6 THE COURT: All right. The jury will be polled.
7 All right. Court is still in session. Settle down.

8 CLERK: Ladies and gentlemen of the jury, as your name
9 is called please stand and answer my 2 questions please.

10 Phil Nesbitt, is this your verdict and still your
11 verdict?

12 JUROR: Yes, sir.

13 CLERK: Thank you. Have a seat please.

14 Catherine Lowery, is this your verdict and still your
15 verdict?

16 JUROR: Yes, sir.

17 CLERK: Thank you. Lorraine Burgess, is this your
18 verdict and still your verdict?

19 JUROR: Yes, sir.

20 CLERK: Thank you. Alma Reeves, is this your verdict
21 and still your verdict?

22 JUROR: Yes, sir.

23 CLERK: Thank you. Derrik Murray, is this your
24 verdict and still your verdict?

25 JUROR: Yes, sir.

1 THE COURT: Thank you. Connie McCormic, is this your
2 verdict and still your verdict?

3 JUROR: Yes, sir.

4 CLERK: Thank you. Gloria Scarborough, is this your
5 verdict and still your verdict?

6 JUROR: Yes, sir.

7 CLERK: Thank you. Nathaniel Durant, is this your
8 verdict and still your verdict?

9 JUROR: Yes, sir.

10 CLERK: Thank you. David Ice, is this your verdict
11 and still your verdict?

12 JUROR: Yes, sir.

13 CLERK: Thank you. Irick Brooks, is this your verdict
14 and still your verdict?

15 JUROR: Yes.

16 CLERK: Thank you. Matthew Donald, is this your
17 verdict and still your verdict?

18 JUROR: Yes, sir.

19 CLERK: Thank you. Victoria Riddick, is this your
20 verdict and still your verdict?

21 JUROR: Yes, sir.

22 CLERK: Thank you. Your Honor, the jury has been
23 polled and the verdict stands.

24 THE COURT: All right. Thank you.

25 Mr. Kent, Mr. Chandler, anything before the jury is

1 excused?

2 MR. KENT: Nothing further.

3 THE COURT: All right.

4 (The jury is excused.)

5 THE COURT: All right. Mr. Kent, motions on behalf of
6 the defendant.

7 MR. KENT: Thank you, Judge. May it please The Court.
8 At this time I think it's proper pursuant to the rules to
9 first make a motion for a new trial. I think The Court
10 rules actually, one, first require me to re-request my
11 motion for a directed verdict.

12 THE COURT: I'm sorry?

13 MR. KENT: Re-request my motion for a directed
14 verdict, to render a verdict of not guilty, take away what
15 the jury has already said.

16 Your Honor, I'm still of the impression based upon the
17 evidence that was presented, based upon what the witnesses
18 that you heard -- I have trouble believing, even though I
19 do believe in the jury system, that based upon the evidence
20 that was presented that they were able to come up with a
21 guilty verdict.

22 I reinstate all the motions, all the arguments I made
23 earlier with my motion for directed verdict.

24 At this point I would ask for a new trial, I think
25 that's required.

1 I make a motion for a new trial based upon the
2 lightness of the evidence, the quickness of the jury
3 verdict. I think they were out for approximately about an
4 hour, if that.

5 The question that they asked, Judge, the fact that I
6 do not believe that after they asked the question, I think
7 they were out for seconds after asking the question.

8 For those reasons, Your Honor, the evidence -- how
9 quick they came to a verdict -- the fact that they asked a
10 question, clearly didn't have time to deliberate over that
11 question. I make my motion for a directed verdict -- re-
12 make it -- make a motion for a new trial at this point in
13 time.

14 And, additionally, Your Honor, I reinstate all the
15 motions I made throughout the course of the trial. But I
16 reinstate all those motions at this time.

17 THE COURT: All right. The defense has made a motion
18 for a new trial and for a motion in arrest of judgment.
19 And I am aware of the grounds on which it is made. I think
20 that the previous rulings of The Court were correct on all
21 of the previous motions, motion made at the conclusion of
22 the evidence for a directed verdict. I also feel that
23 there was sufficient evidence in the record by which the
24 jury could have reached the determination that they did.
25 It was a jury question. And I feel that the jury has

1 resolved those questions and made the factual
2 determinations as they are charged with doing.

3 And so The Court would respectfully deny the motion
4 for a new trial and the motion in arrest of judgment.

5 Mr. Meadors, do you have the sentencing sheet?

6 MR. MEADORS: They're getting it ready, Your Honor.
7 Could we have a moment, Your Honor.

8 (Pause.)

9 THE COURT: All right.

10 MR. MEADORS: Could I have one moment to see if anyone
11 wants to talk?

12 THE COURT: Yes, sir.

13 (Pause.)

14 THE COURT: All right. Mr. Meadors, I'd be glad to
15 hear from you, by way of anything that you wish to
16 introduce in the way of aggravation, or I'd be glad to hear
17 from a member of the victim's family.

18 MR. MEADORS: Thank you. If it please Your Honor.
19 First of all, I want to thank the family for their
20 patience, and, obviously, all of law enforcement. Judge,
21 I've been doing this about 25 years. This is one of the
22 strongest circumstantial evidence cases I've ever tried.

23 And just to respond to some of Mr. Kent's comments, I
24 think the jury -- obviously, we thank them for their
25 verdict. But it truly was an incredible circumstantial

1 evidence case, how things pieced together and everything
2 came back to Mr. Felder.

3 Judge, Stephanie Harry is here, the sister. For the
4 record, mama is here, brother and sister -- everybody in
5 the family, raise your hand.

6 (Complied.)

7 MR. MEADORS: They have been supportive of me and law
8 enforcement since I got here. We started off on a real
9 rough start, me and Ms. Harry, quite frankly. But we've
10 grown to really care about each other now. And I think she
11 has faith in the system now. Stephanie Harry would like to
12 briefly address Your Honor.

13 THE COURT: All right. Ms. Harry under the victim's
14 rights bill, of course, you and the family have the right
15 to be kept advised of everything that's going on. And you
16 also -- and I'm sure the solicitor's office has kept you
17 advised -- the victim's advocate of this case as it has
18 proceeded through the system. And you also have the right
19 to address The Court on behalf of the victim in this case.
20 And so I'll be glad to hear from you.

21 MS. HARRY: First of all, my name is Stephanie Harry.
22 I'm 35 years old. I would first like to give thanks to
23 God. It's been our prayer throughout this 3 years and some
24 change we've been waiting on justice for my brother.

25 My brother had not always been perfect. He had not

1 always been what we have asked for him to do. I can't say
2 that he didn't break into the house. I can't say that he
3 did. But my thing is if he did, I would prefer him to have
4 lock him up.

5 By taking his life, he put a big, big hole in my
6 family, you know. He was my best friend. His daughter was
7 born after he got killed. She will never get to see her
8 father, never. He has 2 twins, a boy and a girl -- I don't
9 know what to tell them, beside from the fact that their
10 daddy have gone on to heaven. They hurts. They ask me if
11 they can see their father. They never going to see him
12 again.

13 I don't know what's gone on with this world today. I
14 don't know why people think that they should take the law
15 into their own hand; that's why have a system. I would
16 prefer, like I said, lock him up. If any of us commit a
17 crime, lock us up. That's what the law is for. I wouldn't
18 have gotten mad if they had lock him up. I wouldn't have
19 gotten mad if they had beat him. But to kill him, I'm not
20 -- I hate -- I don't hate them. I just figure they could
21 have went about it a different way. Killing him over
22 nonsense.

23 If there were any items stolen, I would have paid for
24 it, the same way as I paid for my brother's funeral. I
25 could have gave them all that back, plus some more.

1 Okay. He can get those items back. We can't get my
2 brother back. So they're -- I mean, for me, there's no
3 remorse on their behalf. You know, they -- it's like,
4 Okay. They the law. You know, because they sell drugs, we
5 get to break the law.

6 I work hard. Every day that I be here, I've been
7 coming from work in Columbia. I work hard. That's not the
8 way that they do things. You know, we need to start like
9 Mr. John said in this courtroom, set an example, letting
10 these people know when they pick up these guns or they
11 taking other people's family lives, you know, the chances
12 that they're taking. You're not going to get a tap on the
13 back when you decide to take somebody's life. You know,
14 because you're not going to get that life back.

15 THE COURT: Okay.

16 MS. HARRY: You can give anything else back except for
17 a life.

18 THE COURT: All right.

19 MS. HARRY: I'm just saying, Your Honor, I just hope
20 that -- like I said, it's been a long 3 years. We had
21 different solicitors after different solicitors. I've been
22 up here. I've been pushing. My brother can't speak, so I
23 been speaking for him. I've been pushing. And I just
24 thank God for allow Mr. John to work on this case, because
25 he have been working very hard. He has done a excellent

1 job, and I wish I could thank the jury for being honest,
2 because they know what they saw and they know what they
3 heard. I just want to thank you all.

4 THE COURT: Okay. Thank you. All right.

5 MR. MEADORS: Detective Lyons would like to make a few
6 brief comments.

7 THE COURT: Yes, sir, Mr. Lyons.

8 DETECTIVE LYONS: Thank you, Your Honor. First, on
9 behalf of law enforcement and Sumter Police Department, we
10 would like to thank the solicitor's office for the job well
11 done on the case.

12 I think Mr. Meadors said it best, Your Honor. This is
13 where it all happens. We can't allow it to happen on the
14 streets. It's an unfortunate -- Ms. Harry is right. We
15 can't prove or disprove whether or not her brother broke
16 into Antrell Felder's house. But if he did, this is where
17 it should have been handled, not in the streets. And all
18 too often in law enforcement, Your Honor, as you're well
19 aware of the cases that come in and out of these halls
20 everyday, these type of actions are continuously taking
21 place in the streets of Sumter. And this is the place to
22 put a stop to them is in this courtroom.

23 So with that being said, Your Honor, a fair and equal
24 punishment should be as equal to the punishment that Mr.
25 McKenzie received for supposedly breaking into Mr. Felder's

1 house. Thank you.

2 THE COURT: All right.

3 MR. MEADORS: Your Honor, he's got 2 -- it looks like
4 one in April of '03, a possession of -- I assume cocaine
5 first, and then a PWID conviction in June of '05. Thank
6 you.

7 THE COURT: All right. Anything else, Mr. Meadors?

8 MR. MEADORS: No, sir. I just want to thank the jury
9 for their vote.

10 THE COURT: All right. Mr. Kent, Mr. Chandler, and
11 Mr. Felder. If you all would come around please.

12 (Complied.)

13 THE COURT: All right. Mr. Kent.

14 MR. KENT: May it please The Court. First,
15 respectfully, usually after a jury trial, I would not let
16 my client speak. It's not to disrespect The Court
17 whatsoever. But, of course, he has appellate rights. I've
18 explained to him his appellate rights and it may be in his
19 best interest not to say anything to The Court.

20 THE COURT: And I never hold it against him because I
21 do know they have appellate rights, and anything they said
22 could be used for or against him in the appeal.

23 MR. KENT: Your Honor, this is an interesting case --
24 is probably the easiest way to put it. As you know, we've
25 had our battles on this case. I've never had a client such

1 as Mr. Felder who has come forward every stretch of the
2 way. Not only maintaining his innocence, but demanding his
3 day in court. And I will tell you candidly now that we're
4 done, myself and Mr. Chandler, often met with him and said,
5 I don't know if you really want to go to trial.

6 I'll tell you very candidly, we told him it may not be
7 in his best interest. It may not be a good idea. It's
8 probably in your best interest just -- candidly, Judge --
9 to let time take over. Sometimes time can heal things.

10 He was adamant. He wanted a trial. He wanted a trial
11 as soon as possible; that's why we kept beating down the
12 door for bond hearings and things of that nature.

13 When we were preparing for trial, I actually sat down
14 and met with Solicitor Meadors to talk to him about the
15 chances of working on a guilty plea. I talked to him
16 possibly about exploring the voluntary manslaughter. We
17 talked to the fact that this is at best a circumstantial
18 case, that it was a 50-50 shot either way.

19 He told me to go and explore the option with my client
20 first, to see if it was something he was interested in.

21 I told Mr. Felder there's a very strong chance if
22 convicted -- and I said there's a likelihood you could be
23 convicted based upon the evidence that the state has.
24 You'd be looking at life in prison.

25 Without hesitation, without reservation, he looked at

1 me very candidly -- myself, Mr. Chandler, and Mr. McKenzie
2 (sic) was in the room at this time. He said, I didn't do
3 this and I'm not going to plead guilty.

4 I met with his family. I told his family the same
5 thing. They're all in the back of the courtroom. There
6 was significantly more people. I met with all of them. I
7 told them the same thing, that this might be the type of
8 case that we need to try to entertain a guilty plea.

9 They talked to Mr. Felder. Because of the outside
10 evidence, because of the circumstantial evidence and what
11 could happen, and you never know what a jury's going to do.
12 He, again, maintained his innocence.

13 I tell you this, Judge, that even after the jury
14 rendered his verdict, he looks at me very straight and
15 continues to maintain his innocence to this day; that's the
16 fear of a circumstantial evidence case, Judge.

17 I am not -- I am still a true believer in the jury
18 system. I understand the jury's verdict. I understand how
19 they can come with their verdict. I could understand how
20 they could come with another verdict. But I believe in
21 people also. And Mr. Felder has been very clear this
22 entire time that he maintains his innocence; that's why we
23 are here today.

24 I explained on the record yesterday a lot of our
25 strategy. There's a lot of reasons that we allowed and put

1 evidence in. I think you can understand that now from our
2 closing argument. And he was clear with that, that there
3 was nothing he wanted to hide. The simple fact was just
4 tell everything to everyone.

5 It's troubling, Judge. It very much is troubling.
6 It's troubling that 2 young men have lost their lives as a
7 result of this.

8 I made it clear that it's difficult -- and I must
9 commend Solicitor Meadors. He's given us everything. He's
10 been very honorable with us. But if there is a Court of
11 Appeals who is reading this some day, it is very difficult
12 to try a case when the former solicitor's office simply
13 won't give you everything.

14 I think we did as good of a job as we could with what
15 we had. I don't think the family is in a position -- I
16 would ask everyone in the back of the courtroom who is here
17 for Antrell Felder simply to stand up that you're here
18 showing your support for Mr. Felder.

19 (Complied.)

20 MR. KENT: And, Judge, the courtroom -- as you notice
21 had ---

22 THE COURT: Thank you. Be seated.

23 MR. KENT: Please be seated. Had significantly more
24 people in the courtroom earlier. He's got a lot of
25 support.

1 It's a difficult day, Judge. What I'd ask -- and I
2 don't know if Mr. Chandler has anything additionally to
3 say. I understand your sentencing options in this
4 situation.

5 I still think there is some question of doubt as to
6 what actually happened.

7 I'd ask you to sentence around the 30-year range under
8 the statute. I understand you have a life option, Judge.
9 Based upon the difficulties the defense has had in trying
10 this case, based upon the testimony that you yourself
11 heard, based upon the fact that this is still a
12 circumstantial evidence case, I'd ask you to sentence to
13 the 30 range.

14 Mr. Felder has family. He just recently had a child.
15 If I'm not mistaken, this child is not even a year old yet.

16 MR. FELDER: 8 months.

17 MR. KENT: 8 months old. It's a difficult day for the
18 Felders. I think Mr. Chandler may want to address you
19 also, Judge.

20 THE COURT: Mr. Chandler.

21 MR. CHANDLER: No, sir. I'm fine. Thank you.

22 MR. KENT: And, again, for the record, I've advised my
23 client not to address The Court.

24 THE COURT: Right. And I won't hold him; that will
25 not be held against him.

1 All right. Thank you.

2 MR. KENT: Thank you, Judge.

3 SENTENCE OF THE COURT:

4 As is usual whenever we have a case of this
5 significance, there are a number of people in the courtroom
6 who are involved in the criminal justice system. And those
7 people have all heard me say before that the most difficult
8 thing we circuit court judges have to do is criminal
9 sentencing.

10 We have no crystal ball as to what the future might
11 bring. And the sentences that we impose very often don't
12 satisfy everyone. Sometimes they don't satisfy anyone.
13 But we have to make a decision based upon the evidence that
14 we've heard in a particular case and based upon our
15 experience and our training.

16 I agree with the prosecution's statements in this
17 case. And I've thought this throughout the trial of this
18 case, that the court simply cannot condone vigilante
19 justice. There is no place for taking the law into your
20 own hands. Even if a burglary was committed, that in no
21 way justifies the taking of a life.

22 It's also my duty to give credence and meaning to the
23 jury's decision in their finding of guilt by this
24 defendant, even though the evidence was circumstantial for
25 the most part.

1 But the jury resolved those fact questions and it's
2 not for me to question the jury's determination.

3 I am going to impose a sentence of less than life in
4 prison, so that there will be some hope for Mr. Felder at
5 some time in the future, albeit the far distant future, to
6 get out of prison. But at the same time, I think it's
7 necessary that I impose a substantial sentence because
8 according to the jury's finding, he took the life of
9 another human being and has no right to settle a score that
10 he perceived he had the right to do.

11 The sentence of The Court is the defendant is
12 committed to the State Department of Corrections on the
13 murder charge for a term of 42 years. He will be given
14 credit for whatever time that he has served.

15 The sentence on the possession of a weapon during the
16 commission of a violent crime is 5 years to run concurrent.

17 MR. KENT: Thank you, Your Honor.

18 THE COURT: All right. Everyone be seated please. No
19 one has been excused.

20 All right. The hearing is adjourned.

21 --- End of transcript of record ---
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23
24
25

1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Circuit
7 Court for Sumter County, South Carolina on the 14th, 15th,
8 16th, 17th, and 18th days of November 2011.

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

11

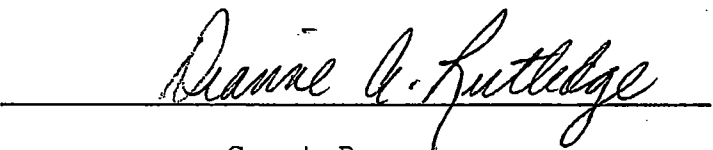
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February 28, 2012

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Court Reporter

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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTRELL R. FELDER,

APPELLANT

APPELLATE CASE NO. 2011-203747

FINAL BRIEF OF APPELLANT

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MAY 28 2013

SC COURT OF APPEALS

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to allow cross examination of the investigator about the scope of his investigation and the fact that the victim had pending burglary charges, when the State argued that the motive for the shooting was retaliation for the victim burglarizing appellant's home?
2. Did the trial judge err in refusing to direct a verdict of acquittal when the State failed to place appellant at the scene of the crime?

STATEMENT OF THE CASE

In January of 2009, the Sumter County Grand Jury indicted Felder for murder and possession of a firearm during the commission of a violent crime, indictment #2009-GS-43-59. On November 14, 2011, Felder proceeded to jury trial before the Honorable Howard P. King. Attorneys Shaun C. Kent and Ray Chandler represented Felder at trial. The jury returned verdicts of guilty and Judge King sentenced Felder to forty two (42) years. A timely notice of intent to appeal was served on November 23, 2011. This appeal follows.

STATEMENT OF FACTS

The jury found Felder guilty of shooting Willie McKenzie. Kayla and Antrell McFadden testified that in the early morning hours of July 18, 2008, they were walking to the Kangaroo convenience store when a man asked them for a cigarette. (R. p. 153, lines 17 – p. 154, 155, lines 1-19; p. 181, lines 20 – p. 182, 183, lines 1-25). Neither knew the man requesting a cigarette. (R. p. 155, lines 14-17; p. 183, lines 6-16). The McFadden cousins gave the man a cigarette and continued on their way to the store. (R. p. 155 lines 18-19). The man stood by a fence. (R. p. 184, lines 1-2). Before they arrived at the store a white car with tinted windows pulled up on the left shoulder of the road. (R. p. 184, lines 9- p.185, lines 1-4). A man got out of the white car and shot the man who was standing by the fence and had just been given a cigarette by the McFaddens. (R. p. 156, lines 14 – p. 157, lines 1-10; p. 184, lines 14 – p. 185, lines 1-4). The man died as a result of being shot and was identified as Willie McKenzie. (R. p. 296, lines 6-8; p. 304, lines 3-11). The shooter left in the white car. (R. p. 162, lines 5-7; p. 186, lines 21 – 24). In describing the car Kayla McFadden testified, “I just remember it was white and had tinted windows; that’s all.” (R. p. 157, lines 2-4). Antrell McFadden described the car as white with tinted windows. (R. p. 184, lines 24 – p. 185, lines 1-4).

Kayla McFadden described the shooter as wearing a hat, a white shirt and dark pants. (R. p. 158, lines 22-25). Antrell McFadden described the shooter as wearing a white shirt and blue jeans. (R. p. 185, lines 5-12). Antrell McFadden described the shooter as a black male about five feet seven inches tall weighing 190 pounds. (R. p. 185, lines 13 – p. 186, lines 1-2). Neither of the witnesses was able to identify the shooter in a photo line-up that contained a photo of appellant Felder. (R. p. 235, lines 1-19).

The McFaddens were taken to the police station and interviewed. (R. p. 228, lines 12-17). After the interview, the police drove the McFaddens to their home. On the way home they noticed a car that was similar to the car driven by the shooter. (R. p. 230, lines 24 – p. 231, lines 1-11). Based on the description, other officers stopped the car. (R. p. 231, lines 12-19). Stacey Caughman, appellant's girlfriend, was driving the car when it was stopped. The car was registered to Ida Mae Felder, the appellant's mother. (R. p. 231, lines 19 – p. 232, lines 1-20).

Detective Lyons admitted that the Felder car did not have tinted windows, as described by the witness. (R. p. 285, lines 11 – p. 286, lines 1-8). Later in the trial the State showed another detective, Detective Potteiger, a photograph of the Felder vehicle. (R. p. 330, lines 5-11). This detective testified that the windows of the vehicle appeared to have lines. (R. p. 330, lines 10-11). The detective then testified that when you remove tint from windows, lines remain. (R. p. 330, lines 19 – p. 331, lines 1-4). Detective Lyons also admitted that another witness described the shooter's vehicle as having silver handles. (R. p. 289, lines 7-12). The detective confirmed that the Felder vehicle had white handles, not silver handles. (R. p. 285, lines 11-14). There was no evidence found in the car that linked this car to the shooting.

Two minutes before the police received the phone call about the shooting, the police received a phone call in reference to a burglary of the appellant's home at (R. p. 232, lines 1 – p. 233, lines 1-9). The police went to where they spoke with Stacey Caughman in reference to the burglary. (R. p. 430, lines 2-16). Appellant was not present when the officer arrived at (R. p. 433, lines 10-12). In his statement appellant said he left before the police arrived because he had a bag of marijuana. (R. p.

326, lines 1-17). At the time of the shooting the victim was found to be in possession of a video camera with video of a child's birthday party attended by appellant's girlfriend Stacey Caughman. (R. p. 245, lines 18 – p. 246, lines 1-7). A red hat was recovered at the scene of the shooting. (R. p. 221, lines 19-20). The appellant's fingerprints and DNA were found on the hat. (R. pp. 370 373; p. 425, lines 7-17). Antrell McFadden identified the hat as being worn by the shooter. (R. p. 191 lines 2-25). Another unidentified individual's DNA was also found on the hat. (R. p. 425, lines 11 – p. 426, lines 1-18). Appellant told the police that hats of his were taken in the burglary. (R. p. 327, lines 19 – p. 328, line 1). The jury found appellant guilty. This appeal follows.

ARGUMENT

The trial judge erred in refusing to allow cross examination of the investigator about the scope of his investigation and the fact that the victim had pending burglary charges when the State argued that the motive for the shooting was retaliation for the victim burglarizing appellant's home.

During the cross examination of Detective Lyons counsel for appellant moved, outside of the presence of the jury, to be able to question the detective about the fact that the victim, Willie McKenzie, had two pending burglary charges at the time of his death. (R. p. 246-266). The detective testified that he believed the motive for the murder was retaliation for a burglary. (R. p. 249, lines 5-11). The State agreed that there were two outstanding burglary warrants against the victim. (R. p. 252, lines 8-22). The State objected to the line of questioning about the victim's pending burglary charges arguing that it was improper third party guilt evidence. (R. p. 253, lines 1-3). Counsel argued that he was not offering the priors for third party guilt but rather to challenge the scope of the investigation for failing to investigate the pending burglaries to determine if those incidents were connected to the shooting. (R. p. 253, lines 10-22).

The judge sustained the State's objection. The judge ruled:

After having studied the matter and thought about it, I first of all do not find that the testimony is relevant under 403 - - 401, 402, and 403, is not relevant to the issue to show anything in connection with the shooting. It simply would be from a standpoint of supposed motive, but I don't see where the burglary has anything to do with the actual shooting.

Neither do I think that under 404(A) (2) that it is probative of anything to show action in conformity therewith.

And, third, I'm not sure this victim (sic) has any knowledge of it.

After having – seemed like to me the sole purpose of the prejudicial effect outweighs the probative value – substantially outweighs the probative value of the impeachment because what it would tend to do is to simply show the victim was a bad person. And even further than that, that it may be for the purpose of showing third party guilt, which I just don't think is appropriate in this case, and I don't think it's an appropriate questioning for impeachment purposes, especially just to show that the impeachment was not with regard to any improper testimony on the part of the witness in this case, but simply to show that they didn't go as far as the defense thinks they should have in the investigation.

