
The State of South Carolina

In the Supreme Court

PETITION FOR A WRIT OF CERTIORARI FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2016-001481

MAURICE LIONEL ABRAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX
VOLUME II OF II
(Pages 535 – 826)

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FORM 5

STATE OF SOUTH CAROLINA)

County of Sumter)

IN THE COURT OF COMMON PLEAS

2012 APR 17 AM 11:58

JAMES J. GRIFFELL
CLERK OF COURT
SUMTER COUNTY, S.C.

SC004
Maurice Abrams 346362)

Full name and prison number (if any) of Applicant)
(NOTIFIED) TRUE COPY
OF ORIGINAL FILE

v.

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

2012-GP-43-713

APPLICATION FOR

State of South Carolina)

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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Sumter County
General Session
3. Name(s) of co-defendant(s) (if any) Tony Lowery + Fredrick
Oneal Owens
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010 GS 43-0885 Murder

- (b) Armed Robbery
- (c) Burglary First degree
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 8th Murder - Life
- (b) Burglary First Degree - Life
- (c) Armed Robbery - 30
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: .
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Ineffective Assistance of Counsel

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
(a) Failure to call witnesses
(b) Failure to object to Evidence
(c) Conflict of Interest
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
(a) Failure to call witness
(b) Failure to object to evidence / Brady Violations
(c) Conflict of Interest / First attorney represented victim in case
12. Prior to this application have you filed with respect to this conviction:
(a) any petition in a State Court under South Carolina Law? _____
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
(d) any other petitions, motions or applications in this or any other Court? _____
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) Dismissal of Appeal was granted
 - (b) Trial Counsel never properly reserved any good issues
 - (c) to ~~seek~~ get any relief
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (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? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Charles T. Brooks ~~III~~
The Brooks Law Office, LLC
 - ii. Post Office Box 3512
Sumter SC 29151
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. June 6, 2009 through June 8, 2009
Trial
 - ii. _____
 - iii. _____

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

Set aside the verdict and asking for
a retrial...

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, Maurice Abrams, 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.

Maurice Abrams

SWORN to and subscribed before me this 29
day of March

Debra Series (L.S.)
Notary Public

My Commission Expires: 11-4-2015

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-43-713

RETURN

v.

Respondent.

I.

1 of 4

A Notice of Appeal was filed with the South Carolina Court of Appeals. An Order of Dismissal was issued on March 15, 2012 after Applicant notified the Court of his desire to withdraw the appeal. The Remittitur was issued on April 24, 2012.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel.
 - a. "Failure to call witnesses."
 - b. "Failure to object to evidence/Brady violations."
 - c. "Conflict of Interest/exist attorney represented victim in this case."

Any claims not specifically enumerated in the post-conviction 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.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

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

V.

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

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

November 30 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2012-CP-43-0713
	)	
MAURICE ABRAMS, 346362,	)	
	)	
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:

Bradley Kirkland, Esquire
Bradley M. Kirkland, LLC
2007 Lincoln St.
Columbia, SC 29201

DATED this 30th day of November, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
 MAURICE ABRAMS,	)	 CASE NO.: 2012-CP-43-713
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

Applicant, amending his application for Post Conviction Relief dated April 17, 2012, further alleges as additional grounds regarding his claim of ineffective assistance of counsel as follows:

1. Applicant's trial counsel, Charles Brooks, III, failed to visit Mr. Abrams a sufficient number of times prior to trial to prepare the case for trial. Applicant retained Mr. Brooks for two murder cases: the "Dubose Siding" case and the "Markeith Ford" case. The Markeith Ford case is the subject of this PCR. Applicant maintains that Mr. Brooks did not meet with him at all concerning the Markeith Ford case. Mr. Abrams became aware of a trial date on the Markeith Ford case the first day of trial. On that day he was transported to the Courthouse and informed his trial would begin that week. At that meeting Mr. Abrams made Mr. Brooks aware of issues 2-4 of this PCR application. Mr. Brooks took no steps to investigate the issues prior to trial.
2. Counsel failed to move to suppress several items introduced at the trial of Mr. Abrams. Mr. Abrams specifically asked Mr. Brooks to make the motions and Mr. Brooks failed to do so.

- a. Mr. Brooks failed to make a motion to suppress the introduction of the items found as a result of a search of Mr. Abrams car. Mr. Abrams claims that the car was seized without a warrant. A warrant was obtained the next day to search the car.
 - b. Mr. Brooks failed to make a motion to suppress the El Cheapo's store video. Mr. Abrams claims that he is not on the video and it is impossible to see anything clearly on the video and therefore it should have been suppressed.
 - c. Mr. Brooks failed to make a motion to suppress the photo identification made by Tony Lowery.
3. Applicant's counsel failed to investigate and present an alibi defense on behalf of Mr. Abrams despite being informed of the defense by Mr. Abrams and his mother, Catherine McFadden.
 - a. The murder for which Mr. Abrams was convicted occurred on May 19, 2009. (Transcript pp. 79-80, 116)
 - b. On that night and at that time Mr. Abrams was with his mother and other family members in the Spanish Gardens Apartment complex.
4. Counsel failed to call witnesses that would have discredited the testimony of the co-defendants at Mr. Abrams' trial and failed to properly cross examine the witnesses called by the state at trial. The primary witnesses against Mr. Abrams were Tony Lowery and Frederick O'Neal Owens. Owens and Lowery claimed that they were with Mr. Abrams at the time of the murder. (Transcript 232-234, 303-306)
 - a. Both witnesses claimed that Terrance Lemon was with them during the murder and that he participated in the crime. (Transcript pp. 219-238, 261-276, 290-291,

296-299, 303-305, 322-323, 326-329, 334). Mr. Lemon was accused of setting up the robbery and providing a gun for the robbery. Mr. Lemon was never charged in the offense. Mr. Lemon denies that he was present during the offense or that he was involved in any way with the offense. Mr. Lemon was not called as a witness at Mr. Abram's trial.

- b. At trial, Tony Lowery claimed that Steve Witherspoon saw Mr. Abrams after the robbery with a large block of marijuana that he had stolen from Markeith Ford. (Transcript pp. 308-310). Steve Witherspoon was also with them just prior to the robbery at El Cheapo's gas station. (Transcript p. 296). Steve Witherspoon was not interviewed or called as a witness and denies being involved in the case.
- c. Tony Lowery provided two separate written statements to the police. In the first statement Mr. Lowery claimed that Mr. Witherspoon picked him up on the way to Fred Owen's house. They went to Lee's Grocery (aka El Cheapo's) to pick up a friend of Witherspoon named JuJu. Maurice and two of his friends were there. (Presumably Terrance Lemon and Frederick Owens). Lowery went to the restroom and when he returned Maurice and the two others were gone. Moe (aka Maurice) called Witherspoon's phone and told them to meet up at Gate gas station. When they arrived at Gate Witherspoon had to leave to take his kids home. Maurice asked Lowery to ride with him because he was feeling sleepy and needed to take the two others home. They then did the robbery but Lowery was not ever told there would be a robbery. Two days later Lowery was with Witherspoon. Maurice called Witherspoon's phone and asked him to come over.

They rode over to Maurice's home and showed Witherspoon a big block of marijuana in his trunk they they stole during the robbery/murder.

- d. In the second statement by Lowery he admitted that he had not told the truth in his first statement. He claimed that Fred Owens, a co-defendant, called him to help with his computer. He walked over to Owens' house. While there Owens said he needed a ride somewhere so Lowery called Witherspoon to pick them up. Witherspoon arrived with Abrams following in his own vehicle. Witherspoon had his kid with him so Owens and Lowery got in Abrams' car and went to El Cheapo's. Lowery went to use the restroom and when he got back Witherspoon was gone. They all got in the car to pick up Terrance Lemon on Harrison Street. They then went to do the robbery/murder and Lowery knew nothing about it. After the robbery they went down the street and Lowery jumped out the car and called Witherspoon to come get him. He told Witherspoon that, "Your stupid ass cousin just shot someone and I need to get away from him." Witherspoon picked him up. He said 2 days later he saw the brick of marijuana as indicated in his first statement.
 - e. Mr. Lowery's testimony was most similar to his second statement although most of the details were omitted.
5. Counsel failed to object to the introduction of several pieces of physical evidence that had not been provided to the defense prior to trial.
- a. Counsel failed to object to the introduction of the bullet fragments entered into evidence. (Counsel for Applicant believes these items are Exhibit Nos.: 19, 29; Transcript pp. 194-195).

- b. Counsel failed to object to the gunshot residue and the witnesses that testified concerning the gunshot residue that was found on the jacket. (Exhibit 30, 31; Transcript pp. 376-391).
 - c. Counsel failed to object to the introduction of the red jacket on the basis that it was a Rule 5/Brady violation and it was the result of an illegal search.
6. Counsel failed to disclose to Applicant a conflict of interest in representing Applicant. Applicant has learned that Mr. Brooks represented George Tomson in a lawsuit against Anthony Nocerino. Nocerino was the victim in the "Dubose Siding" murder case. In that case Mr. Abrams was accused of murdering Nocerino. Applicant believes that the murder of Mr. Nocerino prevented the civil suit from going forward and Mr. Brooks should have made the applicant aware of the potential conflict.

Respectfully submitted,



BRADLEY M. KIRKLAND

Attorney for Applicant
Bradley M. Kirkland, LLC
2007 Lincoln Street
Columbia, SC 29201
803-386-1116 Phone
803-403-8000 Fax
bkirkland@gmail.com

This 2nd day of September, 2013.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
Maurice Lionel Abrams,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF PCR
	)	C/A No: 2012-CP-43-713
v.	)	
	)	
State of South Carolina,	)	
	)	
DEFENDANT.	)	
_____	)	

Sumter County Courthouse
December 19, 2013

BEFORE:

HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Attorney General Mary S. Williams
Attorney for State of South Carolina

Bradley Myers Kirkland, Esquire
Attorney for Maurice Lionel Abrams

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

3

1 MR. KIRKLAND: The first witness that I'm going to
2 call, Your Honor, is Maurice Abrams.

3 THE COURT: Okay. Come around, Mr. Abrams, and let
4 the bailiff swear you in, please, sir.

5 **MAURICE ABRAMS,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 **MR. ABRAMS - EXAMINATION BY MR. KIRKLAND:**

9 Q: All right. Maurice, how old are you right now?

10 A: Twenty-four.

11 Q: Where are you currently housed?

12 A: Lee Correctional.

13 Q: They've already mentioned what you were convicted
14 of. Was that an accurate representation of your
15 convictions and your sentences?

16 A: Yes, sir.

17 Q: Okay. We won't go back through those. Now, did you
18 go to trial or did you plead guilty to your offense?

19 A: Trial.

20 Q: Well, I'm going to jump go right into it Maurice.
21 You were convicted of a murder involving Markeith Ford.
22 Markeith Ford would be the victim; correct?

23 A: Yes, sir.

24 Q: Now, tell me about when you first realized that you
25 were a suspect in this case? What was going on at that

MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

4

1 period of time?

2 A: Actually, during that time I was -- I'd just, I'd
3 just graduated school. It was actually a military school
4 in Aiken. I was going into the military actually.

5 Q: Okay. And when you found out -- so you were not in
6 school at the time; correct?

7 A: Yes, sir.

8 Q: So when you found out that you were a suspect in the
9 Markeith Ford case, where were you? Do you remember
10 where you were?

11 A: I was in Connecticut.

12 Q: You were in Connecticut? What were you doing in
13 Connecticut?

14 A: I was visiting family members.

15 Q: Okay. Now, how did you find out that you were
16 suspect in this case?

17 A: My aunt. My aunt called me and she was like you on
18 the news. That's how I found out.

19 Q: Okay. And so she said you were on the news as a
20 suspect in the case, I assume?

21 A: Yes.

22 Q: In response to that, what did you do?

23 A: I came back down here to South Carolina and turned
24 myself in.

25 Q: Were you just visiting Connecticut or had you moved

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5

1 up there?

2 A: I was just visiting, yes.

3 Q: Okay. So you may not remember this, but do you
4 remember the approximate date that you came down and
5 turned yourself in?

6 A: It was June 12 of 2009.

7 Q: Okay. Now, when you turned yourself in, tell me
8 what happened with your attorney? Were you appointed an
9 attorney did you retain an attorney, what happened?

10 A: I was appointed an attorney, Timothy Murphy.

11 Q: All right. Do you remember the approximate dates?
12 Because I think later on Charles Brooks was representing
13 you. Do you remember the approximate dates that Timothy
14 Murphy represented you?

15 A: I think it was like six months.

16 Q: Okay.

17 A: I'm not sure.

18 Q: Now, did you get to meet with Timothy Murphy?

19 A: Yes. Yes.

20 Q: Now, at the point that Charles Brooks was hired,
21 tell me about the background of that. Were you
22 dissatisfied with Timothy Murphy? Just tell me what was
23 going on?

24 A: Yeah. I was. I was, actually.

25 Q: Okay.

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6

1 A: We hired Charles Brooks to represent me.

2 Q: And about when was that?

3 A: February of 2010.

4 Q: Of 2010?

5 A: Yes, sir.

6 Q: Now, do you remember when the first time was that
7 you met Charles Brooks?

8 A: Was February 2010, I believe.

9 Q: And where did you meet him?

10 A: It was actually at the county.

11 Q: Say that again?

12 A: It was at the county.

13 Q: I'm not from here. So is that the ...

14 A: Sumter County.

15 Q: Is that Sumter/Lee Regional?

16 A: Yes.

17 Q: Okay. Now, when he was retained, there was a lot
18 going on with you and we need to make sure the Judge is
19 able to understand this. What was he retained to
20 represent you on?

21 A. It was three cases.

22 Q. Okay. Now, let's just -- what is the first case?

23 A. Dubose Siding case?

24 Q. Okay. Now, the Dubose Siding case.

25 MR. KIRKLAND: And that's what we're going to call

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7

1 this throughout the day, Your Honor, the Dubose Siding
2 case.

3 THE COURT: Okay.

4 Q: Tell me what that case was about?

5 A: It was another murder.

6 Q: Okay. That was a murder?

7 A: Yeah.

8 Q: Okay. So he was retained on the Dubose Siding and
9 he was retained on what else?

10 A: Jennifer Kyle. It was the Jennifer Kyle case.

11 Q: Okay. So we're going to call that one the Jennifer
12 Kyle case. Now, tell me about, what were those charges?

13 A: Assault and Battery with intent to kill.

14 Q: Okay. And what was the final case?

15 A: Markeith Ford.

16 Q: Okay. Now, the Markeith Ford one, that's the one
17 we're here for today; right?

18 A: Yes, sir.

19 Q: So we have the Dubose Siding case, which was a
20 murder case; the Jennifer Kyle case, which was an assault
21 and battery type case; and, then the Markeith Ford, which
22 is this case, which is a murder case. Okay. Now, tell
23 me about your meetings with Mr. Brooks. Do you remember
24 what happened at the first meeting? You said you met him
25 some time in February?

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8

1 A: He came to see me. We discussed the Jennifer Kyle
2 case and also the Dubose Siding. But we didn't have the
3 motion for the Markeith Ford case yet.

4 Q: So you talked about the Jennifer Kyle, and the
5 Dubose Siding. And did you have the discovery materials
6 for any of those cases at the time?

7 A: The Jennifer Kyle and Dubose Siding.

8 Q: Oh, you did have -- you had that, the discovery for
9 those two cases?

10 A: Yes.

11 Q: But you're saying you did not have the discovery for
12 this Markeith Ford case that we're here for today?

13 A: Yes, sir.

14 Q: Okay. Now, do you remember what you two talkld
15 about during that meeting?

16 A: We talked about the --- the majority of the Dubose
17 Siding case. And a little bit of the Jennifer Kyle. And
18 actually discussed a little bit of the alibi for this
19 case, the Markeith Ford case.

20 Q: Okay. I'm going to break this up so that we make it
21 easy for the Judge to follow us. Okay. You talked a
22 little bit about the Jennifer Kyle case?

23 A: Yes.

24 Q: Do you remember specifically what those discussions
25 were? If you don't, that's fine. It was a long time

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9

1 ago.

2 A: No, I don't remember.

3 Q: But you remember talking about that case?

4 A: Yeah.

5 Q: You remember talking about the Dubose Siding case?

6 A: Yes, sir.

7 Q: Did you talk about the discovery in those cases
8 since you had it?

9 A: We talked briefly about those two. We mainly talked
10 about the Dubose Siding. Like I said, I went to trial
11 for that.

12 Q: Okay. So that one was first up for trial?

13 A: Yes.

14 Q: Okay. Now, you said that you also briefly talked
15 about an alibi. Now, which case are we referring to when
16 you talk about this alibi?

17 A: The Markeith Ford.

18 Q: Okay. So that's the one we're here for today. So
19 in February 2010 you notified Mr. Brooks that you had a
20 potential alibi in the Markeith Ford case?

21 A: Yes, sir.

22 Q: Okay. I understand now. Now, after that meeting,
23 when was the next time that you talked to Mr. Brooks?

24 A: I actually talked to Mr. Brooks -- after that
25 meeting, it was at my trial.

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10

1 Q: Okay. The next time you met with him was at your
2 trial. Now, which trial are you referring to?

3 A: Markeith Ford.

4 Q: Now, correct me if I'm wrong. Was the Markeith Ford
5 case before the Dubose Siding case? Or was there a ...

6 A: It was after, actually.

7 Q: Okay. The Markeith Ford case was after the Dubose
8 Siding case?

9 A: Yes, sir.

10 Q: Okay. Well, let's not get confused here. Because
11 I'm kind of getting confused. So after you met with him
12 in February of 2010, when was the next time you saw him,
13 just laid eyes on him?

14 A: After February or August?

15 Q: After February?

16 A: I seen him one more time back in August of 2010.

17 Q: Okay. Now, let's talk about that. What was that
18 meeting in August about?

19 A: It was ...

20 Q: Where was it first and foremost? Where was the
21 meeting in August?

22 A: Lee Regional in the county.

23 Q: Okay. You met with him in county again in August.
24 And tell me, what did you guys talk about then?

25 A: Talked about the Dubose, Dubose Siding. We was

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11

1 going to trial then.

2 Q: Okay. Now when was -- in relation to when you met
3 him, when was the Dubose case? Was it a week away, a
4 month away, just approximately.

5 A: About a year, six months or something like that.

6 Q: So you didn't have a trial for a year after you met
7 with him in August?

8 A: Yes.

9 Q: Okay. Now ...

10 A: No, no, no, no. It was --- for the Dubose case?

11 Q: Yes, the Dubose case?

12 A: It was actually August 6th that we went to trial for
13 that one.

14 Q: All right. You're probably a little bit nervous and
15 that's perfectly natural. But what we're trying to do is
16 layout for the Judge the time line. So let's think about
17 everything just in order, okay? So you met with him in
18 February, you've already said?

19 A: Uh-huh (affirmative).

20 Q: And you met with him again in August. Okay. Now,
21 the Dubose Siding case, when was that after the meeting?
22 Just shortly after that?

23 A: It was, yes.

24 Q: Okay. All right. We're back on track here. Now,
25 at the meeting before the Dubose Siding case, what did

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12

1 you talk about at that, during that meeting?

2 A: We talked about the Dubose Siding trial, especially
3 Jennifer Kyle. We briefly talked about that.

4 Q: Okay. And the Dubose Siding case was in August --
5 what did you say?

6 A: August 6th through 8th, 2010.

7 Q: Okay. Okay. So after you met with him, did you see
8 him again prior to the Dubose Siding trial?

9 A: No.

10 Q: Okay. So then the next time you saw him was at the
11 Dubose Siding trial?

12 A: Yes.

13 Q: Okay. Now, tell -- I don't want you to go into any
14 details because we're not here for that case. What
15 happened, though, at the Dubose Siding trial?

16 A: Mistrial.

17 Q: That was a mistrial. Okay. That was on
18 approximately August 8th of 2010; correct?

19 A: Yes.

20 Q: All right. So at this point in time, just to make
21 sure we've got the time line straight, you met with
22 Brooks, Mr. Brooks -- excuse me -- in February of 2010.
23 And then again some time in August of 2010. And then you
24 saw him again at your trial for the Dubose Siding case in
25 August of 2010?

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13

1 A: Yes, sir, that's correct.

2 Q: Okay. Now, after the trial, let's talk about this
3 period of time after that trial. After that trial, do
4 you remember the next time that you saw him?

5 A: The next time I talked to him was June 6th of 2011,
6 the day of my trial.

7 Q: Okay. Now, when you say June 6, 2011, the day of
8 your trial, which trial was that?

9 A: Markeith Ford.

10 Q: Okay. So we have the August trial, Dubose Siding.
11 And then you don't see him again for approximately one
12 year, June 6, 2011?

13 A: That's correct.

14 Q: Okay. Now, let's talk about the time frame in
15 between the Dubose Siding trial and you seeing him on
16 June 6th, 2011. What sort of contact did you have with
17 Mr. Brooks during that period of time?

18 A: We corresponded. I was writing him letters.

19 Q: Okay. Let me show you a few things here. Tell me
20 if you recognize ...

21 MR. KIRKLAND: And this one should be the first one
22 in your package, Your Honor.

23 Q: Tell me if you recognize that document I've handed
24 you?

25 A: Yes, I do.

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1 Q: Just don't read the contents of it, but what is it?

2 A: It's a motion for a bond hearing.

3 Q: Is it the actual motion or is ...

4 A: Yes.

5 Q: Okay. And how did you receive this?

6 A: Through the mail. He mailed it to me.

7 Q: Okay. This was mailed to you from who?

8 A: Charles Brooks.

9 Q: Okay.

10 MR. KIRKLAND: I would offer this as Exhibit Number
11 1, Your Honor.

12 MS. WILLIAMS: And that's without objection.

13 THE COURT: Okay.

14 MS. WILLIAMS: If it's still -- I want to make sure
15 that I've got the right letter.

16 MR. KIRKLAND: April 7th, 2011.

17 THE COURT: Okay.

18 **(WHEREUPON, Plaintiff's Exhibit Number 1 was marked**
19 **and admitted into evidence.)**

20 Q: Tell me the -- well, first of all, what does this
21 letter say?

22 A: It say, please let this letter put you on notice
23 that that my client is requesting a speedy trial motion.

24 Q: Now, tell me, what is the background behind that
25 letter? Why was he writing a letter to the prosecutor

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15

1 and the court?

2 A: I wrote him. I was asking him for -- I was sitting
3 in county for two years. I was asking him, man, I need
4 bond or something.

5 Q: Now, at the point in time that you received this
6 letter, had you seen him any in person since the Dubose
7 Siding mistrial?

8 A: No, sir.

9 Q: Okay. So the only correspondence that you had had
10 with him at this point in time was by letter?

11 A: Yes.

12 Q: All right. I'm going to hand you what appears to be
13 another letter. Do you recognize this?

14 A: Yes, sir.

15 Q: And this is an April 20th, 2011 letter. Tell me why
16 you recognize this?

17 A: Because it's from Brooks and it's another one.

18 Q: Who is it to?

19 A: It's to me.

20 Q: Okay. So he sent you a copy of this letter?

21 A: Yes, sir.

22 MR. KIRKLAND: I would introduce the April 20th
23 letter as Defense [sic] Number 2.

24 MS. WILLIAMS: Without objection.

25 THE COURT: All right.

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1 (WHEREUPON, Plaintiff's Exhibit Number 2 was marked
2 and admitted into evidence.)

3 Q: Now, tell me -- and you don't have to read it. Just
4 tell me, what does this letter say? You can read it.

5 A: It's basically asking for another bond hearing.

6 Q: Okay. And so that was a little bit after the first
7 one?

8 A: Yes, sir.

9 Q: Okay. Now, do you know any background behind this
10 one? Had you had any correspondence with him in between
11 the first one and second one?

12 A: Yes. I was asking again for another bond hearing.
13 He didn't answer so we was asking again for a bond
14 hearing.

15 Q: Okay. Now, I'm going to hand you another letter.
16 And attached to this letter is an envelope. Tell me if
17 you recognize this?

18 A: Yes, sir. That's the letter ...

19 Q: Well, before you say what it is, this is a letter
20 from who to who?

21 A: It's a letter from Brooks to myself.

22 Q: Okay. So you received this from Mr. Brooks?

23 A: Yeah.

24 MR. KIRKLAND: Your Honor, I would move the June
25 3rd, 2011, with the attached envelope as Defense -- move

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17

1 it into evidence as Defense [sic] 3.

2 THE COURT: Okay. Any objection?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: Okay.

5 (WHEREUPON, Plaintiff's Exhibit Number 3 was marked
6 and admitted into evidence.

7 (Court reporter advised Mr. Kirkland he keeps saying
8 defense)

9 MR. KIRKLAND: Excuse me. I keep saying defense
10 because I'm a criminal defense attorney. But I mean
11 Plaintiff's 3. I'm sorry, Your Honor. That's funny.

12 Q: All right. Now, tell me the significance of this
13 letter? First of all, what does it say?

14 A: It's advising me that I was going to trial on June
15 the 6th, 2011.

16 Q: Now, what was the date that the letter was drafted?

17 A: June 3rd, 2011.

18 Q: Now, you had an envelope with this when you showed
19 it to me. Tell me, was this envelope, was this letter in
20 this envelope?