(R. p. 265, lines 1-25). At the close of the State's case, counsel for appellant renewed his motion to allow cross examination about the victim's pending burglaries. (R. p. 453 lines 8-12). The judge maintained his previous ruling sustaining the State's objection to the cross examination. (R. p. 453, lines 13-15). The judge erred.

The State admitted that their theory of the case was that the appellant shot the victim in retaliation for the victim burglarizing appellant's home. (R. p. 256, lines 24 – p. 257, lines 1-9). Detective Lyons admitted that he did not investigate the other two pending burglaries as possibly being connected to the shooting. (R. p. 250, lines 10 – p. 251, lines 1-9). The State even argued that the investigator may not have even known about the pending burglaries. (R. p. 261, lines 4-5). Appellant was entitled to require the State to meet its burden and challenge the State's failure to fully investigate the case.

First, the judge erred in finding that the questioning in regard to the victim's pending burglary charges was irrelevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. As argued by counsel at trial, the State made the pending burglary charges relevant by arguing that the motive for the shooting was retaliation for the victim burglarizing

appellant's home. (R. p. 258 lines 1-22). The questioning in regard to the pending burglary charges has a tendency to show that the State's theory that the motive for the shooting was retaliation for the burglary of appellant's home is less probable as the shooting could have been connected to the pending burglaries charges rather than the burglary of appellant's home. The questioning was relevant and goes to the scope and quality of the investigation.

Second, the judge erred in finding that the probative value of allowing cross examination about the victim's pending burglary charges was substantially outweighed by the danger of unfair prejudice. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. In State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct.App. 2008), the South Carolina Court of Appeals wrote, "When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case." State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876, (2007) (citing State v. Bell, 302 S.C. 18, 30, 393 S.E.2d 364, 371 (1990)).

Based on the entire record in the present case, the probative value of questioning the officer about the victim's pending burglary charges was not outweighed by any unfair prejudice. The questioning about the victim's pending burglary charges was highly probative of the officer's failure to fully investigate the case.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State

v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). “[I]n order for this Court to reverse a case based on the erroneous admission or exclusion of evidence, prejudice must be shown.” State v. Taylor, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998). “To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence or the lack thereof.” State v. White, 372 S.C. 364, 374, 642 S.E.2d 607, 611 (Ct.App. 2007). The judge’s failure to allow cross examination of the officer about the victim’s two pending burglary charges constituted a prejudicial abuse of discretion.

The judge’s refusal to allow cross examination of the officer about his failure to investigate the victim’s pending burglary charges deprived appellant of his due process right to present a complete defense. “The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence.” State v. Gillian, 360 S.C. 433, 449–450, 602 S.E.2d 62, 71 (Ct.App.2004); accord State v. Mizzell, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994); Schmidt, 288 S.C. at 303, 342 S.E.2d at 402. The Due Process Clause of the Fourteenth Amendment ensures these rights are extended to criminal defendants in state courts. See U.S. Const. amend. XIV; Pointer v. Texas, 380 U.S. 400, 403–404, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965) (holding the Sixth Amendment applicable to the states through the Fourteenth Amendment); Mizzell, 349 S.C. at 330, 563 S.E.2d at 317 (“The Sixth Amendment is applicable to the states through the Fourteenth Amendment.”). “The right of an accused in a criminal trial to due process is, in essence, the right to a fair

opportunity to defend against the State's accusations.” Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).

The present case is distinguished from State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct.App. 2008). In Lyles the Court of Appeals affirmed the trial judge’s finding that the proffered testimony from a neighbor that, months earlier, a person named C.C. offered to sell him drugs outside of the apartment where a murder, burglary and armed robbery took place and evidence that a marijuana cigarette was found next to the murder victim was irrelevant. The Court noted that there was no probative link between the proffered testimony and evidence, to the trial and the charges of murder, burglary first degree and armed robbery. Additionally, the Court found that even if the testimony and evidence was relevant, it was inadmissible as unfairly prejudicial. In Lyles the Court wrote:

However, “[i]n the exercise of this right [to present a defense], the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” Chambers, 410 U.S. at 302, 93 S.Ct. 1038. “The right to present a defense is not unlimited, but must ‘bow to accommodate other legitimate interests in the criminal trial process.’ ” Hamilton, 344 S.C. at 359, 543 S.E.2d at 594 (quoting Rock v. Arkansas, 483 U.S. 44, 55, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (quoting Chambers, 410 U.S. at 295, 93 S.Ct. 1038)). “ ‘The accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.’ ” Montana v. Egelhoff, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996) (quoting Taylor v. Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988)) (brackets in original). Defendants are entitled to a fair opportunity to present a full and complete defense, but this right does not supplant the rules of evidence and all proffered evidence or testimony must comply with any applicable evidentiary rules prior to admission. Hamilton, 344 S.C. at 359, 543 S.E.2d at 594. 379 S.C. at 342-343, 665 S.E.2d at 209 (Ct.App. 2008).

In the present case, there is a probative link between the pending burglary charges and the shooting because the State made motive an issue arguing that appellant shot the victim in retaliation for the burglary of his house. The proffered testimony in regard to the victim's pending burglary charges was admissible pursuant to the evidentiary rules. The testimony was relevant as it challenged the scope of the investigation and the probative value was not outweighed by any unfair prejudice. Appellant was prejudiced by the exclusion because he was unable to present a complete defense.

The judge's refusal to allow proper cross examination of the officer also violated appellant's right to confront witnesses. In State v. Saltz, 346 S.C. 114, 131, 551 S.E.2d 240, 249 (2001), the South Carolina Supreme Court, citing Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) wrote:

In Van Arsdall, the United States Supreme Court held "a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in *otherwise appropriate* cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose the jury to the facts from which jurors ... could appropriately draw inferences relating to reliability of the witness.'" *Id.* at 680, 106 S.Ct. 1431 (emphasis added) (quoting Davis v. Alaska, 415 U.S. 308, 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)). However, this Court has cautioned the bench that "before a criminal defendant can be prohibited from engaging in [such cross-examination] ..., the record must clearly show that the cross-examination is somehow inappropriate." State v. Graham, 314 S.C. 383, 385-86, 444 S.E.2d 525, 527 (1994).

The bias to be shown by the cross examination of the officer in regard to the victim's prior record is simply the officer's failure to fully investigate the case. The record fails to reflect that the proposed cross examination was improper. The refusal to allow the otherwise appropriate cross examination is a violation of the Confrontation Clause.

Third, the judge erred in excluding the testimony as improper third party guilty evidence. Trial counsel agreed to limit his questioning and argued:

Judge, I have no desire to get in to the fact that – we can limit my question. I have no desire to get in to the fact that, okay, what is – if you want to limit me, saying I can't talk about this person, this person, or this person, I can limit it so far as did you investigate any further, any of these prior burglaries?

No, I did not. We developed this suspect and we stopped here; that goes to my invest – that goes to my defense that they did not fully investigate this case; that's our defense. Did not fully investigate. How do we know? You're saying the motivation is burglary, there's 2 pending burglaries our there this officer didn't even know about, didn't even look in to it.

(R. p. 258, lines 25 – p. 259, lines 1-12).

The testimony was not offered to show that the shooting was committed by another person. Instead, the testimony was offered to challenge the quality and scope of the investigation.

The error in excluding the appropriate cross examination of the officer in regard to the victim's pending burglary charges was not harmless. The State's evidence was not overwhelming. The witnesses did not identify appellant as the shooter. The only evidence placing appellant at the scene of the shooting was the fact that he drove a car that looked similar to the car involved in the shooting and a hat with his DNA and fingerprints was found at the scene.

2. The trial judge erred in refusing to direct a verdict of acquittal when the State failed to place appellant at the scene of the crime.

At the close of the State's case, appellant moved for a directed verdict. (R. pp. 451-452). The judge denied the motion stating:

I think there is evidence in the record, both direct and circumstantial, that place the defendant at the scene. There is evidence by which it could be inferred from the record – could be – the jury could find from the record that the defendant was the individual who fired the shot, even though there are no – there's no direct testimony to that. There is both circumstantial evidence of that and direct evidence of his wearing the hat and his DNA on the hat, and the hat was found at the scene and the other things that Mr. Meadors referred to.

(R. p. 456, lines 4-13). The judge erred. While the hat with appellant's DNA and fingerprints was found on the scene, there is no evidence that appellant was wearing the hat at the time of the shooting.

The State relies on the clothing description, white shirt and dark pants, the vehicle description, white four door car, the hat found at the scene with appellant's DNA and the burglary as motive for the shooting in arguing against the directed verdict motion. (R. p. 453, lines 19 – p. 482, 483, lines 1-5). While both McFaddens described the shooter as wearing a white shirt, Kayla testified that the shooter was wearing dark pants (R. p. 157, lines 22-25) but Antrell testified that the shooter was wearing blue jeans (R. p. 185, lines 5-12). Appellant told police that earlier in the evening he was wearing a white shirt and black shorts, not pants or blue jeans. (R. p. 327, lines 10-13). The shooter's vehicle was described as a white car with tinted windows and silver handles. (R. p. 157, lines 2-4; R. p. 184, lines 24 – p. 185, lines 1-4; R. p. 289, lines 7-12). Neither of the McFaddens described the car as being a four door. While the Felder vehicle was white, it did not have tinted windows or silver handles. (R. p. 285, lines 11 – p. 286, lines 1-8). Importantly, none of the four factors relied upon by the State or by the judge - clothing description, vehicle description, hat or the burglary – place appellant at the scene of the shooting.

In State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 776-777 (2011), the South Carolina Supreme Court wrote:

A case should be submitted to the jury when the evidence is circumstantial “if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). “The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict....” State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

In Bostick the Court found that the trial judge should have directed a verdict of acquittal where no direct evidence linked the defendant to the crime scene or to the items from the victim’s house found in defendant’s mother’s burn pile. In the present case the only evidence linking appellant to the crime scene is the hat. The State, however, failed to establish that that appellant was wearing the hat on the night in question. Viewing the evidence in the light most favorable to the State, the evidence merely raises a suspicion of guilt. As the court wrote in Bostic, “Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).” 392 S.C. at 142, 708 S.E.2d at 778. The judge erred in refusing to direct a verdict of acquittal.

CONCLUSION

Based on the argument presented in issue two, the conviction and sentence should be reversed and the Court should direct a verdict of acquittal. Alternatively, based on the argument presented in issue one, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 28th day of May, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

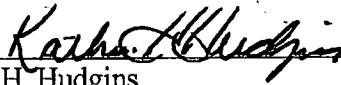
V.

ANTRELL R. FELDER,

APPELLANT

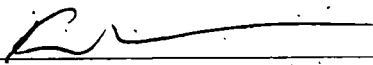
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of May, 2013.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of May, 2013.

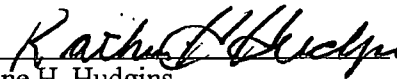
 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 28, 2013


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ORIGINAL 603

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Howard P. King, Circuit Court Judge
2009-GS-43-0059

Appellate Case No. 2011-203747

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANTRELL R. FELDER

APPELLANT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to allow cross examination of the investigator about the scope of his investigation and the fact that the victim had pending burglary charges, when the State argued that the motive for the shooting was retaliation for the victim burglarizing appellant's home?
2. Did the trial judge err in refusing to direct a verdict of acquittal when the State failed to place appellant at the scene of the crime?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Antrell Rashawn Felder, was indicted by the Sumter County Court of General Sessions Grand Jury on December 31, 2008 for murder and possession of a firearm during the commission of a violent crime. 2009-GS-43-0059. ROA 553-54. The charges arose from an incident in Sumter County on July 18, 2008 which resulted in the death of William McKenzie. The Appellant entered a not guilty plea before the Honorable Howard P. King, presiding judge. The Appellant was represented by Shaun C. Kent and Ray Chandler of the Sumter County Bar. The State of South Carolina was represented by Solicitor Chip Finney and Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office. The trial was held before a jury from November 14 through November 18, 2011. On November 18, 2011, the jury returned guilty verdicts on both charges. ROA 536-37. A motion for new trial was made by Appellant and denied by Judge King. ROA 539-41.

After a sentencing proceeding, Judge King sentenced Felder to 42 years for murder and 5 years concurrent for possession of a weapon during the commission of a violent crime. ROA p. 552, ll. 11-16.

The Appellant filed and served a timely notice of appeal on November 23, 2011. This appeal follows.

ARGUMENT

- I. The trial judge properly used his discretion in excluding irrelevant evidence that the victim had two pending burglary charges at the time of his death. The intended use of the evidence would create mere conjecture that a third-party may have had a similar motive but did not qualify as admissible third-party guilt evidence. Further, any speculative probative value is substantially outweighed by the prejudicial effect of merely showing a bad victim and a conjectural inference as to the commission of the crime by another.**

The State's theory of the case against Antrell Felder was not complex. The State claimed that the shooting of Willie McKenzie was a reaction to McKenzie burglarizing Felder's home that evening.¹ On July 18, 2008, Felder became aware while he was at a party that his house was being burglarized by four (4) men. ROA 325-26. At some point, Felder also became aware, or thought, that Willie McKenzie was one of the perpetrators of the burglary. ROA 317, 339, 341. Felder located McKenzie standing on Highland Street while he was driving his mother's white four-door Buick with tinted windows around 12:30 a.m. ROA 156-162, 171. Felder stopped the car by the victim who was on the side of the road. ROA 163-64. Felder exited the vehicle, shooting as he came around the vehicle. ROA 159, 165, 171-75, 184-89, 198-99, 204-09. The shooting resulted in McKenzie's death. ROA 221, 304. Felder drove off, leaving his red baseball cap at the scene. ROA 207, 210, 221-22. The perpetrator is overheard saying something like "I got you or I got you now." ROA 199, 213, 215. The victim, at the time of the shooting, had a video camera in his possession, apparently from the burglary which included a

¹ The facts and inferences set out in this argument in support of the State's theory are more fully set out in Argument II related to the directed verdict issue. In this argument, it is intended to be a summary of the State's theory, not a summary of the proof.

video of the Appellant's girlfriend at a party. ROA 341, 391-93.

Against the State's theory of the Appellant retaliating against McKenzie for the burglary that evening, the defense sought to create a speculative red herring by injecting some evidence that the victim - Willie McKenzie - was wanted for two other unrelated burglaries at the time of his death. The Appellant sought to present this concept through the cross-examination of Sumter Police Department Senior Detective William Lyons [who apparently was not aware of the victim's pending charges]. ROA 261-62² The defense stated that they wanted to ask Detective Lyons if there were two pending burglary charges against the victim and whether Lyons had investigated the other burglary charges. ROA p. 259, ll. 13-20.

In his initial assertion, Felder claims that the trial court erred in limiting his cross-examination of Senior Detective William Lyons of the Sumter Police Department concerning the existence of unrelated burglary charges pending against the victim, William McKenzie, at the time of his death.³ At this time, the defense asserted that it was not his intent to offer the evidence for third-party guilt (ROA p. 253, ll. 10-11, p. 258, ll. 1-20), but that law enforcement's failure to investigate the other burglaries was deficient because they were claiming the burglary of Appellant's home was claimed to be the motive for the shooting of McKenzie. ROA 253-56. The defense claimed its purpose was to "impeach the investigation." ROA 258. In rejecting the proffer, Judge King found the questioning concerning burglary charges against the victim were not admissible for a series of reasons. Those reasons included: that the evidence was not relevant

² The pending charges were apparently Sumter County charges rather than Sumter City charges. ROA 261-62.

³ There was a discussion at the trial that the victim had never been arrested for the other burglaries, but was wanted. ROA p. 251, l. 23 - p. 252, l. 2.

(ROA 262-64), that it was not relevant to the issue to show anything in connection with the shooting (SCRE Rule 401, 402, 403), that under Rule 404(B), it was not probative of anything to show conformity, and third, that there is no evidence the victim had knowledge of them. ROA 264-65. The trial court further determined that it appeared that the sole purpose of the introduction was for the prejudicial effect which substantially outweighed the probative value. ROA 265. Importantly, the trial court found the impeachment value was outweighed because it would only show the victim was a bad person. The court rejected its admission where the evidence simply shows that they did not go as far as the defense thinks they should have in the investigation, but that it was not to impeach any improper testimony and not proper third-party guilt evidence. ROA p. 265, ll. 13-25. The trial court sustained the objection.

STANDARD OF REVIEW.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct.App. 2003). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. Mattison, 352 S.C. at 583-84, 575 S.E.2d at 855.

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct.App. 2004). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice

to the defendant. State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct.App. 2001); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct.App. 2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); State v. Adams, 354 S.C. 361, 377-78, 580 S.E.2d 785, 793-94 (Ct.App. 2003). In order for an error to warrant reversal, the error must result in prejudice to the appellant. See State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000); see also State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890 (1995) (error without prejudice does not warrant reversal).

RELEVANCE AND RULE 403

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice. State v. Holder, 382 S.C. 278, 288, 676 S.E.2d 690, 696 (2009); State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). Stated another way, “evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” State v. Salley, 398 S.C. 160, 169, 727 S.E.2d 740, 744 (2012) (citing Rule 401, SCRE); State v. Bixby, 388 S.C. 528, 544, 698 S.E.2d 572, 581 (2010) (evidence of title search done by title abstract witness was not relevant because he only looked for records of the right of way at the Abbeville County Clerk of Court's office and because he did not search for a record of the right of way in the county tax assessor's office where S.C. Code § 57–5–570 requires that they be maintained, his testimony did not have the tendency to make it more or less probable that 1) Appellant had a

good faith belief that there was no right of way on his family's land, and 2) the records concerning the right of way were not easily accessible to the public).

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; see also State v. Cooley, 342 S.C. 63, 69, 536 S.E.2d 666, 669 (2000) (although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value). “Unfair prejudice means an undue tendency to suggest decision on an improper basis.” State v. Tynes, __ S.C. __, __ S.E.2d __ (S.C.App. April 3, 2013); State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be [scrutinized under Rule 403].” State v. Lee, 399 S.C. 521, at 529, 732 S.E.2d 225, at 229 (S.C. App. 2012) (alteration and emphasis in original; quotation marks and citations omitted).

A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct.App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct.App. 2003). The appellate court will review a trial judge's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct.App. 2001); State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (S.C. App. 2004).⁴

⁴ In McLeod, the trial judge determined the evidence would be more prejudicial than probative. The judge found the only way the State could contradict the evidence would be to call the solicitor as a witness. The individual who allegedly received a deal, Leroy Porter, did not testify at trial. He wore a wire to record a conversation with Brooks, which was played at the McLeod trial. Brooks' words spoke for themselves. The appellate court concluded that it is hard to discern what benefit there would have been for the jury to know the solicitor and police agreed “to help him on some charges.”

RIGHT TO PRESENT A DEFENSE

The United States Constitution guarantees a criminal defendant the right “to present a complete defense.” Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986). This right is also guaranteed by our State constitution: “Any person charged with an offense shall enjoy the right ... to be fully heard in his defense....” S.C. Const. art. I, § 14 (2009). See S.C. Code Ann. § 17–23–60 (2003) (“Every person accused shall, at his trial, be allowed ... to produce witnesses and proofs in his favor....”); State v. Lyles, 379 S.C. 328, 341, 665 S.E.2d 201, 208 (Ct.App. 2008). In Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), the United States Supreme Court stated: “Few rights are more fundamental than that of an accused to present witnesses in his own defense.” 410 U.S. at 302, 93 S.Ct. 1038. However, the right to introduce even relevant evidence “is not unlimited, but rather is subject to reasonable restrictions.” U.S. v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998). The exclusion of witness testimony does not violate a defendant's constitutional right to present evidence so long as the evidence rules are “not ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’ ” Id. (quoting Rock v. Arkansas, 483 U.S. 44, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)). In this case, Burgess's argument that his right to present a defense was violated is refuted by the trial judge's correct application of the law of third-party guilt to the facts of the case.

The appellate court further concluded that any attempt to introduce the impeaching evidence to raise the issue of Porter's possible guilt in the crime is not a proper reason for its admittance. “Our Supreme Court has imposed strict limitations on the admissibility of third-party guilt.” State v. Mansfield, 343 S.C. 66, 81, 538 S.E.2d 257, 265 (Ct.App. 2000). “Evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the defendant's guilt.” Id.

THIRD-PARTY GUILT

The admissibility of evidence of third-party guilt is governed by the rule set forth in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). See State v. Cope, 385 S.C. 274, 292–93, 684 S.E.2d 177, 186–87 (Ct.App.2009) (quoting State v. Gregory as the rule governing admissibility of evidence of third-party guilt); State v. Swafford, 375 S.C. 637, 641–43, 654 S.E.2d 297, 299–300 (Ct.App.2007) (affirming application of State v. Gregory). In Gregory, our supreme court stated:

[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

198 S.C. at 104–05, 16 S.E.2d at 534–35 (internal citations omitted). See also Holmes v. South Carolina, 547 U.S. 319, 331, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006) (holding that to prohibit, on the strength of the prosecution's case, evidence of third-party guilt proffered by an accused violated the right of the accused to present a complete defense).⁵ Accord, State v. Burgess, 391

⁵ The Appellant may argue that this case is controlled by the decision of the United States Supreme Court in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006). In Holmes, the U. S. Supreme Court concluded “the rule applied in [State v. Holmes, 361 S.C. 333, 605 S.E.2d 19 (2004)] the State Supreme Court violates a criminal defendant's right to have ‘a meaningful opportunity to present a complete defense.’ ” 547 U.S. at 331, 126 S.Ct. 1727 (quoting Crane, 476 U.S. at 690, 106 S.Ct. 2142). However, it was not the rule of Gregory which offended the defendant's rights. Rather, it was the “radically changed and extended” rule of State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001), and State v. Holmes. 547 U.S. at 328–31, 126 S.Ct. 1727. In fact, the U. S. Supreme Court specifically stated that the rule of State v. Gregory is the type of rule that does not deny a defendant his right to present evidence.

S.C. 15, 21-23, 703 S.E.2d 512, 515 - 516 (S.C. App. 2010). Evidence of third-party guilt may include: (1) facts that are inconsistent with the defendant's guilt; and (2) evidence raising a reasonable inference as to the accused's innocence. State v. Rice, 375 S.C. 302, at 317, 652 S.E.2d 409, at 416 (S.C. App. 2007)⁶; See Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008) (the holding in Holmes v. South Carolina essentially permits a defendant to introduce evidence of third-party guilt regardless of the strength of the State's case, if the evidence meets the following criteria: "evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. Before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party."); State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App. 2008), cert. dismissed as improvidently granted, 386 S.C. 597, 689 S.E.2d 638 (2010) (although the United States Supreme Court recently addressed the issue of the

547 U.S. at 328, 126 S.Ct. 1727. Holmes v. South Carolina preserves Gregory as the appropriate standard for evaluating the admissibility of evidence of third-party guilt.

⁶ In Rice, the Court concluded that an alleged prior inconsistent statement concerning third-party guilt was inadmissible in prosecution. The court found that evidence defendant asserted in support of introducing third-party guilt testimony implicated an individual with one name at times, and an individual with another name at times, with no clarification as to whether they were the same individual. The Court found that the record was void of facts or circumstances, other than co-perpetrator's inconsistent statements, linking anyone other than defendant to victim's murder, and proffered evidence cast only a "bare suspicion" on third-parties and failed to connect either to murder by way of facts and circumstances surrounding the particular crime. State v. Rice, 375 S.C. 302, at 317, 652 S.E.2d 409, at 416 (S.C. App. 2007).

admissibility of evidence of third-party guilt in Holmes v. South Carolina, that decision overruled the application of the limits on such evidence only to the extent that these limits rely on the prosecution's evidence against the defendant rather than on the strength of the evidence proffered by the defendant to establish third-party guilt); State v. Burgess, 391 S.C. 15, 703 S.E.2d 512 (Ct. App. 2010)⁷ (the Holmes Court specifically stated that the rule of State v. Gregory is the type of rule that does not deny a defendant his right to present evidence; Holmes v. South Carolina preserves Gregory as the appropriate standard for evaluating the admissibility of evidence of third-party guilt).

In Lorenzen v. State, the Court held the sexual offender registry listing the victim's father's name would not have been admissible under either a pre- or post-Holmes third-party guilt standard. Significantly, the victim's father was listed on the registry for committing the crime of assault with intent to commit criminal sexual conduct in the first degree which would have involved an adult victim whereas defendant was charged with criminal sexual conduct with a minor. Defendant's counsel at the PCR hearing acknowledged there was nothing on the registry to indicate the victim's father committed a crime against a child. Furthermore, defendant's allegation that the victim's father may have been the perpetrator was so nebulous that it would have had no other effect than to "cast a bare suspicion." Therefore, the Supreme Court did not believe these facts would be inconsistent with defendant's guilt or raise a reasonable inference of his innocence. In State v. Mitchell, the Court concluded that the fact that telephone directories

⁷In Burgess, the Court of Appeals concluded that the trial judge properly excluded evidence from five witnesses that the victims had been threatened over their drug debts in the months leading up to the murders. The trial judge concluded that the evidence related to the events occurred between eight months and two weeks before the murders and that none of the evidence was inconsistent with Burgess's guilt and that it was "mere conjecture or surmise."

may have contained listings of individuals with names that were either identical or similar to the name a witness initially gave to the police is simply not evidence that any of these individuals was involved in the incident and therefore the directories were properly excluded and not admissible as third-party guilt evidence without evidence to connect the person to the crime. The Court also determined that there was no error in the exclusion of the directory as evidence concerning the thoroughness of the investigation.