21 A: Yes, sir.

22 Q: Okay. Now, what is significant about this envelope?

23 A: He sent it off on June 6th advising me of my trial,
24 the first day of my trial.

25 Q: So to put it simply, you're saying he mailed this on

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1 June 6th; that's the postmark?

2 A: Yes, that's correct.

3 Q: And so that day was the actual day that your trial
4 began?

5 A: Yes, sir.

6 Q: So do you know approximately when you received that?

7 A: I received it my second day of trial. That was June
8 7th.

9 Q: Okay. Now, you had mentioned that you had not seen
10 Mr. Brooks throughout this period of time; is that
11 correct?

12 A: Yes, sir.

13 Q: Now, we have pulled all of your jail records. Let
14 me have you look at these and see if you recognize this?

15 A: Yes, sir.

16 Q: And what is this?

17 A: This is the jailhouse records.

18 Q: So this includes ---

19 A: All meetings and everything.

20 Q: Meeting, discipline, everything, right?

21 MR. KIRKLAND: Your Honor, I'd move the Sumter/Lee
22 Detention Center Inmate Log into evidence as 4.

23 MS. WILLIAMS: Your Honor, this document is about
24 seven pages. Mr. Kirkland talked to me about this before
25 the hearing and that he did obtain this from the

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1 Detention Center folks. I didn't see any need to bring
2 anyone to verify that's what it is. It's seven pages.

3 MR. KIRKLAND: I think it's more than that, Your
4 Honor.

5 THE COURT: Wait. Are you objecting to this or not?

6 MS. WILLIAMS: No, sir, I'm not. I just wanted to
7 put that on the record.

8 THE COURT: All right. Okay.

9 MR. KIRKLAND: This document, Your Honor, is seven
10 numbered pages. And then it contains three -- four
11 handwritten pages on the back of it.

12 THE COURT: Okay.

13 (WHEREUPON, Plaintiff's Exhibit Number 4 was marked
14 and admitted into evidence.)

15 Q: Now, you had an opportunity to look through these
16 records, haven't you?

17 A: Yes, sir.

18 Q: Let me talk to you about a few entries in this
19 record. Let me talk to you about entry number thirty-
20 three on page two.

21 MR. KIRKLAND: And for both the Judge and the
22 assistant attorney general, I'm talking about pa two on
23 the bottom right-hand side. And event number thirty-
24 three is on the left side. They're all in order.

25 Q: What was event thirty-three?

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20

1 A: It's when I went to trial on June 6th.

2 Q: Okay. Now, look at event number thirty-seven. What
3 was event number thirty-seven?

4 A: Investigator Benny Webb came to see me.

5 Q: Okay. Now, who is that?

6 A: That was the investigator that was -- I don't know.

7 Q: Well, tell me this. I don't know him. Was he your
8 investigator for your case?

9 A: Yes, sir.

10 Q: So what was he working on?

11 A: He was doing things for the Dubose Siding case.

12 Q: So do you know of him doing any work on the Markeith
13 Ford case?

14 A: Alibi. Yeah. He spoke to my mom about the alibi.

15 Q: Okay. All right. Now, if you will look down a
16 little bit to event forty-five, tell me what that is?

17 A: Mr. Jernigan came to see me.

18 Q: Who is he?

19 A: He was an attorney that came and spoke to me about
20 something that happened in Clarendon County.

21 Q: About something that happened with what? With the
22 Markeith Ford case?

23 A: No. No, sir, it wasn't.

24 Q: It was unrelated?

25 A: Yeah.

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21

1 Q: Now, also look at event number one twenty-four,
2 which is on page six. What is this event? Do you see
3 that?

4 A: It's an attorney visit.

5 Q: Okay. What was the date of that attorney visit?

6 A: It says June 29, 2008.

7 Q: Well, look at the date carefully.

8 A: Oh, 2009.

9 Q: Do you remember what that was?

10 A: (Witness pauses).

11 Q: Who would have been your attorney at that point in
12 time?

13 A: Timothy Murphy.

14 Q: So you think -- is it fair to say that was probably
15 Timothy Murphy?

16 A: Yes, sir.

17 Q: Now, I'm going to flip to the first handwritten
18 page. And the first handwritten page do you see anything
19 on there that you recognize?

20 A: (Witness pauses).

21 Q: What is that name right there in the lower right-
22 hand corner?

23 A: That's my name. I don't, I don't recognize it.

24 Q: Okay. So you don't remember on 8/19/09, you don't
25 remember what that was? And then on this other page, the

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1 next page, you don't know what that is either? It just
2 mentions Murphy on there?

3 A: Yeah.

4 Q: But you don't have any recollection of that? Was
5 there any other information in these records that you
6 recognize. And what I mean is, did you see anything in
7 here that indicated that Charles Brooks had visited you?

8 A: No, sir.

9 Q: Okay. So there's no record that you saw of Charles
10 Brooks specifically visited you?

11 A: No.

12 Q: Okay. But you do recall him visiting you the times
13 that we talked about; correct?

14 A: Yes, sir.

15 Q: All right. Now, I want to turn your attention for a
16 moment to the discovery materials that you had received.
17 You said that you hadn't seen Mr. Brooks from August of
18 2010 until the day of your trial in 2011?

19 A: Yes, sir.

20 Q: Okay. Now, during that period of time, even though
21 you say he hadn't visited you, did he ever send to you or
22 go over with you in any way the discovery materials?

23 A: No, sir. He sent them but we never went over them.

24 Q: Okay. So he did send it to you. All right. I'm
25 going to hand you this right here. Do you recognize

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23

1 that?

2 A: Yes, sir, that's the items list in Motion to
3 Discovery.

4 MR. KIRKLAND: And, Your Honor, I would move this in
5 as Plaintiff's 5.

6 THE COURT: Okay. This is the document?

7 MR. KIRKLAND: That is the document. Correct, Your
8 Honor.

9 THE COURT: What says the State?

10 MS. WILLIAMS: Is that coming in with the certificate
11 of mailing? Is that together?

12 MR. KIRKLAND: Well, I was going to put them in
13 separately.

14 MS. WILLIAMS: Okay. There's no objection, Your
15 Honor.

16 THE COURT: Okay. It's in without objection.

17 **(WHEREUPON, Plaintiff's Exhibit Number 5 was marked**
18 **and admitted into evidence.)**

19 Q: All right. Tell me what this is and what the
20 significance of this is?

21 A: It's the items list of everything that was in my
22 motion of discovery.

23 Q: So when you received this list, this listed
24 absolutely everything that you received from Mr. Brooks?

25 A: Yes, sir.

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24

1 Q: Okay. Now, I'm going to also hand you another
2 document. But I don't know if these two were attached.
3 Do you recognize this?

4 A: Yes, sir.

5 Q: And what is this?

6 A: It's the certificate of mailing of the motion of
7 discovery.

8 Q: Okay.

9 MR. KIRKLAND: And, Your Honor, I would move the
10 certificate of mail on May 16th, 2011 as Plaintiff's 6.

11 MS. WILLIAMS: That's without objection.

12 **(WHEREUPON, Plaintiff's Exhibit Number 6 was marked**
13 **and admitted into evidence.)**

14 Q: All right. Tell me the significance of this. Does
15 Plaintiff's 5 and Plaintiff's 6 have anything to do with
16 one another?

17 A: Yes, sir, it does.

18 Q: Okay. So tell me how these documents relate to one
19 another?

20 A: It's actually he mailed it off to me on May 16th,
21 2011. This items list.

22 Q: So on May 16th you received this items list?

23 A: Yes, sir.

24 Q: And that was the proof that they mailed it to you,
25 the certificate?

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25

1 A: Yes, sir.

2 Q: Now, within the stuff -- what else was with these
3 two documents?

4 A: Actually, everything that was in the motion of
5 discovery. The items.

6 Q: So this list, these actual documents were also sent
7 to you?

8 A: Yeah.

9 Q: Not just the list. Okay. Now, other than the
10 things that were in that list, did you receive any other
11 discovery from Mr. Brooks?

12 A: I think it was one more piece.

13 Q: Okay. What was that?

14 A: It was the discovery, notifying other witnesses.

15 Q: Okay. Tell me what that was?

16 A: It was two witnesses that was housed with Frederick
17 Owens.

18 Q: Okay. And so you had received something related to
19 a statement that two other witnesses had given?

20 A: Yes, sir.

21 Q: Well, let me ask you this. Are you intending,
22 because I think we have those documents. Are you
23 intending to introduce any of those documents in here
24 today?

25 A: No, sir.

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1 Q: Okay. So that list plus those two statements that
2 you just talked about?

3 A: Yes, sir.

4 Q: All right. Now, the period that we've been talking
5 about is August of 2010 until June of 2011. And in June
6 of 2011, that's when your trial began on the Markeith
7 Ford case; correct?

8 A: Yes, sir.

9 Q: Okay. Now, just so the Judge will have an idea of
10 what we're talking about, summarize, if you would, what
11 the prosecution was going to attempt to prove you did?
12 Summarize their, you know, how their case came together?

13 A: On May 19, 2009 at ten thirty p.m., Teresa Ford
14 called law enforcement and she was like ...

15 Q: Okay. Now, who is Teresa Ford?

16 A: That was the victim's sister.

17 Q: Okay. She calls the police and what happens?

18 A: She states that two suspects came to her house, held
19 her at gunpoint. The other one went and searched the
20 vehicle, came back ...

21 Q: Hold on one second. Somebody went and searched the
22 vehicle you say?

23 A: Yes, sir.

24 Q: So two suspects came into her house?

25 A: Yes, sir.

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1 Q: Were they armed or tell me ...

2 A: Yeah. They was armed.

3 Q: Were their faces covered, uncovered, tell me about
4 that?

5 A: One suspect had something over his hair, I guess.

6 Q: Okay. And this is all, of course, from the
7 discovery material that you received?

8 A: Yes, sir.

9 Q: Okay. So two people came in the house. And
10 apparently, it was a robbery; correct?

11 A: Yes, sir.

12 Q: What ended up happening?

13 A: They went and one of the dudes went and searched the
14 vehicle, came back and said come on, let's go. One of
15 them shot and killed Markeith Ford.

16 Q: Okay. Now, according to the discovery that you
17 looked at, what did the mother or sister of Markeith Ford
18 do at that point in time? I can't remember if it's his
19 mother or sister.

20 A: Sister.

21 Q: What did the sister do at that point in time?

22 A: She called law enforcement, called the police.

23 Q: And then according to discovery, how did the case
24 develop then from that point forward?

25 A: She, I guess, was shown a video. She identified

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1 Tony Lowery out of a photo lineup.

2 Q: Okay. So she identified Tony Lowery and then what
3 happened from there?

4 A: They arrested Tony Lowery and he wrote a statement
5 implicating himself and Frederick Owens and myself.

6 Q: Okay. And so that was how you became a suspect in
7 this case?

8 A: Yes, sir.

9 Q: All right. Now, because I just wanted to go through
10 that so the Judge would have some context about what the
11 case was against you. Now, we'll talk about the trial
12 itself. On the day of the trial, tell me what you were
13 doing that week? On the first day of trial, what were
14 you doing?

15 A: I came in the courtroom and I actually thought I was
16 going for a bond hearing.

17 MR. KIRKLAND: I apologize, Your Honor, I'm going to
18 back up a little bit, if I may.

19 Q: You mentioned a moment ago that Tony Lowery had
20 given a statement to the police; correct?

21 A: Yes, sir.

22 Q: Now, were you ever provided the statements that he
23 gave in your discovery materials?

24 A: Yes, sir.

25 Q: Let me let you look at these two documents and tell

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1 me if you know what those are?

2 A: Those are Tony Lowery's statements right there.

3 MR. KIRKLAND: Your Honor, I would move in the
4 statement from Tony Lowery. The first one is 6/7/09.
5 And the second one is 6/8/09. And I'd like to move them
6 in as separate exhibits. 6/7/09 being the first one,
7 which would be Plaintiff's 7. And then 6/8/09, which
8 would be Plaintiff's 8.

9 MS. WILLIAMS: Your Honor, those are without
10 objection. They are obviously not for the truth
11 contained therein, but just for ... I don't know if Mr.
12 Brooks had them available to him.

13 THE COURT: All right.

14 MR. KIRKLAND: We would agree with that.

15 (WHEREUPON, Plaintiff's Exhibit Number 7 and 8 were
16 marked and admitted into evidence.)

17 Q: All right. Now, I'm going to move on. I just
18 wanted to get those in so we can talk about them later.
19 Tell me about the trial, what were you doing on the first
20 day of the trial?

21 A: I was --- Brooks came back to the back with my suit
22 and I know, I found out I was going to trial.

23 Q: So that morning, I guess they took you to the
24 courthouse?

25 A: Yes, sir.

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1 Q: Okay. So what was going through your head? What
2 did you think was going on?

3 A: I thought I was going for a bond hearing. He came
4 back there with my suit. That was, that was the end of
5 it. I found out I was going to trial and all that ...

6 Q: Had you received that letter yet that we talked
7 about? I don't recall specifically the ---

8 A: No, I didn't receive that until June 7th, the next
9 day.

10 Q: Now, so when you, when he hands you a suit and you
11 realize you're going to trial, what sort of conversation
12 did you have at that point in time.

13 A: I told him right then and there I was like no, he
14 never came to see me. We didn't prepare, we didn't
15 discuss none of the motions. I was like, I was like, I
16 need, I needed these witnesses present. I told him I
17 need Catherine McFadden, Terrance Lemon, Steve
18 Witherspoon here.

19 Q: Okay. All right. Let's talk about each of those
20 individuals because the Judge doesn't know who they are.
21 You said Catherine McFadden. Tell me who that is?

22 A: That's my alibi. My alibi.

23 Q: Who is she, though?

24 A: My mother.

25 Q: Okay. She is your mother and you told him

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1 specifically that she was an alibi witness?

2 A: Yes, sir.

3 THE COURT: Let me stop you right there.

4 MR. KIRKLAND: Yes. Yes, sir.

5 THE COURT: You planning on calling Steve

6 Witherspoon today?

7 MR. KIRKLAND: Yes, sir.

8 THE COURT: (Addressing the deputy) Have you sent
9 him back?

10 THE DEPUTY: No, sir. Not that I know.

11 THE COURT: Didn't you just come ask me about a
12 Witherspoon or something?

13 THE DEPUTY: Yes, sir.

14 THE COURT: Okay.

15 THE DEPUTY: I just realized who he was.

16 THE COURT: Okay.

17 MR. KIRKLAND: Yeah. I've got a subpoena on him.
18 They sent him over.

19 THE COURT: I understand that, but he ...

20 THE DEPUTY: We didn't know anything about it.

21 THE COURT: We didn't know so I was just being sure
22 that he didn't send him back, but he's still here.

23 THE DEPUTY: I can go check.

24 MR. KIRKLAND: My understand is, and I apologize, I
25 thought the jail would have notified them. I called the

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1 jail yesterday and we ...

2 THE DEPUTY: We're the last to find out anything.

3 THE COURT: The only reason I stopped you because
4 they were talking sending him back and then when you said
5 Witherspoon and I said that's where the Witherspoon came
6 from.

7 MR. KIRKLAND: Yes, sir.

8 THE COURT: Because he thought it was someone plead
9 that the solicitor set up for me. I said, no, I didn't
10 set up any pleas today.

11 MR. KIRKLAND: Yes, sir.

12 THE COURT: And I apologize for stopping you.

13 MR. KIRKLAND: No, that's fine.

14 THE COURT: I just wanted to be sure they hadn't
15 sent him back.

16 MR. KIRKLAND: I apologize. If I would have known
17 that I needed to notify the courthouse, I would have done
18 that. But I thought the jail surely would have done
19 that, because they had a subpoena.

20 THE COURT: Well, they don't always communicate, the
21 jail and the courthouse.

22 Q: Well tell me then who is Catherine McFadden? Who is
23 she to you?

24 A: That's my mother.

25 Q: Okay. And you mentioned that you told him -- well,

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1 just tell me. Tell me what you told him about Catherine
2 McFadden that day?

3 A: I told -- we already discussed about the alibi. I
4 was like I need my alibi witness and these other
5 witnesses to testify.

6 Q: Okay. Now, tell me about Steve Witherspoon. Who
7 was he?

8 A: That's a suspect that was named in the case.

9 Q: Okay. Who named him in the case?

10 A: Tony Lowery.

11 Q: Okay. Now, was Tony Lowery charged in the case?

12 A: Yes.

13 Q: Was anybody else charged with this murder, other
14 than Tony Lowery.

15 A: Frederick Owens.

16 Q: Okay. Frederick Owens. Okay. So now, to make this
17 clear, so ultimately Frederick Owens, Tony Lowery, and
18 Maurice Abrams, you, of course ...

19 A: Yes, sir.

20 Q: ... were charged with the murder of Markeith Ford;
21 correct?

22 A: Yes.

23 Q: Okay. Now, there were Terrance Lemon and Steve
24 Witherspoon, tell me what you knew about them?

25 A: All right.

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1 Q: How were they involved in this case?

2 A: Tony Lowery and Frederick Owens mentioned their
3 name, being involved. That's how I got the names. Plus
4 their names was also in the statements.

5 Q: Okay. Now, just so we keep it clear. Now, when you
6 say the statements, what you're referring to is
7 Plaintiff's 7 and Plaintiff's 8?

8 A: Yes, sir.

9 Q: And you're saying that in Plaintiff's 7 and
10 Plaintiff's 8, there is a mention of Steve Witherspoon
11 and Terrance Lemon.

12 A: Yes, sir.

13 Q: In addition to that, you're saying that Frederick
14 Owens, another co-defendant of yours, also mentioned
15 those two names?

16 A: Yes, sir.

17 Q: Now, to your knowledge, was Terrance Lemon or Steve
18 Witherspoon, were they ever charged with this murder?

19 A: No, sir.

20 Q: Was there testimony at trial concerning them as
21 well, other than these statements?

22 A: Yes, sir.

23 Q: Okay. Who testified at trial and mentioned their
24 names?

25 A: Tony Lowery and Frederick Owens.

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1 Q: So both of them, and they were your co-defendants in
2 the case, both of them said that those two were with the
3 five total of you?

4 A: Yes.

5 Q: So there would have been, according to what the
6 testimony at trial ...

7 MR. KIRKLAND: And I know I'm making this more
8 complicated than I should.

9 Q: But according to the testimony at trial, five people
10 were supposed to be present for this murder; correct?

11 A: Yes, sir.

12 Q: You, Owens, Lowery, Lemon, and Witherspoon; correct?

13 A: Yes, sir.

14 Q: And Lemon and Witherspoon were never arrested?

15 A: Yes, sir.

16 Q: Did Mr. Brooks ever talk to Lemon and Witherspoon?

17 A: No, sir.

18 Q: Now, you mentioned that there was an investigator.
19 When the investigator came out and talk to you as we saw
20 on the jail sheet, did you talk to him about Lemon or
21 Witherspoon or your mother?

22 A: Yes.

23 Q: Okay. What did you tell him?

24 A: We briefly spoke. I wanted him to find these
25 witnesses and see what they knew or were they involved or

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1 were they going to testify or not.

2 Q: And so that was a little while before the trial
3 according to the date on that visitation sheet; correct?

4 A: Yes, sir.

5 Q: Now, to your knowledge, did anybody ever talk to
6 these three people?

7 A: No, sir.

8 Q: Was Witherspoon or Lemon ever called at your trial?

9 A: No, sir.

10 Q: Was your mother called as a witness at your trial?

11 A: No, sir.

12 Q: When you mentioned to Mr. Brooks that morning that
13 you needed these three witnesses to be at your trial,
14 what was his response to you?

15 A: He told me he would handle it.

16 Q: He said he'd handle it?

17 A: Yes, sir.

18 Q: Tell me, so I have an idea of what was really going
19 on, how long was this meeting with him that morning?

20 A: It was probably five minutes.

21 Q: Now, if I understand your testimony correctly, it
22 sounds as if you're saying that you never had a meeting,
23 ever with Mr. Brooks, specifically concerning the
24 Markeith Ford case?

25 A: Yes, that's correct.

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1 Q: So, you met with him just prior to the Dubose Siding
2 case?

3 A: Yes, sir.

4 Q: And then you met with him again for five minutes on
5 the day of the Markeith Ford case?

6 A: Yes, sir.

7 Q: Okay. I want to make sure I understood you. Were
8 there any letters or any other correspondence, other than
9 the discovery materials in which he discussed trial
10 strategy or anything with you?

11 A: That's basically it. That was basically it.

12 Q: So basically what you received from him you're
13 saying are the discovery materials?

14 A: Yes, sir.

15 Q: And the request for a bond hearing.

16 A: Yes sir.

17 Q: All right. Now, so I guess you get suited up for
18 your trial?

19 A: Yes.

20 Q: And then what happens after that?

21 A: We go in and pick the jury.

22 Q: Okay. So you immediately go and pick the jury?

23 A: Yeah.

24 Q: Now, after the jury is selected, does the court go
25 right into trial at that point in time or what happens?

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1 A: We select the jury and the Judge was like, do we
2 have any pre-trial matters.

3 Q: Okay. So it was immediately after jury selection he
4 began discussing any pre-trial matters that may exist?

5 A: Yes, sir.

6 Q: And are you referring to -- well, tell me what you
7 thought he meant by pre-trial matters?

8 A: Pre-trial matters is like a hearing right before a
9 trial.

10 Q: Okay. Did your attorney have any pre-trial matters,
11 any motions or anything?

12 A: I mentioned to him to suppress my amendment four
13 violations.

14 Q: Okay. Did he make any pre-trial motions?

15 A: No, sir.

16 Q: In fact, you've looked at the transcript and that's
17 reflected in the transcript; is that correct?

18 A: Yes, sir.

19 Q: And I believe that's on -- I'm not going to have you
20 read it, but that's on page 22 of the transcript?

21 A: Yes, sir.

22 Q: Okay. Now, so he didn't specifically file any pre-
23 trial motions himself. But you say that you had several
24 motions that you would have liked him to file; is that
25 correct?

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1 A: Yes, sir.

2 Q: Tell me which motions? In fact -- well, tell me
3 which motions you think he should have filed?

4 A: I told him he should have preserved any violations
5 of all those items that was taken out my vehicle.

6 Q: Okay. Let me hand you this document right here. Do
7 you recognize that?

8 A: Yes, sir, that's the search warrant.

9 Q: For?

10 A: My vehicle.

11 Q: Okay.

12 MR. KIRKLAND: I would move this in as Plaintiff's
13 9.

14 MS. WILLIAMS: Without objection, Your Honor

15 THE COURT: Okay.

16 (WHEREUPON, Plaintiff's Exhibit Number 9 was marked
17 and admitted into evidence.)

18 Q: Now, I also want to have you look at -- because
19 we're going to talk about both of these together. I want
20 you to have a look at this next document here. Do you
21 recognize this?

22 A: Yes, sir. That's the investigator report.

23 Q: Okay. Now, how is it that you recognize it? How do
24 you know what this is?

25 A: It's part of my motion.

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1 Q: Okay. So who did you receive this from?

2 A: Charles Brooks.

3 MR. KIRKLAND: I would move in the Sumter County
4 Sheriff's Office Investigative Report, which is six
5 pages, Your Honor.

6 MS. WILLIAMS: This is without objection as to being
7 admitted. Not for the truth of anything contained
8 therein but just for --- I'm not sure what ...

9 THE COURT: Okay. Let me just back up just -- on
10 Exhibit 9 ...

11 MR. KIRKLAND: Yes, sir.

12 THE COURT: --- it's only one page?

13 MR. KIRKLAND: Yes, sir.

14 THE COURT: Where's the rest of the search warrant?

15 MR. KIRKLAND: This is all that I received out of
16 his file.

17 THE COURT: All right. And Exhibit 10's in without
18 objection.

19 MS. WILLIAMS: Yes, Your Honor, just subject to it's
20 not being offer for the truth of the matter...

21 THE COURT: And that is the investigative report
22 that he received?

23 MS. WILLIAMS: Yes.

24 MR. KIRKLAND: Yes. I agree with that, Your Honor.

25 THE COURT: Okay.

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1 **(WHEREUPON, Plaintiff's Exhibit Number 10 was marked**
2 **and admitted into evidence.)**

3 Q: All right. Now, tell me what was significant to you
4 when you looked at -- when you received these two
5 documents in your discovery, what was significant to you
6 about it?

7 A: All right, now. They came to try and make a arrest
8 on me on June 11.

9 Q: Okay.

10 A: They had an arrest warrant on me but they didn't
11 have a search warrant or a warrant to take my vehicle.
12 And they took that on June 11th.

13 Q: Okay. So on the 4th page of the investigative
14 report, that's what you're talking about; right?

15 A: Yes, sir.

16 Q: So that's the investigative summary of what occurred
17 on June 11th, '09; right?

18 A: Yes, sir.

19 Q: And what did they do? They came and, you said,
20 arrested you?

21 A: They asked me, and went into the apartment and was
22 trying to make the arrest. They was trying to see if I
23 was in the house or what.

24 Q: And what happened with your car?

25 A: They took my vehicle without a search warrant.

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1 Q: Okay. So on that day they seized your vehicle. And
2 so that was significant to you because that was in this
3 report?

4 A: Yes, sir.

5 Q: Now, let's talk about the search warrant itself.
6 What was significant to you about this search warrant?

7 A: That search warrant was, they got the search warrant
8 on June the 12th.

9 Q: So your issue with it was that they had seized your
10 vehicle prior to obtaining a search warrant, according to
11 the investigative notes?

12 A: Yes, sir.

13 Q: And so you felt like, based on that, the car had
14 originally been seized illegally and Mr. Brooks should
15 have made a motion to suppress any evidence that they
16 received from the vehicle?

17 A: Yes, sir.

18 Q: What evidence did they receive from the vehicle?

19 A: It was the red jacket, a red jacket.

20 Q: And so the Judge will understand, what was the
21 significance of that red jacket at the trial?

22 A: They got gun powder residue actually from the
23 jacket.

24 Q: Did the sister of Markeith Ford, did she say that
25 she could recognize that jacket?

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1 A: Yes, she did.

2 Q: Okay. And so they had obtained gunshot residue and
3 some kind of identification from Markeith Ford's sister.
4 And that was the significance of that piece of evidence?

5 A: Yes, sir.

6 Q: And there was no motion made to suppress that based
7 on what you've just told the court; correct?

8 A: Yes, sir.

9 Q: Now, there was other issues that you thought Mr.
10 Brooks should have raised pre-trial. I'm going to hand
11 you these two documents so that we can keep going in
12 order here. Do you recognize these two?

13 A: Yes, sir, that's the photos from the video that was
14 sitting next to the El Cheapo's.

15 Q: Okay. Let's sort of give the background of this.
16 What was the prosecution -- before I put these in
17 evidence, what were they saying occurred at this El
18 Cheapo?

19 A: They was saying two of the suspects came in there
20 earlier.

21 Q: Okay. And were they suggesting that you were one of
22 those suspects?

23 A: Yes, sir.

24 Q: Okay. And these are?

25 A: These are photos from the video.

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1 MR. KIRKLAND: I would move the two photos from the
2 video in, Your Honor. I'm not sure how to identify them
3 easily or distinguish them. In the first photo, Your
4 Honor, it appears that a young man wearing something on
5 his head is walking towards the camera.

6 THE COURT: All right.

7 MR. KIRKLAND: And so I would move that one in as
8 part of the discovery materials that were received.

9 MS. WILLIAMS: Are we putting in the videos that go
10 with this?

11 MR. KIRKLAND: You can. I wasn't intending to do
12 it, but we can make that a part of the record.

13 MS. WILLIAMS: Okay. Okay. Yeah.

14 MR. KIRKLAND: You want to put the whole video.

15 MS. WILLIAMS: Yeah. We talked about it.

16 MR. KIRKLAND: Yeah.

17 MS. WILLIAMS: Yes. These are without objection,
18 Your Honor.

19 THE COURT: Okay.

20 MS. WILLIAMS: They were admitted at the trial, I
21 believe, is my understanding.

22 MR. KIRKLAND: So I'll call 11 the one where the
23 individual looks like he's walking towards the camera,
24 Your Honor. And Number 12 where there seems to be two
25 men walking away from the camera.

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1 THE COURT: Okay.

2 MR. KIRKLAND: And there's a white car in number 12
3 as well.

4 **(WHEREUPON, Plaintiff's Exhibit Numbers 11 and 12**
5 **were marked and admitted into evidence.)**

6 MR. KIRKLAND: And I'll go ahead and do this so that
7 we keep everything rolling -- and, Your Honor, I would
8 also, and I think without objection because the attorney
9 general's office has requested it, I would like to move
10 the entire video in; however, we have forgotten the copy.
11 Neither of us have a copy of the video. So we can
12 deliver the copy to you tomorrow. We don't intend to
13 take any testimony from the video. So if that's okay,
14 I'll make ---

15 MS. WILLIAMS: It's my fault because I made a copy
16 for you and left it. I'll have Mr. Gourley bring it and
17 give it to the court reporter.

18 MR. KIRKLAND: Well, if you want to, let's ask the
19 court reporter what would be easier for her? Is it
20 easiest to make it a last exhibit madam court reporter?

21 MADAM COURT REPORTER: Yes.

22 MR. KIRKLAND: That's what we'll do then. Is we'll
23 make it the last exhibit once we are done.

24 Q: All right. Now, let's talk about these photos.
25 What does 11 depict or what is it supposed to depict?

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1 A: It's supposed to be a suspect and they trying to say
2 it's me. But he's unidentifiable.

3 Q: Okay. What is the Number 12, what did they say that
4 Number 12 was depicting at the trial?

5 A: This depicts the same thing. He's got his back
6 turned. He's got a disguise over his head.

7 Q: This looks like a -- what do you think this is right
8 there? Does that look like an ice machine or a
9 telephone?

10 A: I have no idea.

11 Q: But there's something and it appears to be obscuring
12 the person walking away, slightly? And that person is
13 supposed to be you; correct?

14 A: Yes, sir.

15 Q: And who was it that testified -- did anybody
16 testify, identify this as being you?

17 A: I think it was Teresa Ford and Frederick Owens.

18 Q: Okay. Now, you had an issue with these coming into
19 evidence. And what was the issue that you had with these
20 coming into evidence?

21 A: I was trying to get him to suppress these on the
22 grounds of --- it suppress them because it clearly shows
23 he's unidentifiable.

24 Q: Okay. So what you're saying is that because the
25 photos or I guess the screen captures are such poor

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1 quality, that you did not believe that they were
2 admissible at your trial?

3 A: Yes, sir.

4 Q: Because you were saying it is impossible to make a
5 positive identification. So that's your issue?

6 A: Yes, sir.

7 Q: Okay. I'm going to hand you some other materials
8 from your discovery. Tell me if you recognize these two
9 separate -- let's just talk about one. You recognize the
10 one that I'm showing you here on your left side?

11 A: Yes. That's the photo lineup. That was in my case.

12 Q: And who -- are you in this photo lineup?

13 A: Yes, sir.

14 Q: Did somebody pick you out of this photo lineup?

15 A: Supposedly Tony Lowery picked me out of the lineup.

16 Q: Okay.

17 MR. KIRKLAND: Your Honor, I would move into
18 evidence the photo lineup in which Tony Lowery signed
19 under number two.

20 MS. WILLIAMS: No objection.

21 MR. KIRKLAND: And that's Number 13, Your Honor.

22 THE COURT: Does this sheet go too or just the photo
23 line up?

24 MR. KIRKLAND: The next exhibit. You'll see the
25 next exhibit, Your Honor, is these two go together. The

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1 one without Tony Lowery's signature. So you have one
2 which -- did I get you mixed up.

3 THE COURT: I've got it.

4 MR. KIRKLAND: Okay.

5 **(WHEREUPON, Plaintiff's Exhibit Number 13 was marked**
6 **and admitted into evidence.)**

7 Q: Tell me about the -- there's also another photo
8 lineup that you received, and it appears to be two pages;
9 do you recognize this?

10 A: Yes, sir.

11 Q: Okay. Now, did you receive -- well, just tell me
12 what it is first?

13 A: It's the photo lineup from Tawanada Brown from the
14 Dubose Siding case.

15 Q: Okay. So you received this photo lineup, the two-
16 page one in the Dubose Siding case?

17 A: Yes, sir.

18 MR. KIRKLAND: And, Your Honor, I think without
19 objection, I'm moving this one in. Then I'll explain.

20 THE COURT: Okay. Any objection?

21 MS. WILLIAMS: No, Your Honor.

22 **(WHEREUPON, Plaintiff's Exhibit Number 14 was marked**
23 **and admitted into evidence.)**

24 Q: Now, why is a lineup from a separate case
25 significant in the Markeith Ford case?

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1 A: Because it's ...

2 Q: First of all, let's look at this six-pack lineup.

3 Tell me, what is the significance of these two six-pack
4 lineups?

5 A: As you can see, it's the same exact lineup.

6 Q: Okay. So what you're telling the Court is that in
7 the Dubose Siding case ...

8 A: Yes, sir.

9 Q: ... which was also a murder case?

10 A: Yes, sir.

11 Q: They showed the same lineup to whoever identified
12 you, as they did to Tony Lowery in the Markeith Ford
13 case?

14 A: Yes, sir.

15 Q: So this photo array is identical in both cases?

16 A: Yes, sir.

17 Q: Okay. Now, what is the difference between these
18 two?

19 A: I wanted him to suppress this. Because it didn't
20 have the second sheet and it's not the original photo
21 lineup.

22 Q: Now, what do you mean when you say the original
23 photo lineup?

24 A: The original that he sent the second sheet?

25 Q: So you're talking about in the Dubose Siding case,

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1 this is the original lineup?

2 A: Yeah. That's the original.

3 Q: And so the original, what you're saying it contained
4 two pages?

5 A: Yes, sir.

6 Q: And then they reused the photo array but didn't
7 include both pages?

8 A: Yes, sir.

9 Q: And so on that basis, you thought that Number 13,
10 Plaintiff's Number 13 should have been suppressed in the
11 Markeith Ford Case; correct?

12 A: Yes, sir.

13 Q: Okay. Is there anything other than what you've
14 discussed concerning these?

15 A: It's actually the same exact photo lineup. See,
16 what they did was they took -- they made a copy of the
17 original, and that's why that photo lineup doesn't have
18 the second sheet.

19 Q: Okay. And the significance for you was that made it
20 inadmissible because it wasn't the original?

21 A: Yes, sir.

22 Q: Okay. Now you also allege in your amended petition,
23 that you didn't feel like you had received all the
24 discovery material prior to trial. Do you remember that
25 issue?

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1 A: It was the bullet fragment and the red jacket. None
2 of those items was in motion of discovery at all.

3 Q: All right. Well, let's go through -- all right.
4 The things that you were just talking about.

5 MR. KIRKLAND: I'm trying to make this as easy as
6 possible, Your Honor, to put these into evidence.

7 THE COURT: Okay.

8 Q: I'm showing you four separate pictures, okay? Do
9 you recognize these four separate pictures?

10 A: Yes, sir.

11 Q: And these -- and this depicts evidence that was in
12 your case, that was admitted into evidence in your case;
13 correct?

14 A: Yes, sir.

15 Q: Now, these are merely photos of the evidence, right,
16 not the actual evidence?

17 A: Yes, sir.

18 MR. KIRKLAND: Your Honor, I would move these four
19 photos of evidence bags.

20 MS. WILLIAMS: Without objection.

21 THE COURT: Okay.

22 MR. KIRKLAND: Then what we'll do is I'll start
23 naming them now, Your Honor.

24 THE COURT: Are they all going in as one exhibit?

25 MR. KIRKLAND: We can.

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1 THE COURT: I'm just trying to ...

2 MR. KIRKLAND: I'll ask the court reporter what she
3 thinks?

4 MADAM COURT REPORTER: Whatever you want to do.

5 MR. KIRKLAND: And I'll make these, all these four
6 photos one exhibit, Your Honor.

7 THE COURT: Okay.

8 **(WHEREUPON, Plaintiff's Exhibit Number 15 was marked**
9 **and entered into evidence.)**

10 MR. KIRKLAND: All right. This, Number 15, Your
11 Honor, contains four pages. The four pages depict a
12 photograph of a red jacket, although it's in black and
13 white. The second photograph is a State's Exhibit 30.
14 There is another photograph, that -- the State's Exhibit
15 Number is not visible. But it does say May '09 at the
16 top of the page. And then the final page of this
17 exhibit, Your Honor, appears to be a bullet with a
18 circular labeling item.

19 THE COURT: Okay.

20 Q: All right. Let's walk through these. What is the
21 first page of this exhibit?

22 A: That's the red jacket that was took out of my
23 vehicle.

24 Q: And this is the red jacket that you think should
25 have been suppressed on the basis that the search was

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1 illegal?

2 A: Yes.

3 Q: Now, let's talk about -- you described this as a
4 Brady violation. Tell me how you think that's a Brady
5 violation?

6 A: It never was part of my Rule 5. Never was disclosed
7 to me.

8 Q: So you never saw this prior to your trial?

9 A: Yes, sir.

10 Q: Okay. That's what you're saying?

11 A: Yes, sir.

12 Q: All right. The second exhibit, which was number 32,
13 what was this?

14 A: Looks like the bag the gunpowder kit came from.

15 Q: Okay. Now, this was admitted in your trial;
16 correct?

17 A: Yes, sir.

18 Q: And you are alleging that there's also, you believe,
19 a Brady violation concerning this. And what is that?

20 A: That's the gun powder kit it never was part of my
21 motion. I never got it.

22 Q: So you never saw this before your trial?

23 A: No.

24 Q: The next page also appears to be a gunpowder residue
25 kit. What's your complaint as to this?

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1 A: Brady violation. That also wasn't part of the
2 motion.

3 Q: And these kits, where do they say they got this
4 gunpowder residue from?

5 A: The red jacket.

6 Q: Okay. Now, what is this final picture here with
7 this circular tag?

8 A: It's the bullet fragment that was found on the scene
9 of the crime.

10 Q: Okay. So do you remember where this was found on
11 the scene of the crime?

12 A: It was actually found on the scene behind the crime
13 scene.

14 Q: Okay. And you're alleging the same as the other
15 three, that you were not provided or given access to this
16 prior to trial?

17 A: Yes, sir.

18 Q: Okay. Is there any other issue with these as to why
19 you think they should not have come into evidence?

20 A: Other than it wasn't a part of my motion and being
21 Brady violations, that's it.

22 Q: Now, did you mention that to your attorney prior to
23 the beginning of the trial or when the evidence was, when
24 they were trying to admit it?

25 A: (Witness pauses)

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1 Q: Or do you even remember?

2 A: I told Brooks, I told Brooks to suppress those
3 things and he didn't do it.

4 Q: Now, part of your claim that this was a Brady
5 violation had to do with this document, my understanding
6 is.

7 A: That right there's the ...

8 Q: Let's identify it. This is Plaintiff's Exhibit
9 Number 5. So what was the significance of this list in
10 relation to those exhibits we just looked at?

11 A: It shows nowhere on there that those items are
12 listed on the items list.

13 Q: Okay. So this just shows that you hadn't received
14 those items.

15 A: (No response).

16 Q: Now, and you may not want to talk about this, there
17 were differences between -- you told me, between Lowery's
18 first statement and second statement. Would you like to
19 discuss those differences?

20 A: Yes, sir.

21 Q: Okay. Let's talk about that. Tell me what the
22 differences were?

23 A: On June 7th his statement, he never involved me in
24 the murder, armed robbery or anything. He actually
25 identified Moe. And he -- that statement -- yeah, he

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1 mentioned my name and he mentioned the name I went by
2 which wasn't Moe.

3 Q: Okay. Now, that's the June 7th statement, right?

4 A: Yes, sir.

5 Q: So that would be -- you're talking about Plaintiff's
6 Exhibit Number 7, the June 7th statement?

7 A: Yes, sir.

8 Q: Okay. What else did he say that was significant in
9 that statement or was there anything else?

10 A: Other than not involving me in the armed robbery or
11 anything and...

12 Q: Okay. And then tell me about the second statement,
13 which is Plaintiff's Exhibit Number 8. What was the
14 significance of that?

15 A: That's when he changed his story and he was like, he
16 wasn't involved in this.

17 Q: Now, at the trial, did your attorney make any
18 attempts to illustrate those particular differences
19 between the two statements?

20 A: No, sir.

21 Q: And if I'm not mistaken, that was on page 322 of the
22 transcript, do you recall that? When the cross, when you
23 discussed those two statements?

24 A: Yes, sir.

25 Q: Okay. Now, one of the big issues that you have

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1 brought up is, you mentioned an alibi?

2 A: Yes, sir.

3 Q: Who would have been your alibi witnesses if you
4 could have raised this alibi?

5 A: Catherine McFadden and Michael McFadden.

6 Q: Okay. Let's talk about Michael. We talked about
7 Catherine a bit. That's your mother?

8 A: Yes, sir.

9 Q: Now, who is Michael McFadden?

10 A: That's my uncle.

11 MR. KIRKLAND: And, Your Honor, my understanding is
12 that there was a point in time that you needed to leave?

13 THE COURT: yeah.

14 MR. KIRKLAND: So how good are we?

15 THE COURT: I've got about five more minutes.

16 MR. KIRKLAND: Why don't we just do the alibi after
17 because then I can do the whole section on the alibi
18 after you come back.

19 THE COURT: Okay.

20 MR. KIRKLAND: Because this is a pretty good
21 stopping point.

22 THE COURT: Okay. All right. Probably the safest
23 thing is one o'clock. Is that going to give you time ...

24 MR. KIRKLAND: I'll be sitting right here. My
25 office is Columbia.

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1 THE COURT: Or maybe you're going to get some lunch.

2 All right. I'll see y'all at one.

3 (WHEREUPON, court stood at recess for a short lunch
4 break.)

5 (P.M. Session of PCR)

6 **Continued Examination of Mr. Abrams - Mr. Kirkland:**

7 Q: And, of course, you know Mr. Abrams you are still
8 under oath from earlier today?

9 A: Yes sir.

10 Q: When we broke, we had been talking about some of the
11 discovery materials and you had mentioned, I'm just
12 going to get everybody back on the same page. You
13 had talked about the bullet fragment and you then
14 talked about the difference between Lowery's
15 statements, do you remember that?

16 A: Yes sir.

17 Q: We then started to move onto a alibi defense that
18 you say that you wanted to present at your trial.
19 Now, let me ask you some questions about that alibi
20 defense. Oh one housekeeping matter, when were
21 talking about the difference between Lowery's two
22 statements. I had asked you if that appeared on
23 page 322 of the transcript, do you remember that?

24 A: Yes sir.

25 Q: Does it sound more correct that it was on page 324

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1 and I may have made a mistake?

2 A: Yes, yes. I believe so.

3 Q: Now, the alibi defense, the first important question
4 that I want to ask you is, and you talked about it
5 at various times. At what point in time, did you
6 bring up the alibi defense with your attorney, Mr.
7 Brooks?

8 A: I mentioned one time when I talked with the
9 investigator at the beginning of the trial.

10 Q: Hold on now. You said you mentioned it one time with
11 the investigator?

12 A: Yes.

13 Q: Okay. Now, who was that?

14 A: That was Bennie Webb.

15 Q: Now, was that visit with the investigator was that
16 reflected in the jail records that we looked at?

17 A: Yes, sir.

18 Q: Okay. So that was the visit?

19 A: Yes, sir.

20 Q: What then did you tell him about your alibi defense?

21 A: I told him, I told him where was my whereabouts that
22 day and ...

23 Q: Did you tell him ...

24 A: At the time of the crime.

25 Q: Okay. So, you told him where you were that day. Did

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1 you tell him who you were with that day?

2 A: Yes sir.

3 Q: Who did you tell him you were with that day?

4 A: I told him Catherine McFadden, my brother, my uncle.

5 Q: Okay. And we'll go through it in a little bit more
6 detail in a minute. Now, was there any other point
7 in time that you actually said to Mr. Brooks because
8 you said that you met with him in February before
9 you had the discovery in the Marquise Ford case and
10 then you said you met with him again before the
11 Dubose Siding trial. At either of those two
12 meetings, did you talk to him about the alibi?

13 A: No, I didn't have the motion and ...

14 Q: Okay.

15 A: I didn't mention it.

16 Q: Okay. You didn't mention it to him those two times
17 but then, Mr. Webb, is that his name?

18 A: Yeah, I mentioned it to Mr. Webb.

19 Q: Okay. Mr. Webb. When the trip began you said you
20 had another conversation with Mr. Brooks.

21 A: Yes.

22 Q: What did you tell him about your alibi that day?

23 A: I told him that I needed my alibi witness present.
24 That's what I told him.

25 Q: Did you tell him who your alibi witnesses were?

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1 A: Yes, sir.

2 Q: Just for the record. Who did you tell him your
3 alibi witnesses were?

4 A: Cathryn McFadden and Michael McFadden.

5 Q: Okay. Now, the alibi that you wanted to present,
6 obviously it would have been on May 19th, the day of
7 the murder.

8 A: Yes, sir.

9 Q: Walk me through the events of that day, as best that
10 you can remember.

11 A: Okay. On May 19th, me and my family was having a
12 memorial dinner.

13 Q: Okay. Hold on one second. You and your family? I
14 didn't hear what you said.

15 A: Yes. Me and my family.

16 Q: And you were having a memorial dinner?

17 A: Yes, sir.

18 Q: Okay. Now, tell me. I'm not familiar with a
19 memorial dinner, what is a memorial dinner?

20 A: My grandmother had passed and we were having a
21 celebration dinner for her passing.

22 Q: Okay. And how is this memorial dinner typically
23 done. Is it done every year, a few times a year.
24 How does a memorial dinner work?

25 A: We do it every, just about every year.

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1 Q: Okay. So, the reason you remember that day is
2 because it was this memorial dinner?

3 A: Yes, sir.

4 Q: Okay. Tell me about that day and what you remember.
5 And let's just walk through the whole day as best
6 you can remember it on that day.

7 A: We was having a memorial dinner like I said, my
8 family. My mom was cooking, everybody was there.
9 My brother, my uncle, my cousins ...

10 Q: Okay.

11 A: And we was eating.

12 Q: Okay. What time was the memorial dinner itself?

13 A: I mean she was cooking every since the night before.

14 Q: Okay.

15 A: So, I think she finished cooking around four,
16 something like that.

17 Q: Okay. So during that day, do you remember --- let's
18 just start from the beginning. Do you remember
19 approximately when you woke up that day?

20 A: I'd say around ten or something like that.

21 Q: Do you remember what you did after that?

22 A: I got up, of course, and washing and stuff like
23 that.

24 Q: Right. And then?

25 A: From then I was just basically a normal day. Like I

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1 said, all having memorial dinner. She was cooking
2 and stuff.

3 Q: Okay. Did you all go anywhere that day, other than
4 at the house?

5 A: Went to Gate's later on that day.

6 Q: What is Gate's?

7 A: It's a gas station off Lafayette.

8 Q: Tell me what the circumstances were around that?

9 A: We was going up there to get gas. She had a little,
10 she told me to follow her in the other car.

11 Q: Okay.

12 A: To get gas. She had a gas voucher. We went between
13 four or five or something like that.

14 Q: Okay. You said a couple of things, you said, she or
15 her. Who is she or her?

16 A: My little sister was with her, she was with my mom
17 and I was driving the other car.

18 Q: So, I take it from what you just said, it's a little
19 confusion. Your mother and your little sister ...

20 A: Yeah. My mother and my little sister.

21 Q: They were in one car?

22 A: Yes. I was in the other car.

23 Q: Okay. Why were you two in separate cars?

24 A: I was going to fill up the car, she had a gas
25 voucher for gas. She knew she had more gas.

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1 Q: All right.

2 A: And she knew she had extra gas so I was going to put
3 the other gas in the other car.

4 Q: Okay. Now, tell me what gas voucher is because I
5 don't know what that is?

6 A: It's a DSS voucher.

7 Q: She was getting out --- who owned these cars?

8 A: My mother.

9 Q: She owned both of those cars?

10 A: Yes, sir.

11 Q: So around four o'clock, you said, you and your
12 mother and your sister were going to the Gate gas
13 station to fill up the cars on the gas voucher?

14 A: Yes, sir.

15 Q: After that, what did you do after that?

16 A: I think she got in a little altercation with the
17 lady in the store because after that she came back
18 and she wanted the registration to the car.

19 Q: Your mother?

20 A: So --- yeah. She had a little altercation. We was
21 just getting gas, so from then ...

22 Q: Hold on. What you remember is your mother got into
23 an altercation with somebody in the store?

24 A: Yeah.

25 Q: And that she came out and got the registration?

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1 A: Yeah.

2 Q: And then what did she do with that, go back in the

3 store?

4 A: She went back in the store, got everything right,

5 came back out and pumped the gas.

6 Q: You don't know what the altercation was about?

7 A: I mean, I know it had something to do with ...

8 Q: Do you know ... if you don't know ...

9 A: I know. She seen us, you know, like she seen me

10 backing up, you know, like she always has gas left

11 over so I was backing up so she thought we was

12 stealing gas, I guess.

13 Q: Okay. Putting the gas voucher on two cars?

14 A: Yes.

15 Q: All right. So, after the altercation got cleared

16 up, then what did you do?

17 A: Like went to the country in Cotton Acres.

18 Q: Approximately what time would you say this is?

19 A: I'd say between, about five or six something like

20 that.

21 Q: Okay. So, now, when you say, I think you said you

22 went to the country?

23 A: Yeah.

24 Q: Okay. Tell me what that is, I don't know what the

25 country is?

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1 A: It's, it's --- It's my grandmother's house we went
2 to.

3 Q: Okay.

4 A: In the country in Cotton Acres.

5 Q: Okay. Now, why were you all at your grandmother's
6 house?

7 A: I was going to feed my dogs.

8 Q: Okay. Did your mother go over there as well?

9 A: Yes, sir. She went over there to drop my sister
10 off.

11 Q: Okay. You may not know this. Do you know why she
12 was dropping your little sister off?

13 A: I believe ...

14 Q: No, if you don't know there is no need to speculate.

15 A: She had to be to work in the morning. I know that.

16 Q: Okay. So she might have been keeping your little
17 sister, okay. All right. How long were you over
18 there?

19 A: I'd say about an hour.

20 Q: Okay. So that could have been, based on what you've
21 said between five and seven depending on ...

22 A: Yeah.

23 Q: Okay. So after that where do you go, what do you
24 do?

25 A: I went, like after I got done feeding my dogs and

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1 all that I left. She came like a little bit after
2 me.