Even if testimony is inadmissible as substantive evidence of third-party guilt, it may still be admissible for witness impeachment purposes. See State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). However, in Cooper, the Court noted the limitation to this matter of impeachment. In Cooper, the Court found that defendant could not call an otherwise irrelevant witness for the sole purpose of impeaching her with a prior inconsistent hearsay statement concerning that witness' guilt of crime with which defendant was charged, where it was not admissible as free-standing third-party guilt evidence. However, in State v. Fossick, 333 S.C. 66, 508 S.E.2d 32 (1998), a State's witness testified concerning the circumstances surrounding the murder. On cross-examination, defense counsel asked the witness if he had previously told his girlfriend that he was the one who killed the victim. The witness denied making the statement. Defense counsel then sought to admit extrinsic evidence of a prior inconsistent statement made by the witness. The Supreme Court held that even if the evidence was inadmissible as evidence of third-party guilt, it was admissible for impeachment purposes.

ANALYSIS

Appellant claims that the trial judge erred in rejecting the proffer concerning the existence of the victim's two pending burglary charges for various reasons. First, he contends that it was

relevant. Second, he contends that the probative value of the evidence was not substantially outweighed by unfair prejudice. Thirdly, he contends that the trial judge erred in rejecting it as third-party guilt evidence because it was not offered to show that the shooting was committed by another and that it was merely intended to challenge the scope of the investigation as narrow. Lastly, assuming the above, he contends that its exclusion was not harmless error. Respondent submits that each of the positions set forth undermines the other positions and supports the trial court's discretion in excluding the evidence. The trial court did not abuse his discretion in the exclusion.

The Trial Court's Holding

The analysis must begin with the trial court's rejection of the evidence concerning the victim's two unrelated burglary charges. The trial court stated:

The issue before The Court is whether the defendant through his counsel will be allowed to ask Mr. Lyons, the investigating officer in this case and the case officer in this case 1 or 2 or 3 questions regarding the outstanding burglaries that the defendant (sic) had at the time of this incident.

One of the questions he wanted to ask him was, are you aware of the outstanding burglaries against the victim? I think Mr. Lyons' original answer was, no. But assuming he establishes that he reviewed the NCIC that was in the file, that it showed that there were some burglary . . . charges against the victim, the next question would be, did you do any investigation of them?

Those were the things that Mr. Kent wished to ask this witness. My understanding is that the purpose of this is not to establish third-party guilt, which Mr. Kent and the defense concedes they have no right to do, but to impeach the investigatory work on the part of law enforcement. And that the purpose of it is for impeachment purposes.

The first thing that strikes me about it, Counsel, is that I'm not sure why you want to do this, because I think it helps the state show motive. Which, if they claim is burglary, and as I understand it, the state [290] does contend that is their theory -- but at the same time, the state does not have to prove motive. They can

show motive, but it is not something that they have to prove. But I'm not sure where it helps the defense to show that the victim had prior burglaries, that this defendant thought his house had been burglarized so he shot him, and the fact that he had prior burglaries that is a double-edge sword it seems like to me. It might buttress the state's motive because the victim was shot in retaliation for the shooter thinking the victim had burglarized the defendant's house.

Be that as it may, I have reviewed the cases that were submitted to The Court. One being [State v. Fossick], 333 S.C. 66, 508 S.E. 2d 32; [State v. Beckham], 334 S.C. 302, 513 S.E. 2d 606, and also [State v. Saltz], 346 S.C. 114, 551 S.E. 2d 240, as well as the U.S. Supreme Court case of Delaware v. Van Arsdall.

The Court has also studied and looked at Rule 404 (A) regarding character evidence or 404 character evidence in general and 404 (A) (2), which deals with character evidence of the victim. That rule provides that evidence of a pertinent trait of character of the victim of the crime offered by an accused or for the prosecution to rebut the same or evidence of a character trait for peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

[291] After having studied the matter and thought about it, I first of all do not find that the testimony is relevant under 403 -- 401, 402, and 403, is not relevant to the issue to show anything in connection with the shooting. It simply would be from a standpoint of supposed motive, but I don't see where the burglary has anything to do with the actual shooting.

Neither do I think that under 404 (A) (2) that it is probative of anything to show action in conformity therewith.

And, third, I'm not sure this victim (sic) has any knowledge of it.

After having -- seemed like to me the sole purpose of the prejudicial effect outweighs the probative value substantially outweighs the probative value of the impeachment because what it would tend to do is to simply show that the victim was a bad person. And even further than that, that it may be for the purpose of showing third-party guilt, which I just don't think is appropriate in this case, and I don't think it's an appropriate questioning for impeachment purposes, especially just to show that the impeachment was not with regard to any improper testimony on the part of the witness in this case, but simply to show that they didn't go as far as the defense thinks that they should have in the investigation.

[292] The objection to the testimony is sustained.

ROA p. 263, l. 1- p. 266, l. 2. The issue was raised again at the conclusion of the case and rejected. ROA p. 453, ll. 8-15).

The Evidence Was Not Relevant

In the first assertion, Felder contends that the trial court erred in finding that the evidence was “irrelevant.” In his brief, he asserts that because the State made the burglary of Felder’s home the motive to support Felder’s shooting of McKenzie it made the other pending burglary charges relevant. Although he claims this is not a third-party guilt proffer⁸ - which he conceded at trial he could not meet - he claims that the questioning would have a tendency to show “the state’s theory that the motive for the shooting is less probable as the shooting could have been connected to the pending burglary charges rather than the burglary of appellant’s home.” Initial Brief of Appellant, p. 7-8.⁹ However, the dichotomy between third-party guilt and his claim below and here that it was to “impeach” the investigation are mischaracterizations of what he was attempting to do - to suggest that there were other people who had a similar motive - but admitting that those people would not satisfy the Gregory standard for admissibility. The State argued below that this was “classic (inadequate) third-party guilt evidence” and that it was their attempt to assert that law enforcement should have gone back and looked at other burglaries that

⁸Throughout his argument before the trial court, defense counsel claimed this victim burglary charge evidence was not “third-party guilt” evidence. ROA p. 247, ll. 20-25 (“third-party guilt case law would not allow me to simply say there’s somebody out there who possibly could have done this. ROA p. 253, ll. 6-11 (“I’m not offering it for third-party saying somebody else did it.”). Although not relied on by the trial court, Detective Lyons stated in the proffer, he did not investigate other burglaries for the motivation for the murder “because we had a hat there at the scene that was told to us that the shooter was wearing that we had gotten the defendant’s fingerprint off of.”

⁹Counsel claimed at trial that third-party guilt case law allowed him to “impeach the investigation.” R .p. 247, l. 25.

he was charged with and determine if those victims had done the murder. ROA 257. The defense asserted that because they were not specifically pointing to a particular person they could bring it up because the state was asserting that Felder's particular motive was the burglary that immediately preceded his shooting of the victim. However, the court noted that this was just an attempt to go through the back door by the defense counsel to bring in what he could not bring in through the front door. ROA 258. Counsel claimed that their defense was that the police did not fully investigate the case.

The State stated that this inquiry would not "impeach" the officer and that it was prejudicial to the State and that they were also merely showing this was a bad victim due to other criminal acts allegedly against others. Importantly, the State claimed, under Gregory that the evidence was not inconsistent with the Appellant's guilt. ROA p. 259-60, l. 15.

Contrary to the claims of the Appellant, this evidence was not intended to impeach the investigator or investigation, but was expressly intended to suggest that there were two other equally possible perpetrators. The problem with the Appellant's suggestion is that attempts to do what State v. Gregory precludes. The fact that Appellant had experienced a burglary similar to two other individuals does not equate with the others having a motive to kill McKenzie on July 18. To the contrary, the Appellant made no showing that this evidence was either "inconsistent with his own guilt", or that the facts raised a reasonable inference as to his innocence. To the contrary, there was no evidence to suggest the other burglary victims were the guilty party. Rather, the evidence of the victim being charged with two burglaries can have no other effect than to cast bare suspicion upon two innocent families or to cast a conjectural inference as to the commission of McKenzie's murder by the other burglary victims. There is no proof presented of

the connection of those victims to the crime. As Gregory so cogently held, remote acts (here being burglary victims), disconnected and outside of the crime itself cannot be proved for such purpose.

The Appellant's attempt to characterize the other crime evidence as admissible to impeach the investigation is a "red herring." The trial court saw through this in rejecting the claim, noting it was not relevant and not qualifying as third-party guilt. Further, the trial court found that the parsed argument presented supported Appellant's guilt because it enhances the showing of the personal motive to kill by Appellant due to his contemporaneous burglary.

This assertion was similar to the Court's rejection in the recent case of State v. Burgess, *supra*. In Burgess, the defendant sought to present evidence that over a period of time the victim had been threatened over his drug debts. However, the Court concluded that none of the evidence was inconsistent with the defendant's guilt and that it was merely conjectural. Like Burgess, the excluded evidence was not inconsistent with Felder's guilt and was mere conjecture.

The Appellant further asserts that assuming it is relevant, the probative value of allowing cross-examination about the victim's pending charges was not substantially outweighed by the danger of unfair prejudice. He claims it was "highly probative of the officer's failure to fully investigate the case." *Initial Brief of Appellant*, p. 8. However, the Appellant fails to explain why this examination is relevant or probative to the defense. In his brief, he claims that there is a probative link between the pending burglary charges with other victims and the shooting of McKenzie because the State claimed that Appellant's motive was the victim's burglary of Appellant that night. *Initial Brief of Appellant*, p. 11. The trial court properly rejected this alleged probative value under Gregory.

The Appellant seeks to distinguish State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (S.C. App. 2008), to support his claim of relevance and probative value. However, in Lyles, it plainly supports the court's discretion in excluding the remote evidence concerning the victim's pending charges. In Lyles, the Court found that evidence regarding a prior drug sale solicitation and the presence of drugs next to the murder victim was irrelevant. Like Burgess and the instant case, the Court found that there was causal probative link by the fact that drugs were offered for sale outside of the apartment several months before or that marijuana was located next to the victim where it did not serve as a defense or excuse or mitigate the defendant's actions. The court concluded the evidence was unduly prejudicial because it would insinuate that a key witness was a drug dealer and could have unfairly impugned character of the victim and state witness and cloud the issues.

Here, the prejudicial clouding of the issues was the only actual effect the admission of the victim's charges could have. As noted above, absent any connection to McKenzie's shooting, the evidence only created mere suspicion toward two other victims without any relation to the actual crime, as conceded by the Appellant at trial. Like Lyles, the excluded evidence of the charges had no probative link to McKenzie's murder on July 18. Even if McKenzie committed the burglaries at an earlier time, there was no causal link to this crime, nor did it negate Felder's motive that evening.

Further, the evidence, like Lyles is unduly prejudicial because it suggests a decision on an improper basis by insinuating other burglary victims had an intent to kill by the fact of their victimization and that the victim was of bad character. Like Lyles, the risk of confusion and misdirection is evident. Like Lyles, under Rule 403, given the tenuous link to other burglary

victims, the prejudicial effect substantially outweighs the probative value. With deference due the trial judge's conclusion, the decision to exclude must be upheld.

At trial, the Appellant relied upon State v. Fossick, 333 S.C. 66, 508 S.E.2d 32 (1998) for the proposition that he should be entitled to cross-examine Detective Lyons about the victim's burglary charges. Apparently by characterizing the evidence as "impeachment" evidence, Appellant claims to get around its deficiency under Gregory's third-party guilt threshold. While in Fossick, the Court noted defective third-party guilt evidence that cannot be introduced as substantive evidence, may be admissible for impeachment purposes, here it was never being introduced to impeach the credibility of Detective Lyons. Instead it was only being offered as substantive evidence.

Similarly, his reliance at trial on State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999) was misplaced. In Beckham, the defendant claimed the trial court deprived him of his right to present third-party guilt evidence. The Court rejected it because the proffered evidence would not exculpate him. However, the Supreme Court found error under Fossick in not allowing evidence presented to impeach a SLED investigator's denial on cross-examination that he had been looking for two men on the night of the murder as impeachment evidence. According to the proffer, there was evidence that the investigator had been looking for two men, contrary to his testimony. Unlike the instant case concerning the victim's burglary charges, the proffered evidence in Beckham was found to be proper impeachment by inconsistent statements of the investigator. Here, there were no inconsistent statements by the witness that would have been

impeached by the collateral evidence.¹⁰

The trial court did not abuse its discretion in excluding this evidence. The evidence would have injected a red herring into the case which could have only led to confusion of the issues before it where there was no tie shown of the burglary charges to the shooting. Like the situation in State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001), while there is a right to a meaningful cross-examination, it does not mean that the trial court cannot exercise its discretion in limiting the scope of cross-examination. Like the rejected inquiry in Saltz, the proposed inquiry of Detective Lyons would not elicit a fact to show bias on his part. Since the inquiry was inappropriate, the trial court properly exercised its discretion in not allowing the cross-examination.

¹⁰ Since the trial court properly excluded the evidence, Delaware v. Van Arsdall, 475 U.S. 673 (1986) provides no basis for relief.

II. The Trial Court did not abuse its discretion in denying the motion for a directed verdict. There was sufficient direct and circumstantial evidence with reasonable inferences that the Appellant drove to the crime scene, shot the victim and then left with a motive arising from his belief that the victim had participated in a contemporaneous burglary of Felder's home. Contrary to the claim of Appellant, there was substantial circumstantial evidence that Appellant was present on Highland Street at the time of the shooting.

The Appellant claims that the only evidence linking Appellant to the crime scene is the red baseball hat. However, he only claims in his brief that the state failed to establish that he was wearing the hat at the time of the shooting. *Initial Brief of Appellant*, p. 14. Respondent submits that there was sufficient evidence that Felder was at the scene of Willie McKenzie's shooting. This was supported not only by the presence of the hat worn by the shooter at the crime scene with Appellant's fingerprint and DNA present, but also by the identity of the vehicle driven by the perpetrator consistent with the vehicle owned by Appellant's mother that he was seen driving moments before the incident .3 miles away and his attempt to evade questioning by his attempt to falsely identify himself to law enforcement, among other matters. The Appellant's argument goes to the weight of the evidence - not its sufficiency. There was sufficient evidence presented at trial, considering the evidence in the light most favorable to the prosecution, by which a rational trier of fact could find the Appellant guilty beyond a reasonable doubt of murder as the shooter . This issue is without merit.

HOW THE ISSUE WAS RAISED AT TRIAL

The Defense Motion

At the close of the state's case, the defense made a motion for a directed verdict. ROA

451. The defense pointed out that Antrell McFadden, who witnessed the shooting initially claimed that he would be able to identify the shooter, but was later unable to identify Felder in a photographic line-up. Defense counsel recognized that while the defendant's DNA was in the hat found at the scene, that there was an unidentified third-party's DNA also present. ROA 451.¹¹ He also pointed out that a witness had reported that the vehicle seen at the shooting had silver handles whereas the vehicle connected to the Appellant had white handles. ROA 452.

The State's Response.

Counsel for the prosecution urged that the directed verdict motion be denied because of considerable direct and circumstantial evidence. Particularly, the prosecution stated that there were two eyewitnesses who described the shooter with white shirt and dark pants. Both witnesses noted that the shooter had a hat and one described it as a red hat. The prosecutor also pointed out that in the Appellant's admitted statement, he described himself as wearing a white shirt and pants that evening. Solicitor Meadors noted that a four-door white car described in the statement was traced to the Appellant's mother which is consistent with the eyewitness statements that the white four-door car had come forward with the person wearing a white shirt and dark pants. ROA 454. Though there was a discrepancy between the two eyewitnesses concerning the number of shots fired, the eyewitnesses stated that they saw the individual get shot.

In addition the prosecutor addressed the presence of the hat found at the scene and its link

¹¹The Appellant is not making the same claim at trial as he is making in his brief. Plainly he expressly asserts that the State did not prove that he was wearing the hat on the night of the incident and therefore the State's case fails. *Initial Brief of Appellant*, p. 14. However, at trial, this same argument was not expressly made.

to the Appellant. Assistant Solicitor Meadors described that it was proven by direct and circumstantial evidence. He noted that the hat had the DNA of the defendant and that it also had his fingerprint on it.

Concerning motive, which the prosecution admitted that it did not have to prove - Meadors pointed out that a camera was located on the victim's body. He stated that the evidence revealed that the camera was used to video the Appellant's girlfriend's birthday party. Meadors declared that this tied the victim to the contemporaneous burglary of the Appellant's home. He contended that the defendant's motive was supported by the timing of the break-in, the call to Appellant about the break-in, [his return and departure from his home] to the killing point (.3 miles from his home). The prosecution argued that this was sufficient evidence to require rejection of the motion. ROA 455.

The Trial Judge's Denial of the Motion.

In denying the motion for directed verdict, Judge King declared:

Rule 19 of the South Carolina Rule of Criminal Procedure control the matter of motions made at this point. Rule 19(A) specifically provides that the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed if there is a failure of competent evidence tending to prove the charge in the indictment.

I've always felt that the use of the word competent in that rule is unfortunate because it implies believable or credible evidence. But I do not believe that that's the way competent is meant in that rule. I think the word competent as used in the rule means admitted evidence or evidence in the record.

And the rule goes on to clarify that by saying in ruling on this motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

Most of the points which -most if not all of the points which are made on behalf of the defendant by Mr. Kent are matters that go to the weight of the

evidence and not to its existence.

I think there is evidence in the record, both direct and circumstantial, that place the defendant at the scene. There is evidence by which it could be inferred from the record – could be – the jury could find from the record that the defendant was the individual who fired the shot, even though there is no direct testimony to that. There is both circumstantial evidence of that and direct evidence of his wearing the hat and his DNA on the hat, and the hat that was found at the scene and other things that Mr. Meadors referred to.

I believe that if I were to direct a verdict, I would be weighing the testimony and inserting my judgment for that of the jury. And I do not believe I could do this, so I would respectfully deny the motion.

ROA p. 455, l. 8- p. 456, l. 17.

STANDARD OF REVIEW

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). "'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

The standard of review on appeal for a directed verdict is well founded.

A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597,

602, 533 S.E.2d 572, 574 (2000).

State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011).¹²

In ruling on a motion for a directed verdict, a trial judge is concerned only with the existence of evidence, not with its weight. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997); State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App. 2003) (citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)). "[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App. 2008).

ANALYSIS

Although not cited to in the Appellant's opening brief, this case is not analogous to the situations that arose in State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004);

¹²In Jackson v. Virginia, the U. S. Supreme Court stated that the "critical inquiry on review of the sufficiency of the evidence to support a criminal conviction ... [is] whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The question to be answered in applying the standard is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, 443 U.S. at 319, 99 S.Ct. 2781. (italics in original). Conflicting inferences presented by the facts in the historical record are presumed to have been resolved in favor of the prosecution "even if it does not affirmatively appear in the record, and we must defer to that resolution." Jackson, 443 U.S. at 326, 99 S.Ct. 2781; Wright v. West, 505 U.S. 277, 297, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992).

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) or State v. Odems, 395 S.C. 582, 587, 720 S.E.2d 48, 51 (2011). In Martin, the South Carolina Supreme Court found there was not substantial circumstantial evidence the defendant was involved in a murder because there was no evidence that placed the defendant in the apartment where the crime occurred. Martin, 340 S.C. at 602-03, 533 S.E.2d at 574-75. The evidence presented indicated that a car matching the defendant's description was at the victim's apartment complex. However, the Supreme Court noted there was no evidence that conclusively indicated the car seen was the defendant's car, and there was no evidence that both the defendant and his co-defendant arrived at the scene in the car. Further, the Supreme Court found there was no evidence either defendant entered the victim's apartment, and there was no evidence the victim's death occurred during the time the car matching the defendant's was at the apartment complex. *Id.*

In Schrock, this Court reversed the trial court's denial of a directed verdict motion because nothing in evidence placed Schrock at the scene of the crime. *Id.* at 132, 322 S.E.2d at 452. The State had presented a footprint found at the murder scene that was similar to footprints found in an area where the defendant had admitted he had been, cigarette butts that were of the same brand the defendant smoked, and an oil can found at the scene that could not be tied to the defendant. *Id.* at 131-32, 322 S.E.2d at 451. Also, the State presented testimony that could only place the defendant within, at best, one mile of the murder scene. *Id.*

In Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the Court affirmed the Court of Appeals' reversal of a denial of a motion for a directed verdict in a murder case. The Court noted the fact that the BMW the victim borrowed on the last day he was seen alive was found abandoned in Tennessee (which was where the defendant was located), raises a suspicion of guilt but is not

evidence that the defendant killed the victim. *Id.* at 390, 605 S.E.2d at 531. The Court also noted that there was no evidence the defendant was at the scene of the crime, which according to the State's theory was in Colleton County. *Id.*

In Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Court reversed the trial court's denial of a motion for a directed verdict. The Court found there was no direct evidence linking Bostick to the crime scene or the items found in the burn pile. *Id.* at 141, 708 S.E.2d at 778. There was also no testimony tending to establish that Bostick had control over the burn pile. *Id.* The Court determined that the circumstantial evidence that was introduced by the State at trial, at most, only raised a mere suspicion that Bostick committed the murder. *Id.* at 142, 798 S.E.2d at 774.¹³

In Odems, the State relied on four pieces of circumstantial evidence to acquire a conviction of the defendant on charges of robbery in the first degree, grand larceny, criminal conspiracy, and malicious injury. The evidence was : (1) the defendant was located in the getaway car shortly after the time of the robbery, (2) the items stolen from the victim's home were found in the getaway car, (3) the defendant fled from law enforcement when the car was pulled over, and (4) the defendant enlisted the assistance of an uninvolved individual in his

¹³ This case is also not analogous to State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, the Court affirmed the Court of Appeals' reversal of the denial of a directed verdict and found the defendant was entitled to a directed verdict in a first-degree burglary case because the circumstantial evidence that was presented only raised a mere suspicion of guilt. Mitchell, 341 S.C. at 409, 535 S.E.2d at 127. The Court noted the only evidence linking Mitchell to the burglary was a fingerprint on a screen. *Id.* The State did not present any evidence whether the screen was on the window at the time the window was broken or when the screen had been removed. The Court found the fact that Mitchell's fingerprint was on a screen propped up against the house did not prove entry because Mitchell had been in and around the victim's house as least three times prior to the burglary. *Id.*

attempt to evade arrest. Odems, 395 S.C. at 586-87. According to the Supreme Court, “[t]he circumstantial evidence presented by the State does not reasonably tend to prove Petitioner’s guilt, and fails this Court’s well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury.” *Id.* The Supreme Court reversed the defendant’s conviction.

Appellant’s case is inapposite to all four of these preceding cases. There was both direct evidence and substantial circumstantial evidence establishing Appellant was at the scene when the murder occurred. Unlike the facts in Martin, Arnold, Schrock, Bostick, and Odems the evidence presented in Petitioner’s case did more than just cast “mere suspicion” that Felder was involved in the shooting. Viewing the evidence in the light most favorable to the prosecution, it was sufficient to support the denial of the motion for a directed verdict.

Evidence revealed the circumstances that led to the death of Willie McKenzie began in the late evening of July 17, 2008 with the telephone call from David around 11:59 that advised Appellant that four guys were breaking into the Appellant’s house. ROA 325-26 (Appellant’s Statement). At that point, Appellant left the party on Broad Street and returned to his home on Harry Avenue. Appellant reported to the police in his statement that when he left to go to Harry Street he was driving his car, a white vehicle titled to his mother, and his mother was following in a green car. ROA p. 326, ll. 1-7. He identified his car as a white Buick. ROA p. 327, ll. 1-14, p. 329, l. 16 - p. 333, l. 2. (State Exhibits 12, 13).

According to Felder, when he entered his home on Harry Street, he noticed matters missing. ROA p. 326, ll. 8-12. He stated that his girlfriend, Stacey Caughman, advised him to leave if he had something on him. Felder claimed he had marijuana on him “so he promptly left

by himself driving his white four-door Buick.” ROA p. 326, ll. 14-15.¹⁴ This was prior to the police arriving at Harry Street.

The Defendant’s Clothes

The Appellant also admitted in his statement that he had been wearing black shorts and a black shirt that morning of the 18th, but admitted that he had changed earlier from a white shirt. ROA p. 327, ll. 10-13. [The eyewitness identified the shooter as wearing a white shirt and dark pants. ROA 157, 169-70, 184-86, 202-03].

The 911 Calls

On July 18, there was a 911 call about the burglary at ___ Harry Street. ROA p. 232, ll. 18-24. Two minutes later, there was a second 911 call concerning the shooting on Highland Street. ROA p. 232, ll. 22-23, p. 233, ll. 5-9. Then, fifteen minutes later, there was a second call about the break-in at ___ Harry Street. In response to the 911 call to the burglary at Harry Street, Officer Gabriel Blackwell arrived at 1 a.m. after a call went out at 12:37. ROA 429-30, 432, ll. 17-24. The Appellant’s girlfriend, Stacey Caughman, was present at the time and stated that she had made the 911 call. ROA 430. According to the incident report, the call to Harry Street was at 00:37 and the call on the murder was 00:39. ROAp. 273.