3 Q: Okay. So she wasn't with you immediately when you
4 left?

5 A: Right.

6 Q: Where did you go?

7 A: I went straight to Wedgefield.

8 Q: And so as we were just talking about six to seven
9 maybe is that going to take us?

10 A: Yes.

11 Q: So when you get to ... where did you say you went?

12 A: Wedgefield. South Forge Apartments.

13 Q: Tell me what apartments those are.

14 A: Those are ...

15 Q: Who lives there?

16 A: My mother.

17 Q: So you were going back to your mother's house?

18 A: Yes, sir.

19 Q: Where did you live at the time?

20 A: I was actually between my mother's and my
21 grandmother's house.

22 Q: Okay. Were you staying --- where were you staying
23 this evening?

24 A: I was actually at my mom's apartment.

25 Q: Okay. So you were planning on staying at your

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1 mother's that evening?

2 A: Yes, sir.

3 Q: Okay. So you had planned to go back to your mother's
4 apartment. When you get there who was there, what's
5 going on?

6 A: My brother, my brother and my uncle is there. We
7 all ... I was eaten, I ate over there. I ate over
8 there.

9 Q: Tell me the people again. I'm going to write these
10 down.

11 A: My little brother was there.

12 Q: Let me ask you this. Is your little brother here
13 today?

14 A: Yes, sir.

15 Q: Okay. So you see him in the courtroom?

16 A: Yes, sir.

17 Q: Who else was with you?

18 A: My uncle was there.

19 Q: Do you see him?

20 A: Yes, sir.

21 Q: Okay. Who else was with you?

22 A: I think a few of my cousins was there.

23 Q: Okay. Are your cousins here today?

24 A: No, sir.

25 Q: Okay. So, according to your estimate, you were six

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1 or seven o'clock getting there. Tell me what goes
2 on from that point. What do you do when you get
3 there. You said you ...

4 A: I mean, I ate a little bit. I played a game. I was
5 chilling man.

6 Q: Okay. Well, tell me a little bit about the house.
7 Where was, and it's going to be tough to do this. I
8 understand that but kind of describe the, it's an
9 apartment?

10 A: Yeah, it's an apartment.

11 Q: Okay. So when you walk through the front door of
12 the apartment, what room would I be in?

13 A: You'll be in the front.

14 Q: Okay. The front room. Is that where like the t.v.
15 and stuff ...

16 A: Yes.

17 Q: And so --- was that where people were most of the
18 time or where they somewhere else?

19 A: Yeah, mainly in the living room.

20 Q: Okay. And there's also, I guess, a kitchen in this
21 apartment?

22 A: Yes, sir.

23 Q: Where is the kitchen?

24 A: It's like the living room in on the right, like the
25 back entrance.

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1 Q: Okay. Can you see the living room or the front room
2 from the kitchen?

3 A: Yes.

4 Q: Okay. So where were most of the people most of the
5 time when you were, you know, socializing and
6 watching t.v. and whatnot?

7 A: Mainly in the living room.

8 Q: And that's where you were?

9 A: Yes, sir.

10 Q: Okay. Now, how long would you say that you were
11 there at the apartment that night?

12 A: I been there all night.

13 Q: So you didn't leave the apartment or did you leave
14 the apartment?

15 A: I did earlier. Earlier I left it.

16 Q: Okay. Why did you leave earlier?

17 A: To go to Gate.

18 Q: That's it. So from seven or so earlier that night,
19 did you leave that apartment?

20 A: Nah, no.

21 Q: And during that period of time, from what you just
22 said, I suppose you were socializing, playing video
23 games and watching television?

24 A: I was. Actually I was -- between, I know at 10:30, I
25 was at the house. I was asleep. I know I was.

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- 1 Q: At 10:30 you were asleep?
- 2 A: Yes, sir.
- 3 Q: Do you know who was in the house --- well, where
- 4 were you sleeping first of all?
- 5 A: I slept on the couch. It's a one bedroom apartment.
- 6 I slept on the couch.
- 7 Q: Okay. Who was --- at 10:30 then do you know what
- 8 time approximately you fell asleep?
- 9 A: Really, I say around, really, I'll say around nine
- 10 something.
- 11 Q: Okay. Who do you remember was in the apartment the
- 12 last time you remember prior to being asleep?
- 13 A: My mom was there, my uncle was there, my little
- 14 brother was there.
- 15 Q: Now, after you fell asleep, at any point in time did
- 16 you awaken? Do you remember anything else?
- 17 A: No. I remember my uncle. I think he went to
- 18 karaoke or something that night.
- 19 Q: How did you know that he went to karaoke?
- 20 A: I think the door --- the door will beep every time
- 21 the door opens.
- 22 Q: Okay. So, you're talking about the front door of the
- 23 house?
- 24 A: Yes, sir.
- 25 Q: The exit to the house?

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1 A: Yes, sir.

2 Q: Was there any other exit to the house?

3 A: The back door, there's a little sliding back door
4 there too.

5 Q: Oh, okay. But everybody uses the front door?

6 A: Yes, sir.

7 Q: All right. Now, you said the door beeps. Why does
8 the door beep?

9 A: I don't know.

10 Q: Okay. So you recall the door beeping and he was
11 leaving?

12 A: Yes, sir.

13 Q: What time, do you know approximately what time that
14 was?

15 A: I don't know. It was sometime late, sometime late.

16 Q: Okay. Now, was there anybody else that stayed the
17 night as well with you?

18 A: My little brother was there. My mom was there, of
19 course.

20 Q: Okay. Where did your mother sleep?

21 A: She slept in her bedroom.

22 Q: Okay. The bedroom, is that visible off of the front
23 room that you're talking about?

24 A: Yes, it is.

25 Q: Okay. Where did your brother, where did he sleep?

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- 1 A: It's like, it's like he was on the couch with me
2 too.
- 3 Q: Okay. So both of you sleep there that night and
4 your mother slept in her bedroom that night?
- 5 A: Yes, sir.
- 6 Q: Is there anything else, anybody else that came by
7 that night or anything that you can remember?
- 8 A: I feel like my cousin --- my cousin Josh, my cousin
9 Josh ...
- 10 Q: Right.
- 11 A: Other than them, not really.
- 12 Q: How long were they there, would you estimate?
- 13 A: I know they left like, before I went to sleep. I'd
14 say like nine, something like that.
- 15 Q: So, generally speaking several of your family
16 members had come by for this memorial dinner?
- 17 A: Yes, sir.
- 18 Q: And then it sounds as if most of them left except
19 for you, your brother and your mother?
- 20 A: Yes, sir.
- 21 Q: Okay. Who stayed at your mom's?
- 22 A. Me and my brother.
- 23 Q: Okay. So both of you slept there that night and
24 your mother slept in her bedroom that night?
- 25 A: Yes, sir.

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1 Q: Is there anything else, anybody else that came by
2 that night that you can remember or anything else that
3 you can remember?

4 A: One of my cousins. There was several of them. Josh,
5 my cousin, Josh.

6 Q: Right.

7 A: Other than him ...

8 Q: How long were they there would you estimate?

9 A: I would say, I know it was before I went to sleep
10 I'd say ...

11 Q: Okay. So generally speaking, several of your family
12 members had come by for this memorial dinner?

13 A: Yes, sir.

14 Q: And it sounds as if most of them left except for
15 you, your brother and your mother?

16 A: Yes, sir.

17 Q: And your uncle left some time after you had fallen
18 asleep to go to Karoke?

19 A: Yes, sir.

20 Q: And you knew that because the bell or whatever on
21 the door rang?

22 A: Yes, sir.

23 Q: Okay. As to that alibi, is there anything else that
24 you can remember? Any other details that I have
25 forgotten to ask you about?

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1 A: (Witness pauses).

2 Q: It's not a test. That's all the questions I have.

3 Do you remember anything else?

4 A: Other than that the confidential issue.

5 Q: Okay. We're going to talk about that. But I'm
6 talking about the alibi. Anything else you can remember
7 about that?

8 A: That's basically it, I think.

9 Q: Okay.

10 A: That was about it.

11 Q: Okay. Well, then I'm going to move on to another
12 issue. That's all we're going to talk about concerning
13 the alibi. You had mentioned in your application.

14 THE COURT: Let me ask you one thing. Where did you
15 say your grandmother's house was?

16 THE WITNESS: Cotton Acres Road.

17 THE COURT: Okay.

18 THE WITNESS: It's like when you pass here.

19 THE COURT: Okay. Sorry to interrupt.

20 MR. KIRKLAND: That's fine, Your Honor. Anytime.
21 Please do ask any question that you'd like.

22 Q: You'd mentioned in your post conviction relief
23 amended application that you had felt like there was a
24 conflict of interest?

25 A: Yes, sir.

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1 Q: Now, I want you to describe to the Judge what did
2 you mean by that? And take your time because this is
3 complicated, I know. So take your time explaining it?

4 A: Brooks was filing a lawsuit against my victim
5 Anthony Nasareno.

6 Q: Okay. Let's talk about that for a minute. So
7 you're saying your attorney, Charles Brooks ...

8 A: Yes, sir.

9 Q: ... had a lawsuit pending against somebody named
10 Anthony Nasareno.

11 A: Yes, sir.

12 Q: Okay. Now, who is that Anthony Nasareno?

13 A: That was my victim in the Dubose Siding case.

14 Q: So you were accused of killing Anthony Nasareno?

15 A: Yes, sir.

16 Q: By the way, we haven't talked about it yet. What
17 ever happened with that case?

18 A: We had a hung jury first one.

19 Q: Okay.

20 A: The second time we got found not guilty.

21 Q: Okay. So you were acquitted of this murder?

22 A: Yes, sir.

23 Q: Nonetheless, this Anthony Nasareno fellow was still
24 dead. You just weren't convicted of it?

25 A: Yes, sir.

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1 Q: Okay. Now, how do you feel that Mr. Brooks
2 representing Anthony Nasareno was a conflict for you?

3 A: Well, when he -- he lost out on money. He lost out
4 on money.

5 Q: Okay. I know I keep slowing you down but we have to
6 really stay focused here. Because the Judge has never
7 heard any of this. So when you say that he lost out on
8 money, tell me why he lost out on money?

9 A: He never got a chance to go through this lawsuit he
10 was filing.

11 Q: So he was unable to successfully sue this Anthony
12 Nasareno?

13 A: Yes sir.

14 Q: Let me let you look at this right here. Do you know
15 what this document is?

16 A: That's the Sumter County Public Index.

17 MR. KIRKLAND: Your Honor, I think I can introduce
18 this without objection, the Sumter County Public Index.

19 THE COURT: Do you have any problem with it?

20 MS. WILLIAMS: I don't, Your Honor.

21 Q: All right. Now, the lawsuit that you're talking
22 about, is that reflected in this public index posting?

23 A: It shows where he had some type of ... he filed some
24 type of suit against Anthony Nasareno.

25 Q: So it looked like from this that George Thompson was

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1 represented by Charles Brooks and they were suing Anthony
2 Nasareno?

3 A: Yes, sir.

4 Q: Now, do you know from your own personal knowledge
5 anything about that lawsuit?

6 A: I knew he was filing the lawsuit because the victim
7 paid him a counterfeit check.

8 Q: Okay. And I'll correct this, Your Honor, because I
9 believe I may have said that was seventeen, but this is
10 actually Plaintiff's 16.

11 **(WHEREUPON, Plaintiff's Exhibit Number 16 was marked**
12 **and admitted into evidence.**

13 Q: All right. So this is a little bit tough to
14 understand, I think, for most people. So you're saying,
15 and I'm trying to reiterate what you just said. So what
16 you're saying is because this person died and it was
17 believed that you were the killer, that then Brooks could
18 not go through with the lawsuit and so he lost money
19 because of this?

20 A: He felt it was a conflict. And that's why he didn't
21 call my witnesses. And that's why he didn't object to the
22 Brady violations. And that's why he never made my
23 suppressions. This is why I'm here today.

24 Q: So you believe this is a big issue?

25 A: Yes.

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1 Q: Were there any indications from the way that you and
2 Brooks interacted that gave you the impression that he
3 had turned on you the way you're describing?

4 A: In my trial, I was trying to speak to him. I was
5 trying to speak to him. He kept throwing his hand in my
6 face. I know he did.

7 Q: So you're just saying as a human being, you picked
8 up on something concerning his attitude towards you and
9 it changed somehow?

10 A: Yeah.

11 Q: Okay. All right. Is there anything concerning ...

12 MR. KIRKLAND: And, Your Honor, were you able to
13 understand what he's ...

14 THE COURT: Oh, yeah.

15 MR. KIRKLAND: Okay.

16 Q: Is there anything else concerning that conflict of
17 interest that you would like to bring to the attention of
18 the Court?

19 A: Other than --- other than ... (Pause).

20 Q: If you can't think of anything, just relax.

21 A: I was prejudiced because of the conflict of
22 interest.

23 Q: Okay.

24 A: And if he would have did those things and called my
25 witnesses the results of the trial would have been

MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

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1 different, hands down.

2 Q: Got it. Now, Mr. Abrams, I believe I have gone
3 through every single thing that we ever talked about.
4 And I think I did it very thoroughly. However, this is
5 your last day, of course, that, you know, you can raise
6 these claims. Is there anything that you can think of
7 that I didn't raise to your satisfaction that we can talk
8 about a little more?

9 A: He was very ineffective. He's ineffectiveness.

10 Q: Well, let's talk about it. Tell me about his
11 ineffectiveness?

12 A: He was ineffective for not coming to see me and
13 prepare for the trial for one.

14 Q: And how do you think that impacted the outcome of
15 the trial?

16 A: If he would have did, if he would have prepared for
17 it and we would have put up some type of defense, it
18 would have been way different.

19 Q: Do you think it had any impact on your alibi
20 defense?

21 A: My alibi actually came to testify.

22 Q: Okay. So you saw your alibi witnesses?

23 A: Yes.

24 Q: So which ...

25 A: They actually came to testify and he still wouldn't

MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

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1 call them. My alibi witness is right there. He wouldn't
2 do it.

3 Q: Did he say anything about his thinking as to why he
4 would not do that?

5 A: All I know is, all I know is he kept on throwing his
6 hand up. I knew I was getting time from the first day I
7 walked in the courtroom. I mentioned ...

8 Q: When you say something like that, what do you mean
9 when you say you knew you were getting time the first day
10 you walked in the courtroom?

11 A: From me walking in the courtroom, and I'm thinking
12 I'm going for a bond hearing.

13 Q: Right.

14 A: And he bring my suit back there.

15 Q: Right.

16 A: I knew I was going to get time because he never
17 prepared, we never talked about anything. I got my last
18 piece of motion on May 21st, 2011. That was like two
19 weeks, two weeks before my trial.

20 Q: And I think you said you never talked to him about
21 the alibi. You only had an opportunity to talk to the
22 investigator; is that correct?

23 A: Yes, sir.

24 Q: And I think we've got it now. And the Judge, I
25 think, is very clear on what your allegations are. Is

MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

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1 there anything specifically, other than what we've talked
2 about, that you want to raise?

3 A: Other than that, that's it.

4 Q: Ms. Williams is going to ask you some questions, and
5 answer her questions. Oh, there's one final thing I have
6 to ask of you. There was another fellow that was
7 supposed to have been there, Terrance Lemon, right?

8 A: Yes, sir.

9 Q: Now, a few months ago we were here for a PCR;
10 correct?

11 A: Yes, sir.

12 Q: And I had subpoenaed Terrance Lemon. And Terrance
13 Lemon, you saw him sitting in the courtroom; right?

14 A: No, I don't see him.

15 Q: No, he's not here today. But you remember him being
16 in the white t-shirt and being here last time that we had
17 a PCR?

18 A: I don't know who he is so ...

19 Q: Okay. But I told you he was under subpoena;
20 correct?

21 A: Yes, sir.

22 Q: And that he was here to testify?

23 A: Yes, sir.

24 Q: We weren't able to get him this time. You
25 understand that?

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1 A: Yes.

2 Q: And you're still fine with -- and I gave you the
3 option of me filing a motion for continuance, but you
4 wanted to go forward without him?

5 A: Yes, sir.

6 Q: Okay.

7 MR. KIRKLAND: That's all I have your Honor.

8 THE COURT: Okay. Ms. Williams.

9 CROSS-EXAMINATION

10 BY MS. WILLIAMS:

11 Q: Mr. Abrams, with regard to Mr. Nasareno, Charles
12 Brooks represented you in that case; is that correct?

13 A: Yes.

14 Q: So he, of all people, knew you didn't do it; right?

15 A: I mean, he should have.

16 Q: He should have. So he wouldn't really have any
17 reason to be, have ill will towards you; is that correct?

18 A: Oh, yes, he did.

19 Q: Even though you didn't do it, he knew you it; right?
20 Actually, you weren't convicted at that trial; right?

21 A: I didn't get the question. What was the question?

22 Q: You were not convicted of killing Mr. Nasareno;
23 right?

24 A: No.

25 Q: And Charles represented you there; correct?

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1 A: Yes, he did.

2 Q: Okay. And I'm sure you talked to him in that case;
3 right?

4 A: Yeah, I did.

5 Q: You told him you didn't do it; right?

6 A: Yes, I did.

7 Q: So he had really no reason to be mad at you, huh?

8 A: Yes, he did.

9 Q: Tell me about -- you were writing him and asking for
10 a speedy trial motion; is that correct? You wanted ---

11 A: No. I didn't write for no speedy trial motion. I
12 asked for a bond hearing.

13 Q: Okay. That's all you were asking for. So the
14 letters that he sent about the speedy trial, you didn't
15 want him to do that?

16 A: No.

17 Q: Okay. So you weren't in a hurry to get to trial; is
18 that correct?

19 A: I can't hear the question. What was it?

20 Q: You weren't in a hurry to get to trial?

21 A: No, I wasn't.

22 Q: Which car were you driving on the 19th?

23 A: I was actually driving my moms Chevy Cavalier.

24 Q: Okay. You weren't driving, so you weren't driving -
25 - does she have another car?

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- 1 A: Yes, she did.
- 2 Q: And what kind of car is that?
- 3 A: I believe some type of jeep. I forgot the name of
- 4 it.
- 5 Q: So she doesn't own another blue car?
- 6 A: Actually, that's my car.
- 7 Q: That's your car?
- 8 A: Right. That's my car.
- 9 Q: Where was that car on the 19th?
- 10 A: It was actually parked. I was trying to get it
- 11 fixed. Actually everything it had a transmission and all
- 12 that. All that was -- it was in need of work.
- 13 Q: So you don't know why anybody would describe that
- 14 car on that date.
- 15 A: I don't know why, actually.
- 16 Q: How did you know where your uncle was going?
- 17 A: I don't know where he went. All I know is he left.
- 18 Q: About how many of your cousins were there; you said
- 19 a bunch of them? Do you know, any idea of how many
- 20 people were at the house?
- 21 A: I'll say no more -- it was -- I'll say about ten
- 22 peoples were there.
- 23 Q: What did y'all have to eat?
- 24 A: Macaroni and cheese, chicken, you know.
- 25 Q: Good stuff?

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1 A: Yeah. Sunday dinner.

2 Q: Did you run into anybody else at the gas station?

3 A: Huh?

4 Q: Did you run into anyone else at the gas station?

5 A: No.

6 Q: And you weren't -- do you know Mr. Owens or ...

7 A: No. I actually never met Owens at all.

8 Q: Okay. Did you know Lowery?

9 A: Yes, I did.

10 Q: But there's no reason for them to say they were in
11 your car that day; right?

12 A: Actually, I don't understand why they even put me in
13 the place, actually.

14 Q: Okay. All right. So you talked to Benny Webb. How
15 many times did you talk to him, you think?

16 A: Probably one time.

17 Q: Okay. And you told him you need to talk to my mom?

18 A: Yeah. I let him know about my alibi.

19 Q: Did you followup on your alibi or defenses in any of
20 your letters to Charles Brooks or to Mr. Webb? Did you
21 write Mr. Webb?

22 A: I don't remember.

23 Q: That's fair. Did you have any bond hearings ever
24 during that time?

25 A: I did. I had probably one, one.

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1 Q: Was Mr. Brooks present for that?

2 A: I believe so.

3 Q: And he did visit you at least one time in February;
4 right?

5 A: Yes, he did.

6 Q: So the record doesn't show that but he was there at
7 least once?

8 A: Yes.

9 Q: Okay.

10 MS. WILLIAMS: Beg your indulgence. My notes are not
11 very well written sometimes.

12 Q: And when Ms. Teresa Ford identified the videotape,
13 she was really picking out the outfit. She didn't say
14 that was your face or anything; is that ...

15 A: Yes. You are absolutely right.

16 Q: Yeah. She said that guy, that's the outfit the guy
17 was wearing. This big red t-shirt on his head?

18 A: Yes. You are absolutely right.

19 Q: A pretty distinctive outfit that guy was wearing?

20 A: Yeah, yeah.

21 Q: And the issues about the jacket, the shells. Were
22 you aware of those issues because you had them in
23 discovery materials; right?

24 A: No, I was not aware of those at all.

25 Q: Did he send you the reports regarding the bullet

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1 fragments?

2 A: No.

3 Q: And did you read over the investigators notes that
4 you had?

5 A: Yes. I seen ever note in my motion, yes.

6 Q: Yes. Okay. Who lives at your grandmother's house?

7 A: Who lives there?

8 Q: Uh-huh (affirmative)?

9 A: My grandmother.

10 Q: Is that your father's mother or your ...

11 A: That's my mother's mom.

12 Q: Okay. But you said you were living there too, at
13 the time?

14 A: Huh?

15 Q: You were also living there?

16 A: I was back and forth like I said from my
17 grandmother's house and my mom's house.

18 Q: Okay. And so would you brother also live at your
19 mom's house regularly? Where did your little brother
20 live?

21 A: My brother's the same way.

22 Q: Okay. So y'all -- it wasn't unusual for you both to
23 sleep on the couch at the same time?

24 A: No, it wasn't.

25 Q: How did you fit on the couch then?

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1 A: It was actually a pull-out couch?

2 Q: Oh, okay. And so your sister was back and forth as
3 well? Y'all kind of went to different houses?

4 A: My grandmama used to babysit my little sister, so...

5 Q: That's fair.

6 MS. WILLIAMS: Your Honor, I don't think have any
7 more questions.

8 THE COURT: Okay. Anything else, Mr. Kirkland?

9 MR. KIRKLAND: Let me think one second, Your Honor.
10 That's all I have, Your Honor.

11 THE COURT: Okay. You can step down.

12 MR. Howle: Your Honor, I was asked to speak to Mr.
13 Witherspoon in regard to what might be asked of him today
14 to see if there was any fifth amendment matters that he
15 might want to raise. And I just want to let the Court
16 know that we talk this morning in regard to that.

17 THE COURT: Okay. Thank you.

18 MS. WILLIAMS: That's right.

19 THE COURT: And they told me earlier before you got
20 here that they had done.

21 MS. WILLIAMS: And I'll just, for the record that
22 there was a plan for Mr. Howe to speak to this witness in
23 case he had any concerns. And he spoke to him this
24 morning.

25 THE COURT: Okay.

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STEPHEN WITHERSPOON,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

MR. WITHERSPOON - EXAMINATION BY MR. KIRKLAND:

Q: All right. Mr. Witherspoon, my name is Brad Kirkland. You may recognize my name from the subpoenas. You remember that I was the person that subpoenaed you to court?

A: Yeah.

Q: And you have to speak up because she has to put into that little thing everything you say?

A: Yes.

Q: But don't feel intimidated, just relax and it'll be fine. My understanding is that the attorney that represented you today gave you a summary of why you were here; do you understand the reason why you are here?

A: Yes.

Q: So you're aware that Markeith Ford was murdered on May 19th, 2009?

A: Yes, sir.

Q: Okay. Now, did he indicate to you whether or not you were a suspect in that case or did you know whether or not you were a potential suspect in that case?

A: No, he didn't.

Q: Okay.

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1 A: He said I wasn't.

2 Q: Okay. All right. Do you know -- let me ask you a
3 couple of questions about who you know. Do you know
4 somebody named Tony Lowery?

5 A: Yes.

6 Q: Okay. How do you know Tony Lowery?

7 A: Through church.

8 Q: Oh, so you saw him fairly regularly?

9 A: Not regularly.

10 Q: When you went to church you saw him?

11 A: Yeah.

12 Q: Okay. Was that once a week, once every few weeks?

13 A: Once a week.

14 Q: So you could identify him pretty easily?

15 A: Yes, sir.

16 Q: Do you know somebody named Frederick Owens?

17 A: Not off-hand.

18 Q: You don't recognize that name?

19 A: Naw.

20 Q: Okay. Do you recognize the name Terrance Lemon or
21 T. Lo or Terro?

22 A: No, sir.

23 Q: Okay. Do you recognize Maurice Abrams? Do you know
24 who that is?

25 A: Yes, sir.

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1 Q: This person sitting over here. Do you know who that
2 is right there?

3 A: Yes, sir.

4 Q: Who is it?

5 A: Maurice Abrams.

6 Q: Okay. Now, on May 19th, do you remember anything
7 about that day, what you were doing that day?

8 A: Yes, I do.

9 Q: Tell me what you were doing that day and just start
10 at the beginning and just take me through the day?

11 A: I went to my sister, to Manning.

12 Q: To Manning?

13 A: Yeah.

14 Q: Okay.

15 A: She took me to Manning to go get a dog.

16 Q: Oh, okay. Tell me what time was that, do you
17 remember?

18 A: I can't remember the exact time. I know it was
19 around the afternoon time.

20 Q: It was around the afternoon time?

21 A: Yeah.

22 Q: So when you say that, you mean after twelve p.m.?

23 A: Yeah. It was way after twelve. More like, maybe
24 like ...

25 Q: Just, you know, your best estimate?

MAURICE ABRAMS VS. STATE OF SOUTH CAROLINA

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1 A: I can't give you a time, about four, five, somewhere
2 in there.

3 Q: Okay. That's fine. That's absolutely fine. Now,
4 after you went to help -- where did you have to go to
5 Manning?

6 A: Yes, sir.

7 Q. How far away's that?

8 A. I don't know.

9 Q. Okay. And so you went. Did you end up buying a
10 dog?

11 A. Yes, sir, I did.

12 Q. Were both of you riding together?

13 A. Yes, sir.

14 Q. Once you had bought the dog -- how long were you
15 there buying the dog?

16 A. We were there for -- I think we were there for about
17 anywhere between thirty minutes to an hour, somewhere in
18 there.

19 Q. Okay. And after you bought the dog, where did you
20 go then?

21 A. First we went inside Walmart, then we went by the
22 ...

23 Q. Hold on. The Walmart, where is this Walmart?

24 A. In Manning. That's where we bought -- met the guy
25 to buy the dog, at the Walmart in Manning.

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1 Q. Oh, you met him in the parking lot?

2 A. Yes, sir.

3 Q. Okay. So you went in the Walmart. How long were
4 y'all in the Walmart?

5 A. Maybe about thirty minutes.

6 Q. Okay. And then after that, what did you do?

7 A. We left there and we stopped by either Bojangles or
8 either KFC, one.

9 Q. Okay. Was that nearby in Manning?

10 A. Yes, sir. In Manning too.

11 Q. Okay. Then after that what -- did you eat there or
12 did you just get stuff and put it in the car?

13 A. We got the food and we left.

14 Q. Okay. And then where did you go then?

15 A. Back to her house in Dalzell.

16 Q: In where?

17 A. Dalzell.

18 Q: Dalzell?

19 A: Yes, sir.

20 Q: I'm not from this area so I've never heard of that.
21 Dalzell?

22 A: Dalzell.

23 Q: How close is that to -- have you ever heard of the
24 El Cheapo's that used to be Lee's or Lee's Grocery?

25 A: Yes, sir.

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1 Q: How far away is that is the El Cheapo's from
2 Dalzell?

3 A: Good little while.

4 Q: Okay. So you were nowhere near the El Cheapo's?

5 A: No, sir.

6 Q. Do you remember approximately what time it might
7 have been when you got back to her house?

8 A. I can't remember. I know it was dark but I can't
9 remember about the time.

10 Q. So this was May 19th?

11 A. Yes, sir.

12 Q. So that would have been the summer?

13 A. Yes, sir.

14 Q. After the brought the dog back to her house, what di
15 you guys do?

16 A. Sat around the house, singing and playing on the
17 organ.

18 Q. Oh, playing on the organ?

19 A. Yes, sir.

20 Q. Is somebody a musician?

21 A. I'm one.

22 Q. Okay. So y'all were playing the organ. Who was
23 over at hte house at that point in time?

24 A. It was her, me, her kids, and the dog that we just
25 bought.

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1 Q. What kind of dog did you get?

2 A. I can't remember the name of it. It looked like a
3 little Rottweiler.

4 Q. Okay.

5 A. A small dog.

6 Q. How long were you there, do you think at your
7 sister's house?

8 A. Just about all the way to the morning.

9 Q. Oh, so you stayed overnight more or less?

10 A. Yeah.

11 Q. Were you guys awake, you know, having fun
12 socializing or did you sleep?

13 A. No, we was awake practically til morning.

14 Q: Okay. When you say practically to morning,
15 different people have different opinions of morning.
16 What is morning when you say practically morning, what
17 does that mean to you? What time?

18 A: I don't know. Three, four, somewhere in there.

19 Q: Okay. All right. So three or four. Now, at that
20 point in time did you leave her house?

21 A: Yes.

22 Q: Where did you go then?

23 A: I had my son with me. I went home.

24 Q: So at ten thirty p.m. that night -- this is
25 confusing, but that was on the 20th, right, when you left

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1 ...

2 A: Uh-huh (affirmative).

3 Q: ... because it was the 19th?

4 A: Uh-huh (affirmative).

5 Q: Okay. So at ten-thirty on the 19th, you had brought
6 the dog back and you and your sister and the other people
7 were playing the organ and socializing and talking?

8 A: Yes, sir.

9 Q: And you didn't leave to go to El Cheapo's?

10 A: No, sir.

11 Q: You didn't leave to go pick up Frederick Owens?

12 A: No, sir.

13 Q: You didn't see Tony Lowery that night?

14 A: No, sir.

15 Q: You didn't see Maurice Abrams that night?

16 A: No, sir.

17 Q: What's your sister's name?

18 A: Mary Smith.

19 Q: Mary Smith?

20 A: Yes, sir.

21 Q: Was there any point in time -- and I may have
22 already asked you this. But was there any point in time
23 that anybody ever indicated to you that you may be a
24 witness or have any kind of role or anything in Markeith
25 Ford's death?

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1 A: No, sir.

2 Q: Did the police every contact you?

3 A: The police, they tried to get in contact with me,
4 left a card and I called them back.

5 Q: And what happened with that? You don't have to
6 necessarily say what they said. But just what happened
7 with that?

8 A: They just asked me did I -- they was looking for
9 Maurice's home. He said that he -- if they had gotten in
10 contact with me then they would have found him.

11 Q: But they didn't try -- they didn't ask you any
12 questions about you being with them at El Cheapo's or
13 anything like that?

14 A: No, sir.

15 Q: They didn't ask any questions about you being with -
16 - picking up some guy named Tony Lowery?

17 A: No, sir.

18 Q: Okay.

19 MR. KIRKLAND: That's all I have, Your Honor. I had
20 to think for a minute. But that's all I have.

21 THE COURT: Okay. Ms. Williams?

22 CROSS-EXAMINATION

23 BY MS. WILLIAMS:

24 Q: Mr. Witherspoon, do you know anyone who lives in
25 Spanish Garden Apartment?

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1 A: Do I know anyone who live there?

2 Q: Yeah. Did you know anybody that lived there?

3 A: Yes. My sister and my cousin.

4 Q: And you are Mr. Abrams cousin; isn't that correct?

5 A: Yes.

6 Q: So y'all know each other pretty well?

7 A: We know each other well enough.

8 Q: Y'all grow up around each other?

9 A: Yes.

10 Q: Were you friends? Did you hang out or ...

11 A: We hung out sometimes, not a lot.

12 Q: And so your family members all are here , your
13 sister ...

14 A: Yes.

15 MS. WILLIAMS: Thank you.

16 THE COURT: Okay.

17 MR. KIRKLAND: I have nothing else, Your Honor.

18 THE COURT: All right. You can step down.

19 MR. KIRKLAND: Your Honor, I'm going to call Mary
20 Smith. I had not planned on calling her. And,
21 therefore, they have not run a background on her. So if
22 you'll give me one moment, I'll let Mary Smith write down
23 her information quickly and then we'll go from there.

24 THE COURT: Okay.

25 MS. WILLIAMS: Ready, Your Honor.

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1 THE COURT: Okay.

2 MR. KIRKLAND: And, Your Honor, I call Mary Smith.

3 MARY SMITH,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 **MS. SMITH - EXAMINATION BY MR. KIRKLAND:**

7 Q: Ms. Smith, my name's Brad Kirkland. You probably
8 heard me talking to your brother just a little while ago.
9 He was talking about -- you heard him -- about going to
10 get a dog. Did you hear him testifying about that?

11 A: Yes.

12 Q: Do you remember that incident? Do you remember that
13 day?

14 A: Yes.

15 Q: Well, tell me, because I can't lead you. So just
16 tell me, what do you remember about that day? Do you
17 remember the date was -- what the date was?

18 A: I'm not sure about the date, but I know ---

19 Q: Excuse me?

20 A: I say I'm not sure about the date, but I know the
21 day that he came over is sort of woozy.

22 Q: Okay. Okay. And what, tell me what you remember
23 that day?

24 A: He came by the house probably five or four o'clock
25 and we were going to buy a Dashaund.

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1 Q: It was a Dashaund. Okay. And where did you meet
2 the people?

3 A: At the Manning, Walmart in Manning.

4 Q. Okay. Now, I know it sounds silly but I'm going to
5 walk back through virtually every question I asked him.
6 So what time do you think you got to Manning?

7 A. About maybe 30 minute to a hour.

8 Q. Okay. And once you got to Manning, how long were
9 you there in the parking lot talking to the dog owner or
10 salesman?

11 A. About forty minutes.

12 Q. Okay. After you spent forty minutes with him, did
13 you buy the dog?

14 A. Yes, I did.

15 Q. And I know it seems silly I'm asking you the exact
16 same questions. But then after that, do you remember
17 what happened after you bought the dog?

18 A. We went into Walmart to buy some dog clothes.

19 Q. Ah, dog clothes. How long would you say you were in
20 there?

21 A. It might have been forty minutes to an hour.

22 Q. I'm just a little bit curious. What sort of dog
23 clothes did you find for your dog?

24 A. It was like a cute little a sweater.

25 Q: Okay. Was it a female or a male?

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1 A: It was female.

2 Q: Okay. So after you had bought the dog clothes, got
3 back in your car, where did you go then?

4 A: Back to my house.

5 Q: Did you make any ...

6 A: Well before that we stopped at ...

7 Q: ... stops on the way.

8 A: ... the restaurant.

9 Q: Okay. Now, were you in Manning, in Dalzell, in
10 Sumter?

11 A: Manning. Still in Manning.

12 Q: Still in Manning. So once you -- did you eat there
13 or did you take the food with you?

14 A: We didn't eat there because I had the dog in the
15 car.

16 Q: Right. Of course. So where did you go then?

17 A: After that, we drove home, back to my house.

18 Q: Now, where is your house located?

19 A: 3140 King Street, in Dalzell.

20 Q: In Dalzell. Now, are you familiar with what used to
21 be referred to as Lee's or Lee's grocery and now it's El
22 Cheapo's, I understand?

23 A: That's way on the other side of town.

24 Q: Now, when you say way on the other side, how many
25 would you say it's from you?

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1 A: That would depend on traffic, it's on the other
2 side.

3 Q: Well, let's say at ten-thirty at night, how far away
4 would it be?

5 A: It'd be about an hour?

6 Q: It'd be about an hour? Okay. So when you get back
7 to your house, what do you guys do?

8 A: We just sang --- my son plays the organ, so we just
9 sang.

10 Q: Okay. And how long were you guys there at the
11 house, you know, socializing, playing the organ and
12 whatnot?

13 A: We did that for hours so probably around eleven,
14 twelve o'clock we stopped.

15 Q: Okay. Do you remember --- did your brother, your
16 brother's, Steve Witherspoon; right?

17 A: (Nods head affirmatively).

18 Q: Okay. Do you remember approximately when your
19 brother left that night?

20 A: Like I said, it was early in the morning. It had to
21 be early in the morning because I usually send my kids to
22 bed until after that.

23 Q: Okay. So it's the same question I asked before.

24 When you say the word, you know, the phrase early in the
25 morning, what does that mean to you as far as the time?

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1 A: About three, two or three o'clock.

2 Q: Okay. Now, if your brother -- was he with you or
3 within your sight the whole time that he was over there?

4 A: Yes.

5 Q: I mean, I know he may have gone to the bathroom or
6 something, but I'm saying was he -- did he ever leave the
7 house that you knew of?

8 A: No, he didn't.

9 Q: If he would have been gone for approximately two
10 hours, would you have known that?

11 A: Yeah. Usually, he would tell me when he was about
12 to leave.

13 Q: Was there a two-hour period of time that he was not
14 at the house?

15 A: No.

16 Q: So he was there from when you got back from Manning
17 ---

18 A: Uh-huh (affirmative).

19 Q: --- which -- what time did we think that was? Seven
20 or eight?

21 A: Yes. It was dark.

22 Q: Okay. And he was there until -- and it was May
23 19th, so that's summer. And he was there until three
24 a.m. and there was no two-hour period that he was not
25 there?

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1 A: No, sir.

2 MR. KIRKLAND: That is all the questions I have,
3 Your Honor.

4 THE COURT: Okay. Ms. Williams.

5 CROSS-EXAMINATION

6 BY MS. WILLIAMS:

7 Q: I just want to make sure. You said it was Wednesday
8 but you weren't sure, is that correct?

9 A: Yes.

10 Q: Is there any reason that one day stood out to you
11 or...

12 A: Usually we had Bible study or something.

13 Q: Oh, okay. So y'all had gone to that, that day?

14 A: We didn't go.

15 Q: Okay. What kind of car does your brother, Mr.
16 Witherspoon, what does he drive?

17 A: My brother doesn't own a car. He drove like a
18 Tarsus or something like that.

19 Q: Is that what he would have been driving in 2009?

20 A: Yes.

21 Q: And you know, Mr. Abrams. He's your cousin?

22 A: Yes, ma'am.

23 Q: And did he usually drive his vehicle? Did you see
24 him in that a lot?

25 A: I don't see him.

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1 Q: You've never seen him ...

2 A: I've never been around him since he was a little
3 boy.

4 Q: And was it you that he said lived at the Spanish
5 Gardens Apartments or ---

6 A: No, ma'am.

7 Q: Those were different relatives?

8 A: Different, yes.

9 Q: All right. But that's where y'all's relatives ---

10 A: I'm not sure.

11 Q: Okay. And did your brother have a cell phone, do
12 you recall?

13 A: I'm not sure.

14 Q: Okay. Thank you.

15 MR. KIRKLAND: Nothing else, Your Honor.

16 THE COURT: Okay. You may step down.

17 MR. KIRKLAND: Your Honor, I don't know long we've
18 been going. Do we have time to do another fairly lengthy
19 witness, maybe a thirty-minute, forty-minute witness?

20 THE COURT: Yes.

21 MR. KIRKLAND: Okay.

22 THE COURT: I assume we're going to finish this
23 before we go to lunch.

24 MR. KIRKLAND: Yes, sir. I just was -- whatever you
25 want to do. I'm going to call Catherine McFadden.

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1 THE COURT: You need a break, Melissa?

2 MADAM COURT REPORTER: No, sir.

3 THE COURT: All right.

4 MR. KIRKLAND: Catherine McFadden.

5 **CATHERINE MCFADDEN,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 **MS. MCFADDEN - EXAMINATION BY MR. KIRKLAND:**

9 Q: Ms. McFadden, it's already been discussed quite a
10 bit. You are Maurice's mother; correct?

11 A: Yes, I am.

12 Q: Do you have any other children?

13 A: Yes, I do.

14 Q: How many children do you have?

15 A: I have four total.

16 Q: Maurice. And I think another one's here in this
17 courtroom?

18 A: Maurice, Dwayne, Leroy and my six year old.

19 Q: Who's here in this courtroom, other than Maurice?

20 A: Dwayne.

21 Q: Are your children all grown? What are their ages?

22 A: Twenty-six, twenty-four, twenty-two, and six.

23 Q: So -- oh, you've got a six-year-old?

24 A: Yeah.

25 Q: Okay. The older children, what sort of work or what

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1 kind of things do they do?

2 A: Leroy is disabled, Dwayne's unemployed, and Maurice
3 is locked up.

4 Q: Of course. Now, what kind of work do you do?

5 A: I am a packer at Amazon.

6 Q: How long have you worked at Amazon?

7 A: One year.

8 Q: Where were you working prior to that?

9 A: I was at Walmart for about eight months, and then I
10 worked at Target before that.

11 Q: Okay. How long did you work at Target?

12 A: I worked at Target a total of seven years.

13 Q: Okay. And then you went to Walmart?

14 A: Yeah.

15 Q: Now, in 2009 it's obvious Maurice was charged with
16 murder. Do you recall approximately at the time that he
17 found out or you found out that he was a suspect or had a
18 warrant for his murder?

19 A: I found out -- it was maybe in June.

20 Q: Okay. In June you found out. How did you find out?

21 A: On the news.

22 Q: Oh, so you saw him. He was wanted?

23 A: Wanted.

24 Q: Okay. Now, at some point in time, he's already
25 testified so I'm going to skip through some of this. He

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1 turns himself in and then he's at the detention center?

2 A: Yes.

3 Q: Okay. Now, tell me where does your involvement in
4 the case begin? What were you thinking? Once he gets
5 arrested, what were you trying to do? What was going on
6 with you?

7 A: Establish the date that it happened.

8 Q: Okay.

9 A: Something happened.

10 Q: Okay. Did he have -- when he was initially
11 arrested, did he have an attorney?

12 A: When he was initially arrested?

13 Q: Right?

14 A: When he turned himself in?

15 Q: Yes.

16 A: He didn't have one at the time, no.

17 Q: Okay. Do you know what happened with his -- if he
18 got an attorney?

19 A: He got a public defender.

20 Q: Okay. Now, did you ever have any interaction with
21 that public defender?

22 A: Yes, I did.

23 Q: Okay. I don't want you to talk about what he
24 necessarily said to you, but was there -- were you -- did
25 you have a good relationship or what with this person?

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1 A: It wasn't good and it wasn't bad.

2 Q: Okay. Were you confident in his representation?

3 A: No.

4 Q: Okay. So based on that, what did you decide to do?

5 A: To hire a attorney.

6 Q: Okay. And who did you decide to hire?

7 A: Well, I was searching, checked out a few lawyers,
8 then I finally met up with Brooks.

9 Q: With Charles Brooks?

10 A: Charles Brooks, yeah.

11 Q: Okay. Now, did you --- how did you decided to hire
12 Charles Brooks? Had you met with him or, you know, what
13 happened?

14 A: Well, when I met with him ...

15 Q: This was before he was hired?

16 A: Before he was hired, I met with him.

17 Q: Okay. And ...

18 A: And me and Brooks discussed the cases and he told me
19 ... But I told him I only wanted him to represent my son
20 because I can't afford it, to have him represent him on
21 all the cases.

22 Q: Okay. Now, let's break that down so the Judge can
23 understand it. At this time, we have the Dubose Siding
24 case, that was pending. The Markeith Ford case.

25 A: Yes.

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1 Q: And then the female assault case. I can't remember
2 her name?

3 A: Yes.

4 Q: Something like Kyles?

5 A: Kyles.

6 Q: And so you told him you only wanted him to represent
7 Maurice on one charge?

8 A: Yes.

9 Q: What was that charge?

10 A: The Dubose Siding.

11 Q: Okay. Dubose Siding. Not the Markeith Ford case
12 that we're here for today?

13 A: Not the Markeith Ford.

14 Q: Okay. Now, tell me what ended up happening with
15 that? Because obviously, he did represent him. What
16 happened?

17 A: Well he told me that he was going to charge me one
18 flat fee.

19 Q: And you don't need to discuss the actual fee itself,
20 but ...

21 A: Yeah. For all these cases. But I only really
22 wanted him to represent him for the Dubose Siding because
23 I thought it was a conflict of interest when he had
24 Murphy.

25 Q. Okay. Now, I'm not certain what you mean by that.

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1 A. Well, Murphy. Murphy --- when I went and met with
2 Murphy because I wanted him to try to get the videos from
3 the gas station.

4 Q. Got you.

5 A. Murphy told me that his kids went to school with
6 Nasareno's kids.

7 Q. Hold on, this is that same Anthony Nasareno?

8 A: Anthony Nasareno.

9 Q: So because Brooks was suing Anthony Nasareno --
10 well, tell me what you thought the conflict was?

11 A. The conflict was because he knew Nasareno. Murphy
12 knew Nasareno.

13 Q: And how was that a conflict in your mind?

14 A. I thought it was a conflict. I felt he wasn't going
15 to represent my son fair during the trial.

16 Q: Oh, because Nasareno was the victim in the Dubose
17 Siding case?

18 A: Yeah. In the Dubose Siding case.

19 Q: I'm sorry. I'd gotten so confused right then. I
20 apologize.

21 A: Uh-huh (affirmative).

22 Q: But wasn't he representing him on the Nasareno case?

23 THE COURT: No.

24 MR. KIRKLAND: No, he wasn't.

25 THE COURT: She's talking about Murphy. You're

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1 talking about Brooks.

2 MR. KIRKLAND: Yeah. I understand. I've gotten
3 confused terribly.

4 THE COURT: Murphy's children went to school with
5 Nasareno kids.

6 MR. KIRKLAND: Okay.

7 THE COURT: Brooks is suing Nasareno over in the
8 Magistrates over a ...

9 MR. KIRKLAND: But he was the victim of the Dubose
10 Siding case.

11 THE COURT: Dubose siding, right.

12 Q: So when Murphy was appointed, was he appointed on
13 the Nasareno case and the other cases?

14 A: Yes. He had all three cases.

15 Q: Oh, okay. So he was representing Maurice on the
16 Nasareno case?

17 A: On all three cases.

18 Q: Okay. I've got you.

19 A: And he also represented ...

20 Q: Okay. I got you. Now, so you thought that was a
21 conflict and then what did you do about it?

22 A: I went back to the courthouse and let Lauren
23 Stephens know.

24 Q: I don't know who that is. Who is Lauren Stephens?

25 A: Lauren Stephens, they told me that she was the

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1 person that pointed out caseloads to all public
2 defenders.

3 Q: Okay.

4 A: So I went back to her and, went back to her and I
5 told her that I felt that Murphy wasn't representing my
6 son because his kids --- I thought that he knew Nasareno.

7 Q: Okay. So what did she do about that?

8 A: She told me, I thought Murphy would do a good job.
9 He's so excited about having this case.

10 Q: But ultimately since she didn't reassign it -- so
11 I'm going to skip ahead a little bit here.

12 A: She didn't reassign it.

13 Q: So you decided to hire somebody?

14 A: Hire somebody.

15 Q: So you went and talked to Brooks?

16 A: Uh-huh (affirmative).

17 Q: And tell me about retaining Brooks?

18 A: When I went and retained Brooks ...

19 Q: We were talking about the three different cases.

20 A: Three different cases.

21 Q: And you only wanted ...

22 A: I only wanted him to represent Maurice on the Dubose
23 Siding case.

24 Q: Got you. And the reason why that was, now I
25 understand, is because that's where you thought the

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1 conflict was?

2 A: Right.

3 Q: Okay. I'm with you now. I never understood that
4 until just now. So what happens because he apparently
5 ended up representing him in the Markeith Ford case. So
6 what happened?

7 A: He told me that the Nasareno case, he'd take all
8 three cases for the price of one.

9 Q: And so was that the same price he was going to
10 charge for just the one and he said he'd do them all?

11 A: Yeah.

12 Q: Okay. So basically he just said the same fee that I
13 would quote you for the one case, I'll just do all of
14 them for that?

15 A: Yeah. Because he told me that most likely that the
16 Ford case was not going to go to trial.

17 Q: Got it. So did you allow him then to do that?

18 A: I told him I only wanted him to focus on the Dubose
19 Siding case.

20 Q: So how was it then that he came to represent ...

21 A: He wrote Timothy Murphy a letter stating that he was
22 going to represent my son.

23 Q: On all of the cases?

24 A: On all of the cases. I didn't want him to do all
25 the cases. I only wanted him to do Dubose Siding.

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1 Q: Okay. So at any point in time when this is ---
2 because it was on for a year or two. Did you attempt to
3 get Mr. Brooks off of the case?

4 A: I didn't attempt to get him off of the case because
5 he told me that the case was not going to go to trial.

6 Q: Okay. So you ultimately acquiesced in this
7 arrangement of him representing your son on all three
8 charges?

9 A: Yes.

10 Q: Okay. Now, during the period of time that he's
11 representing your son, let's talk about the communication
12 that you two had about his representation of your son?

13 A: Uh-huh (affirmative).

14 Q: Were you satisfied with his representation of your
15 son?

16 A: No, I wasn't.

17 Q: What sort of problems did you have?

18 A: He was not advising my son, was not going to visit
19 my son. I told him, I said, my son needs to see you. He
20 did not go down there at all.

21 Q: How often would you say that you were able to
22 contact Mr. Brooks himself?

23 A: Nearly everyday I was talking to Brooks, talking to
24 Brooks office. My son needs to see you. I would make an
25 appointment to go out there to see Maurice.

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1 Q: So and how was it that you were aware that he never
2 went?

3 A: When I come back from -- Maurice would tell me, he
4 would call me. He would let me know that Brooks had not
5 been there. And I'll tell him again. I tell him again.
6 And Brooks didn't go.