The initial Harry Street burglary 911 call was made at 12:37 and 14 seconds a.m. ROA 414, l. 18 - p. 415, l. 8. The 911 call related to the Highland Street shooting was received at 12:39

¹⁴ In his statement, Felder claimed he went “the back way” to Sada’s apartment after he left Harry Street. However, he could not name any of the streets and claimed he then left. It is apparent that this claimed way was an out of the way route that avoided Broad and Highland Street. Further, Felder claimed to leaving his Buick at Sada’s house with the keys on the floorboard. ROA 327. He claimed he went with Boo to the Red Bay area until 3 a.m.. Id. However, he did not know Boo’s real name or where he lived.

and 51 seconds am. ROA 415, l. 12-19. State Exhibits 51, 52.

The Eyewitnesses

Kayla McFadden testified that she and her cousin, Antrell McFadden, were walking to a convenience store and came upon a man, who requested a cigarette. After they gave him the cigarette, they walked away from him. She described a car pulling up, a white car with tinted windows pulled up and someone got out and fired shots and kicked the victim. ROA 156-57. Kayla described the shooter as wearing a "hat, white shirt, and some dark pants." ROA p. 157, ll. 24-25. Kayla identified the red hat (State Exhibit 17) as possibly the hat and confirmed that this was the hat on the ground in State Exhibit 1 at the crime scene. ROA 158.

Kayla confirmed that the man who got out of the car initially shot the other man over the car. She confirmed that she saw the shooter go around the car and then kick the victim. ROA 172-73.¹⁵ She stated that the white car had come off Broad Street.

Kayla's cousin, Antrell McFadden, testified that he gave the victim a cigarette that night and the victim was not wearing a hat. ROA 183, 186. After they walked away, he stated a white car with tinted windows pulled up and a man got out of the car wearing a red and black hat, white shirt and blue jeans, about 5'7". ROA 184-86. He stated he heard one shot, but did not see the shooter's face. ROA 186. He said he then saw the hat on the ground and pointed it out to the police. ROA 189-91. He identified State Exhibit 1 showing the hat as the hat he saw on the person who got out of the car. ROA 190-91.¹⁶ (State Exhibit 17). He stated the shooting

¹⁵ Dr. Janice Ross, the pathologist, testified that it would have been difficult to identify bruising on McKenzie's body after the death. ROA 304.

¹⁶ On cross-examination, McFadden stated he was sure the person was wearing a red hat. ROA p. 207, ll. 16-20.

occurred after 12:30 that night. ROA 194. McFadden testified that he heard the person who shot the victim say "I got you now." ROA p. 229, ll. 17-18.¹⁷

During the trial Antrell McFadden's statement to the police on July 18, 2008 was also introduced. ROA 215 (State Exhibit 19) (ROA 557). In the statement, McFadden stated that the car had pulled up on the shoulder on the side the guy was walking. He described the car as an all-white four-door Buick with light tint on the windows. He described seeing the driver get out with a low fade and wearing a red and white Phillies hat (although the hat recovered was actually a red St. Louis hat). He described him wearing a white "wife beater" tee shirt and blue jeans. This was at 12:49, less than ten minutes after the shooting. State Exhibit 19 (Statement of Antrell McFadden). ROA 557.

The police confirmed that McFadden had pointed out the red hat to them. ROA 227. Also, ROA 221-22, 226.

The White Buick Identified

The evidence also reveals that later that morning, McFadden identified the Appellant's white Buick as consistent with the vehicle they had seen at the shooting. Kayla described that on their way home from the police station she saw a car that looked similar to the car that did the shooting. ROA 165. She stated she was in the police car with her cousin as they were being brought home. ROA p. 165, ll. 3-23. They were with Detective Lyons and Detective Potteiger. ROA 175-76. She stated that "I think it was the same car. It had tinted windows in it, it was white." ROA p. 176, ll. 11-12. Antrell testified that he thought it was the same car, but was not

¹⁷Although McFadden testified that he did not see the perpetrator's face, he did claim at one point that he could identify the shooter. ROA 186, 193, 211. However, he was not able to pick out the shooter from a line-up that included the Appellant. ROA 193, 211-12, 235-36.

positive. ROA 195-96, 212.

Detective Lyons confirmed that while he and Detective Potteiger gave the McFaddens a ride home from the police station a white car passed them at Willow Morand Apartments. The car was a white four-door with tinted windows. ROA 231. At that point the McFaddens stated that it looked like the car they had seen earlier, commenting that "it looks like the vehicle, that can be the vehicle, I'm not sure." ROA p. 231, ll. 6-11. Because they had passengers, Det. Lyons stated they could not stop the vehicle so they called it in and had other officers go to the complex and identify the vehicle. ROA 231. They were able to identify the vehicle as belonging to Ida Mae Felder, the Appellant's mother and driven by Stacey Caughman, the Appellant's girlfriend. ROA p. 231, l. 12 - p. 232, l. 12. Det. Lyons stated after they returned, they learned that a burglary had occurred at Harry Street and called in 2 minutes prior to the 911 call on the shooting. ROA 232.

The distance between Willow Morand Apartments and Harry Street was less than one mile and between Harry Street and the crime scene was less than $\frac{1}{2}$ to $\frac{3}{4}$ mile. ROA 234. Det. Lyons opined it would take less than a minute to get between Harry St. and Highland St. ROA 274. The distance between Harry and Highland was measured as .3 miles. ROA 441.

Det. Potteiger testified similarly about the ride with the McFaddens when they identified the white car and observed it turning into Willow Morand Apartments. ROA 315-16, 333. He stated it was one of the few vehicles seen on the roadway that morning. ROA p. 316, ll. 2-4.

The False Identity by Appellant

While the police were investigating the case, Detective Lyons went to Spanish Garden Apartments on the afternoon of the 18th to seek to locate the Appellant. When they asked for

Appellant, the Appellant introduced himself as Tavaras, the Appellant's brother. ROA p. 238, ll. 11-22. They were told that Appellant was not there. ROA p. 238, ll. 20-22. Detective Potteiger testified about the false identity event. ROA 318. He declared that when Felder turned himself in on the 19th, that he was the same man they saw on the 18th. ROA 318, 335,

The Tint Removal

As noted above, the vehicle the McFaddens saw the shooter driving was a white car with tinted windows. ROA 157, 184-85, 204-05. In addition, the car that was seen that morning and registered to the Appellant's mother was a white car with tinted windows after 1:30 a.m. ROA 165, 196, 231, 316.

However, the white Buick was later impounded. At that time, there was a tacky film-like substance on the windows. Detective Lyons testified that this was consistent with the tint being removed from the car windows. ROA 243. He stated that the vehicle was seized late on the 18th. ROA 243. He stated that the car in the impound did not presently have tinted windows. ROA p. 285, ll. 15-16. He stated this was 12 to 14 hours after the shooting. ROA 285. Detective Potteiger also stated that the lines on the vehicle were indicative of tint being removed. ROA 330-31. Similarly, Lt. Duggin opined that the marks left on the car at the time he took the photographs suggested the removal of tint. ROA 419-20.

Therefore, there was evidence that the particular car had tinted windows when first seen by Detective Lyons and Potteiger with the McFaddens, but later it was removed that day, prior to the seizure and impoundment.

THE APPELLANT'S RED HAT AT SCENE

The shooter was seen wearing the red hat left at the shooting scene. After recovery of the

hat, evidence from the hat was directly connected to Antrell Felder. First, there was a fingerprint from Felder's right middle finger located on the label of the hat. ROA 371-74.¹⁸

In addition, the Appellant's DNA was determined to be a major contributor to a swab from the baseball cap (State Exhibit 17) and the victim was excluded from the mixture. ROA p. 425, l. 11- p. 426, l. 17.

SUMMARY

The Appellant contends that the State failed to present any evidence to connect Appellant to the shooting. However, as noted above, this case was more than merely about the hat located at the scene. Unlike Shrock, where there was an inadequate connection with the cigarette butt at the scene and the crime, the particular baseball hat found at the this scene was viewed on the shooter - not the victim - and was directly connected to the crime. Further, the red hat was directly connected to Appellant through both the fingerprint on the label and the mixed DNA from the hat's swab. A white four-door vehicle similar to the shooter's car was directly connected to the Appellant who admitted driving the vehicle at a similar time that evening, an evening when few vehicles were seen on the roadways. That particular vehicle registered to the Appellant's mother was also connected to the Appellant through his DNA and a fingerprint on an item within the vehicle. That particular vehicle was left by Appellant, according to his statement at Sada's house with the keys on the floorboard while Appellant claimed he went to Red Bay between 12:25 and 12:35 and remained at Red Bay until 3 am. ROA 327. That particular vehicle was seen after 1:30 am being driven back to the Willow Morand Apartment by Appellant's

¹⁸ The Appellant's print was also located from the white Buick on a lottery ticket recovered from the car. ROA 376-77. Felder's DNA was also present in the car. ROA 413-14.

girlfriend - who had earlier remained at Harry Street when the police responded to the break-in call.

The giving of a false identity when the police were seeking to question him speaks of guilty knowledge. The Appellant's odd claim of taking an unusual "back way" route which avoided the crime scene in his statement and an alibi claim with an unknown person questions his credibility about the crime. ROA 326-27. The Appellant acknowledged wearing similar clothes that day as the shooter wore - white shirt and dark pants, but then claimed to have changed clothes into all black that morning. ROA 327.

The inferences drawn by the affirmative acts in changing matters from the time of the crime also suggest guilty knowledge. The timeliness of the removal of the window tint on the day of the crime, his false identification to police as Tavaras,¹⁹ his change of clothes and his claim of leaving the car away from his home with the keys in it suggested guilt. See State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (False and conflicting statements are evidence of

¹⁹The giving of the false name by Appellant to police and denying his own identity is similar to flight or evasion of arrest. See Beckham, 334 S.C. at 315, 513 S.E.2d at 612. "In South Carolina, we recognize that evidence of flight [is] proper. We also recognize that it is oftentimes appropriate for counsel to argue to the jury the inferences growing out of flight." State v. Byers, 277 S.C. 176, 177-78, 284 S.E.2d 360, 361 (1981) (internal quotations omitted); see also State v. Grant, 275 S.C. 404, at 408, 272 S.E.2d 169, at 171 (1980) (stating that while a jury charge on flight as evidence of guilt is improper, admission of evidence and argument by counsel concerning it are allowed). The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. Beckham, 334 S.C. at 315, 513 S.E.2d at 612; State v. Crawford, 362 S.C. 627 at 636, 608 S.E.2d 886 at 891 (S.C. App. 2005). It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Crawford, 362 S.C. at 636, 608 S.E.2d at 891, citing Commonwealth v. Jones, 457 Pa. 563, 319 A.2d 142 (1974)).

guilty knowledge and intent). Finally, his claimed alibi in being with the unknown “Boo”, whose real name he did not know nor his address, was also more than merely suspicious under these circumstances.

Evidence was also presented that this was not the first break-in at Appellant’s home. ROA 339. Further, there was evidence presented that Appellant knew the victim and that McKenzie had purchased “items” from Felder on occasion. ROA 339, ll. 15-20.

Against this backdrop was the contemporaneous break-in of the Appellant’s home and the odd reporting only the thefts of shoes by his girlfriend [prior to her apparent knowledge of the shooting], while Appellant later reported clothes, shoes and hats after he turned himself in concerning the crime.²⁰ Compare ROA 431-32 with ROA 326-27. Against the backdrop was the presence on the victim at the crime scene of a camera which had recorded the Appellant’s girlfriend’s birthday party, implicitly suggesting the camera was a product of the break-in - - albeit unreported. ROA 391-92.

The Appellant seeks to attack the weight of the evidence by suggesting conflicts within the testimony of the witnesses concerning the particular clothes worn, the number of shots heard, whether the suspect’s vehicle had silver handles or white handles, and the failure to identify the Appellant in the photographic line-up as the perpetrator as evidence to support the directed verdict motion. *Initial Brief of Appellant*, p. 13. However, a reasonable inference from the evidence in the light most favorable to the prosecution is the test. The Appellant turns that test on its head by taking the inferences in the light most favorable to the defendant. Contrary to his

²⁰As the state cogently pointed out in their closing, who breaks into a home to steal a baseball hat! ROA 483.

claims, as noted by the trial court, his argument goes to the weight of the evidence. This is not the proper standard.

There is no reasonable inferences that this was a mere random shooting at midnight of a person walking along the road. Evidence at the shooting was that the perpetrator stated "I got you now." ROA 199-200. Evidence beyond the baseball hat, but connected to its owner supplied sufficient evidence to send it to a jury. The trial court properly denied the motion for a directed verdict.

CONCLUSION

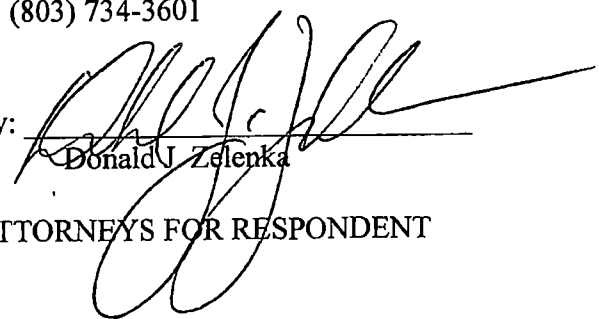
For the aforementioned reasons, the State respectfully asks this Court to affirm the ruling of the trial court as well as Appellant's underlying convictions.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601

By: 

Donald J. Zelenka

ATTORNEYS FOR RESPONDENT

May 28, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Howard P. King, Circuit Court Judge
2009-GS-43-0059

Appellate Case No. 2011-203747

STATE OF SOUTH CAROLINA,

RESPONDENT,

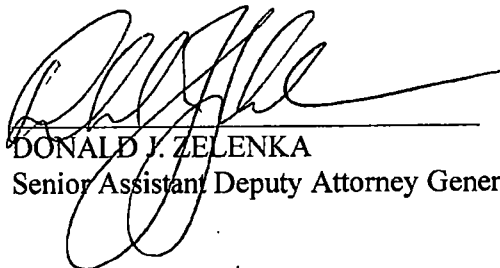
v.

ANTRELL FELDER,

APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

May 28, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Howard P. King, Circuit Court Judge

Appellate Case No. 2011-203747

RECEIVED
MAY 28 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANTRELL FELDER,

APPELLANT

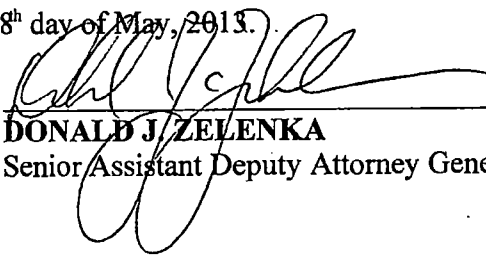
CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served Respondent's **Final Brief of**

Respondent on:

Katherine H. Hudgins, Esquire
Appellate Defender
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211

by depositing a copy in the Inter Agency Mail this 28th day of May, 2013.


DONALD J. ZELENKA

Senior Assistant Deputy Attorney General

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antrell R. Felder, Appellant.

Appellate Case No. 2011-203747

Appeal From Sumter County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2013-UP-437
Heard November 13, 2013 – Filed November 27, 2013

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Donald J. Zelenka, all
of Columbia, for Respondent.

PER CURIAM: Antrell R. Felder appeals his convictions of murder and
possession of a firearm during the commission of a violent crime, arguing the trial

court erred in (1) excluding evidence of the victim's unrelated burglary charges and (2) denying Felder's directed verdict motion. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in excluding evidence of the victim's burglary charges: *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001) ("The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion."); Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); *State v. Gregory*, 198 S.C. 98, 104, 16 S.E.2d 532, 534 (1941) ("[E]vidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (internal quotation marks omitted)); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . ."); *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) ("When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case."); *Saltz*, 346 S.C. at 130-31, 551 S.E.2d at 249 (noting the trial court can exercise its discretion and limit the scope of cross-examination notwithstanding a defendant's Sixth Amendment right to confront witnesses).

2. As to whether the trial court erred in denying Felder's directed verdict motion: *State v. Martin*, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000) ("In reviewing the appeal of a refusal to grant a directed verdict of not guilty, [the appellate court] must look at the evidence in the light most favorable to the State."); *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984) ("When a motion for a directed verdict is made in a criminal case, the trial [court] is concerned with the existence or non-existence of evidence, not its weight."); *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury."); *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011) ("Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial [court] to direct a verdict of acquittal is not error.").

AFFIRMED.

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA

County of SumterAntrell R. Felder 309617

Full name and prison number (if any) of Applicant

v.

State of South Carolina

RECORDED
IN THE COURT OF COMMON PLEAS

2014 JUL 23 AM 9:31

JAMES S. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.2014-CP-43 1492CERTIFIED TRUE COPY
OF ORIGINAL FILEAPPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS B READ CAREFULLY**

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence General Session
Court Sumter County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-43-059

RECEIVED

JUL 25 2014

Referred to PCR ds

Answered _____

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Nov. 18, 2011 37 years murder
- (b) Nov. 18, 2011 5 years possession of firearm during commission of a violent crime.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov. 27, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2013-UP-437
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
 (c) _____

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

- (a) See attachment label PCR Application issues
 (b) See attachment label PCR Application issues
 (c) See attachment label PCR Application issues

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

- (a) See attachment label PCR Application issues
 (b) See attachment label PCR Application issues
 (c) See attachment label PCR Application issues

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) This PCR Application is my first opportunity to present this issue.
 (b) This PCR Application is my first opportunity to present this issue.
 (c) This PCR Application is my first opportunity to present this issue.

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you:
 i. Ray Chandler and Shawn Kent, P.O. Box 1292
Manning, S.C 29102
 ii. Ray Chandler and Shawn Kent, P.O. Box 1292 Mann-
ing S.C 29102-1292
 iii. Ray Chandler and Shawn Kent, P.O. Box 1292 Mann-
ing S.C 29102-1292 Katherine Hudgins and Susan Hackett
P.O. Box 11589 Columbia, S.C
 (b) the proceedings at which each such attorney represented you:
 i. RAY Chandler and Shawn Kent represented me at
arraignment, trial, and sentencing
 ii. _____
 iii. Katherine Hudgins and Susan Hackett represented
me on direct appeal.

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

dismissal and discharged of convictions and
sentences

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Antrell R. Selder, 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.

Antrell Selder

SWORN to and subscribed before me this 7th
day of July, 2014.

Jessica H. Frye (L.S.)
Notary Public

My Commission Expires: _____

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

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

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

Antrell Gelder
Applicant

SWORN or affirmed to and subscribed before me this
10th day of July, 2014.

Susan H. Frye
Notary Public My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

CASE NO. 2014-CP-43 **1492**

POST CONVICTION RELIEF APPLICATION

ISSUES

RECORDED
2014 JUL 23 AM 9:3
JAMES C. CARROLL
CLERK OF COURT
SUMTER COUNTY, S.C.

ISSUE I

Trial Counsel Ineffective in failing to articulate and argue dismissal of the criminal case at the pretrial hearing on the grounds of Speedy Trial Rights violation. See (Baker v. Wingo, 92 S.ct. 2182 (1972); Dickey v. Florida, 90 S.ct. 1564 (1970); State v. Langford, 735 SE2d. 471; State v. Edwards, 649 SE2d. 112; U.S. Const. Sixth Amend.; S.C. Const. Art. I, §14; U.S. Const. Fourteenth Amend; U.S. Const. Fifth Amend.).

ISSUE II

Trial Counsel Ineffective for failing to articulate and argue dismissal of the criminal case on the grounds of prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage. See (State v. Langford, 735 SE2d 471; State v. Evans, 688 SE2d 583; State v. Cooper, 687 SE2d 62; State v. Edwards, 649 SE2d 112; S.C. Const. Art. I, § 8; U.S. Const. Fourteenth Amend.; U.S. Const. Fifth Amend.).

ISSUE III

Trial Counsel Ineffective in failing to compel the attendance of solicitor Catherine Fant at the pretrial evidentiary motions hearing where solicitor Fant's actions and inactions were the core of the prosecutorial misconduct allegations and where solicitor Fant is the only individual privy to the information that will answer her actions and inactions and which will justify the trial court granting dismissal of the case based on prosecutorial misconduct. See (U.S. Const. 6th Amend.; S.C. Constitution Article I, §14; S.C. Code of Law §17-23-60; S.C. Code of Law § 19-7-60; S.C.R.C.P. Rule 45; State v. Burgess, 703 SE2d 512; Walker v. State, 756 SE2d 144; U.S. Const. Fourteenth Amend.; U.S. Const. Fifth Amend; Martinez v. State, 403 SE2d 113; State v. Lee, 28 SE2d 402); *Smith v. State*, 745 SE2d 378.

ISSUE IV

Trial Counsel Ineffective in failing to move for disqualification or recusal of the Third Circuit Solicitor's Office for repeated actions of prosecutorial misconduct committed by solicitor Catherine Fant which has prejudiced the trial preparation and discovery and defense development strategies of the Applicant. (S.C. Const. Art. I, §8; U.S. Const. Fourteenth Amend; U.S. Const. Fifth Amend.; State v. Quattlebaum, 527 SE2d 105; State v. Wilson, 693 SE2d 923).

ISSUE V

Trial Counsel Ineffective in failing to conduct reasonable investigation

and interview of Tavares Felder, while Tavares Felder's pretrial hearing testimony and trial testimony would have established grounds for suppression for the motions in limine and would have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made an in-court identification of the defendant and testified the defendant faked his identity to elude law enforcement which in turn alluded to defendant's guilt of this crime and the correctness of the law enforcement officers' identification of defendant. See (Walker v. State, 756 SE2d 144 (S.C.2014); U.S. Const. Sixth Amend.; U.S. Const. Fourteenth Amend.; Thomas v. State, 417 SE2d 531 (S.C. 1992); Martinez v. State, 403 SE2d 113); Smith v. State 745 SE2d 378.

ISSUE VI

Trial Counsel Ineffective for stipulating to the unredacted introduction of defendant's oral statement into trial evidence via detective Potteiger's report and trial testimony which emphasizes that the defendant "was currently out on bond following a lynching charge," resulting in the unobjectionable introduction of inadmissible "prior bad acts" and "other crimes" to demonstrate defendant's propensity to violence and to challenge defendant's willingness to exercise his right to testify in his defense. See (State v. Johnson, 360 SE2d 317; State v. Turner, 279 SE2d 130; State v. Wilson, 266 SE2d 426; State v. Singleton, 400 SE2d 487; State v. Martin, 357 SE2d 21; S.C. Rules of Evidence 612; S.C. Rules of Evidence 404 (b); State v. Spears, 742 SE2d 878; S.C. Rules of Evidence 404 (a); State v. Bush, 45 SE2d 847; State v. Glaham, 112 S.E. 923; U.S. Const. Sixth Amend.; S.C. Rules of Evidence 609.

ISSUE VII

Due Process Violation for the repeated actions of prosecutorial misconduct committed by solicitor Catherine Fant which has prejudiced the trial preparation and discovery and defense development strategies of the Applicant. (S.C.Const. Art. I, §8; U.S. Const. Fourteenth Amend; U.S. Const. Fifth Amend.; State v. Quattlebaum, 527 SE2d 105; State v. Wilson 693 SE2d 923).

ISSUE VIII

Due Process Violation for prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage. See (State v. Langford 735 SE2d 471; State v. Evans, 688 SE2d 583; State v. Cooper, 687 SE2d 62; State v. Edwards, 649 SE2d 112, S.C. Const. Art.I, §8; U.S. Const. Fourteenth Amend.; U.S. Const. Fifth Amend).

ISSUE IX

Appellate Counsel Ineffective for failing to evaluate and brief suppression of the phone records, the victim's pending burglaries, "third-party guilt" principles to impeach the investigation, and the trial judge's denial to dismiss the case on prosecutorial misconduct. (State v Wilds , 756 SE2d 387; Evitts v. Lucey, 105 S.Ct. 830; Smith v. Robbins, 120 S.Ct. 746; Southerland v. State, 524 SE2d 833.

ISSUE X

Trial Counsel Ineffective i|| failing to conduct reasonable investigation and interview of Stacey Caughman and Ida Mae Felder, where the||r pretrial hearing testimony and trial testimony will have established grounds for suppression for the pretrial motions and will have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made in-court identification of Mrs. Ida Mae Felder's white automobile as being with tinted windows on the night of the crime, and who additionally testified that the tint on the windows were subsequently removed to obstruct and conceal from law enforcement that Mrs. Felder's white car is the "tinted window" white car the eyewitnesses saw at the crime scene which in turn alluded to the defendant's guilt of this crime and to the integrity of law enforcement's investigation of this case. See (Walker v. State, 756 SE2d 144 (S.C. 2014); U.S. Const. Sixth Amend.; U.S. Const. Fourteenth Amend.; Thomas v. state, 417 SE2d 531 (S.C. 1992); Martinez v. State, 403 SE2d 113); Smith v. State, 745 SE2d 378

Date: 7/7/14

Antrell Felder

AFFIDAVIT OF TAVARIS FELDER

I, Tavaris Felder, do hereby swear, attest, depose and say to the following:

I did reside at Spanish Garden, Wedgefeild, S.C. 29168, Sumter County on July 18, 2008. On July 18, 2008 law enforcement officers came to my residence at Spanish Garden, Wedgefeild, S.C. 29168 and knocked on my front door. I answered the knock by opening the front door to my residence. The law enforcement officer closest to me asked me my name and who was I. I answered the officer by replying that I am Tavaris Felder and I live here. Upon learning this the law enforcement officers left my residence and proceeded to walk towards thier vehicles. I was not asked to produce any form of identification by the law enforcement officers, if I was asked to produce identification I would have produced my South Carolina state issued identification card.