7 Q: So are you aware of approximately how many times
8 that you know of that he did visit Maurice?

9 A: Maybe once or twice.

10 Q: Okay. Now, were you able to have any phone
11 conversations or any in person conversations with Mr.
12 Brooks in which you discussed potential defenses or
13 strategies of representation?

14 A: No.

15 Q: Did you ever have a conversation with Mr. Brooks in
16 which you raised defenses to him, that you told him about
17 any defenses?

18 A: Yes. I did. I told him several things that I
19 noticed.

20 Q: Okay.

21 A: Like at the bond hearings and preliminary hearings,
22 I noticed some ...

23 Q: Well, I don't want to get too deep into that stuff
24 because we decided not to raise those issues. But I
25 understand what you're saying?

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1 A: Uh-huh (affirmative).

2 Q: One of the issues that Maurice did raise was an
3 alibi. Did you ever have an opportunity to talk to him
4 about an alibi?

5 A: I mentioned the alibi in the beginning. I told him
6 I was trying to get the video ...

7 Q: To corroborate your story about the alibi?

8 A: Right. Yeah.

9 Q: So you told Brooks that at some point in time? You
10 said in the beginning. What does the beginning mean?

11 A: Like when I first went and met with him.

12 Q: Before you even hired him?

13 A: Before I hired him.

14 Q: Okay. Now, did you ever have an opportunity to talk
15 to any of the investigators in this case?

16 A: Yes, I did.

17 Q: Okay. So Mr. Brooks hired an investigator?

18 A: I think -- Yeah. Yeah, I think the court appointed
19 investigator because I couldn't afford it.

20 Q: Right. And did you meet or talk to the
21 investigator?

22 A: Yes, I did.

23 Q: Now, what did issues did you raise with the
24 investigator? Why did he talk to you?

25 A: About the alibi.

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1 Q: So he did come and talk to you about the alibi?

2 A: Uh-huh (affirmative).

3 Q: Okay. And so were you able to talk to him about the
4 alibi?

5 A: Yeah. I spoke to him about the alibi.

6 Q: Now, I'm going back for one minute and talk about,
7 sort of this three-way relationship that you had with
8 Brooks, and Brooks was having with Maurice. Were you
9 able to stay in contact with Maurice at the jail? How
10 were you in contact with him?

11 A: His bondsman let him call me.

12 Q: Okay. Was he expressing some concerns about Mr.
13 Brooks to you?

14 A: Brooks was not visiting him to prepare for the case,
15 for the trial.

16 Q: And you passed that along, you say, to Mr. Brooks?

17 A: Yes, when I could see him.

18 Q: And to your knowledge that didn't occur except once
19 or twice?

20 A: Once or twice.

21 Q: Now, I'm going to move forward. Is there anything
22 else about Mr. Brooks and about your relationship and the
23 relationship that you had with Maurice that you want to
24 talk about?

25 A: Yes.

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1 Q: Well, let's start and see if we're going somewhere.
2 What else would you like to discuss?

3 A: All during the Ford trial how he asked for ...

4 Q: Okay. Now, the Ford trial is the one we're here for
5 today?

6 A: Yes.

7 Q: Okay. What happened?

8 A: The prosecutor had presented their case and started
9 questioning Teresa.

10 Q: Who is Teresa?

11 A: Teresa Ford.

12 Q: And she was the ...

13 A: The victim's sister. And then we had a break after
14 they had questioned her. And Brooks came over to me
15 after we went to break and he asked me, he said, is your
16 parents going to put up their house for Maurice?

17 Q. Okay. Hold on. Hold on. So if I -- Brooks says to
18 you, are your parents willing to put up their house for
19 what?

20 A. For Maurice. I mean, yeah, if he get bond they say
21 they will put up the house.

22 Q. Was this during the trial?

23 A. During the trial.

24 Q. Okay.

25 A. And then he said, is your son ...

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1 Q. No, don't talk about money.

2 A. Is he worth X amount of dollars? You think your
3 son's worth X amount of dollars? I'm like, yeah, my son
4 worth X amount of dollars.

5 Q. Okay.

6 A. So basically he was asking for money to represent my
7 son.

8 Q. Now, let's talk about that. So what was -- don't
9 talk about the money. What was the payment arrangement?
10 Did you pay him the whole thing up front at the
11 beginning?

12 A. I paid him like one-fourth. It may have been more
13 one-fourth of the money.

14 Q. Okay. Of the total amount that he said he would do
15 all three cases for?

16 A. Right.

17 Q. Well, I know. I can speed this up. So at the time
18 that he says this thing to you, how much had you paid him
19 in percentages of the total amount that you owed him?

20 A. Ninety percent of the first amount due.

21 Q. Now, you say the word, first amount. All right.
22 What are you suggesting when you say first amount?

23 A. He was wanting more money.

24 Q. So I don't want to interpret this for you?

25 MS. WILLIAMS: Your Honor, I think this is

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1 irrelevant at this point of ...

2 MR. KIRKLAND: Well, I think that this is going to
3 go to a potential conflict.

4 THE COURT: All right. Go there.

5 MR. KIRKLAND: I'm getting there as fast as I can.

6 Q: So when he comes up to you and starts asking you for
7 more money in the middle of the trial, what did you feel
8 was going on with your relationship with Brooks and with
9 Brooks relationship with -- how did you read that? I
10 wasn't there?

11 A: I think that he was trying to go to trial because he
12 was wanting more money for representing my son. And I
13 told him I only wanted him to represent my son for one
14 case. And he said that the other case is not going to go
15 to trial.

16 Q: So was your impression that he was asking for more
17 money than even the original deal?

18 A: Yes.

19 Q: And what was his demeanor at this point in time when
20 he's, you know, approaching you with this subject?

21 A: Don't you think your son is worth X amount of
22 dollars? I'm like, yeah.

23 Q: So how did you -- describe that in words because we
24 have to put this on the record. So -- I'm trying to
25 think of how to ask this, so what did you think he was

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1 insinuating to you or what he was going to do or what was
2 the problem?

3 A: That basically he would do a good job if I was to
4 pay him more money.

5 Q: So in your mind -- well, what was your response to
6 that? What did you decide to do about that?

7 A: I just looked at him. And I said you told me that
8 you was going to do all these cases for X amount of
9 dollars.

10 Q: So he seemed to have gone back on his word?

11 A: On his word.

12 Q: And he seemed to be kind of upset about it from what
13 I'm reading here.

14 A: Yes, he wanted more money.

15 Q: Okay. All right. Other than that, I think we all
16 get that issue now. So you think that's a conflict that
17 he didn't put one hundred percent effort into it because
18 of the money issue.

19 A: The money issue.

20 Q: All right. Other than that issue, is there anything
21 else you can think of with your relationship with Brooks?

22 A: No.

23 Q: I don't remember me and you talking about anything
24 else.

25 A: I think that's it.

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1 Q: Okay. Now, let's talk about this alibi. Do you
2 remember where you were on May 19th?

3 A: Yes.

4 Q: Of the 2009?

5 A: Uh-huh (affirmative).

6 Q: Do you remember where you were?

7 A: Yes.

8 Q: Okay. Tell me what you were doing that day. Let's
9 walk through the entire day.

10 A: Well ---

11 Q: Where were you working at the time?

12 A: Target.

13 Q: Okay. You were working at Target. Now, what were
14 you doing on that day? Why was that day memorable?

15 A: Well, it was memorable to me because May 17th was my
16 grandmother's birthday. So Big Mama, so May 17th was her
17 birthday. And we decide we was going to do a memorial
18 dinner, which we do it every year since her passing.

19 Q: So every May 17th since 2007 you had done that?

20 A: Yes.

21 Q: So this was this the second or third? Second time?

22 A: This was the second time?

23 Q: Okay.

24 A: But May 17th was on a Sunday.

25 Q: What day was May 17th?

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1 A: May 17th was on a Sunday.

2 Q: Okay. Let me let you look at this real quick. Do
3 you recognize this?

4 A: Yes.

5 Q: What is that? Say what it is?

6 A: That's the cover of my grandmother's obituary.

7 Q: Obituary?

8 A: Yes.

9 Q: Okay.

10 MR. KIRKLAND: Your Honor, I would offer this cover
11 of the obituary, which reads at the top, homecoming
12 service for our dearly beloved, into evidence at this
13 time. And it's Plaintiff's 17.

14 MS. WILLIAMS: Without objection.

15 THE COURT: All right.

16 **(WHEREUPON, Plaintiff's Exhibit Number 17 was marked**
17 **and admitted into evidence.)**

18 Q: Now, what does it have -- who was this the obituary
19 for?

20 A: For my grandmother.

21 Q: Okay. And what are birth and the two dates here,
22 what do they represent?

23 A: Her time of birth and the day she died.

24 Q: What is the date of birth?

25 A: May 17th, 1919.

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1 Q: And ...

2 A: June 8th, 2007.

3 Q: All right. Now, you say that you were celebrating
4 her birthday, which was May 17th.

5 A: Yes.

6 Q: And May 17th, as we know, fell on a Sunday that
7 year.

8 A: On a Sunday.

9 Q: So why did you not have the memorial dinner on that
10 day since that was her birthday?

11 A: Because my mother sing with the Corinthian singers.
12 They had to sign in North Carolina. So we couldn't
13 really celebrate it on Sunday because we were in North
14 Carolina all day.

15 Q: Okay. Now, what was the relationship that you had
16 with the Corinthian Singers?

17 A: My mother sung in the group.

18 Q: Your mother sung in it?

19 A: Yeah.

20 Q: Were there any other family members involved in it?

21 A: My brother was the drummer.

22 Q: Okay. Where were they, do you remember?

23 A: We went to Rayford. Rayford, North Carolina.

24 Q: Do you remember about how far away that was?

25 A: It was on the other side of South of the Border.

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1 Q: Okay. So it was pretty significant trip to go up
2 there and do this? How long did that last that day?

3 A: All day there was a lot of people singing up there.

4 Q: And so that ultimately was why you couldn't do the
5 memorial then.

6 A: Why we couldn't do it that day.

7 Q: Okay. Now, so you apparently move it. When do you
8 move it to?

9 A: I moved to Tuesday.

10 Q: And why did you move it to Tuesday?

11 A: Monday I had to work.

12 Q: Okay. And on Tuesday, tell me about that day?

13 A: Tuesday --- the Monday night I started preparing the
14 ...

15 Q: Right.

16 A: So I was preparing the memorial dinner for my
17 family. And on that day ...

18 Q: And we're talking about the 19th now, the next day?

19 A: The 19th.

20 Q: Okay. On that day, what did you do?

21 A: On the 19th, I got up, started preparing food,
22 started cooking dinner. And then I finish up like, maybe
23 about two. And then about four o'clock, I decided to
24 leave. I told Maurice let's go. I wanted to go get the
25 gas voucher from DSS said I could get gas --- let's get

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1 gas.

2 Q: Okay. You remember what time that was?

3 A: That was between -- that was after four o'clock.

4 Q: Okay. And so tell me what you did. You and ...

5 A: Me and Maurice -- I was driving my truck. And I had
6 a Mazda, the Chevy.

7 Q: And you went to Gate?

8 A: We went to Gate gas station.

9 Q: And y'all were in separate cars?

10 A: In separate cars. And I tried, attempted to get gas
11 in both of the cars. And one of the clerks inside the
12 gas station, me and her got into an argument.

13 Q: What was that argument over?

14 A: Over that gas voucher. She said I wasn't supposed
15 to put gas in somebody else's car. And I told her both
16 the cars is mine. And I wanted to put part of the gas in
17 one car and part of the gas in the other car.

18 Q: Right.

19 A: And I showed her the registration. And I continued
20 to put gas in the car. And then I left. We left, me and
21 Maurice went to my mom's house.

22 Q: Okay. What did you do there?

23 A: My mother's house.

24 Q: Where was your grandmother's house located?

25 A: My mother's house.

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1 Q: Where was your mother's house located?

2 A: Near Dalzell.

3 Q: And what --- I'm not from this area. It may be

4 significant to the judge. Sort of where is that, in

5 Sumter?

6 A: It's near Dalzell.

7 Q: Okay. So you go over there to visit her. How long

8 are you over there?

9 A: About an hour and a half.

10 Q: Okay. And then if you're only over there an hour

11 and a half, you leave. Does Maurice leave. Tell me how

12 that all works out?

13 A: Maurice left just before me and we went home.

14 Q: Okay. So both of you went home at that point in

15 time?

16 A: Yeah.

17 Q: Do you know maybe what time it was at that point?

18 A: Between six thirty and seven.

19 Q: Okay. Now, what -- when you say home, tell me where

20 home is?

21 A: My apartment, South Forge Apartments.

22 Q: South Forge Apartments?

23 A: Yeah. They call it Spanish Gardens, some call it

24 South Forge Apartments.

25 Q: Now ...

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1 A: On Highway 261.

2 Q: All right. Now, once you get back home, Maurice,
3 you say, arrives at approximately the same time?

4 A: Yeah.

5 Q: Who is there at the time?

6 A: My brother, my son, Dwayne, Maurice and then me and
7 my niece and my nephew was just leaving.

8 Q: So they were leaving when you guys were pulling up?

9 A: Right.

10 Q: Okay. Who are your niece and nephew?

11 A: Celia and Josh.

12 Q: Okay. So you go in the house and then tell me sort
13 of how the evening plays out?

14 A: I went in the house. We watched the home videos of
15 my grandmother, which I had taken. I had two TVs. I had
16 one in my bedroom and one in the living room. And my
17 brother was in the house. Maurice went back and forth on
18 the computer and my brother was in my room.

19 Q: Okay. Now, back and forth on the computer. Where's
20 the computer?

21 A: It was in my room, my bedroom.

22 Q: And your brother is? Who is that?

23 A: Michael McFadden.

24 Q: Who's here today?

25 A: Sitting in the back there.

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1 Q: Okay. So -- okay. Just continue on. So you two
2 were in the bedroom.
3 A: Maurice was in and out of the bedroom.
4 Q: Right.
5 A: Livingroom.
6 Q: Right.
7 A: Sometimes we'd join the kids at ...
8 Q: Where's Maurice during all this?
9 A: In the room playing a game with Dwayne.
10 Q: And Dwayne is his brother?
11 A: Brother.
12 Q: Now, was there any point in time during that evening
13 that Maurice left for any period of time?
14 A: Not for a long period of time. He went to smoke
15 cigarettes.
16 Q: Okay. So how long would be like the longest period
17 of time that they would be out smoking cigarettes?
18 A: Five minutes.
19 Q: Okay. Five minutes. How would you have know
20 whether people were coming in and out of that house?
21 A: Because the -- I have an alarm and every time you
22 open the door, it churps.
23 Q: Okay. So any time that anybody goes out, you were
24 aware of it happening?
25 A: Right.

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1 Q: Now, was there any extended period of time that you
2 didn't know where Maurice was? You know, were you in
3 your bedroom for two hours or something and didn't see
4 him?

5 A: No. I would look through the door from my bedroom
6 to the living room.

7 Q: Okay. So you know he was there?

8 A: He was there.

9 Q: Now, when did you have to work again, do you
10 remember?

11 A: It had to be about four a.m.

12 Q: Okay. The next ...

13 A: The next, yeah.

14 Q: So the 20th morning, the morning of the 20th?

15 A: Yes, the 20th.

16 Q: So I would assume then at some point in time you
17 went to bed?

18 A: Yes.

19 Q: Do you remember when that was?

20 A: After the eleven o'clock news.

21 Q: So do you specifically remember watching the eleven
22 o'clock news?

23 A: Yeah, I watched it.

24 Q: Or is that just something you do regularly?

25 A: Something I do regularly.

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1 Q: All right. I got you. So you wouldn't have gone to
2 bed ...

3 A: I watch the first fifteen minutes of the eleven
4 o'clock new. I watch all of the ten o'clock news. And
5 then I watch the first fifteen of the eleven o'clock
6 news.

7 Q: And do you do that every day?

8 A: All the time.

9 Q: Every day?

10 A: Yeah.

11 Q: Okay. That's a local news, I guess.

12 A: Yeah.

13 Q: Now, at the time that you remember watching the
14 news, do you remember Maurice having left the house?

15 A: No, Maurice was there.

16 Q: Okay. He was there at that point in time?

17 A: Yes.

18 Q: And then you went to bed?

19 A: Right.

20 Q: Now, did -- you said there's some kind of alarm. Is
21 the alarm loud enough to awaken you if somebody goes ---

22 A: I'm a light sleeper. I can hear it. Every time
23 they open that door, churp, churp churp.

24 Q: Did anybody leave after you had gone to sleep?

25 A: I was laying down. I heard it churp and my brother

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1 said he was leaving.

2 Q: Okay. And your brother left?

3 A: Probably about twelve o'clock.

4 Q: About twelve o'clock?

5 A: Uh-huh (affirmative).

6 Q: Is there anything else that you remember about that
7 day that I have failed to ask you? I think that's every
8 note that I have.

9 A: I think that's it.

10 Mr. Kirkland: Okay. Well, then, I'm done. And Ms.
11 Williams is going to ask you some questions. Please
12 answer them.

13 CROSS-EXAMINATION

14 BY MS. WILLIAMS:

15 Q: Ms. McFadden did you talk to Charles Brooks before
16 the Dubose Siding case?

17 A: Yes, ma'am.

18 Q: Was that the same level of communication? Did y'all
19 have better communication then?

20 A: Not really. We talk a little bit. Made a payment.
21 Asked him a question here and there.

22 Q: And you testified earlier that you felt that he was
23 implying he would do better if you gave him more money;
24 is that correct?

25 A: Yes, I did.

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1 Q: But he wasn't going to get paid more if Mr. Abrams
2 was convicted, right? He wasn't going to get more money
3 either way; right? How would it help him if Mr. Abrams
4 went to jail, I guess, is what I'm saying.

5 A: I don't know.

6 Q: Why would he try to send him to jail if he didn't
7 get more money?

8 A: I don't understand the question.

9 Q: And Steve Witherspoon is related to you all?

10 A: Yes.

11 Q: Was he, his family invited to this event?

12 A: Just like my mother, father, niece, nephew.

13 Q: But it wasn't Steve's family.

14 A: If he --- he does come by. Sometimes he come by.
15 Different relatives, my aunts. Sometime he come by.

16 Q: What time of day?

17 A: It was all day long. You know, not like set time.

18 Q: Okay. So this wasn't like a sit down meal. It was
19 more like everybody come over and ...

20 A: It was like, you know, extra food than you normally
21 cook like cakes and pies and stuff like that. That's
22 all.

23 Q: And the 17th was a Tuesday, right?

24 A: The 17th was not a Tuesday.

25 Q: What day of the week was that?

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1 A: The 17th was a Sunday.

2 Q: I'm sorry the 19th. I apologize.

3 A: The 19th.

4 Q: And what time did you get up to go to work?

5 A: I get up like at two thirty a.m.

6 Q: So the eleven o'clock news, what time did that
7 usually end?

8 A: I guess eleven-thirty. But I don't watch but like
9 the first fifteen minutes.

10 Q: Okay. Is that a normal time that you go to work at
11 four a.m. in the morning?

12 A: Yeah. I have to be to work at four a.m.

13 Q: So everyday you usually sleep from eleven fifteen to
14 about three?

15 A: I'll sleep sometimes during the afternoon, like
16 right after I get off from work, I'll go to sleep, do
17 some other stuff. But I know I got to get up at two-
18 thirty. So, you know, I get a little before I go to
19 work.

20 Q: And you were cooking all day. Do you recall about
21 what time you got done in the kitchen or was there a
22 specific time?

23 A: It was before four o'clock.

24 Q: And you saw your son's --- heard your son's
25 testimony today, is that correct?

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1 A: Did I heard his testimony?

2 Q: Yes?

3 A: Yes, I did.

4 Q: And Mr. Webb, when did you meet with him?

5 A: I met Mr. Webb ...

6 Q: You can give me kind of a ballpark.

7 A: Um ...

8 Q: And if you don't recall; that's fair.

9 A: I don't recall.

10 Q: Did you give him any other information, other than
11 the alibi that you've given us today?

12 A: No. That's it.

13 Q: Did he followup with any other family members to
14 your knowledge?

15 A: To my knowledge, no.

16 Q: I think that's all the questions I have.

17 MR. KIRKLAND: No more questions, Your Honor.

18 THE COURT: You may step down.

19 MR. KIRKLAND: I'm going to call one more witness, I
20 think, Your Honor, Michael McFadden. And I'm going to
21 attempt to compress this as much as possible.

22 THE COURT: Okay.

23 **MICHAEL MCFADDEN,**

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

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MR. MCFADDEN - EXAMINATION BY MR. KIRKLAND:

Q: We have gone through this a lot today, but I have to ask you a few questions. What is your relationship to Maurice?

A: I'm his uncle.

Q: What is your relationship to Catherine McFadden?

A: Brother.

Q: Say it again?

A: Brother.

Q: Brother. Now, I'm going to skip straight to the alibi because that's why you're here. Do you remember May 19th, 2009?

A: Yes, sir.

Q: Why is it that you remember that day?

A: My sister had a memorial dinner at her place.

Q: Okay. Hold on one second. Because you're getting really raspy. Kind of sit back a little bit and speak up a little bit and be really clear so she can get what you're saying, okay? Why do you remember that day?

A: My sister had prepared a memorial dinner at her place.

Q: Okay. Now do you remember what you were doing that day?

A: I got to her house about four o'clock.

Q: And I hate this, but let me back up for half a

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1 second. You realize, of course, because we've already
2 gone through the obituary, that her real birth date is
3 the 17th?

4 A: Yes, sir.

5 Q: Do you know what you were doing on the 17th of that
6 year?

7 A: We had a service in North Carolina.

8 Q: Now, why -- did you have any role in that service?

9 A: I play the drums for my mom's group.

10 Q: You play the drums for your mom's group?

11 A: Yes, sir.

12 Q: And the name of your mom's group is?

13 A: Corinthian Singers.

14 Q: Do you remember where it was?

15 A: North Carolina.

16 Q: Okay. How long were you gone that day?

17 A: We was gone all day.

18 Q: Okay. So you couldn't have the memorial dinner on
19 that day. I understand.

20 A: Right.

21 Q: So what day did you have it?

22 A: We had it that Tuesday. My sister, she had to work
23 that Monday.

24 Q: Okay. Now, tell me about your day. You get there
25 at four o'clock?

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1 A: I got there at four o'clock. When I arrived in the
2 parking lot, my sister and my nephew was in two separate
3 cars. And I asked her where she was going. She told me
4 she was going to the DSS office to get a voucher.

5 Q: Okay. So you saw them before they left?

6 A: Yeah.

7 Q: Okay. So what did you do?

8 A: When I see them, I just asked her where she was
9 going. She told me she was going the Gate's gas station.

10 Q: All right. And what did you do after? So they
11 leave. What did you do?

12 A: I went in the house and my two nephews were in
13 there.

14 Q: Now, you say your two nephews. Who is that?

15 A: That's Leroy and Dwayne.

16 Q: And Dwayne is?

17 A: My sisters.

18 Q: All right. And this was a little bit after four.
19 So walk me through sort of the series of events that
20 occurred that evening?

21 A: Well, I went into parsonage and placed the drinks
22 that I had.

23 Q: Place the drinks that you have?

24 A: Yeah.

25 Q: Okay.

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- 1 A: And put the video into the VCR.
- 2 Q: Okay. Now, what was that video?
- 3 A: Pictures of my grandmother.
- 4 Q: A video of your grandmother. Okay, and then what do
- 5 you remember after that?
- 6 A. After that, I went back in the room and sit down and
- 7 Joshua and Celia came in.
- 8 Q. Joshua and Sada?
- 9 A: Celia.
- 10 Q. Celia.
- 11 A. That's my niece.
- 12 Q. They came in?
- 13 A. Yes.
- 14 Q. So who was in the apartment at that point in time?
- 15 A. It was me, Joshua, Dwayne, Leroy.
- 16 Q. Okay. Now at some point in time, your mother [sic]
- 17 and Maurice have testified, they came back. Do you
- 18 remember people leaving and coming back? Who left and
- 19 who came back?
- 20 A. My sister and my nephew left, my niece.
- 21 Q. Okay. What time.
- 22 A. My niece.
- 23 Q. They went with your mother [sic]. What time did
- 24 your mother [sic] get back?
- 25 A. My niece.

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1 Q. Okay. So your niece -- not the little one that she
2 was taking over to the grandmothers?

3 A. Right. My other niece.

4 Q. Another niece left at what time?

5 A. About nine o'clock.

6 Q. And what time did your mother [sic] get back?

7 A. My sister.

8 Q. Your sister?

9 A. My sister got back between six-thirty and seven.

10 Q. Okay. What time did Maurice get back?

11 A. The same time.

12 Q. Around six-thirty or seven. Now, once they get
13 back, what happens for the rest of the evening?

14 A. We just ate and watched the video and talked.

15 Q. Okay. I'm going to ask you some questions about
16 this apartment. When you walk in -- what do you walk
17 into when you walk in?

18 A. You walk into the living room right there.

19 Q. Okay.

20 A: And the kitchen, the table's right by it.

21 Q. Okay.

22 A. And my sister's room is over to the left.

23 Q. Okay. Now, is there any other room anybody could be
24 in, other than those rooms? I mean, I'm not talking
25 about the bathroom. Those are three main rooms that are

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1 in the apartment?

2 A. Yes.

3 Q. Okay. Now, from the bedroom can you see into the
4 living room?

5 A. No.

6 Q. Okay. From the living room can you see into the
7 kitchen?

8 A. Yes, sir.

9 Q. Now, was there any time from six or seven or
10 whenever you say Maurice got back, was there anytime --
11 what time did you leave that night?

12 A. I left at twelve.

13 Q. Okay. You left at twelve. So you were there from
14 seven until twelve, for sure?

15 A. Yes, sir.

16 Q. Did you see Maurice come in and out during that time
17 at all?

18 A. The only time he was out was for a cigarette smoke.

19 Q. How long would he be out when he would go out to
20 smoke a cigarette?

21 A. About five minutes.

22 Q. About five minutes. Now, from where you were, if he
23 had left for an hour or so, would you have noticed it?

24 A. Oh, yes.

25 Q. Okay. And you're basing that on the layout of the

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1 place, I take it?

2 A. Yes.

3 Q. Okay. So you could see from wherever you were
4 pretty much everything that was going on?

5 A. Yes, sir.

6 Q. When you left, why did you leave?

7 A: I left at 12:00. I went down the street.

8 Q. What was going on with Maurice and his brother or
9 whoever else was there? What was going on with them at
10 the time that you left?

11 A. Maurice was asleep.

12 Q. Okay. Where was he asleep?

13 A. In the chair.

14 Q. On the chair?

15 A. It's a sectional. One was on one side and one was
16 on the other side.

17 Q: And you say one was, who's the other? Maurice and -
18 --

19 A: Dwayne.

20 Q: Okay. Where was his mother at this point in time?

21 A: His mother was in the room, laying down.

22 Q: Okay.

23 MR. KIRKLAND: That's all I have, Your Honor.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

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1 BY MS. WILLIAMS:

2 Q: Mr. McFadden, did you ever speak to Charles Brooks
3 or an investigator Benny Webb?

4 A: No, ma'am.

5 Q: What time did you get there?

6 A: To my sister's house?

7 Q: Yes?

8 A: Four o'clock.

9 Q: What were you doing before that?

10 A: I was leaving my house.

11 Q: You were at your house?

12 A: Yes, ma'am.

13 Q: Just hanging out?

14 A: At my house? I was just at my house. I was at my
15 house, you know, sitting around.

16 Q: Is there any reason that you know what time you got
17 there to your sisters?

18 A: I looked at my watch. It was about four o'clock. I
19 told my sister I'd probably go between three-thirty and
20 four o'clock.

21 Q: Okay. And you said that the couch, he was asleep,
22 there was a sectional like a chair at one end and then
23 longer chair on the end?

24 A: Yes.

25 Q: One end had a longer chair on the end?

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1 A: Yeah.

2 Q: Okay. All right. And so his little brother was
3 there asleep to?

4 A: Yeah.

5 Q: Okay. And he would have been sleeping on the other
6 end?

7 A: Yes.

8 Q: Okay. And do you remember what time the others
9 left, that being Joshua and Celia?

10 A: Not exactly.

11 Q: I think that's all.

12 MR. KIRKLAND: That's all the questions I have, Your
13 Honor.

14 THE COURT: Were you at the trial? Did you attend
15 the trial?

16 THE WITNESS: Yes, sir.

17 MR. KIRKLAND: Your Honor, I had considered calling
18 Dwayne Abrams; however, I think we have made the point we
19 intend to make with this alibi. So I am going to cut
20 Dwayne Abrams and I am going to rest.

21 THE COURT: Okay. Does the State have any
22 witnesses?

23 MS. WILLIAMS: Your Honor, I do have a witness. I
24 need to check outside. I saw him in the courtroom a few
25 minutes ago. If we may take five minutes?

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1 THE COURT: Okay.

2 (WHEREUPON, court stood at recess for a short
3 break.)

4 MS. WILLIAMS: The State calls Charles Brooks.

5 **CHARLES BROOKS,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 **MR. BROOKS - EXAMINATION BY MS. WILLIAMS:**

9 Q: Mr. Brooks, how long have you been practicing law?

10 A: About seventeen years now.

11 Q: And in that time have you -- has criminal law been a
12 big part of what you do?

13 A: It has.

14 Q: Tell me about, just briefly, I'd ask you to sum up
15 your legal career for us?

16 A: Basically been practicing law. I did some public
17 defender work for a few years, quite a few years ago.
18 And ever since then it's been basically private practice.
19 I'm back in the public defender position as a part-time
20 contractor.

21 Q: Would it be fair to say that the majority of your
22 practice is criminal work?

23 A: I would say it's a fair share. That and family law.

24 Q: Have you tried murder cases before Mr. Abrams' case?

25 A: Yeah.

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1 Q: Many times? Can you guesstimate?

2 A: I've tried quite a few murder cases. I would say
3 five to ten. And, of course, I've tried various other
4 criminal cases as a part of that too.

5 Q: Tell me how you came to represent Mr. Abrams?

6 A: His mother came and hired me.

7 Q: Okay. And was that -- she came into your office and
8 met with you?

9 A: That's correct.

10 Q: Did she talk to you about some of the charges he was
11 facing?

12 A: That's correct.

13 Q: Tell me what you recall, if anything, about that
14 conversation? How many cases did he have?

15 A: He had this case. He had a murder on, what we've
16 referred to as Dubose Siding Road case. And he also had
17 an assault and battery with intent to kill case.

18 Q: Now, was she focused on one of those cases? Was
19 this a take all three of them, what was the deal?

20 A: That was basically that. I'd represent them all for
21 -- some of them got -- obviously, as you get into cases ,
22 some of them are stronger than the others as far as
23 stronger from the state's perspective, as far as evidence
24 against them, things like that.

25 Q: So what case came up first?

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1 A: The first case that came up was the Dubose Siding
2 Road case. Do you want me to tell you the facts?

3 Q: Very briefly.

4 A: Very briefly. The facts of that case is Maurice was
5 the co-defendant in a case with another co-defendant name
6 was Henry Taylor, a/k/a Do-Dah. The factual scenario of
7 that one was -- according to the State's theories that Do
8 Dah goes into collect a debt from Mr. Nasareno. Mr.
9 Nasareno has a girlfriend who's there. The State's
10 theory was that they come in to collect a drug debt. He
11 doesn't have it. Do Dah shoots Mr. Nasareno. The girl
12 gets up to run. And the allegation was that Maurice had
13 shot her in the head. She supposedly survived. We tried
14 that case. Arthur Wilder represent Mr. Taylor. I
15 represent, Mr. Abrams. Harry Conner was the prosecutor.
16 That case was in front of Judge James and it ended in a
17 hung jury. And this was one of the last cases under the
18 tenure of Kelly Jackson, the Solicitor.

19 Q: And in regards to that case, the victim, Anthony
20 Nasareno, were you representing someone named George
21 Thompson in a civil suit involving Anthony Nasareno?

22 A: What had happened was, Mr. Thompson and Mr.
23 Nasareno, way before I even got involved with Mr. Abrams,
24 I used to do some real estate closing. They'd asked me
25 to do a closing where they had bought some piece of

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1 property. And we closed the transaction. This might
2 have been a year before Maurice was ever involved or was
3 ever even thought of or anything like that. And we did
4 the transaction. And then -- I mean, that was basically
5 it. And then I want to say shortly before Mr. Nasareno
6 got killed, Mr. Nasareno's wife had asked me to look into
7 getting a divorce against him. And Mr. Thompson had said
8 that Mr. Nasareno owed him some money from that
9 transaction, I guess the arrangement that they had, that
10 I wasn't privy to had soured. But Mr. Nasareno
11 technically was just a real estate client. In practicing
12 in the private sector and I'm sure, the Judge probably
13 understands what I'm talking about. You just -- people
14 come in, you do a closing. You don't really have a whole
15 lot of interaction or attorney/client relation with them,
16 except for that particular transaction. That's all I had
17 with Mr. Nasareno. And I think when I did the trial of
18 that case, I told Mr. Abrams about it. But we put that
19 on the record so there was no issue.

20 Q: It was a Magistrate's Court case, though, right?

21 A: A Magistrate's Court case?

22 Q: Uh-huh (affirmative). The one about Thompson against
23 Mr. Nasareno being involved?

24 A: I don't think I filed any -- I think he may have
25 filed something. But he was probably looking to come

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1 back to me and -- that never even materialized because
2 shortly after that, Mr. Nasareno got killed.

3 Q: So you didn't harbor any feelings of ill will
4 against Mr. Abrams because of that?

5 A: Oh, absolutely not. As a matter of fact, if
6 anything, I would have been upset with Mr. Nasareno.
7 Because when I did that transaction, he gave me a bad
8 check. And I had to put some pressure under him to get
9 that money. So Mr. Nasareno was not my friend. As a
10 matter of fact his wife had -- well, she's a widow now --
11 had actually come to see me about doing a divorce against
12 him, which if she had come in and brought -- she said,
13 you know, it was one of those things, she came in to
14 consult. And, yeah, I'll come back. But, of course, in
15 the interim, Mr. Nasareno had gotten killed. So
16 obviously she didn't have any desire to, you know, need
17 to get the divorce at that point. So, no, absolutely
18 not.

19 Q: Okay. This matter came to trial on Monday. When
20 would you have gotten notice about this trial?

21 A: Chief Finney took over as Solicitor of the Third
22 Circuit at the beginning of that year. And Glenn Manning
23 was his Assistant Deputy Solicitor that was technically
24 in charge of the case. And, of course, some of the
25 people, former personnel probably remember Glenn Manning

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1 and his ability to try cases. Mr. Finney had brought in
2 John Meadows. Mr. Meadows had extensive training as a
3 solicitor in Richland County and had lost the Solicitor's
4 race over there and he brought Mr. Meadows in as
5 basically to help out. Mr. Meadows ended up basically
6 doing the vast bulk of the work in the case. And as far
7 as finding out about it, I don't think it was ever an
8 issue of when the case was coming up.

9 Q: Would you have found out the Friday before or ---

10 A: No, no. John, he let me know way in advance that
11 this case was coming up. Now, I can't necessarily
12 remember, but there was never an issue about do we know
13 this case is coming up on this Monday. That was never an
14 issue. What became an issue in that case was there was
15 some discovery that Teresa Ford, who is now deceased, was
16 the sister of the victim. There was nothing in that
17 discovery that indicated she could ID Maurice, nothing in
18 the discovery. And John, when we got ready to try the
19 case -- I mean, I'm talking about we coming in, getting
20 ready to start trying the case, John does say, hey,
21 Charles, I talked to her. She did say she can ID him.
22 And he said, hey, I don't know why it wasn't in the
23 discovery. At that point, you know, John was not the guy
24 that had the case from the very, very beginning. And, of
25 course, I raised that issue in front of Judge King. And

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1 when I initially raised, for those of y'all who don't
2 necessarily try a lot of cases in front of Judge King,
3 sometimes have a little bit of a overbearing personality.
4 So he basically got, I would say, a little upset with me,
5 as if it was my fault. And then the next day I -- being
6 a little persistent that I am -- came back to try to
7 clean it up with John Meadors. And said, John will tell
8 you this is not in the discovery. And then you may see
9 in the transcript where Judge King goes through, hey, Mr.
10 Brooks, you still could have talked to her and that kind
11 of thing. He kind of cleaned it up as far as making sure
12 it wasn't necessarily my fault about -- I guess when you
13 first read that first day, Judge King made it sound like
14 I had the discovery and then was saying I didn't have it.
15 When really and true, in fact, that issue about Teresa
16 Ford being able to identify that was never issued in
17 discovery. That was something I found out as we were
18 trying the case, that she allegedly could ID him. Now,
19 up until that point, I always told his mother and him and
20 his father, Clayton Abrams, that that case was probably
21 the strongest case that the State had. And what worried
22 me the most in that case is Maurice did not have a
23 record. He did not have any confession or anything like
24 that. But what worried me the most is you got two other
25 guys, Tony Lowery, who's a co-defendant, and Frederick

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1 Owens. And Frederick Owens is a test-a-liar. And I say
2 a test-a-liar because I dealt with Frederick Owens before
3 on another case where he testified against a client of
4 mine in a murder case. And he is somebody that I knew --
5 I didn't hold in high regard. But I knew and I told him,
6 this is the strength of their case. Of course, that's
7 before I knew that Teresa Ford was going to be able to
8 say, you know, I can ID Maurice and all that. And, of
9 course, I tried to do the best I could with cross-
10 examining her on that situation.

11 Q: Mr. Abrams said that he -- you know, there was a
12 letter that he received from your office dated June 3rd.
13 It looked like it didn't get postmarked until Monday the
14 6th, which was the beginning of the trial. Would that
15 have been when you notified him or would you have
16 notified him in any other way, his family or anyone?

17 A: His mother called us probably every day or every
18 other day. And every once in a while Maurice would call
19 from the jail. And I went to see him. So if that's what
20 the letter shows, I can't necessarily argue with that.
21 But, I want to say there was a lot of communication
22 involving his case as far as what I was telling her.
23 Because she came to the office all the time. And she
24 called quite a bit.

25 Q: So you would go out and make visits to the jail

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1 occasionally?

2 A: Occasionally.

3 Q: Did you have other clients in jail, would you got to
4 visit him, everybody?

5 A: During that time, I think Maurice was -- during that
6 time, I think Maurice might have been the only murder
7 case I had at that time. I'm not quite sure. But I went
8 to see him. And he was always a quite fellow, really
9 didn't say a lot during our meetings. A lot of the
10 conversation that would take place, I would tell him,
11 this is what the situation is with this case. This is
12 what the situation is with that case. And, of course,
13 like I said, his mother was, you know, always calling,
14 coming by. And occasionally, you know, his father would
15 -- I know his father was like driving trucks or something
16 like that, you know, he'd come to town and he'd call and
17 I'd kind of tell him, you know, this is what the
18 situation was and so on and so forth. So my -- I think
19 my position on that would be there was a lot of
20 communication as far as just telling him this is how the
21 case looked. This is what's in this case or this is how
22 this case looks and so on and so forth.

23 Q: Mr. Abrams testified earlier that he didn't know
24 about the trial until you came back there with his suit.
25 And he asked you about some witnesses at that point. Do

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1 you recall that?

2 A: Now, I recall bringing in the suit that his mama had
3 brought. I don't recall saying anything about any --
4 letting him know this was the first time he was going to
5 trial and the things -- any witnesses and things of that
6 nature. Now, I did hire Benny Webb as an investigator on
7 this case. I'll tell you, I usually -- a lot of time, I
8 hire Glenn Harold, which you may have some familiarity
9 with, John Davis. But both of those particular
10 investigators like, conflicted out because I think Glenn
11 had represented Tony -- I mean, was investigating for
12 Tony's lawyer, for Fredericks. One or the other. One of
13 them was investing for Frederick's lawyer. But, of
14 course, Glenn did call me because I have more of a
15 working relationship with him on other cases. So he did
16 call me and tell me that. And he kind of shared some of
17 the things that he had. I say very minimum
18 conversations. But, also, I had Benny Webb as, you know,
19 investigator on Maurice's case.

20 MS. WILLIAMS: May I approach the witness, Your
21 Honor.

22 THE COURT: Yes, ma'am.

23 Q: I'm going to bring you a document which the caption
24 says, Benny Webb, private investigator. Can you tell me
25 if that's something you had some report?

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1 A: Yeah. Yes, ma'am. I've seen it.

2 Q: Can you tell me what it is?

3 A: Look like an invoice from Benny Webb.

4 Q. All right.

5 A: For work that he did on Maurice's case.

6 MS. WILLIAMS: And Your Honor, I'd like to introduce
7 that as State's 1. I'm going to provided a copy to
8 opposing counsel. That's the only copy I have in my file
9 right now. But I will make him a copy.

10 THE COURT: Any objection?

11 MR. KIRKLAND: If I may have one moment, Your Honor.

12 THE COURT: Okay.

13 MR. KIRKLAND: Your Honor, I am going to make an
14 objection to this on the basis that it is hearsay. This
15 is not a document that Mr. Brooks produced. And so I
16 would object on that basis.

17 MS. WILLIAMS: I think it's a record from Mr.
18 Brooks' business, but ...

19 THE COURT: Okay. I'll sustain the objection. I
20 mean, is there an order in place where the Judge approved
21 funds?

22 MS. WILLIAMS: There is. I have a copy of those.

23 THE COURT: Okay.

24 MR. KIRKLAND: And, of course, we wouldn't object to
25 the order. That's part of the case.

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1 THE COURT: Right. Okay.

2 Q: Okay. We will just hang onto that. Mr. Webb did a
3 lot of work for you. He went out and did some
4 investigation; is that correct?

5 A: That's correct. And let me say this. I wasn't with
6 him when he would go out and do that. I am assuming that
7 he did it. As we as lawyers are obviously assuming that,
8 you know, an investigator goes out and comes back and
9 says, I investigated XYZ, that's what he's doing. I've
10 never had any issue about whether or not Mr. Webb's
11 trustworthy enough to say he did say something when he
12 actually didn't. So I say all of that to say, based on
13 what he told me, yes.

14 Q: Okay. Based on what he told you, did you ever
15 consider alibi to be a defense in this case?

16 A: No.

17 Q: Okay. And do you recall Ms. Catherine McFadden
18 telling you about the alibi in this case?

19 A: She indicated to me -- remember now, he had three
20 separate cases, all serious. So remember one of them was
21 assault and battery with intent to kill. She indicated
22 that on one of these, he may have been someplace with
23 some family. But that's why I got Mr. Webb. And based
24 on what he indicated to me, along with my experience,
25 family members, close family members, especially daddy's

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1 and mama's, tend to not be very credible when it comes to
2 an alibi. Along with what Benny, you know, told me -- he
3 just basically said it was not really a credible alibi
4 defense. And that was never a situation that -- there
5 was never a situation that the case was in that posture.
6 There was never a situation of Maurice saying to me when
7 I went to the jail, hey, man, I know for sure I was at
8 such and such place. And A, B, C, and D, know I was
9 there. That never came across in our conversation
10 because every time I talked to him about this case, it
11 was the problem that you got in this case is that Tony
12 Lowery and Frederick Owens are testifying. That was my
13 biggest concern in trying that case. And I knew that in
14 order for them to get him, they were going to have to
15 make some type of deal with them, which, I think they
16 did.

17 Q: At the trial, did he ask you about calling these
18 people as witnesses, calling his family members?

19 A: Not during the trial.

20 Q: Okay.

21 A: As a matter of fact, during the trial Mr. Webb was
22 there, I thought Maurice could have and should have taken
23 the stand.

24 Q: Okay.

25 A: And I still think if he had taken the stand, then he

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1 probably would not have been convicted of murder. The
2 way the case was lining up, so to speak, you know, trying
3 these cases enough, you kind of get a feel for what's
4 going on, how people are coming across, how things are
5 being testified, and that sort of thing. Tony Lowery,
6 according to his testimony or his theory, he was at the
7 door, whether it was outside the door or inside the door.
8 Because the theory was that the shooter held Markeith
9 Ford right just inside the house, with the gun to the
10 head when Tony Lowery either at the edge of the door or
11 the outside of the door. Well, in Tony Lowery's case,
12 gunshot residue got on him. And, of course, Tony Lowery
13 was going -- my theory was going to say anything he could
14 in order to get out of the situation. You also had
15 another guy who they also said had a gun, who was not
16 even charged and on trial. And you also had Frederick
17 Owens, who I said before, I've dealt with him. He'll say
18 anything to save his behind. Frederick claimed that he
19 never got out of the vehicle that they were traveling in.
20 But, of course, there were huge inconsistencies in his
21 testimony. So the theory was, all of these were older
22 gentlemen, okay, who were basically just robbing this guy
23 of dope and money. And I think that the jury needed to
24 hear Maurice say, hey look I didn't do the shooting, you
25 know. Terrance, a guy named Lemon did the shooting.

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1 They said he had a gun. Everybody said he had a gun.
2 He, being Terrance. But Maurice would not take that
3 stand.

4 Q: Did you consider calling any other witnesses had you
5 looked at -- you wanted Maurice to testify. Was there
6 anybody else?

7 A: No, ma'am. None that I can recall. No.

8 Q: And you don't recall Maurice telling you he was with
9 his mom or his dad?

10 A: That would have been the time he could have said, I
11 was with my mother. Even though, you know, there might
12 have been some issue about whether or not they were alibi
13 and that kind of stuff. But in that situation, he could
14 have testified. He was a young guy, no record, no
15 statement for John Meadors to impeach him on. I mean, as
16 many times as we try cases, more often than not, we have
17 clients that we can't really strategically put on the
18 stand because of all types of problems. He could have
19 taken that stand and he could have pointed the finger at
20 this Lemon guy. He could have said, I was there. He
21 could have said, well, I was there, but I was the one
22 that stayed in the car. He could have said a number of
23 things that I think would have come across as very
24 believable. Because the co-defendant's statements were
25 inconsistent and they were inconsistent with one another.

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1 Plus, you got another guy there who's not even on trial
2 who everybody says had a gun. You know, that was the
3 case I said, you know, he could take the stand.

4 Q: There were some pieces of evidence that Mr. Abrams
5 was concerned about. He thought that maybe there was a
6 Brady violation as he put it, the red jacket and the
7 bullet fragments. Now, would the solicitor's office, do
8 they typically hand you those types of items? Did you
9 get pictures of them? Would you be aware of them for
10 statements? How does that work?

11 A: Yeah, you know, we would have been aware of them.
12 They wouldn't give you an item. They would let you know
13 about. But in this situation, it takes me back to, you
14 know, all the cases in their totality. You know, when
15 you talking about looking in his mama's car and a jacket.
16 And he's got other members of his family, to me, I didn't
17 really think that that was as critical because it's not
18 like they got everything close in time related to the
19 incident. I think this was, you know, days, maybe weeks
20 later, if I recall.

21 Q: The red jacket was found later on?

22 A: Yeah. It wasn't like, you know, the incident
23 happened today and then tomorrow they went and picked him
24 up and got all these pieces of evidence and looked at his
25 mama's car. I talked to the solicitor, you know, a

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1 significant amount of time. So, you know, if he had, if
2 there was gunshot residue to me it was not as significant
3 because of the passage of time.

4 Q: And am I correct that the solicitors have an open-
5 file policy here; is that correct?

6 A: Well, I don't know if they have an open-file policy.
7 They would ---

8 Q: You could come and look at the evidence?

9 A: It kind of depended on the prosecutor too, now. Mr.
10 Manning, at the time, who was technically the one over
11 the case, I don't think he had quite as much experience.
12 But I wouldn't say he would hide anything intentionally
13 from you. I think that when John Meadors came aboard,
14 you know, I think John's issue has been a little bit, you
15 know, forthcoming. Because, obviously, he's probably a
16 little more experienced prosecutor. But I think that
17 might have been the first case John tried here for the
18 prosecutors office. So I don't think there was any issue
19 with that. He admitted on the record about the Teresa
20 Ford identification, that that was not something in the
21 discovery. He admitted that on the record. And he said
22 to me, he was like, I don't know why that would not have
23 been in discovery, because obviously that might have
24 changed my entire posture in the case or view in the case
25 or ...

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1 Q: But she really testified that was a pretty
2 distinctive outfit. She's the one that recognized that
3 crazy red t-shirt on his head and ...

4 A: Yeah. But, of course, you know, anybody there could
5 have been wearing or dressed that way.

6 Q: Yeah.

7 A: So, you know, -- and that's why I tried to ...

8 Q: And the jury saw the videotape.

9 A: Yeah. But the videotape was not real clear to say
10 this was Maurice. You know, it was not real clear and
11 that sort of thing. And when you see the video --
12 sometimes when you see a video, you can clearly ascertain
13 that this person is with this other person or that
14 they're together somehow, whether they're a couple or
15 whether they're buddies hanging out, come into the store
16 at the same time. When you looked at that video, you
17 could not really see that Mr. Lowery and the person that
18 they alleged to be Maurice were together in some facet or
19 another. Because I think when you look at it Tony Lowery
20 comes in and he goes off and he does his ...

21 Q: The Judge is going to watch the video but it was put
22 in at trial for the jury to ---

23 A: Right. I mean, but I -- that wasn't something that
24 because you couldn't make out whether or not that was
25 Maurice. You couldn't really identify that that was him.

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1 And you could not even ascertain that that was -- whoever
2 it was, was actually with Tony Lowery. Because it's not
3 like they came in the store, they were talking or one
4 comes in first and goes to the other and talks. There
5 was none, there was actually no interaction between the
6 two individuals on the tape. So how could somebody say
7 that this guy's with this guy? That's the way it
8 appeared to me.

9 Q: You can just tell me whether you recall these or
10 not. Do you recall Mr. Webb giving you any information
11 about looking into the condition of the vehicle?

12 A: No. No, that never became an issue.

13 Q: Do you recall if this matter was called for trial
14 before -- did he go and pick up a suit for an earlier
15 trial date?

16 A: Did who go pick the suit?

17 Q: Mr. Webb?

18 A: Did he go pick up a suit?

19 Q: A suit for Mr. Abrams to wear? Would he have picked
20 that up for an earlier trial date, to your recollection?
21 If you don't remember ...