On the same day of July 18, 2008, law enforcement officers came to my residence at Spanish Garden, Wedgefeild, S.C. 29168, Sumter County for a second time. I again I answered the knock at the front door of my residence. The law enforcement officer again asked me my name, and again I answered the officer by replying that my name is Tavaris Felder. This time the officer asked me would I provide identification to establish my identity. I produced and presented my South Carolina state issued identification card which bears my name Tavaris Felder and my other personal information. The law enforcement officers did not seem suspicious who I am they simply thanked me for answering the questions and producing identification, after they said "ok" after viewing my South Carolina state identification card.

I am the indiviual that law enforcement officer Detective Jason Potteiger testified regarding during his pretrial testimony and trial testimony. I am the individual that law enforcement officer Detective William Lyans testified during the trial testimony. I encountered both of these officers twice on July 18, 2008. They asked me my name on the first encounter on July 18, 2008, then returned for a second encounter where they asked me my name again the additionally asked for identification to establish my identity. I am the blood brother relative of Antrell Felger. I and Antroll are not twins, but we share physical features and stature and voice that are so similiar that Antrell and I have been mistaken for each other in our daily lives by people who are familiar with our identities. It is quite understandable that law enforcement cannot discern me, Tavaris Felder, from my brother, Antrell Felder, from a visual standpoint without some form of independent identification process like a showing of a state issued identification card.

If I was interviewed and investigated by Antrell Felder's defense counsel I would have given this testimony as it is written in this affidavit. If I was called as a witness to Antrell Felder's pretrial hearings I would have given this testimony as it is written in this affidavit. If I was called as a witness to Antrell Felder's trial I would have given testimony as it is written in this affidavit.

Sworn and Subscribed before me
this 23rd day of June 2014

James E. Sumner
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: March 14, 2015

Tavaris D. Felder
Tavaris Felder

6/23/14

AFFIDAVIT OF STACEY CAUGHMAN FELDER

I, Stacey Caughman Felder, being of sound mind and mental capacity, do hereby swear, attest, depose and say the truth to the following:

I am authorized to operate and have in my possession the white, four-door Buick which was titled and registered to Ms. Ida Mae Felder in 2008. I normally drive this automobile regularly and I am familiar with this Buick's characteristics, features and appearance. At no time were any of the windows tinted on the white, four-door Buick prior to July 18, 2008, on July 18, 2008, nor after July 18, 2008. I know from personal knowledge that there was no tint on the windows, because I had frequent daily interactions with this automobile.

On the night of July 18, 2008, when I was approached by a law enforcement while I had the possession of the white, four-door Buick when I was at Willow Morand Apartment, the white four-door Buick registered and owned by Ms. Ida Mae Felder did not have tinted windows. Had I been investigated or interviewed by the defense counsels of Antrell Felder and asked about the tint of the Buick, I would have given them the information that is in this affidavit. Had I been subpoenaed or called to testify in the trial proceedings of Antrell Felder regarding the tint of the Buick I would have given testimony same as the testimony that is in this affidavit.

SWORN and SUBSCRIBED before me

this 16 day of July, 2014;

Shirley M. Lowery
Notary Public Of South Carolina

My Commission Expires: 9-20-2019

s/ Stacey Caughman-Felder
Stacey Caughman Felder

AFFIDAVIT OF IDA MAE FELDER

I, Ida Mae Felder, being of sound mind and mental capacity, do hereby swear, attest, depose and say the truth to the following:

I am the actual owner and registered owner of the white, four-door Buick car. I frequently use and am in direct contact with this automobile. I am familiar with this Buick's characteristics, features and appearance. This white four-door Buick, which is owned by me, did not have tinted window prior to July 18, 2008, on July 18, 2008, nor after July 18, 2008. I personally viewed the white four-door Buick on July 18 and 19 2008, and it did not have any tint.

Had I been investigated or interviewed by the defense counsels of Antrell Felder and asked about the tint of the Buick, I would have given them the information that is in this affidavit. Had I been subpoenaed or called to testify in the trial proceedings of Antrell Felder regarding the tint of the Buick, I would have given testimony same as the testimony that is in this affidavit.

Ida Mae Felder
Ida Mae Felder

SWORN and SUBSCRIBED before me

this 14 day of July 2014.

Shirley M. Lowery
Notary Public of South Carolina

My Commission Expires: 9/20/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Antrell R. Felder, # 309617,	)	2014-CP-43-1492
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 23, 2014, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the January 2009 term of the Sumter County Grand Jury for murder and possession of firearm or knife during the commission of a violent crime (2009-GS-43-0059). Ray Chandler, Esquire represented Applicant. On November 18, 2011, Applicant was convicted as indicted. The Honorable Howard P. King sentenced Applicant to forty two year term of imprisonment for murder and five year term of imprisonment for possession of a weapon during commission of a violent crime with all sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Antrell Felder, Op. No. 2013-UP-437 (Ct. App. filed November 27, 2013). The Remittitur was issued on December 13, 2013.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and appellate records. 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

- a. "failing to articulate and argue dismissal of the criminal case at the pretrial hearing on the grounds of speedy trial rights violation."
- b. "failing to articulate and argue dismissal of the criminal case on the grounds of prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage."
- c. "failing to compel the attendance of solicitor Catherine Fant at the pretrial evidentiary motions hearing where solicitor's Fant actions and inactions were the core of the prosecutorial misconduct allegations and where solicitor Fant is the only individual privy to the information that will answer her actions and inactions and which will justify the trial court granting dismissal of the case based on prosecutorial misconduct."
- d. "failing to move for disqualification of recusal of the Third Circuit Solicitor's office for repeated actions of prosecutorial misconduct committed by Solicitor Catherine Fant which has prejudice the trial preparation and discovery defense development strategies of the Applicant."
- e. "failing to conduct a reasonable investigation and interview Tavares Felder, while Tavares Felder's pretrial hearing testimony and trial testimony would have established grounds for suppression for the motion in limine and would have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made an in-court identification of the defendant faked his identity to elude law enforcement which in turn alluded to defendant's guilty of this crime and the correctness of the law enforcement officers' identification of defendant."
- f. "Trial Counsel Ineffective for stipulating to unredacted introduction of defendant's oral statement into trial evidence via detective Potteiger's report and trial testimony which emphasizes that the defendant was currently out on bond for a lynching charge," resulting in the unobjectionable introduction

of inadmissible 'prior bad acts' and 'other crimes' to demonstrate defendant's propensity to violent and to chill defendant's willingness to exercise his right to testify in his defense."

- g. "failing to conduct a reasonable investigation and interview of Stacey Caughman and Ida Mae Felder, where their pretrial hearing testimony and trial testimony will have established grounds for suppression for the pretrial motions and will have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made in-court identification of Mrs. Ida Mae Felder's white automobile as being with tinted windows on the night of the crime, and who additionally testified that the tint on the windows were subsequently removed to obstruct and conceal from law enforcement that Mrs. Felder's white car is the 'tinted window' white car the eyewitness saw at the crime scene which in turn alluded to the defendant's guilt of this crime and to the integrity of law enforcement investigation of this case."

2. Due process violation

- a. "for the repeated actions of prosecutorial misconduct committed by solicitor Catherine Fant which was prejudiced the trial preparation and discovery and defense development strategies of the Applicant."
- b. "for prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage."

3. Ineffective Assistance of Appellate Counsel

- a. "failing to evaluate and brief suppression of the phone records, the victim's pending burglaries, 'third party guilt' principles to impeach the investigation, and the trial judge's denial to dismiss the case on prosecutorial misconduct."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

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

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the

requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

VII.

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

[Signature block on following page]

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September 29th, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2014-CP-43-1492
	)	
ANTRELL R FELDER, #309617,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Mr. Fulton Casey Dale Cornwell
448 Deerwood Street Unit 9A
Columbia, SC 29205

DATED this 29th day of September, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF SUMTER

3
4
5 ANTRELL RASHAWN FELDER,)

6 Applicant,)

7 -vs-)

8 STATE OF SOUTH CAROLINA,)

9 Respondent.)

TRANSCRIPT OF RECORD

14-CP-43-01492

10
11 March 28, 2017
12 Sumter South Carolina

13
14 B E F O R E:

15 HONORABLE D. CRAIG BROWN, Judge.
16
17

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

19 TIMOTHY L. GRIFFITH, Esquire
20 Attorney for the Applicant

21 JULIE A. COLEMAN, Asst. Attorney General
22 Attorney for the Respondent/State
23
24

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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(Court Reporter's Note: No exhibits were marked or received into evidence.)

1 (The following proceedings are reported on
2 March 28, 2017.)

3 THE COURT: Is the State ready to proceed?

4 MS. COLEMAN: Yes, Your Honor. We are going
5 to begin with Antrell Felder, and I believe we might
6 have a motion to make before the Court this morning.

7 THE COURT: Yes, sir.

8 MR. GRIFFITH: If it please the Court, Your
9 Honor. Mr. Felder and I have communicated, and he would
10 like a continuance at this time. He would Like to have
11 a little more time to communicate with me.

12 The communication is kind of difficult. He is
13 in SCDC. He would like a little more time, and I would
14 ask the Court for the same thing. And I have spoken
15 with some of the other folks, and they do not seem to be
16 opposed.

17 MS. COLEMAN: Your Honor, I would oppose the
18 continuance. Although I will say, we seem to be missing
19 one witness at the moment who should be here today. We
20 have our first witness ready to go. This is a 2014 --

21 THE COURT: 2014.

22 MS. COLEMAN: -- case. It has been continued
23 several times. I would like to go ahead and do it today
24 if we can.

25 MR. GRIFFITH: Again, Your Honor, he only gets

1 one chance. He only gets --

2 THE COURT: Well, he has had three years to
3 work on that chance.

4 MR. GRIFFITH: I actually was not appointed
5 three years ago. I was only appointed in the more
6 recent history.

7 THE COURT: When would that be?

8 MR. GRIFFITH: Let me see.

9 MS. COLEMAN: Your Honor, Casey Cornwell, I
10 believe, was the original PCR counsel on this case. He
11 was relieved.

12 THE COURT: On February 16, 2016, Mr. Cornwell
13 filed a motion to be relieved.

14 MS. COLEMAN: Yes. And I don't know that we
15 actually got Mr. Griffith appointed on this case until a
16 few months after that.

17 MR. GRIFFITH: It was the month of July, Your
18 Honor, 2016.

19 THE COURT: Other than requesting more time,
20 Mr. Griffith -- it has been approximately eight
21 months -- what other?

22 MR. GRIFFITH: Also, Your Honor, this
23 particular client was -- and is -- in SCDC up in
24 Greenville, which is a good bit of ways from here. I am
25 here in Sumter. So it makes communication in person

1 difficult.

2 But he has not -- he didn't understand the
3 process of communicating with me evidently. I did talk
4 to him on the phone one time, a three-way call, with his
5 mother. That was our last communication. I have
6 reviewed the case, Your Honor.

7 THE COURT: Let me ask you this: I mean, this
8 case has been set on the roster. When do these rosters
9 come out?

10 MS. COLEMAN: About a month ago.

11 THE COURT: Why are we waiting until the
12 morning after they have brought him from Greenville for
13 you to ask for a continuance?

14 MR. GRIFFITH: I understand, Your Honor.
15 Mr. Felder, I spoke to him this morning; and he just did
16 not feel ready. He wanted to have some more time.

17 THE COURT: Well, I will respectfully deny
18 your request to continue. We are going to go forward
19 with it.

20 MR. GRIFFITH: Thank you, Your Honor.

21 MS. COLEMAN: Thank you, Your Honor.

22 THE COURT: Call your case, please, ma'am, or
23 place on the record what you so desire before we move
24 forward with the first witness.

25 MS. COLEMAN: This is Antrell Felder versus

1 the State of South Carolina, 2014-CP-43-1492. The
2 applicant is presently confined in the South Carolina
3 Department of Corrections pursuant to orders of
4 commitment of the Sumter County Clerk of Court.

5 The applicant was true billed indicted at the
6 January 2009 term of the Sumter County Grand Jury for
7 murder and possession of a firearm or knife during the
8 commission of a violent crime.

9 Ray Chandler and Shaun Kent, Esquires,
10 represented the applicant. On November 18, 2011,
11 applicant was convicted as indicted. The Honorable
12 Howard P. King sentenced the applicant to a 42-term of
13 imprisonment for murder and a five-year term of
14 imprisonment for possession of a weapon during the
15 commission of violent crime, with all sentences running
16 concurrently.

17 A timely notice of appeal was filed on
18 applicant's behalf. The South Carolina Court of Appeals
19 affirmed applicant's conviction and sentence, and
20 remittitur was issued December 13, 2013.

21 The applicant filed a timely application for
22 post conviction relief on June 23, 2014, alleging
23 ineffective assistance of counsel, due process
24 violation, and ineffective assistance of appellate
25 counsel, as well as prosecutorial misconduct.

1 THE COURT: Also if you plead guilty to this
2 charge, if you are ever found guilty or plead guilty to
3 the same or similar charge in the future, the penalty
4 would be higher next time because you would have at
5 least one prior conviction for possession of cocaine.
6 Do you understand that?

7 The State filed its return September 29, 2014;
8 and he is present today and represented by Mr. Timothy
9 Griffith.

10 Your Honor, at this time we ask that we go a
11 little out of order. The State has a witness who has a
12 hearing at 10:30 that he needs to get to, if we could
13 present him first.

14 THE COURT: Any objection, Mr. Griffith?

15 MR. GRIFFITH: No objection, Your Honor.

16 MS. COLEMAN: The State calls Shaun Kent.

17 (The witness comes forward.)

18 SHAUN KENT, being
19 first duly sworn, testifies as follows:

20 CLERK: State your name for the record and
21 spell your last name, please.

22 THE WITNESS: Shaun Kent, K-E-N-T.

23 DIRECT EXAMINATION

24 BY MS. COLEMAN:

25 Q Good morning, Mr. Kent. How are you?

1 A Good morning. How are you?

2 Q Fine. How long have you been practicing law?

3 A Seventeen years.

4 Q Do you recall whether you were appointed or
5 retained in this case?

6 A Myself and Ray Chandler were retained on
7 Mr. Felder's case.

8 Q Do you recall when that was?

9 A Not specifically. I think it was 2013, around that
10 timeframe.

11 Q How many times did you meet with the applicant
12 prior to his trial?

13 A In excess of ten times. We met with him numerous
14 amount of times when he was incarcerated, a
15 significant amount of time, at least ten.

16 Q Did the applicant cooperate with you in the course
17 of your representation?

18 A Yes, he did fully. He was very cooperative.

19 Q Did you file any Brady or Rule 5 motions?

20 A Yes, we did. Myself and Mr. Chandler both filed
21 them.

22 Q And did you review the discovery materials with the
23 applicant?

24 A Reviewed it with the applicant, his family, as well
25 as myself and Mr. Chandler.

1 Q So prior to trial did you discuss the elements of
2 the charges and what the State was required to
3 prove with the applicant?

4 A In full detail, yes, ma'am.

5 Q Did you discuss the applicant's version of the
6 facts?

7 A In full detail, yes, ma'am.

8 Q And what were those facts?

9 A This was a strange case. There was a murder in
10 which Mr. Felder maintained his innocence the
11 entire time. He said he was not there the entire
12 time. It was a circumstantial case.

13 We had a lot of problems with the prosecution
14 in this case. I am sure that will be a question
15 you ask later. The long and short of it, it was an
16 accusation that Mr. Felder had committed the
17 murder, that he was in and around the area.

18 The prosecution told us that there was an
19 eyewitness for the longest period of time, but it
20 turned out there wasn't an eyewitness. The lion
21 share of the evidence against Mr. Felder -- believe
22 it or not -- was just that there was a hat of his
23 that was found at the crime scene with his DNA
24 inside.

25 Somebody had said they saw somebody matching

1 his description in and around the area. The DNA
2 was inside the hat. Mr. Felder had reported that
3 his house had been broken into some time before
4 that, and someone had stolen his hat and some other
5 property. That was a question. It was a very
6 circumstantial case.

7 Q Would you describe the State's evidence as strong
8 in this case?

9 A Not really. I mean, it was a strong circumstantial
10 case; but it wasn't the best case, I thought.

11 Q Did the applicant ever give you any potential
12 witnesses or leads to investigate?

13 A Yes. Antrell was really good about the case. I
14 mean, we talked in full detail. He told us who to
15 look into. He told us who to contact. He was
16 really good. We did everything that he told us to
17 do.

18 Q So you investigated those witnesses?

19 A In full detail, yes, ma'am.

20 Q What other investigation did you do for this case?

21 A It becomes very strange because one of the issues,
22 as I mentioned to you, we had so much problems with
23 the prosecution in this case. Originally there was
24 a solicitor on the case. Her name was Catherine
25 Fant.

1 She was on the case originally. She ended up
2 leaving the Solicitor's Office, and the case was
3 assigned to John Meadors, as well as Chip Finney.
4 When we received the discovery from the Solicitor's
5 Office, they had mentioned, during a bond hearing
6 and some other factors, that there was actually an
7 eyewitness to the shooting.

8 So myself and Mr. Chandler, over and over
9 again, kept asking for the eyewitness to the
10 shooting, if there was an actual eyewitness to the
11 shooting; and it turned out there wasn't one.

12 So we made a bunch of prosecutorial misconduct
13 motions. So we spent a lot of time investigating
14 and chasing rabbit holes on information that wasn't
15 there. Then once we figured out that information
16 wasn't there, the investigation basically turned
17 into investigating the circumstantial case.

18 It's hard to put it that way, but going out to
19 the crime scene, looking into the crime scene,
20 seeing what happened, and talking to Mr. Felder
21 about the burglary that happened to his residence
22 earlier, then checking the DNA. The DNA matched to
23 his hat that was found at the crime scene.

24 Q Did you have ample time to prepare for trial?

25 A Yes, we had plenty of time.

1 Q And did you file motions for a speedy trial in this
2 case?

3 A Yes, we did.

4 Q But how long did it take for the case to actually
5 go to trial?

6 A I can't remember. It was a lengthy period of time.
7 We continued to file motions because we wanted to
8 try the case as soon as possible.

9 Q What was your trial strategy in this case?

10 A With it being such a circumstantial case and with
11 the information that Antrell had given us, most of
12 it was discrediting the State's case. It was just
13 proving that Antrell just wasn't there and couldn't
14 have done it; and it could have been somebody else,
15 potentially his brother or someone else who could
16 have matched the DNA. The problem, of course, was
17 the fact of the DNA evidence found at the scene
18 that matched Antrell Felder.

19 Q The applicant has an allegation of prosecutorial
20 misconduct against Solicitor Catherine Fant who you
21 mentioned was originally on the case. Can you
22 describe to us some of the issues that you had with
23 the Solicitor's Office?

24 A We made a motion for prosecutorial misconduct
25 before the trial if I remember correctly. One of

SHAUN KENT -- DIRECT -- MS. COLEMAN

1 the major issues we had with Ms. Fant, just to be
2 perfectly candid, we felt as though she was lying
3 in the discovery, that she directly told the Court
4 one thing and told myself and Mr. Chandler
5 something that was completely inaccurate.

6 She told us during a bond hearing, which kept
7 Antrell in jail, she told us during a bond hearing
8 that there was an actual eyewitness to the
9 shooting, and that given the eyewitness to the
10 shooting, that that person would be utilized at
11 trial to help convict Mr. Felder.

12 So myself and Mr. Chandler were getting ready
13 for the bond hearing and getting ready for court,
14 were looking feverishly for this so-called
15 eyewitness. Then it turned out the eyewitness
16 never existed. That was our biggest issue.

17 Then we had a problem. We had to request
18 discovery. I think we had requested three or four
19 motions just to get our discovery from the Court --
20 I mean -- from the Solicitor's Office. She just
21 wouldn't give it back to us. Finally after they
22 got a new solicitor is when we were able to get all
23 the information we needed.

24 Q You testified that you made a motion before the
25 trial for prosecutorial misconduct?

1 A Yes, we did. Yes, we did.

2 Q Did you move to have the case dismissed in its
3 entirety?

4 A Yes, we did.

5 Q And was that successful?

6 A No, it was denied.

7 Q Was there any legal reason for you to argue for the
8 entire Third Circuit Solicitor's Office to recuse
9 themselves from this case?

10 A I guess I could say it became interesting because
11 at that point in time, we had gone through a
12 changeover. Ms. Fant was no longer at the
13 Solicitor's Office.

14 So I could say yes and no. Yes, in that there
15 could have been some taint knowing that most of the
16 people who were there when Mr. Chandler and I were
17 dealing with them had been gone.

18 Q Do you believe that you would have been successful
19 if you had made such a motion?

20 A No.

21 Q Do you believe that Mr. Felder's trial was
22 prejudiced by Ms. Fant's failure to turn over the
23 discovery?

24 A No, I don't. I do believe he got a fair trial.

25 Q Would the outcome of the trial have been different

SHAUN KENT -- DIRECT -- MS. COLEMAN

1 if the State had given you those materials sooner?

2 A Now, that's a possibility. It's hard to look back
3 and say what would have happened if they were given
4 to us what they were supposed to give us. I wish
5 they would have, but looking back, I just don't
6 know.

7 Q Do you believe the outcome of the trial would have
8 been different if the case had been scheduled
9 sooner?

10 A Possibly, yes, ma'am. And I say that because there
11 would have been a different solicitor on the case
12 to be honest. I mean, just to say it candidly,
13 there would have been a different prosecutor
14 prosecuting the case. Solicitor John Meadors and
15 Catherine Fant would have prosecuted the case.

16 Q The judge, when you made these motions about the
17 discovery and the prosecutorial misconduct, did the
18 judge exclude one of the witnesses from testifying
19 for the State? Do you recall?

20 A I cannot remember. It was such a long time ago
21 candidly. Mr. Chandler may remember; I just cannot
22 remember.

23 Q Okay. As far as stipulating, the applicant has
24 made an allegation that you did not explain to him
25 some of the stipulations that you made at trial.

1 Did you discuss the stipulations before you made
2 them?

3 A Yes, I remember that very clearly. I remember
4 where Mr. Chandler and I were when we did it.
5 Before we went to trial, one of the things we
6 talked to Mr. Felder about was candidly trying to
7 talk him into a plea. We said, "If we are not
8 going to plea, these are the things that we are
9 going to work on. These are the things we are
10 going to stipulate to."

11 Q Did he seem to understand that discussion?

12 A We had no problems with Mr. Felder. In fact, he
13 was a very good client. He understood everything
14 and understood what we were doing.

15 Q Did the applicant give law enforcement a statement
16 about his involvement with this case?

17 A I just don't remember. I'm sorry. It's been such
18 a long time. I don't remember.

19 Q The applicant has also alleged failure to
20 investigate some witnesses in this case. Did you
21 ever investigate or meet with Tavaris Felder, I
22 believe? I might be pronouncing that wrong.

23 A I can tell you candidly every witness that
24 Mr. Felder gave us that we could get to meet with
25 us, we met with, we investigated with.

1 Mr. Chandler had on staff an investigator, Maurice
2 Flewelling. He would investigate and look into
3 every potential name, every potential allegation.

4 And a lot of times meeting with Mr. Felder --
5 and we would explain to him there are certain
6 things that clients want you to do that do not
7 benefit his trial.

8 Any person that we would thought benefit, the
9 potential witnesses, people we would call and look
10 into. If there was somebody we did not think would
11 benefit his case, we told him that. "It's not
12 going to do you any good. It's just a waste of
13 time." But anybody that we thought was helpful
14 that we discussed with Mr. Felder, we would meet
15 with and talk to, as well as our investigator.

16 Q Did the defense put up any witnesses at trial?

17 A I don't think we did.

18 Q What was your strategy in choosing not to put up
19 witnesses?

20 A In this type of case -- and we talked to Antrell
21 about it. One, it's one of those situations that
22 if we were going to put Antrell on the stand, he
23 would have to come across as credible, no prior
24 record, not been in trouble.

25 And given the fact that this was a totally

1 circumstantial case, we felt having the last word
2 was more important than putting on a case just to
3 put on a case. We discussed that with him.

4 Q Did he agree with the strategy?

5 A He did.

6 Q No further questions. Thank you.

7 THE COURT: Cross examination.

8 MR. GRIFFITH: Thank you, Your Honor. May it
9 please the Court.

10 CROSS EXAMINATION

11 BY MR. GRIFFITH:

12 Q Mr. Kent?

13 A Yes, sir.

14 Q I understand that you did file motions on the
15 prosecutorial misconduct. And having read through
16 the transcript, I see that one of those was the
17 fact that certain documents were not provided to
18 you until just before the trial. Is that true?

19 A That is correct, yes, sir.

20 Q How long before the trial were you provided those
21 documents? And I don't know if you've had a chance
22 to review that transcript or not.

23 A I have reviewed it. I know it wasn't a substantial
24 period of time, no, sir.

25 Q It was not a substantial amount of time?

1 A No, sir.

2 Q Did you have time then to review those documents in
3 order to put them into the trial and make them a
4 part of the trial?

5 A I think so, Mr. Griffith. I think so.

6 Q I'm sorry I missed it, but how long did you say
7 that it was from the time he was incarcerated or
8 arrested on this charge until the trial?

9 A I can't give you a specific. I don't remember.
10 I'm sure you have it there. If you tell me, I
11 would agree with you.

12 Q But you did file a motion for a speedy trial?

13 A Yes, we did. The situation was, as I mentioned, we
14 had two solicitors on the case. Ms. Fant was on
15 the case originally. Then she was no longer with
16 the Solicitor's Office. We had the issues with the
17 bond hearing. It took longer than it should have
18 for Mr. Felder to get up to trial. I do remember
19 that.

20 Q On the issue of putting up witnesses, did
21 Mr. Felder give you information about his brother,
22 Tavaris Felder?

23 A He did.

24 Q Were you provided with an affidavit or anything
25 like that, a statement from him or a statement by

1 him?

2 A I actually don't remember.

3 Q How about his wife, Stacy Caughman Felder? Did you
4 have communication with her? Did you speak with
5 her?

6 A We met with her many times. She would meet with us
7 in our office. She would go over the case. We
8 would talk about pleas. We met with her many
9 times, yes, sir.

10 Q And did you have an opportunity to speak with Ida
11 Mae Felder?

12 A Yes. That would be Antrell's mother.

13 Q Yes, sir. And you didn't feel that you should call
14 these as witnesses?

15 A No.

16 MR. GRIFFITH: If it please the Court, Your
17 Honor. I have three affidavits I would like to submit.
18 I actually...

19 (Attorneys confer.)

20 MR. GRIFFITH: The Court has those documents,
21 Your Honor.

22 THE COURT: I see them. I see them.

23 MR. GRIFFITH: I would like to put them on the
24 record as exhibits. This would all be one exhibit.

25 Is there any objection?

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1 MS. COLEMAN: Your Honor, I might object just
2 because we have not had the chance to cross examine
3 these witnesses, although it was included with his
4 application. So it's already a part of the record
5 before the Court.

6 THE COURT: I mean...

7 MS. COLEMAN: But as far as satisfying the
8 burden of the witness's testimony, we do object to that.

9 THE COURT: They are already part of the
10 record. The rules of evidence are still applicable
11 here. The State certainly would have an opportunity to
12 cross examine these witnesses.

13 Are these witnesses going to testify?

14 MR. GRIFFITH: No, Your Honor.

15 THE COURT: I have them. There is no need to
16 put them in the record. I already have them right here.

17 MR. GRIFFITH: Okay, Your Honor. Would it be
18 okay if I hand these to the witness, Your Honor?

19 THE COURT: Yes, sir.

20 MR. GRIFFITH: Because they are in the record.

21 BY MR. GRIFFITH:

22 Q Mr. Kent, those are the affidavits of the three
23 persons I mentioned. Have you seen those
24 affidavits? They appear to have been signed in
25 2014.

1 A I'm sure I have. 2014 is a long time ago. I can't
2 sit here --

3 Q You see a lot of affidavits --

4 A -- and say --

5 Q I understand.

6 COURT REPORTER: I'm sorry. I didn't hear
7 your question.

8 THE COURT: Hold on a minute. Hold on a
9 minute. I can't have you and Mr. Kent talking at the
10 same time because that creates problems for my court
11 reporter. Please restate your question.

12 MR. GRIFFITH: Sorry, Your Honor.

13 BY MR. GRIFFITH:

14 Q Looking at those affidavits, do you recall any of
15 the information, having spoken with these folks on
16 this information? I will give you a little time to
17 look it over.

18 A (Pause.) Okay. I have looked at all three of
19 these affidavits. These are definitely affidavits
20 I would not have seen. They are written in the
21 past tense after the trial.

22 All of them seem to indicate that, "Had I been
23 contacted by defense counsel, this would have been
24 information I would have given and would have
25 testified to." So none of these affidavits would

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1 have been affidavits that I would have seen.

2 Q Having not seen them prior to the trial though, you
3 indicated you had spoken with these people prior to
4 the trial --

5 A Yes.

6 Q -- in fact many, many times?

7 A Yes, many times.

8 Q Is this some of the same information perhaps they
9 had given at that time or is this new information?

10 A One of the questions, there was a vehicle that was
11 alleged that it was a type of vehicle that
12 Mr. Felder had driven, had been driving in that
13 type of area. It was a vehicle that witnesses
14 described as a specific vehicle they saw in the
15 area.

16 One of the questions that -- and just to say
17 it in a group -- the Felders were concerned with
18 was whether or not there was tint on the windows.
19 One of the big issues that they were making was the
20 vehicle that Mr. Felder drove had no tint on it.

21 The vehicle either had no tint on it or the
22 vehicle that the witnesses saw did have a tint on
23 it. So it was a question of whether or not the
24 vehicle that Mr. Felder drove had tint on it versus
25 the vehicle that assailant who committed the murder

1 had tint on it.

2 It was a question of tint versus non-tint. I
3 remember specifically talking to these witnesses
4 about getting the issue out about tint, that the
5 vehicle had tint on the windows.

6 If you review the transcript, during cross
7 examination of all the witnesses in the case, we
8 were able to get out the differences with the tint.
9 "Were they able to see the tint? How dark it was
10 at night?"

11 So we were able to get out everything that
12 they wanted to get out about the tint through the
13 State's witnesses without having to put these
14 witnesses on the stand.

15 The problem with putting these witnesses on
16 the stand -- and we talked to Mr. Felder -- all the
17 witnesses we wanted to call all had the last name
18 Felder.

19 All were in his camp. All were friends and/or
20 family members of his, and all would be easily
21 cross examined on an issue that we were able to get
22 out through the other witnesses.

23 So it wasn't an issue that we weren't able to
24 flesh out through other witnesses who testified for
25 the State. We thought it would have been

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1 cumulative just to put other witnesses to say the
2 same thing. So I do remember that point from the
3 three affidavits that you have given me.

4 Q So do you see any information that you were not
5 aware of in these affidavits that might be
6 considered new evidence?

7 A Nothing that I see, nothing that just on a cursory
8 glance in the affidavits A, B, and C, no sir.

9 Q Thank you. On the issue of the pretrial, did you
10 at that time ask for a dismissal based on the
11 prosecutorial misconduct?

12 A I thought I did, Tim. I thought I did.

13 Q Okay.

14 A I thought I made a motion to dismiss based upon
15 prosecutorial misconduct, which was denied by Judge
16 King. I may be incorrect, but I thought that's
17 what I had done.

18 Q And you've answered the question about having
19 disqualification or recusal of the Third Circuit.
20 Did you ask for a change of venue at any time?

21 A I don't think I did, no, sir. Usually that's not
22 my practice. Having tried as many cases in Sumter,
23 South Carolina, I love the venue to be perfectly
24 candid. So I wouldn't have asked for a change of
25 venue in this case.

1 Q And, Attorney Kent, did you review the oral
2 statement given by the defendant prior to the
3 trial? I'm sure you did.

4 A Again, from pure memory I can't say that I did.
5 Based upon common practice, I would be shocked if I
6 did not review the statement.

7 Q But because he had mentioned in his oral statement
8 to the police being on bond for lynching at the
9 time as prior acts, did you make objection to the
10 entrance -- including his oral statement without
11 redaction -- of those particular pieces of fact
12 based on prior acts and prejudicial?

13 A I don't remember but I don't think I did. No, Tim.
14 And if I didn't, based on your question, that would
15 be a mistake.

16 Q Thank you. I have no further questions, Counsel
17 Kent.

18 THE COURT: Any redirect?

19 MS. COLEMAN: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. COLEMAN:

22 Q The statement he was just referring to, there is a
23 sentence in there about how he was out on bond for
24 lynching. Do you believe that if you had kept this
25 out, it would have changed the outcome of this

1 trial?

2 A I don't think so. I mean, there was so many other
3 things that I wish would have gone different; but I
4 don't think that statement in and of itself would
5 have been the difference, no, ma'am.

6 Q Thank you. Nothing further.

7 MR. GRIFFITH: Nothing further, Your Honor.

8 THE COURT: Sir, you may step down.

9 (The witness leaves the witness stand.)

10 THE COURT: Any objection to him being
11 excused?

12 MS. COLEMAN: No objection.

13 THE COURT: So granted. Thank you. Have a
14 nice day.

15 THE WITNESS: You too, Judge.

16 MS. COLEMAN: We will do the applicant next to
17 go back to the proper order.

18 THE COURT: All right. Mr. Griffith.

19 MR. GRIFFITH: Your Honor, I would call
20 Mr. Felder to the stand.

21 (The witness comes forward.)

22 ANTRELL FELDER, being
23 first duly sworn, testifies as follows:

24 CLERK: State your name for the record and
25 will you please spell your last name.

1 THE WITNESS: Antrell Felder, F-E-L-D-E-R.

2 MR. GRIFFITH: If it please the Court.

3 DIRECT EXAMINATION

4 BY MR. GRIFFITH:

5 Q Mr. Felder, where are you currently incarcerated?

6 A Lieber.

7 Q Can you tell us kind of where that is?

8 A Ridgeville, South Carolina.

9 Q And how long have you been incarcerated?

10 A Five years and some change.

11 Q And do you remember what your sentence -- what your
12 sentence was?

13 A Yes, 42 years: 37 years for murder and five years
14 for a weapon.

15 Q And you filled out the application for a PCR. In
16 that application you listed several issues; is that
17 correct?

18 A Yes, sir.

19 MR. GRIFFITH: If it please the Court, Your
20 Honor. If he can have and be looking at his issues so
21 we can go over them one at a time.

22 THE COURT: Yes, sir.

23 BY MR. GRIFFITH:

24 Q Do you have those issues before you, Mr. Felder?

25 A Yes, sir, I do.

1 Q As to these issues, I will ask you to elaborate on
2 them. The first issue, ineffective counsel,
3 ineffective assistance, you articulate or you argue
4 in the criminal case in the pretrial hearing on the
5 grounds of speedy trial. Could you let us know why
6 you feel that that was incorrect?

7 A Yes. My issues are -- one and two, deals with my
8 lawyers, trial lawyers' ineffective assistance for
9 failing to argue dismissal of the criminal case at
10 the pretrial hearing on the grounds of speedy trial
11 rights, violation of Baker versus Wingo; and
12 Solicitor Fant manipulation in this case to gain an
13 unconstitutional advantage.

14 My issues, one and two, deals with my trial
15 lawyers' ineffective assistance by not arguing
16 dismissal of my criminal case at the pretrial
17 hearing on the grounds of speedy trial rights, a
18 violation of Baker versus Wingo.

19 At the pretrial hearing, it was argued to the
20 judge to dismiss my case on the grounds of
21 prosecutorial misconduct. See trial transcript
22 page 40, line 12; page 41, line 8, line 11, and
23 line 21 and line 25; page 42, line 2 through line
24 4; page 68, line 13 through 22; page 69, line 8
25 through 9; page 71, line 2 through 3; page 84, line

1 16 through 18.

2 Judge King informed everyone at the trial that
3 he had three alternatives in the case in dealing
4 with the prosecutorial misconduct that occurred
5 against my rights.

6 The judge said he could, one, grant a
7 continuance of the case. Two, strike the testimony
8 of the federal witness, Diante Frierson. Or,
9 three, grant the dismissal of the case. See trial
10 transcript page 91, line 24; page 92, line 7.

11 The judge ultimately found that the
12 prosecutorial misconduct was committed but chose
13 the remedy of striking the testimony of Diante
14 Frierson to resolve the issue.

15 The trial attorneys, Kent and Chandler, are
16 ineffective because they should have had three
17 motions. They should have had a motion to the
18 judge for dismissal of the case on alternate
19 grounds, that prosecutorial -- it violated my
20 speedy trial right and violated Judge King previous
21 order to have my trial commence by April 12, 2010.

22 The lawyers had a good argument for this issue
23 because Solicitor Fant committed prosecutorial
24 misconduct by standing up in open court and lying
25 that she recovered a bullet shell connected to this

1 crime from the area of the incident more than two
2 years after the incident occurred.

3 Solicitor Fant intentionally lied to violate
4 my speedy trial right and to violate Judge King
5 trial schedule order in order to get a continuance
6 to get an advantage on me against my defense
7 strategy.

8 The prosecutor cannot manipulate the court
9 docket or manipulate facts to a judge to tamper
10 with the judge true understanding of what is at
11 issue in a trial. This is what Solicitor Fant did
12 in my case.

13 In State versus Landry, 735 S.E2d 471, the
14 Supreme Court of South Carolina specifically
15 instructed solicitors not to use manipulation to
16 gain advantage because it violates the people due
17 process rights.

18 If my lawyers, Kent and Chandler, would have
19 brought to the judge attention by motion that the
20 prosecutorial misconduct done by Solicitor Fant
21 violated my speedy trial right and violated Judge
22 King trial scheduling order, then the judge at the
23 trial would have issued a ruling specifically
24 dealing with the trial scheduling order.

25 I would have been successful on this motion

1 had Chandler or Kent argued. And even if the trial
2 judge would have denied this motion, I would have
3 had it properly preserved for a direct appeal
4 issue.

5 I would have been successful in direct appeal
6 by using the case laws: Baker versus Wingo, 92
7 S.C. 2182; Dickie versus Florida, 90 S.C. 1564;
8 State versus Landrum, 735 S.E.2d 471; State versus
9 Edward, 649 S.E.2d 112; State versus Evans, 688
10 S.E.2d 583; and State versus Cooper, 687 S.E.2d 62.

11 Q Mr. Felder?

12 A Yes, sir.

13 Q Do you think that -- how long did it take from the
14 time you were charged with this crime until you
15 went to trial?

16 A From 2008 to 2011.

17 Q And you stated and you already spoke about the
18 prosecutor controlling and manipulating the trial
19 docket. Can you tell us how she did that?

20 A Yes. At every bond hearing, Solicitor Catherine
21 Fant would tell the judge, Judge King or Judge
22 Cooper, that she had a witness, an eyewitness, for
23 the State and that they'll deny my bonds and that I
24 am currently out on bond for lynching second
25 degree, to get my bond denied and telling she got a

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1 bullet shell from the scene. She don't have no
2 evidence of none of that stuff.

3 Q Did you talk to your attorneys about this?

4 A Yes, sir.

5 Q Did you talk to your attorneys about asking them to
6 change the venue or try to get a different county
7 or solicitor to try the case?

8 A No, sir, they talked to me about that --

9 COURT REPORTER: They did or did not?

10 THE WITNESS: No, I never spoke to them about
11 that.

12 BY MR. GRIFFITH:

13 Q And one of your issues, issue number three, you
14 talk about the solicitor not attending one of the
15 evidentiary motions. Can you tell us about that?

16 A Yes. My testimony for issue three deals with my
17 trial lawyer ineffective assistance for failing to
18 subpoena the attendant solicitor, Catherine Fant,
19 to the pretrial evidentiary motion hearings because
20 Solicitor Fant actions and inactions or at the
21 court for prosecutorial misconduct allegations
22 argued by Kent and Chandler to Judge King, it is
23 very important for Solicitor Fant to have attended
24 because she is the only individual that has the
25 information that would answer why she did what she

1 did in my case. And her answers would have
2 justified the trial judge, Judge King, granting
3 dismissal of the case based on prosecutorial
4 misconduct.

5 The first thing I want to bring to the PCR
6 court attention is that Solicitor Catherine Fant is
7 here -- well, she would have been here but she
8 passed away -- this morning because I filed a
9 subpoena on her to attend from the law library at
10 Broad River Road prison.

11 I know for a fact that if I can subpoena her
12 from the prison, I know Kent and Chandler have the
13 knowledge and ability to have subpoenaed Fant to
14 come to the pretrial hearing to give testimony on
15 the prosecutorial misconduct issue that Judge King
16 was determining.

17 Just the fact that I can subpoena Fant to come
18 to PCR to testify on the prosecutorial misconduct
19 issue, it shows that my lawyer, Kent and Chandler,
20 are clearly deficient under Strickland versus
21 Washington, the first prong of ineffective
22 assistance of counsel, because Chandler or Kent
23 could have easily subpoenaed Fant to come to
24 pretrial hearings, and there is no excuse.

25 The trial judge, King, stated in the trial

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1 transcript, "I don't have any knowledge as to why
2 Ms. Fant didn't think that this information was
3 something that should be revealed." See trial
4 transcript page 93, line 1 through 3.

5 Solicitor Meadors stated at the trial, "Judge,
6 it's not fair for me to go back in Ms. Fant's shoes
7 and defend her for doing something that she" -- see
8 trial transcript page 88, line 14 through 15.

9 When Attorney Kent questioned Detective Lyons
10 about the interview he and Ms. Fant had with the
11 federal witness, Diante Frierson, which was at the
12 core of Kent and Chandler prosecutorial misconduct
13 argument, this exchange occurred on the record:

14 Questioned by Kent: "No written statements.
15 No notes were taken by anybody in the room at all?"

16 Answer by Detective Lyons: "Not me. I
17 cannot. I cannot account for whether or not
18 Ms. Fant took any." See transcript page 75, line 3
19 through 6.

20 Attorney Kent told the judge that he and
21 Chandler showed up on April 12, 2010, ready for
22 trial. We came into the courtroom. We sat in the
23 courtroom ready for trial. We actually sat -- I
24 remember very specifically -- we got here about
25 9:00 o'clock. We went through the jury. Ms. Fant

1 didn't say a word to us.

2 Right about 1:00 o'clock she came to us and
3 said, she said, "I will not be calling the trial
4 today." We specifically asked her, "Why would you
5 not be calling this trial?" Her specific response
6 to us, "Well, we found some new evidence."

7 I said, "Ms. Fant, what is the new evidence?"
8 She said, "Well, we found a bullet." See trial
9 transcript page 56, line 9 through 12 -- 9 through
10 21.

11 When you look at the trial transcript, you
12 will see Attorney Kent actually told the trial
13 judge, King, that, "The testimony of Ms. Fant is
14 necessary to resolve these issues of prosecutorial
15 misconduct."

16 Attorney Kent said, "It may be a necessity to
17 have the former solicitor testify in the hearing."
18 Judge King replied, "It may be necessary what?"
19 Attorney Kent then replied, "To have the former
20 solicitor who was on this case to testify in that
21 hearing." See trial transcript page 40, line 15
22 through 22.

23 Attorney Kent did not subpoena Ms. Fant and
24 did not call Ms. Fant to give testimony at the
25 pretrial hearing. The lawyers, Kent and Chandler,

1 are ineffective because they did not produce the
2 critical evidence of Catherine Fant testimony to
3 effectively argue the prosecutorial misconduct and
4 the speedy trial rights violation that happened to
5 me through Ms. Fant's conduct.

6 This meet both prongs of Strickland versus
7 Washington. Both my defense lawyers failed to move
8 for dismissal of my case on the grounds of Ms. Fant
9 prosecutorial misconduct of being untruthful about
10 newly discovered bullet evidence was a delay tactic
11 by Ms. Fant to cheat me out of my speedy trial
12 rights and cheat me out of Judge King's order that
13 my trial must be held April 12, 2010, or my case is
14 to be dismissed. I should be granted relief on
15 this issue.

16 Q Do you think that the issue of the prosecutorial
17 misconduct would -- had your attorneys made that
18 and been successful, made it the way you wanted,
19 that it would have changed the outcome of your
20 trial?

21 A Yes, sir.

22 Q Now, on the issue of your oral statement to the
23 police, you say that they didn't redact certain
24 information that had to do with your prior history.
25 Do you remember giving the statement to the police?

1 A Rephrase that question, sir.

2 Q Okay. You gave a statement to the police, issue
3 number VI, number 6.

4 A Yes. (Pause.) No, I don't remember telling nobody
5 about me being out on no bond or nothing.

6 Q Well, in that case then that wouldn't have been in
7 that statement.

8 A Yes.

9 Q But evidently it was?

10 A Uh-huh.

11 THE COURT: Is that a yes or a no?

12 THE WITNESS: Sir?

13 THE COURT: Is that a yes or a no?

14 THE WITNESS: No, sir, I never told them about
15 me being out on no bond.

16 THE COURT: Thank you.

17 BY MR. GRIFFITH:

18 Q Did you talk to your attorneys about calling other
19 witnesses, such as your mother, your wife, and your
20 brother?

21 A Yes.

22 Q And what did they say?

23 A They said they was going to interview them and talk
24 to them. Then when I get up there with Shaun, he
25 probably tell me he think it wouldn't be a good

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1 idea or something. You know, they would be nervous
2 and scared. It wouldn't be...

3 Q Do you think that if they had called those
4 witnesses, it would have changed the outcome of
5 your trial?

6 A Yes, sir.

7 Q Do you have any other issues you would like to
8 talk -- to address the Court with on your list
9 there?

10 A Yes, sir, I would like to --

11 Q Tell us about it.

12 A All right. Issue number five deals with my trial
13 lawyers ineffective assistance by not doing an
14 independent investigation of the prosecution claim
15 that I lied about my identity at my mother's house
16 to evade the police.

17 If you look at my trial transcript on page
18 111, line 4; page 113, line 6, you will see that at
19 the pretrial hearing testimony that Detective
20 Potteiger and Detective Lyons testified that the
21 man that answered the door at Ms. Ida Mae Felder
22 residence stated he was not Antrell Felder.

23 The same officers testified that they later
24 discovered that the man who opened the door was, in
25 fact, Antrell Felder; and I was the person who

1 opened the door and I had, in fact, lied to them to
2 disguise my identity.

3 These officers testified I lied to them and
4 told them my name is Tavaris Felder when I opened
5 the door to conceal my true identity to evade the
6 police.

7 Detective Lyons and Detective Potteiger
8 testified in trial in front of the jury that I lied
9 to them and told them my name was Tavaris Felder to
10 disguise and hide my identity from them and the
11 other police officers to evade being arrested or
12 questioned about the homicide case.

13 If you look at page 111, line 18; page 113,
14 line 3; page 317, line 14; page 318, line 7; page
15 343, line 22; page 345, line 6; page 350, line 12
16 through 24; page 368, line 12 through 14 of my
17 trial transcript, you can clearly see that
18 Detective Lyons and Detective Potteiger is clearly
19 using this to show the jury that I am evading
20 arrest; and it is a sign of guilt when I lie to the
21 face of police officers in order to trick them into
22 believing that I am Tavaris Felder when I am, in
23 fact, Antrell Felder.

24 If you look at transcript page 506, line 2,
25 line 16; page 507, line 2 through line 7; page 508,

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1 line 10 through line 24, you will see that the
2 state solicitor jumped on the testimony of the
3 police officers and argued to the jury that the
4 testimony of Detective Potteiger and Lyons shows
5 that Antrell Felder did, in fact, lie to and trick
6 the police into believing that he was Tavaris
7 Felder.

8 When the police came to Ms. Ida Mae Felder
9 residence, the state solicitor specifically argued
10 to the jury in closing arguments on transcript page
11 506, line 10 through line 13, that the jury can
12 consider the actions of Antrell Felder's lies and
13 trickery in concealing his true identity as
14 evidence of guilt in deciding the weight of the
15 circumstantial evidence in this case.

16 The truth is I did not answer the door at
17 Ms. Ida Mae Felder residence when the police
18 officers came there that day. It was really my
19 brother, Tavaris Felder.

20 I did not speak to Detective Lyons or
21 Detective Potteiger or any other police officer who
22 came to Ms. Ida Mae Felder's residence that day.
23 It was my brother, Tavaris Felder, who these
24 officers spoke to.

25 I have an affidavit from Tavaris Felder right

1 here to submit to the Court. This affidavit is
2 authentic and it is the original document sworn to
3 and signed by Tavaris Felder.

4 This affidavit shows that what I just
5 testified to is the truth. I did not lie to any
6 police officers that I was Tavaris Felder to hide
7 my true identity.

8 For the police officers to testify to the
9 pretrial suppression hearing and at my trial in
10 front of the jury and tell them I lied to them to
11 hide my identity when I did not do this damaged my
12 case very badly.

13 For the solicitor to argue to the jury that I
14 lied to the police to hide my identity when I did
15 not and for the solicitor to tell the jury that I'm
16 lying to hide my identity is evidence of guilt to
17 consider with their circumstantial evidence damaged
18 my case very badly.

19 My whole case is based on circumstantial
20 evidence and assumption. My lawyer said this at
21 trial. On transcript page 533, line 10 through 11,
22 the state solicitor said this at trial on
23 transcript page 497, line 5 through 11, and page
24 505, line 19 through 20.

25 My whole case is based on credibility and who

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1 the judge believed or not believed. The fact that
2 the police officers and the solicitor put in my
3 trial, put evidence in my trial, that I lied to the
4 police to trick them to believe I was Tavaris
5 Felder in order to hide my identity, tipped the
6 skills. And it is no doubt that this made a major
7 impact on the jury convicting me of this crime.

8 Q Mr. Felder?

9 A Sir?

10 Q Well, of course, we are not here to retry the case.
11 But I would like you to just say tell us why you
12 feel that your attorneys were ineffective in -- do
13 you think they were ineffective by not presenting
14 your brother to testify that you were, in fact,
15 telling the truth?

16 A Yes, sir.

17 Q That would be really what we want to know.

18 A All right.

19 Q So can you continue with another issue,
20 number seven?

21 A Excuse me. I am trying to make sure I get my full
22 bite at the apple. So I want to put everything on
23 the record, sir.

24 Q Sure.

25 A I'm continuing on with five.

1 Q Oh, okay.

2 A My lawyers, Kent and Chandler, are ineffective
3 because they did not even take the time to
4 interview Tavaris Felder to find out whether or not
5 Tavaris Felder was the man who opened the door at
6 Ms. Ida Mae Felder residence and spoke with police.

7 In my trial transcript page 38, line 23; page
8 39, line 22; page 122, line 4; page 124, line 20;
9 page 127, line 14; and page 478, line 18; page 479,
10 line 1, you can see attorney, Shaun Kent, argue at
11 the pretrial suppression hearing and at the trial
12 that I was not the man who opened the door and
13 spoke with the police, that it was my brother
14 Tavaris Felder.

15 But the fatal mistake that Attorney Kent and
16 Chandler made was that they did not put into
17 evidence or rebut the state solicitor by evidence
18 that it was not me and it was my brother, Tavaris
19 Felder, who police spoke with.

20 The evidence I'm saying that Attorney Kent and
21 Chandler could have used is the testimony of
22 Tavaris Felder. There is no doubt to what Tavaris
23 Felder would have testified to if he was subpoenaed
24 to come to court by Attorney Kent and Chandler.

25 Because the affidavit of Tavaris Felder that I

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1 just submitted to the PCR court tells in detail
2 what Tavaris Felder testimony would have been if he
3 was called to testify in this criminal case.

4 The attorneys, Kent and Chandler, are both
5 ineffective. They know who Tavaris Felder is.
6 They know where and how to locate Tavaris Felder;
7 and at all times they know Tavaris Felder testimony
8 was critical in fighting against the police
9 officers' claim that I lied and tricked them into
10 believing I was Tavaris Felder to evade arrest and
11 questioning.

12 Attorneys Kent and Chandler had no excuse by
13 fact or by law in not interviewing and subpoenaing
14 Tavaris Felder to testify at my pretrial
15 suppression hearing and my trial to offer competent
16 rebuttal testimony and evidence to support my
17 suppression motion and to support reasonable doubt
18 in my favor and to challenge the credibility and
19 reliability of Detective Potteiger and Lyons
20 testimony and investigation.

21 Had my trial lawyers, Kent and Chandler,
22 investigated Tavaris Felder, they would have
23 discovered this information and would have direct
24 evidence to support the motion to suppress.

25 Had my trial lawyers, Kent and Chandler,

1 investigated Tavaris Felder they would have
2 discovered this information and would have had the
3 right inference to rebut and impeach the
4 credibility and reliability of Detective Potteiger
5 and Lyons.

6 They claim that I gave them a fake name to
7 evade them. If my lawyers, Kent and Chandler,
8 would have presented this testimony to Tavaris
9 Felder the outcome of my suppression hearing and my
10 trial would have been different.

11 My case is similar to Walker versus State, 756
12 S.E.2d 144; Thomas versus State, 417 S.E.2d 531;
13 and Martinez versus State, 403 S.E.2d 113; and
14 Smith versus State, 745 S.E.2d 378.

15 Issue number six deals with my trial counsel
16 ineffective assistance by Counsel Kent and
17 Chandler -- Counsel Chandler stipulation to the
18 introduction of my oral statement to police
19 officers on page 345, line 14 through 24.

20 The prosecution used an unredacted stipulated
21 oral statement in its case against me, detective
22 Potteiger written report and trial testimony,
23 Detective Potteiger report and testimony introduced
24 at trial specifically introduced to the jury that I
25 previously committed the crime of lynching. See

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1 trial transcript, page 351, line 11 through 12.

2 This testimony and report introduced to the
3 jury through Detective Potteiger is inadmissible,
4 prior bad acts and other crimes evidence. This
5 testimony and report introduced to the jury through
6 Detective Potteiger unconstitutionally demonstrated
7 to the jury a propensity to commit a violent act
8 and paint a picture to the jury that I am a
9 criminal.

10 The introduction of these prior bad acts and
11 other crimes evidence is objectionable under the
12 South Carolina Rules of Evidence, 609; S.C. Rules
13 of Evidence 404(a) and (b); South Carolina Rules of
14 Evidence, 612; U.S. Constitution Amendment Five;
15 U.S. Constitution Amendment Six; and my right to be
16 free from self-incrimination.

17 My trial attorney, Kent and Chandler, did not
18 make any objection to the introduction to the jury
19 of my pending charge of lynching. This is
20 ineffective assistance of counsel, and I was
21 prejudiced under the two-prong description of
22 evidence standard.

23 My attorney did not motion the Court to redact
24 the testimony of Detective Potteiger; neither did
25 they redact the trial exhibit of my oral statement

1 to exclude the portion referring to my pending
2 lynching charge.

3 In fact, my lawyer stipulated to the
4 introduction of the lynching charge to the jury.
5 The ineffective assistance of counsel is so blatant
6 and crystal clear in this case because if you look
7 at trial transcript page 469, line 8 through page
8 470, line 10, you will see that my trial counsel
9 Kent and Solicitor Meadors have a discussion with
10 the trial judge regarding my pending lynching
11 charge.

12 Judge Howard King specifically told Kent that
13 to introduce a pending lynching charge would be a
14 clear violation of South Carolina Rule of Evidence
15 609.

16 What makes this so prejudicial is that the
17 same testimony regarding my pending lynching charge
18 was stipulated to by my lawyers to be introduced in
19 my trial uncontested.

20 If my lawyers would have challenged Detective
21 Potteiger report and trial testimony as
22 inadmissible, prior bad acts, and other crimes and
23 character evidence, then it is close to 100 percent
24 sure that Judge King would have ruled such evidence
25 is inadmissible, at least under South Carolina

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1 Rules of Evidence, 609.

2 I base this nearly 100 percent assurance on
3 the fact that Judge Howard King actually expressed
4 a ruling in my trial that the pending lynching
5 charge is inadmissible under South Carolina Rules
6 of Evidence, 609. See trial transcript page 470,
7 line 8 through 12.

8 The record in the trial transcript and my
9 testimony and the supporting law shows that I have
10 met both prongs of Strickland, and I should be
11 granted relief.

12 In addition, when I heard that my lawyers
13 stipulated to my pending charges coming in my trial
14 and when I heard Detective Potteiger read his
15 report into his trial testimony, it chilled me to
16 my bone that the jury would most likely convict me
17 because they are now thinking I am a violent person
18 because I am a defendant in two cases that involve
19 allegations of violent acts.

20 I chose not to exercise my right to testify
21 because of the impact my pending lynching charge
22 affected my trial with inadmissible prior bad acts,
23 character evidence; and I didn't want to be
24 ambushed on the stand with this character evidence
25 or any other evidence coming from prosecutorial

1 misconduct that would further make me look like a
2 bad guy in front of the jury.

3 It was totally unfair for my trial to be
4 conducted like this, and it is clear ineffective
5 assistance of counsel for my attorneys not to
6 protect my rights adequately in this trial.

7 All my lawyers had to do was simply challenge
8 my introduction of my pending lynching charge as
9 constitutionally inadmissible and inadmissible
10 under South Carolina Rules of Evidence. I have met
11 both prongs of Strickland, and I am entitled to PCR
12 on this issue.

13 The inadmissible prior bad acts and other
14 crime evidence were given to the jury to deliberate
15 in the jury room. They are listed as State's
16 Exhibit 34 and Number 35.

17 This is highly prejudicial to my trial's
18 fairness because the jury convicted me with
19 inadmissible prior bad acts and other crime
20 evidence. The South Carolina Supreme Court case,
21 State versus Jonathan Hill, 714 S.E.2d 879, said
22 this is wrong to do, and PCR relief should be
23 granted.

24 THE WITNESS: I got some issues on here,
25 Judge, that I don't have no testimony to because I filed

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1 a motion to invoke discovery because I was writing
2 letters to all the attorneys that I had before.

3 They don't seem to know where my paperwork at
4 or my motion of discovery or none of that stuff. I am
5 trying to get all that stuff. So I'm writing letters.
6 I ain't got no -- that's why I don't have issues with
7 some of these issues that I am raising. I don't have no
8 testimony to them.

9 THE COURT: Mr. Griffith.

10 BY MR. GRIFFITH:

11 Q So you feel that you should have a new trial
12 because your credibility was in question, and
13 that's the biggest issue -- that's one of the
14 bigger issues -- in this PCR, and you should be
15 granted a new trial?

16 A Yes, sir.

17 Q Did you put all of these items in your appeal to
18 the appellate court?

19 A No, sir.

20 Q I have no further questions at this time. Answer
21 any of the questions here.

22 CROSS EXAMINATION

23 BY MS. COLEMAN:

24 Q Good morning, Mr. Felder.

25 A Good morning.

1 Q Your attorney argued a motion for prosecutorial
2 misconduct before your trial; correct?

3 A Yes, ma'am.

4 Q And did he explain to the Court all these issues
5 with Catherine Fant that you just talked about
6 today?

7 A No, ma'am.

8 Q Which ones do you think he didn't explain, just
9 briefly?

10 A I guess with the manipulation of the docket.

11 Q Okay.

12 A And about the bullet shell, my evidence of the
13 bullet shell.

14 Q Okay. But he did make a motion to dismiss the case
15 based on the prosecutorial misconduct; correct?

16 A Yes, ma'am.

17 Q And the judge denied that motion; correct?

18 A Yes, ma'am.

19 Q But the trial judge did grant part of the motion --
20 right -- and he excluded the testimony of one of
21 the State's witnesses?

22 A Yes, ma'am.

23 Q Do you think that worked in your favor?

24 A Yes, I think, but at the same time, no.

25 Q Okay.

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1 A It was too late. They done heard everything anyway
2 from the State's witnesses. They strike the
3 testimony from them.

4 Q But did the jury hear that witness?

5 A No, they didn't hear the witness. They heard what
6 the detective had to say about the witness, what he
7 wanted to say.

8 Q And you voluntarily gave a statement to law
9 enforcement; right?

10 A Yes, ma'am.

11 Q And that statement was used against you at your
12 trial?

13 A Yes, ma'am.

14 Q Did your attorney discuss with you the stipulation
15 you were going to make before trial?

16 A No, ma'am.

17 Q No. Okay. Thank you. Nothing further.

18 MR. GRIFFITH: Nothing for redirect, Your
19 Honor.

20 THE COURT: Sir, you may step down. Thank
21 you.

22 THE WITNESS: Thank you.

23 (The witness leaves the witness stand.)

24 THE COURT: Any other witnesses, Mr. Griffith?

25 MR. GRIFFITH: No other witnesses, Your Honor.

1 THE COURT: Ms. Coleman.

2 MS. COLEMAN: The State calls Ray Chandler.

3 RAY ELBERT CHANDLER, being
4 first duly sworn, testifies as follows:

5 CLERK: State your name for the record and
6 spell your last name.

7 THE WITNESS: My name is Ray Elbert Chandler,
8 C-H-A-N-D-L-E-R.

9 DIRECT EXAMINATION

10 BY MS. COLEMAN:

11 Q Good morning, Mr. Chandler.

12 A Good morning, ma'am.

13 Q Thank you for being here today. How long have you
14 been practicing law?

15 A Since 1971, 46 years. I know that's -- I have a
16 four-digit bar number.

17 Q Do you recall when you were retained on this case?

18 A I think Mr. Kent got it correct. I think it might
19 have been early '13. It might have been late '12,
20 but it was right in that timeframe.

21 Q So you were present in the courtroom when Mr. Kent
22 testified.

23 A Yes, ma'am, I had just walked in.

24 Q Great. Do you agree with his overall take on the
25 case of how many times you met with the applicant,

1 the discussions you had?

2 A I do to a point. When Shaun said about ten times,
3 if it were collective between myself, Mr. Kent, and
4 myself and Mr. Kent, myself and Mr. Flewelling --
5 and that's F-L-E-W-E-L-L-I-N-G -- and then with
6 family members, it exceeded ten.

7 The amount of locations that we met with them
8 around the crime scene and the three or four
9 different locations, and with one or two other
10 witnesses, and I cannot recall their names, I'm
11 sorry; but they showed us through these areas that
12 were going to be part of the story.

13 Mr. Flewelling would be here. He has been
14 retired. He is in the early stages of dementia,
15 I'm sorry, but could not add anything due to that
16 condition.

17 Q Did you review all the discovery material with the
18 applicant?

19 A Yes, ma'am.

20 Q And did he seem to understand everything?

21 A He was very -- Shaun is exactly right. Mr. Kent
22 was exactly right -- our client was cooperative.
23 He was introspective. He listened. He added. His
24 wife or girlfriend did the same thing. She was a
25 litigant for him. I say that. She could beat the

1 door down in a pleasant way if she had some issues.

2 There were, I think, two or three other family
3 members; and, of course, we could not discuss what
4 he said in front of them, but we did do a lot of
5 evidence sharing and listening in this case.

6 Q You stated that you investigated all the witnesses
7 that he gave you to investigate?

8 A I can't recall that we investigated them all.

9 Q Okay.

10 A We investigated and spent time on the things that
11 we thought were very necessary. I have this rule
12 that I like to look at a person who is going to
13 testify and speak to a person who is going to
14 testify. It's just -- I am just uncomfortable with
15 anything else.

16 Q Do you recall being asked to investigate Tavaris
17 Felder, his brother?

18 A I don't.

19 Q After hearing what has been testified today by the
20 applicant about his brother, there was an issue in
21 the case about the police came to the door and he
22 answered and claimed to be his brother.

23 Do you believe that it would have been helpful
24 to call his brother as a witness to rebut that
25 claim?

1 A I recall being told about his brother, and I recall
2 something about how similarly they looked. If I
3 saw the brother at some juncture, I just don't
4 recall it. But it was conceded to me that they
5 looked very, very much alike. To answer your
6 question, I don't see that as the linchpin issue in
7 this case.

8 Q Did you ever investigate or meet with Ida Mae
9 Felder?

10 A If we did I don't recall it, but that name is very
11 familiar.

12 Q Did you ever investigate or meet with Stacy
13 Caughman?

14 A Yes.

15 Q Who is Stacy Caughman?

16 A I think Stacy was his girlfriend, wife. And she
17 was the one, I think, that was driving that car
18 later that evening when it was stopped. This was
19 the tint, window-tint car.

20 Q Okay. And did you meet -- you said you met with
21 her; correct?

22 A Oh, yes, ma'am. Yes, ma'am.

23 Q Did you decide why -- why did you decide not to use
24 her as a witness at trial?

25 A The two worst defenses that I ever get in 46 years

1 of practicing law -- right -- is alibi and
2 entrapment. So when you get the potential of an
3 alibi case, in my mind whether the law says it or
4 not, it tends to shift the burden back to you in
5 the eyes of the jury to establish something.

6 The more witnesses who testify as to an alibi,
7 one of two things happen. They all remember
8 exactly the same way in lockstep, which is a
9 credibility issue. Right?

10 Or they introduce some nuance that you have
11 never heard about, and now you've got to deal with
12 it in a matter of minutes, rather than a matter of
13 days.

14 So this is a strategy. It's not a lock-in;
15 it's a strategy. And the strategy -- Shaun was the
16 lead counsel in this case. But the strategy in
17 this case that we discussed with them would be to:

18 "Let's get at this case from the government
19 side, the prosecution side, get out all we can get
20 out and make sure we were argue last because this
21 was a circumstantial case."

22 Was I responsive to that?

23 Q Yes, you were. Thank you. So it was your strategy
24 to have the last argument in the case?

25 A Yes, ma'am, and Mr. Kent made that ultimate

1 decision. We went over it and he was arguing it.

2 He is really good at it.

3 Q Did you review this and discuss this with the
4 applicant?

5 A I did.

6 Q Did he seem to understand that strategy?

7 A He did, and Shaun explained it.

8 Q Did the applicant give law enforcement a statement
9 with this case?

10 A There was an oral statement made at some juncture,
11 and I wish I had a better memory of that but it was
12 discussed. Shaun and I discussed it. "Flew" and I
13 discussed it, you know, exactly as to what impact
14 that would have.

15 Q And did you notice the line in there about how he
16 was out on bond for lynching?

17 A I recall that. My memory was refreshed today while
18 I was sitting there, yes.

19 Q Was that something that you believe changed the
20 outcome of the case?

21 A You could argue it in retrospect. You could argue
22 that hard in retrospect. If I was sitting in a
23 room looking at a transcript, I would argue it hard
24 in retrospect.

25 I do not -- and it could have -- but there

1 were three very compelling things in this case.
2 There was a red hat that allegedly belonged to my
3 client in the road or beside the road near the dead
4 body.

5 There was a vehicle that generally matched the
6 description of one that was either -- and I'm not
7 sure who owned it -- but I don't think my client
8 did. I think there was another ownership out
9 there.

10 The question was what tint was in the vehicle,
11 and whether or not these people who allegedly could
12 say they saw him in there versus the vehicle that
13 we found that did not have the level of tint. Does
14 that make sense?

15 The third issue was my client -- the
16 applicant's house or place he rented on one side of
17 the main street here in Sumter. I don't know if
18 that's Boltman or wherever it is. They were on one
19 side and this shooting occurred on the other.

20 There was an issue in this case of when they
21 got back to his house, there were like three or
22 four people with him. They found the house had
23 been broken into. I think it was the air
24 conditioning unit, had come through an air
25 conditioning unit. Why I recall that after so long

1 I don't know.

2 But they had done that and they had gone in
3 and taken some clothes. It was more than the hat.
4 There was some other clothing missing. I think the
5 issue was they were looking for money and
6 marijuana. That's what it was.

7 These people were people who had -- in the
8 neighborhood or in the area -- had had some
9 competition or bad blood. One of those people, who
10 was the decedent in this case, did not have a very
11 good reputation.

12 So the issue was -- and then there was another
13 issue that there was a 9-1-1 call made from the
14 house or in the neighborhood by either his
15 girlfriend/wife or another person to the police
16 reporting that robbery. That was then confirmation
17 of the fact that they could not have been over on
18 the other side of town, you know, to do it.

19 Those were pretty good issues. Those were
20 issues that we worked on hard. So Flew and I set
21 up a diagram of where one house was and where the
22 other house was. We did an aerial of it, and we
23 timed it about eight or nine times, you know.

24 We knew the timing of everything it was, et
25 cetera, whether you had to stop at the stop sign,

1 et cetera. There was an issue that this was then
2 about 3.5 minutes or three minutes from one place
3 to the other.

4 So our theory was: Look, how implausible is
5 it that you could be broken into -- right -- go out
6 and get in your car in this large parking lot, move
7 around it, get out, get on this street, cross the
8 main drag and happen to -- within three minutes --
9 run into somebody and shoot them dead, not knowing
10 that they broken into your house or not.

11 Added to that the confusion about the DNA in
12 the hat or hairs in the hat that had DNA. So we
13 were adding up through the prosecution's witnesses
14 the cell phone call, the car tint -- and I did that
15 on cross examination -- the time, the robbery, the
16 break-in of his house that was reported.

17 So that seemed to be our theory at reasonable
18 doubt. Whether our client had a pending charge or
19 not was not as important to me as was getting
20 across to the jury that he couldn't have done it.
21 Is that it?

22 Q Yes, thank you.

23 A Especially when they didn't turn up an eyewitness.

24 Q Did the defense put up any witnesses at trial?

25 A I don't recall that we did. If we had, we wouldn't

1 have gotten to argue last.

2 Q Right. You testified that your strategy was to
3 have the last word?

4 A Yes, ma'am.

5 Q Okay. Now, we have discussed a lot of
6 prosecutorial misconduct allegations in this case
7 with Solicitor Catherine Fant. Did you argue a
8 motion about prosecutorial misconduct to the trial
9 court?

10 A I want to tell you Ms. Fant is deceased, and
11 therefore I am somewhat circumspect about the
12 attitude I need to take. In fairness to this young
13 man, I think I need to tell you that this ain't the
14 first time I have caught her hiding evidence.

15 It ain't the first time that Mr. Kent and I
16 have caught her hiding evidence, and it was not the
17 first time that we had caught that Solicitor's
18 Office hiding evidence, up to the point that in a
19 trial in Manning, Judge Cooper fined them for
20 keeping out two witnesses from Ohio who were
21 eyewitnesses and were exculpatory in a murder case
22 there. So we did not give that person or that
23 office any slack.

24 Q So you argued all this to the trial court?

25 A We argued it forcefully. This got so contentious

1 that there was a confrontation between Mr. Kent and
2 Ms. Fant in the hall outside of Judge James' office
3 that resulted in both of them being called in and
4 talked to.

5 Q The motion you made to the trial court was denied;
6 correct?

7 A That's correct. Even in the case where I had -- I
8 am looking at trial. I mean, I am in there with
9 the jury scratching off. Right? And somebody
10 says, "Oh, by the way, we've got these two people
11 from Ohio, you know, who saw this young lady get
12 roughed up by the 6'2 guy who is now dead." I
13 mean, I'm in there ready to go to trial.

14 Q And that was a different case?

15 A It was a different case. But the point is the
16 judge didn't deny that, Judge Cooper, my former law
17 partner, didn't deny that. He gave them an \$1,800
18 fine.

19 I just don't see in this circuit a lot of
20 cases denied for prosecutorial misconduct. There
21 are other remedies -- right -- and one of the
22 remedies is you get more time. Right? If the
23 conduct was bad enough, that time may help you.
24 Does that make sense?

25 Q Yes. Did Judge King in this case grant you more

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1 time, grant you a continuance?

2 A I think we got more time on this case to look at
3 it. I'm not sure about that but I believe we did.
4 Here was my problem. My problem was they had
5 messed around on this case, and we had made a
6 speedy trial motion.

7 I really wanted this case dismissed on the
8 speedy trial because they had completely messed
9 around and had misled us on how the evidence was to
10 play out and who they had in this case.

11 Q Did Judge King exclude one of the State's witnesses
12 from testifying in response to your motion for
13 prosecutorial misconduct?

14 A Mr. Kent made that motion. I hope he did. I can't
15 tell you I remember that. I'm so sorry.

16 Q That's fine. I believe just looking at the
17 transcript, it seems like he was excluded from
18 testifying.

19 A Yes, ma'am. And that was a very vociferous
20 argument. It doesn't read the way it was argued.

21 Q By the time that this case got to trial on the day
22 it was actually tried, did you have all the
23 discovery materials?

24 A Yes, ma'am, I believe we had it all.

25 Q Was that the basis for the judge refusing to or

1 choosing not to grant your motion to dismiss?

2 A I don't recall that, but I think it would be a
3 valid reason for it.

4 Q Why didn't Catherine Fant attend the pretrial
5 hearing on the prosecutorial misconduct motion?

6 A I have no idea. I have no independent memory of
7 that. It may have been because of the
8 circumstances there. That's just an assumption on
9 my part. I have no idea.

10 Q And Ms. Fant had been ill for a while?

11 A I didn't know that then.

12 Q Right.

13 A I didn't know that then. I subsequently discovered
14 that, and I can't relate her illness with this
15 timeframe from my independent knowledge. But she
16 had been, yes, ma'am.

17 Q And, of course, we can't have her today to testify.
18 In your opinion if Ms. Catherine Fant had attended
19 that motion on the prosecutorial misconduct, would
20 it have helped you if she had been there to explain
21 herself?

22 A Knowing the individual and knowing the
23 circumstances, I don't think so. I think she would
24 have gotten away with it. She might have gotten
25 her wrist slapped, but I think Mr. Kent was talking

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1 suspension. I mean, he wasn't talking wrist slapping.

2 Q Thank you. No further questions.

3 A Thank you.

4 THE COURT: Cross examination.

5 MR. GRIFFITH: Thank you, Your Honor. If it
6 please the Court.

7 CROSS EXAMINATION

8 BY MR. GRIFFITH:

9 Q Attorney Chandler, as to the prosecutorial
10 misconduct, do you think that rose to the level
11 that his trial was affected by it, and the outcome
12 of trial may well have been affected by the
13 prosecutorial misconduct?

14 A It just made it harder, you know, to get there.
15 Once we got there -- because Judge King is a great
16 judge -- and once we got all the stuff that we
17 needed, we still got back to the same thing. I
18 explained to this young attorney that we were on a
19 different path. Does that make sense?

20 Q Yes.

21 A Whether or not I found an eyewitness, and the
22 eyewitness said, "Oh, by the way I saw him" --
23 right -- or we found the eyewitness and the
24 eyewitness said, "I never saw any of that," still
25 puts me back to the same: This place was robbed.

1 The hat was taken. The shooting was somewhat
2 nearby. The window tint. That theory would have
3 been unchanged in my mind.

4 Q So to rephrase the question: Do you think that the
5 prosecutorial misconduct had -- do you think the
6 case should have been dismissed based on
7 prosecutorial misconduct?

8 A I think it was as close a case for dismissal, other
9 than I one I just told you about, as I have seen.
10 However, you know, defense lawyers see defenses --
11 that should have been dismissed a lot different
12 than judges do.

13 So for me to say, "Heck, yeah. It should have
14 been dismissed," kind of begs the issue, doesn't
15 it? I would have loved for a bunch of other things
16 to have been dismissed and reflect on them years
17 later, and I was probably wrong.

18 I will tell you that this one made it much
19 more difficult to defend this young man. He was a
20 straight and honest and good client the whole time
21 we had him.

22 Q Attorney Chandler, also, this case was based on
23 circumstantial evidence; is that correct?

24 A Yes, sir.

25 Q Do you think the jury was swayed or prejudiced by

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1 the fact that perhaps his brother did not have the
2 opportunity to testify to say that he did not lie
3 to the police as to his identity?

4 A I would not have called his brother on that issue.
5 I saw that as a tertiary issue at best and lost the
6 ability to argue last on a circumstantial evidence
7 case. If I was wrong in that, I am wrong now; but
8 it's a retrospective error. That was my strategy
9 and Shaun's strategy, and we stuck to it.

10 The thing that really hurt me in this case was
11 they came back and offered us some good stuff for a
12 plea versus the incredible length of time this
13 young man was facing. We talked to him about that
14 long and hard. That was his decision and I
15 respected it.

16 What I saw in this case, sir, was that we got
17 momentum early for the reasons we talked about. We
18 got some very good momentum. We were going up and
19 they were starting to offer and look at some stuff
20 for us.

21 I was afraid I was going to hear the stall
22 horn at some point, and it was not going to go well
23 at the end. But it went all the way through to the
24 point that it was pretty even.

25 But when we were up there with some

1 significant momentum, in retrospect I wish I had
2 argued harder for a lesser sentence on his behalf,
3 look at his life in this situation.

4 MR. GRIFFITH: If it please the Court, Your
5 Honor. I would like to bring these affidavits for this
6 witness.

7 THE COURT: Yes, sir.

8 THE WITNESS: I've got my assistant's glasses
9 in that I left my dollar glasses at home today.

10 BY MR. GRIFFITH:

11 Q These are three affidavits that were evidently
12 submitted after this trial based on the testimony
13 of Mr. Kent.

14 A Yes, sir.

15 Q Have you had an opportunity to look at those?

16 A If you will give me just a minute, please.

17 Q Certainly.

18 A (Pause.) This may have been -- I am looking at the
19 affidavit of Tavaris Felder. This may have been
20 when they went over to the card game place. I'm
21 not sure. I don't recall that. I know where
22 Spanish Garden is in Wedgefield.

23 I do recall that they looked amazingly
24 similar. I don't know if I saw a driver's license
25 picture or I saw him. I just can't recall that,

RAY CHANDLER -- CROSS -- MR. GRIFFITH

1 but they were amazingly in stature, et cetera,
2 amazingly similar.

3 I am looking at Stacy Caughman's now, Counsel.
4 I knew that vehicle was registered to Ida Mae. I
5 just didn't want to guess at that. When I was
6 testifying, I remembered that was the third party
7 vehicle. I also remembered it was a Buick.

8 The tint/no tint issue was an issue that was
9 raised by Mr. Flewelling, who was absolutely
10 incensed that they were lying about the tinting.
11 He was absolutely incensed. There was something
12 else in the car, and I can't recall it. There was
13 something else in the car that we raised as an
14 issue.

15 I think the testimony was that they saw a
16 white Buick in the area, and I'm not sure that at
17 some point the police may have stopped that Buick
18 in the area, and Ms. Caughman was in it during that
19 period of time.

20 What I can't remember is the length of time
21 when Ms. Caughman was in it versus the shooting.
22 It was post shooting. I just can't recall it. I
23 would not have put her up for the same reason that
24 I testified to earlier about the strategy. Okay?

25 It's not going to change in my mind the issue

1 because I think I cross examined the officer -- and
2 I could be corrected -- on the tint issue, the tint
3 issue. I wore him out, you know, on the tint
4 issue. I absolutely wore him out in front of that
5 jury.

6 So I would not have thought to call this other
7 lady. One of the reasons, I think, that concerned
8 me about her, although she was very pleasant and
9 believable, she was the person that made that 9-1-1
10 call, I think.

11 Q Yes, sir.

12 A And there was some squirrel about the 9-1-1 call,
13 and we just didn't want to get it in -- you know,
14 get it on our side and have to try to clean it up.
15 Let me look at Ms. Ida Mae's.

16 Q Well, having looked at those that you have had
17 time, do you think those would have been -- had
18 that information been brought to light, it would
19 have impacted his opportunity to have been
20 acquitted at the trial?

21 A I know where you are going. If you had to say -- I
22 think the information, as Mr. Kent testified, was
23 brought to light. Whether it was -- you know,
24 actually I was thrilled at the way that issue went
25 in trial.

RAY CHANDLER -- CROSS -- MR. GRIFFITH

1 Even if it had not gone that well, I would not
2 have abandoned the argue-last strategy on that
3 issue. I think now we have the white Buick issue
4 going away. Whether it was tint or no tint, they
5 owned a white Buick. They had a red hat.

6 There was a distance between where they had
7 the robbery and the time of the shooting. That was
8 within seconds or 45 seconds of when you could have
9 gotten there and the shooting been done.

10 That was what the prosecution argued. We
11 thought that was "whooley." But that's what they
12 argued. I go back and say that I thought that was
13 the linchpin of the case.

14 Q Attorney Chandler, would you call this new evidence
15 that perhaps may have impacted the trial?

16 A Call what new evidence?

17 Q The information in those affidavits.

18 A The tint?

19 Q The information in the affidavits.

20 A No, sir. There are two things I see in the
21 affidavits. One is the resemblance issue that they
22 would have argued, you know, he was trying to cover
23 himself up.

24 Then the issue of the tint and the color of
25 the Buick, we knew that all along because I think

1 at some point -- correct me if I'm wrong -- that
2 that car was impounded. We then went and
3 independently took like 18 or 20 pictures of it and
4 went through a person in window tinting. It was a
5 white Buick.

6 Q Thank you. I have no further questions.

7 A And I think it was in the evening. So, I mean,
8 that's where I am.

9 Q Thank you, Counselor. I have no further questions.

10 MS. COLEMAN: Nothing further.

11 THE COURT: Sir, you may step down.

12 THE WITNESS: Thank you, Judge. It's good to
13 see you, sir.

14 THE COURT: You too, sir.

15 (The witness leaves the witness stand.)

16 MS. COLEMAN: The State has no further
17 witnesses, but we would request a brief closing
18 argument.

19 THE COURT: Anything in closing, Mr. Griffith?

20 MR. GRIFFITH: Yes, Your Honor. We would
21 argue that there is new evidence not presented at trial.
22 The case was a circumstantial case, and it was very
23 important in this case for the jury to believe
24 Mr. Felder over the State and to believe his side of the
25 story.

1 We believe that had the evidence been brought
2 forth as Mr. Felder had testified, that it was his
3 brother who came to the door rather than him who came to
4 the door, his credibility with the jury would be
5 substantially improved.

6 This evidence, whether new or whether just not
7 presented, had an impact on the outcome of the trial and
8 his credibility. So by not presenting this evidence or
9 not being aware of the evidence, counsel, whether it's
10 new evidence or whether it was just not presented, Your
11 Honor, counsel was ineffective if it was known to them
12 by not presenting it to the jury, which would have
13 enhanced his credibility or if it's new evidence, Your
14 Honor, it should have been presented to the jury and
15 should be cause for a new trial.

16 As to the prosecutorial misconduct, I believe
17 that's an issue that is generally handled in the appeals
18 court. But, Your Honor, it did rise to a level that I
19 believe impacted the trial and impacted the ability of
20 the attorneys to protect his rights and to have
21 presented the case in a timely manner, as well as having
22 to expend additional time because of the prosecutorial
23 misconduct going down the wrong areas of investigation,
24 et cetera. I believe that that would be reason for the
25 Court to find that he may have the right to a new trial.

1 THE COURT: Thank you, sir.

2 Yes, ma'am.

3 MS. COLEMAN: Your Honor, in regards to the
4 issue of new evidence, I would submit that this was not
5 one of his allegations. And even if it were, none of
6 this rises to the level of newly discovered evidence or
7 after-discovered evidence.

8 Both attorneys testified on the stand they
9 were aware of all of the things that were written in
10 these affidavits. They chose not to use them as part of
11 their trial tragedy. These witnesses were not presented
12 as a matter of strategy.

13 As far as prosecutorial misconduct goes,
14 normally I would present Mr. Catherine Fant, who was the
15 solicitor on the case. Obviously she is no longer with
16 us and is unable to testify. I ask that you give us
17 some deference in that respect.

18 I could put up John Meadors, who ended up
19 prosecuting the case or Solicitor Finney, but I really
20 think that this can be argued just from the record, the
21 transcript of the trial.

22 All of this was argued on the transcript. It
23 was presented to the judge. They described in detail
24 every grievance they had against Solicitor Fant. The
25 trial judge ruled against them. He found on the record

1 that it did not prejudice him in terms of being able to
2 go to trial and being prepared to present at trial.

3 By the time that Mr. Meadors took over the
4 case or Solicitor Meadors took over the case, he had
5 given them every piece of discovery that they needed and
6 more, I believe. They had no problems working with him.

7 All of this is on the record. So the judge
8 was presented with all this information, and he found
9 that they weren't prejudiced at the time. He granted
10 part of their motion and did not let the State present
11 one of their witnesses in response to the discovery
12 issue that they had had with the prosecutor on this
13 case.

14 Furthermore, I would argue that prosecutorial
15 misconduct is a direct appeal issue that should have
16 been raised on appeal. They did not raise it on their
17 appeal. They argued two other issues and not this one.
18 So he has waived his right to bring that up on PCR.

19 I don't think there was any issue, any proof
20 presented today that would satisfy his burden of proof
21 as far as the stipulation goes or the statement, the
22 statement that included the fact that he was out on
23 bond. I don't think that prejudices his case.

24 Both attorneys said that that was not
25 prejudicial. It was not a linchpin issue they

1 testified. I believe that's everything. So we are
2 asking that you deny his application for post conviction
3 relief. Thank you.

4 THE COURT: I will take a look at it and I
5 will let you all know.

6 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third 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 the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Sumter County, South Carolina, on the 28th day of March, 2017.

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

July 5, 2017

s/L.Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2017 MAY 18 PM 1:55

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Antrell R. Felder, #309617,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43-1492

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 23, 2014. Respondent submitted its Return on September 29, 2014. An evidentiary hearing was convened on March 28, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial attorneys, Shaun Kent, Esquire, and Ray Chandler, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the January 2009 term of the Sumter County Grand Jury for murder and possession of firearm or knife during the commission of a violent

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crime (2009-GS-43-0059). Shaun Kent, Esquire, and Ray Chandler, Esquire, represented Applicant. On November 18, 2011, Applicant was convicted as indicted. The Honorable Howard P. King sentenced Applicant to forty two year term of imprisonment for murder and five year term of imprisonment for possession of a weapon during commission of a violent crime with all sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Antrell Felder, Op. No. 2013-UP-437 (Ct. App. filed November 27, 2013). The Remittitur was issued on December 13, 2013.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel

- a. "failing to articulate and argue dismissal of the criminal case at the pretrial hearing on the grounds of speedy trial rights violation."
- b. "failing to articulate and argue dismissal of the criminal case on the grounds of prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage."
- c. "failing to compel the attendance of solicitor Catherine Fant at the pretrial evidentiary motions hearing where solicitor's Fant actions and inactions were the core of the prosecutorial misconduct allegations and where solicitor Fant is the only individual privy to the information that will answer her actions and inactions and which will justify the trial court granting dismissal of the case based on prosecutorial misconduct."
- d. "failing to move for disqualification or recusal of the Third Circuit Solicitor's office for repeated actions of prosecutorial misconduct committed by Solicitor Catherine Fant which has prejudice the trial preparation and discovery defense development strategies of the Applicant."
- e. "failing to conduct a reasonable investigation and interview Tavares Felder, while Tavares Felder's pretrial hearing testimony and trial testimony would have established grounds

for suppression for the motion in limine and would have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made an in-court identification of the defendant faked his identity to elude law enforcement which in turn alluded to defendant's guilty of this crime and the correctness of the law enforcement officers' identification of defendant."

- f. "Trial Counsel Ineffective for stipulating to unredacted introduction of defendant's oral statement into trial evidence via detective Potteiger's report and trial testimony which emphasizes that the defendant was currently out on bond for a lynching charge," resulting in the unobjectionable introduction of inadmissible 'prior bad acts' and 'other crimes' to demonstrate defendant's propensity to violent and to chill defendant's willingness to exercise his right to testify in his defense."
 - g. "failing to conduct a reasonable investigation and interview of Stacey Caughman and Ida Mae Felder, where their pretrial hearing testimony and trial testimony will have established grounds for suppression for the pretrial motions and will have established a viable defense and rebuttal evidence against the law enforcement officers at trial who made in-court identification of Mrs. Ida Mae Felder's white automobile as being with tinted windows on the night of the crime, and who additionally testified that the tint on the windows were subsequently removed to obstruct and conceal from law enforcement that Mrs. Felder's white car is the 'tinted window' white car the eyewitness saw at the crime scene which in turn alluded to the defendant's guilt of this crime and to the integrity of law enforcement investigation of this case."
2. Due process violation
- a. "for the repeated actions of prosecutorial misconduct committed by solicitor Catherine Fant which was prejudiced the trial preparation and discovery and defense development strategies of the Applicant."
 - b. "for prosecutorial misconduct and the resulting prejudice as the result of solicitor Catherine Fant controlling and manipulating the trial docket of this case to gain an unconstitutional advantage."
3. Ineffective Assistance of Appellate Counsel
- a. "failing to evaluate and brief suppression of the phone records, the victim's pending burglaries, 'third party guilt' principles to impeach the investigation, and the trial judge's denial to dismiss the case on prosecutorial misconduct."

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III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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 (1985).

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V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified that Solicitor Catherine Fant told lies about his case so that he would not get bond. He testified that his trial attorneys were incompetent for failing to argue and have his case dismissed based on prosecutorial misconduct, and for failing to have Solicitor Catherine Fant present at the pretrial motion hearing to testify about her misconduct. He stated that his attorneys were ineffective for failing to present testimony from witnesses including Tavares Felder, Ida Mae Felder, and Stacey Caughman. Applicant presented affidavits with testimony from these witnesses.

Trial Counsel Shaun Kent testified that he met with Applicant more than ten times prior to trial to review discovery and discuss trial strategy. He stated that this was a murder case, but Applicant always maintained his innocence. He stated that there were no eye-witnesses; the worst evidence against Applicant was his hat which was found at the scene of the crime with his DNA on it. Mr. Kent testified that their trial strategy was to discredit the State's case and question the hat with Applicant's DNA. He stated that they made a motion for prosecutorial misconduct before the trial and argued it to the trial court because Solicitor Catherine Fant had withheld discovery and information about the case from the defense and had mentioned on the eve of trial that the State had an eye-witness, when there was actually no eye-witness to the crime. Mr. Kent testified that he did not believe that Applicant's trial was prejudiced by Ms. Fant's failure to turn over discovery because by the time they tried the case they had all the discovery material and were fully prepared for trial.

Mr. Kent testified that Applicant gave him lots of witnesses to track down and he investigated all of them, but he did not find them useful or credible. He stated that they had a lengthy investigation and they spent a lot of time chasing down "rabbit holes" to investigate

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issues that were not helpful in the end. Mr. Kent testified that he discussed stipulating to Applicant's oral statement with him before the trial, and Applicant agreed with their decision to do so and had no problem with it. He testified that he believed he investigated Tavares Felder, Ida Mae Felder, and Stacey Caughman and chose not to use them at trial because they were not good witnesses; they were in Applicant's family, and they were not very credible. He stated that he does not believe that their testimony would have changed the outcome of the trial. He stated that they made a decision not to have Applicant testify at trial because they wanted the last word in closing argument and because he did not believe that Applicant was a credible witness. He stated that there was no new evidence presented in the affidavits Applicant presented to this Court at the evidentiary hearing.

Trial Counsel Ray Chandler testified that he met with Applicant more than ten times, and he met several times with Applicant's family, his investigator, and other witnesses. He stated that Applicant looked very much like his brother, Tavares, who law enforcement testified about at trial; this was an issue in the case, but it was not the "lynchpin issue" that led to his conviction. He stated that it was their trial strategy not to present any witnesses so that they could have the last closing argument before the jury, and they believed this strategy was better for them than trying to present alibi witnesses. He testified that if their decision not to call these witnesses was wrong, then it is a retrospective error; this was their strategy at the time, and they stuck to it.

Mr. Chandler testified that, in his opinion, if Catherine Fant were present at the pre-trial motions hearing over prosecutorial misconduct, she would have gotten "a slap on the wrist" but it would not have changed the trial or helped his case to have her there. He stated that their prosecutorial misconduct motions would not have been successful even if Solicitor Fant had been in attendance.

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VI. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

Failure to argue dismissal of charges for violation of speedy trial rights

Applicant alleges that Trial Counsel was ineffective for failing to argue for the dismissal of his charges based on the violation of his right to a speedy trial. This allegation is meritless. Applicant's attorneys testified that they moved for a speedy trial in this case, but their motion was denied. While Mr. Kent did testify that the case possibly could have turned out differently if it were tried faster because it would have been tried with different solicitors, this Court finds that Applicant has failed to meet this burden of proving prejudice. The trial transcript shows that by the time this case was called for trial, Applicant's attorneys had enough time to get the complete

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discovery material and all potential prosecutorial misconduct issues had been cured by the new solicitor who tried the case.

Trial Counsel was not deficient for failing to argue for a speedy trial because they did, in fact, argue on this basis. Finally, Applicant has not proven that he was prejudiced. Therefore, this allegation is denied and dismissed with prejudice.

Failure to argue dismissal of charge for prosecutorial misconduct

Applicant alleges that Trial Counsel was ineffective for failing to argue and have his case dismissed based on allegations of prosecutorial misconduct. This allegation is meritless. The trial transcript clearly illustrates that Applicant's attorneys did move to have the case dismissed for prosecutorial misconduct before the trial was held. Mr. Kent argued the motion and requested that the case be dropped, that the case be continued to allow more time to prepare, or that the State be prohibited from using an expert witness that they were not aware of until the eve of trial. The trial court heard Trial Counsel's entire argument on the issue, considered the issue fully including prejudice to Applicant, and denied his motion to dismiss the charges. However, the trial court did grant relief by excluding testimony from the State's expert witness based on prejudice to Applicant.

It is clear from the record before the Court and from the testimony presented at the evidentiary hearing that the prosecutorial misconduct issues were argued and ruled upon by the trial court. Therefore, Trial Counsel cannot be deficient for failing to argue this issue. Furthermore, as the trial court held before the trial, Applicant was not prejudiced by the denial of this motion because he was fully prepared for trial, had all discovery materials, and the State's witness was not allowed to testify against him. Therefore, because there was neither deficiency nor prejudice, this allegation is denied and dismissed with prejudice.

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Failure to compel attendance of Solicitor Catherine Fant at pre-trial hearing

Applicant alleges that Trial Counsel was ineffective for failing to compel the attendance of Solicitor Catherine Fant at the pre-trial hearing on his motion for prosecutorial misconduct, resulting in the denial of his motion. This allegation is meritless. Trial Counsel was not deficient for choosing not to involve Solicitor Fant in the hearing. Furthermore, Applicant can show no prejudice from the fact that she was not at the hearing. Both Mr. Kent and Mr. Chandler credibly testified at the evidentiary hearing that if Solicitor Fant had been present, it would not have changed the outcome of the hearing or of the case. This Court agrees. Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to move to recuse Third Circuit Solicitor's Office

Applicant alleges that Trial Counsel was ineffective for failing to move to recuse the entire Third Circuit Solicitor's Office from his case based on his allegations of prosecutorial misconduct. This allegation is meritless.

Applicant has failed to meet his burden of proving that any motion to recuse the entire solicitor's office would be successful, especially in light of the fact that the trial court denied his motion for prosecutorial misconduct. It is unlikely that this motion would have been granted. Furthermore, even if this motion were granted, the trial would still have been held, and although the prosecutors would have differed, the evidence and the jury pool would have been the same. Applicant cannot prove that the result of the trial would have been different under these circumstances. Applicant has not proven that the Third Circuit Solicitor's Office prosecuted the case in an inappropriate manner by the time the case went to trial, and the trial likely would have been the same regardless of who was prosecuting. Therefore, this Court finds that Trial Counsel

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was not deficient and Applicant has shown no prejudice but the mere speculation that the result of the trial would have been different. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to investigate

Applicant alleges that Trial Counsel is ineffective for failing to investigate his case and interview potential witnesses that would have changed the outcome of his case. This allegation is meritless.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Mr. Kent and Mr. Chandler credibly testified that they investigated and interviewed every potential witness that Applicant presented them. They stated that they met with Stacey Caughman several times. Their trial strategy was not to present any witnesses for the defense in order to have the last closing argument, and they testified that they knew about the information these witnesses planned to testify about. Mr. Kent and Mr. Chandler credibly testified that these witnesses would not have been credible for multiple reasons, and it was their strategic decision

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not to use them at trial. This Court will not question that strategy in retrospect, and finds that Trial Counsel was not deficient in choosing not to use these witnesses at trial.

Furthermore, Applicant can prove no prejudice because he did not present the testimony of these witnesses that he alleges would have changed the outcome of the case. "In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence." *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Id.* This Court notes that, while the witness's affidavits were part of the record before the Court as part of Applicant's application for post-conviction relief, these affidavits cannot be used to satisfy Applicant's burden of proof because the witnesses were not available for cross-examination by the opposing party.

Because Applicant has failed to prove deficiency and prejudice, this allegation is denied and dismissed with prejudice.

Stipulating to unredacted oral statement

Applicant alleges that Trial Counsel was ineffective for stipulating to the admission of an oral statement Applicant gave law enforcement without redacting information within about how Applicant was out on bond for another crime. Trial Counsel credibly testified that he discussed this stipulation before the trial and Applicant did not raise this issue; Applicant understood and agreed with the decision to stipulate. The statement was a voluntary statement given by Applicant to law enforcement, and it is unlikely that Applicant could have kept it out of evidence. Furthermore, this Court finds there was no prejudice from the introduction of this

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evidence, and that the Applicant's comment that he was out on bond for another crime did not change the jury's verdict. Therefore, this allegation is denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Applicant cannot satisfy either requirement of the Strickland test.

This Court finds that Applicant has failed to meet his burden of proving that Appellate Counsel was deficient in choosing not to brief any of the issues he alleged should have been

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briefed, and that there was prejudice to Applicant by the failure to brief these issues. Because Applicant failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has not carried his burden of proving actual prosecutorial misconduct; therefore, this allegation must be dismissed.

While both trial attorneys testified that they experienced difficulty getting discovery material from the former Solicitor who prosecuted the case and that there was a confrontation between the parties about potential witnesses of the case, this Court finds that there was no prejudice to Applicant. Applicant's attorneys made a motion to dismiss the case based on prosecutorial misconduct to the trial court before the trial began. The trial transcript shows that Trial Counsel fully argued this motion and requested relief from the trial court before the case was heard. The trial court heard the full argument, considered the effect of these actions on Applicant, and denied the motion. As the trial court pointed out in the transcript, by the time the case was called for trial, the State had addressed all issues with discovery and turned over every

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piece of Rule 5 material to which Applicant was entitled. Furthermore, the trial court ruled that it would not allow the testimony of one of the State's witnesses because it would result in prejudice to Applicant in the face of the complications with the Solicitor's Office.

This Court finds that all issues of prosecutorial misconduct were fully heard and ruled upon by the trial court in this case, and Applicant has failed to prove that he was prejudiced by any of the Solicitor's actions that should result in a new trial. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

VII. 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 notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

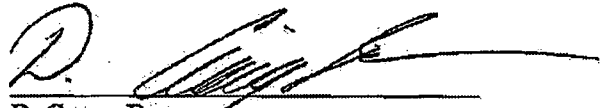
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behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of May, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

MURDER, POSSESSION OF FIREARM OR
KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME

CERTIFIED TRUE COPY
OF ORIGINAL FILE

At a Court of General Sessions, convened on December 31, 2008, the Grand

Jurors of SUMTER County present upon their oath:

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE – MURDER

That ANTRELL RASHAWN FELDER did in Sumter County on or about July 18, 2008, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one William McKenzie by means of shooting him with a handgun, and that the said William McKenzie did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

That ANTRELL RASHAWN FELDER did in Sumter County on or about July 18, 2008, was in possession of and did visibly display a knife during the commission of a violent crime, to-wit: murder, a violent crime as defined in Section 16-1-60, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

P. Kelly Jackson

SOLICITOR

WITNESSES

SPD

Potteiger

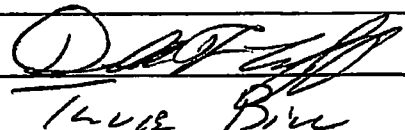
Lyons

ARREST WARRANT NUMBER

J304487

D/A: 07/19/08

ACTION OF GRAND JURY


Foreperson of Grand Jury

Date: 31 December 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43-0059

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE

vs.

ANTRELL RASHAWN FELDER

Indictment for

**MURDER, POSSESSION OF FIREARM
OR KNIFE DURING THE COMMISSION
OF A VIOLENT CRIME**

C. KELLY JACKSON, SOLICITOR