22 A: I don't know anything about that.

23 Q: Okay.

24 MS. WILLIAMS: I think that's all.

25 CROSS-EXAMINATION

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1 BY MR. KIRKLAND:

2 Q: I was trying to take notes, but it's very hard to
3 take notes when I'm trying to listen as well. From what
4 I understood, your opinion of this case was that it was a
5 very weak case as far as the physical evidence was
6 concerned; is that correct?

7 A: Absolutely.

8 Q: So the tape was weak in your opinion?

9 A: That's correct.

10 Q: It was fuzzy to begin with; correct?

11 A: That's correct.

12 Q: Didn't show that these two guys were even
13 necessarily together?

14 A: I wouldn't necessarily say it was fuzzy but it was -
15 - I mean, it was clear that you could see people coming
16 in the store and you could clearly make out that it was
17 Tony Lowery.

18 Q: Right.

19 A: But you really couldn't make out this alleged
20 individual in this red was actually Maurice. I can say
21 that.

22 Q: Okay. Got you. And even if it were Maurice, if
23 someone were to assume it were, it was weak in the sense
24 that those two did not appear as you say from their body
25 language to be together?

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1 A: That's correct.

2 Q: Okay. In addition to that, you said that the
3 physical evidence, the other physical evidence, such as
4 the jacket that was taken from the car, was also weak in
5 your opinion, because of the circumstances?

6 A: Correct.

7 Q: And the circumstances were that the jacket had been
8 recovered weeks if not months, you'll have to correct me

9 ---

10 A: And bear in mind, you may actually have to correct
11 me because I can't remember the time frame.

12 Q: I don't either.

13 A: I just know that it wasn't a situation where the
14 incident happens today, next day they picking up Maurice.

15 Q: Right.

16 A: Then next day they're searching the vehicle, and the
17 next day. It was a substantial period of time ...

18 Q: Okay.

19 A: ... a significant period of time between the
20 incident and when they supposedly got in mama's vehicle
21 and got the jacket and that kind of thing.

22 Q: So you felt -- it sounds like you felt pretty good
23 about the defense, you know, as far as the physical
24 evidence was concerned?

25 A: Correct.

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1 Q: You weren't very concerned about it at all?

2 A: That's correct.

3 Q: So the real issue for you and I think you said this
4 was this Frederick -- well, Owens and Lowery, the two
5 that testified?

6 A: That is correct.

7 Q: And that was the big issue. And somehow your goal
8 was going to be to just discredit them somehow in any
9 way, shape, or form that you could discredit them.
10 Because they seemed to be the linchpin of the case in
11 your opinion?

12 A: That's correct.

13 Q: Okay. So that was the goal, just to discredit them
14 somehow?

15 A: Well ...

16 Q: I'm not minimizing the physical.

17 A: And it was never, it was never --- it was not like
18 we know definitely they're going to testify against him
19 today. And then we went to trial two months later.

20 Q: Right?

21 A: It was kind of up in the air, are they ever going to
22 test --- Because I was hoping that they would have those
23 guys sitting at the table with Maurice.

24 Q: Right.

25 A: So it was not a situation of we know definitely

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1 today that they're testifying against him, and then we've
2 got thirty, sixty days later or two weeks later. It was
3 a situation where it was like the morning of. And Owens'
4 lawyer, I know -- I think John Britton was his lawyer.
5 And Tony Lowery and somebody else --- I can't remember
6 who the lawyers were. But that's when they were like, we
7 testifying against your man. At the outset, as we were
8 actually getting into trial.

9 Q: Right. Okay. So these two, you find out they're
10 going to testify?

11 A: Correct.

12 Q: You had an investigator that was hired; right?

13 A: Correct.

14 Q: Now, the investigator, from what I understood when I
15 was listening to you testify, the investigator actually
16 did talk to the family about an alibi? That conversation
17 occurred?

18 A: That would be my understanding. That's one of the
19 reasons why I got Mr. Webb. And, of course, I couldn't
20 get Mr. Harold, I couldn't get Mr. Davis, was to do
21 things that we, as lawyers, generally don't have time to
22 do, which is to basically -- to find out if there's some
23 credibility here. Was this young man someplace else? At
24 the same time understanding that Maurice did have several
25 -- he had different cases too. So it was not like this

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1 one case.

2 Q: Right.

3 A: On this particular day. I mean, he's got another
4 case on this day, another case on this day. So, you know
5 ---

6 Q: So was that somewhat confusing, keeping all of that
7 straight?

8 A: Well, you know, as far as this particular case,
9 Benny, what I need you do is look into this, tell me what
10 the situation is, is there someplace else investigate
11 Give me something. Tell me what you can give me, you
12 know, fact-finding for me as opposed to me towing the
13 line on what the police are going to give me.

14 Q: Okay. From what I understood, based on the
15 conversations that you had with Benny, I believe you said
16 his name is?

17 A: Benny Webb.

18 Q: Benny Webb, Mr. Webb. That you realized that there
19 was a possibility of raising an alibi defense. Something
20 was mentioned that raised the possibility of it?

21 A: Well, an alibi defense, but it was never as to what
22 case. Okay.

23 Q: Okay. Okay.

24 A: Because remember now, he's got Dubose Siding Road,
25 he's got this one, and he also has this other one.

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1 Q: Yeah.

2 A: So, you know, hey we go out and these are when the
3 incidents allegedly happened. Tell me what you can find
4 out.

5 Q: Got it. So the miscommunication or the
6 misunderstanding was that the three cases, being you
7 representing him at once, when he mentioned something
8 about an alibi, it was confusing as to which case it
9 might have been an alibi for, because of the multiple
10 dates.

11 A: Well, now, I'm going to tell you now, Maurice never,
12 he didn't really talk much.

13 Q: I understand that. But I'm talking about now ---

14 A: I'm talking about Ms. McFadden?

15 Q: No. Well, I'm actually talking about you and Mr.
16 Webb.

17 A: Okay.

18 Q: Because my understanding is what you just said was
19 that there was confusion about when Mr. Webb mentioned
20 the alibi, that there was some confusion about ---

21 A: No, no, no, no. Mr. Webb -- no, no, no, no. I got
22 Mr. Webb. Hey, you go out. This is what this guy's
23 charged with. See what you can find out for me.

24 Q: Got it.

25 A: He went and talked to, I assume, based on what he's

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1 told me ...

2 Q: I understand.

3 A: He went and talked with Ms. McFadden and presumably
4 did his thing as an investigator and he came back to me.

5 Q: Right.

6 A: Okay?

7 Q: I'm with you right now.

8 A: All right.

9 Q: And then ...

10 A: And then, what else you want to know?

11 Q: Okay. So you actually said, and you can correct me
12 because you know what you said, that you thought about
13 and discussed the alibi with Mr. Webb and determined that
14 it was not credible or able to be effectively raised?

15 A: Because the only person that was saying or giving
16 any idea, the whole possibility ...

17 Q: Right.

18 A: ... of him being someplace else when this crime or
19 one of the other crimes were committed, was his mother.

20 Q: Right. Did you ever have an opportunity to sit down
21 and talk to his mother or to any of his family ...

22 A: I talked to his mama a lot of time.

23 Q: Did you talk to her about the alibi?

24 A: I talked to her about everything.

25 Q: Okay. So you talked to her about the alibi. And

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1 you decided not to raise it because it didn't appear to
2 be credible?

3 A: It did not appear to be credible.

4 Q: Okay. There we go.

5 A: Along with the information that, you know, Benny
6 Webb came back to me with. And I discussed it with him
7 ...

8 Q: I understand.

9 A: I discussed it with him. You know, he's a trained
10 investigator with SLED.

11 Q: So when you got to trial, the strategy was to hard-
12 cross these two test-a-liars as you referred to one of
13 them?

14 A: Right.

15 Q: And try to discredit them?

16 A: Right.

17 Q: And you had decided before the trial that you
18 weren't going to -- your strategy was not going to be to
19 raise the alibi, but to focus on these two witnesses and
20 the fact that they were not telling the truth. Because
21 the physical evidence wasn't that damaging in your
22 opinion?

23 A: That's correct.

24 Q: And the reason why, from what I understand, that you
25 think that things went south on you was not anything to

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1 do with the cross-examination of these witnesses, not
2 anything to do with the alibi. But the problem that I
3 perceived you attempting to convey to the Court, is that
4 Maurice invoked his right ...

5 A: No, no, no.

6 Q: ... against self-incrimination?

7 A: That's incorrect. The problem I had was that Teresa
8 Ford shows up the day of the trial saying, oh, I can
9 identify Maurice.

10 Q: Right. But if I'm not mistaken, you said you could
11 have won it, you think, if Maurice would have taken the
12 stand. That seemed to be the biggest.

13 A: That's after the --- no, no. But that's after the -
14 - okay. Let me explain it to you.

15 Q: All right.

16 A: Going into the trial, the only thing that they had,
17 that I perceived, was potential testimony, potential
18 making a deal with Tony Lowery, potential making a deal
19 with Frederick Owens.

20 Q: Got it.

21 A: Okay. There was nothing in the discovery about his
22 sister, the deceased sister or anybody else in that house
23 with Mr. Ford, being able to point the finger and say,
24 hey, it was Maurice that shot him. None of that was in
25 discovery.

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1 Q: Right. Because it didn't exist, did it?

2 A: None of that was in the discovery.

3 Q: Well, here's what I'm talking about?

4 A: Okay.

5 Q: She didn't make an out-of-court identification.

6 There was no indication ...

7 A: There was no record of her -- there was nothing in

8 the file, there was nothing in the prosecution's

9 discovery ...

10 Q: And there was nothing introduced at trial that she

11 had, that they could put in to corroborate her

12 identification?

13 A: That's correct.

14 Q: All right. There we go.

15 A: The first time I learned of Teresa Ford's ability to

16 identify him was in court.

17 Q: Right?

18 A: And I raised that issue as you see that in the

19 transcript.

20 Q: I saw it. You did.

21 A: And obviously --- so going in, you know, I had a

22 different game plan.

23 Q: Right.

24 A: Obviously, that game plan had to change in light of

25 Judge King's ruling ...

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1 Q: Naturally.

2 A: --- that I personally didn't agree with.

3 Q: Naturally.

4 A: Right.

5 Q: But to be fair, that was something that you could
6 cross her on. Because the fact that there was nothing,
7 no pre-trial identification.

8 A: Right.

9 Q: You could at least cross her on that. So here's my
10 point on that.

11 A: Okay.

12 Q: Is that it was damaging. But it wasn't a case-
13 ending type of thing. Lowery and the other witness were
14 the truly damaging ones, that said that ...

15 A: No, no, no, no. That's incorrect. Teresa Ford, to
16 me, her testimony was damaging because now you've got
17 somebody who doesn't have, who is not looking for a deal.

18 Q: Right.

19 A: Who is now saying that Maurice was there and did the
20 shooting. See, going into this, and my thought process
21 is, hey, we've got two guys, both charged with murder,
22 Tony Lowery, Frederick Owens, and we also got another
23 guy. Because the whole incident allegedly has four guys
24 involved. But there's another guy who's not even sitting
25 at the table, who's not even charged.

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1 Q: Right.

2 A: We've got two guys here that's charged. No
3 forensics, you know, no statement by my client, no
4 record, there's nothing on him except potentially what
5 you're concerned about is these two guys.

6 Q: Right.

7 A: Okay. Now, that's how I approached the case and
8 that's what I told the family. Okay? Now, the day of
9 the trial, John Meadors comes to me and says, hey, I have
10 to tell you, Teresa Ford says she can identify Maurice.
11 He said, Charles, I don't know why it wasn't in
12 discovery. You know, I have no idea. Because at the
13 time, it's not like John Meadors ...

14 Q: I understand. And we're not alleging that he didn't
15 do anything ...

16 A: But Teresa --- see, you understand, that in the
17 middle of trial --- I'm sure you've tried cases and you
18 understand what I'm talking about. Obviously, that
19 changes some of the dynamics of the trial because here's
20 a person who's not looking for a deal.

21 Q: Right.

22 A: Okay. Her testimony that, hey, this is the man that
23 shot my brother, to me, has a lot more credibility than
24 these two knuckleheads ...

25 Q: That's right.

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1 A: ... who are sitting down here, charged with murder,
2 looking for a way out.

3 Q: That is -- absolutely, I'm with you.

4 A: Just these two guys ...

5 Q: And you had it.

6 A: ... I'm going to eat them up.

7 Q: But it changed.

8 A: It changed and I raised that issue and Judge King
9 ruled against me.

10 Q: Right. And so you had to deal with it, though?

11 A: Right. I had to deal with that.

12 Q: And you did the best you could to deal with it?

13 A: That's correct.

14 Q: But at that point in time, don't you think it would
15 have been prudent to start thinking, you know, maybe this
16 alibi thing, maybe I need to start looking into this. Or
17 maybe Steve Witherspoon or Terrance Lemon, maybe I need,
18 you know, figure out if I need to call them. Because now
19 the dynamics have changed. Did you ever -- did that
20 cross your mind?

21 A: No.

22 Q: Did you ever take an opportunity to try to interview
23 Steve Witherspoon or Terrance Lemon?

24 A: Me personally?

25 Q: Yeah. Or the investigator, whoever?

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1 A: Now, I don't know what Benny Webb did, whether he
2 tried to do that. He didn't ...

3 Q: You're aware that they were supposed to be present,
4 because you read the discovery. You're aware that Steve
5 Witherspoon and Terrance Lemon were present that day with
6 Lowery, Owens and ...

7 A: And allegedly Mr. Abrams.

8 Q: Correct.

9 A: I knew that they were involved, yes.

10 Q: So if ...

11 A: But hold on a second. Now ...

12 Q: Did you talk to them?

13 A: No, I did not.

14 Q: Do you know if Webb talked to them?

15 A: I don't.

16 Q: Do you think that would have been a good idea to
17 talk to them?

18 MS. WILLIAMS: Your Honor, the question calls for
19 speculation.

20 MR. KIRKLAND: Well, Your Honor ...

21 A: At this point, I ...

22 MR. KIRKLAND: That's fine. I'll actually agree with
23 that objection. So you don't even have to answer that.

24 A: Okay.

25 MR. KIRKLAND: I don't need his opinion on that.

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1 THE COURT: Okay.

2 A: I'll give it if you want it?

3 Q: No, no. I'm good now. I'll see if she wants to ask
4 it so I can object to it. Now, you've said that you met
5 with --- and I'm almost done. You said that you met with
6 Maurice various times, but you don't remember exactly how
7 many times?

8 A: No, sir.

9 Q: And it looked like from the letters that I had, and
10 I may not have all your letters. You were kind enough,
11 by the way, to make the file available and I tried to
12 copy all of it.

13 A: I told you I would.

14 Q: I know. And I appreciate that. I really do because
15 a lot of attorneys won't do it. Was there any letters
16 that you're aware of that discussed meetings with him or
17 memorialized meetings with him or do you have any notes
18 memorializing meetings with him?

19 A: I don't think so.

20 Q: Okay.

21 A: I know every time I would see Maurice, he didn't
22 vocally contribute a lot.

23 Q: Okay.

24 A: A lot of the, some of the discussion would have come
25 from his mom when she was in the office. I'd come out

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1 there and Maurice would just sit there and he'd say, what
2 you got to tell me? And I would tell him.

3 Q: Right.

4 A: And the same thing that I told him, and I told his
5 family, told his mom, told his dad, was in this
6 particular case, and that was the posture that I had, was
7 that I thought that --- I thought that the Dubose Siding
8 Road case, the State had some significant problem. I
9 thought that the Markeith Ford, which is this case, I
10 said, they got problems. They can fix them. What I'm
11 concerned about is they get these two guys. Because, as
12 I said, there was nothing in discovery, nothing ever
13 mentioned about any other party being able to identify
14 Maurice.

15 Q: Okay.

16 A: And then there was this one other incident, assault
17 and battery with intent to kill. It really never had
18 been ...

19 Q: And so near the end of this trial ...

20 A: Yes.

21 Q: ... when, let's say the prosecution rests. And you
22 didn't put up anything. Of course, we've already talked
23 about it, concerning the alibi. You didn't call
24 Witherspoon or Lemon?

25 A: Correct.

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1 Q: You were put in a position where my understanding
2 from your direct testimony -- I mean, on direct, was that
3 you felt like to save the save the case at that point,
4 and things had changed ...

5 A: That's correct.

6 Q: ... you needed Maurice to take the stand?

7 A: Correct.

8 Q: Because you didn't have anything that effectively
9 combated what you felt like was that identification by
10 ...

11 A: Teresa Ford.

12 Q: Teresa Ford.

13 MR. KIRKLAND: I have no more questions.

14 REDIRECT EXAMINATION

15 BY MS. WILLIAMS:

16 Q: Mr. Brooks, when your client didn't want to testify,
17 did you feel like you wanted to put up a case at that
18 point?

19 A: When he did not want to testify?

20 Q: Uh-huh (affirmative).

21 A: We didn't have anything else.

22 Q: Would there be any benefit, with everything else
23 that you knew, putting a case up if your client wasn't
24 going to testify?

25 MR. KIRKLAND: Your Honor, that calls for

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1 speculation.

2 MS. WILLIAMS: No, I'm asking him what he did. I'm
3 not speculating on what a witness would testify to. I'm
4 just asking him what he did.

5 THE COURT: Okay. Go ahead.

6 A: I mean, there was nothing else to put up.

7 Q: Okay.

8 A: There was nothing to put up. And going in -- like I
9 said before, going into the trial, looking at the
10 discovery and everything I had, discussions with Benny
11 Webb, we really didn't think that there was a credible
12 alibi defense, at least from my opinion. It's not like
13 Maurice said, I was here such and such day. I know I was
14 here. He never really, he never really said anything
15 like that, he didn't. But as you know, as you try these
16 cases, you know, the State has the burden. So in looking
17 at their case, all they had was Tony Lowery and Frederick
18 Owens, going in -- that day, going into the trial, I
19 mean, the morning of. And, obviously, things had changed
20 as a result of John saying to me, yeah, Ms. Ford is going
21 to get on the stand and she's going to say she can
22 identify Maurice. And we had a big to-do about that.
23 And I've tried cases in front Judge King before and
24 sometimes, like I said before, he gets a little
25 overbearing on that. And probably -- I was basically

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1 saying, I didn't have something when I actually did. And
2 obviously John backed me up the next day. And we hashed
3 that issue out where he told the Judge there was nothing
4 in the file, nothing in discovery indicating that. So
5 obviously now, you know -- now, personally, I didn't
6 think that was fair to Maurice. That's my personal
7 opinion. Because, obviously, the posture of the case may
8 have changed if I knew going in that Teresa Ford was
9 going to identify him ...

10 Q: You were able to argue that, that tape was crazy,
11 that she couldn't have seen him, right? You were able to
12 argue that?

13 A: I did. I argued that.

14 Q: And you were able to argue that these two guys were
15 just complete liars. They obviously were minimizing what
16 they did?

17 A: That's true.

18 Q: Okay. And you didn't feel you had a credible
19 defense of ...

20 MR. KIRKLAND: That's a leading question, Your
21 Honor.

22 THE COURT: All right. Please rephrase it.

23 MS. WILLIAMS: Okay.

24 Q: Did you feel you had an alibi to put up?

25 A: And let me say this ...

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1 Q: A credible alibi?

2 A: At the time, no. But now to Maurice's credit,
3 because we looked at the discovery. And in looking back
4 at it, the only thing that was there, potentially there,
5 no forensics, was potentially Frederick and potentially
6 Tony, okay? I say that to get, you know, to his -- to be
7 fair to Maurice, if we knew that Teresa was going to say,
8 yes, I pointed him out etcetera, etcetera, then perhaps,
9 you know, we may have done some things differently as far
10 as whether or not, you know, maybe -- I'm speaking -- I
11 want to be careful. I'm not speaking for Benny Webb.
12 Maybe he would have done a little more in terms of maybe
13 developing more of an alibi. I don't know. But he had
14 the file, too, or had copies that I gave him out of the
15 file. That's why I think that Teresa Ford's testimony is
16 truly unfair, because if you read the transcript, Judge
17 King says, well, Mr. Brooks you could have gone out and
18 talked to her. But if you're a defense lawyer, and I'm
19 sure Mr. Kirkland can identify with this, that's really
20 not feasible. Because if it's not in the discovery that
21 she can identify him, then what reason would you have to
22 go out and talk to her? Because you're only going off of
23 what you've gotten that the State has given you. And
24 then obviously that's what you -- I presume that's what
25 your investigator uses. That's what I think was unfair

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1 to Maurice. That's my personal opinion.

2 Q: Okay.

3 A: Okay.

4 Q: Back to your question which was do you feel you were
5 able to attack her identification?

6 A: As best I could, yes.

7 Q: Okay.

8 A: Okay. Because now I do know Ms. Ford. And she's
9 deceased now. She was ill and that sort of thing. And I
10 was -- I was prepared for Mr. Lowery and Mr. Owens. Very
11 prepared for them going into the trial. Because -- and
12 I'd dealt with Frederick Owens before on another murder
13 trial. So I was adequately prepared for them and knew --
14 had my line of cross-examination formed. But like I
15 said, that Teresa Ford, if you look at everything else in
16 the trial, everything else was lined up just the way I
17 saw it, except for Teresa Ford coming into court, now is
18 pointing the finger, and saying, this is the guy that
19 killed my brother. And I didn't personally think that
20 that was fair to Maurice. Because at the time, I had
21 basically laid it out for him and his family ...

22 Q: I understand how you feel about Teresa Ford. I
23 really do. I promise.

24 A: Because, listen, I don't like to lose.

25 Q: Okay.

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1 A: I thought at that point we had a winnable case. Up
2 until that point, we had a winnable case. Regardless of
3 Maurice taking the stand.

4 Q: Based on what you had at the time. You didn't think
5 it was a alibi; is that correct?

6 A: That's correct.

7 Q: Okay. Thank you.

8 THE COURT: Is that it?

9 MR. KIRKLAND: I do have one recross question.

10 THE COURT: Okay.

11 RE CROSS-EXAMINATION

12 BY MR. KIRKLAND:

13 Q: You hadn't prepared for Ms. Teresa Ford and I
14 believe what you said on the record was the Judge said,
15 I understand why you're upset, because the Judge
16 basically said it was your fault, because you could have
17 gone out and talked to Teresa Ford?

18 A: Yes. Yeah, that's right. That's what he said.

19 Q: Right. And you said, well, Judge I'm paraphrasing,
20 best I can, so correct me, but you said ...

21 MS. WILLIAMS: If the transcript is at issue ...

22 MR. KIRKLAND: Yeah right.

23 MS. WILLIAMS: I'll look at it. I'll tell you what
24 the transcript says and we can talk about it some if you
25 want to. But is there a question here?

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1 MR. KIRKLAND: Yeah, there is a question here.

2 Q: The question is, is your response is something to
3 the effect, you know how that would go, Your Honor, or
4 something like that. Sort of what you just said as
5 defense attorneys ...

6 A: And, Brad, you're a defense lawyer. How you going
7 to go out and -- well, first of all, how you going to
8 talked to the deceased guy's sister, first off. Second,
9 there's nothing in the discovery saying she can identify
10 him.

11 Q: Yeah, I got it.

12 A: So you wouldn't presumably have any reason to go out
13 and there's nothing in discovery saying that she
14 identified anybody.

15 Q: But as a defense attorney, and I don't mean this to
16 be confrontational. But as a defense attorney, we know
17 that we have a right to try to talk to them. There's no
18 law that prevents us from trying to talk to them.

19 A: Yep.

20 Q: They can just say, no, to us or they can say, yes,
21 to us?

22 A: And we've got the right not to talk to them.

23 Q: Right.

24 A: And sometimes it might not -- it's the State's
25 burden to prove their case.

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1 Q: But not talking to this witness and not knowing what
2 she was going to say, ended up creating a problem. And
3 we don't know whether she would have talked or not.

4 A: That's correct. That's correct.

5 Q: Okay.

6 MR. KIRKLAND: That's all I have.

7 MS. WILLIAMS: Ms. Ford made an in court
8 identification. The tape she said she recognized the
9 outfit. She didn't recognize him. She made an in-court
10 ID ...

11 THE COURT: I read the transcript.

12 MS. WILLIAMS: Okay. Your Honor, we've got a couple
13 of things to add to the record. We have the videotapes.

14 MR. KIRKLAND: And I'll stipulate to that. And I'll
15 put it in as my exhibit, if you'd like, Your Honor. That
16 will be Plaintiff's 18. And so we will get that to you
17 and have it marked.

18 THE COURT: Okay.

19 MR. KIRKLAND: What's the best way to do that. I'll
20 check with the court reporter afterwards.

21 THE COURT: Okay.

22 MS. WILLIAMS: And, Your Honor, based on some of the
23 things that came out in the testimony today, I'm going to
24 request to leave the record open at this point. I just
25 want to speak to Mr. Webb. There are some questions that

1 -- the things that I thought were going to be said were
2 different then what came out today. And I would like the
3 opportunity to speak with him and supplement the record
4 if I feel that it's necessary. If you can give me, I
5 guess with Christmas next week, up to two weeks to speak
6 him. And I'll let the Court know what I find out. I
7 appreciate that.

8 MR. KIRKLAND: I do have a position on that, Your
9 Honor. I don't know what the rules are and I have no
10 idea if that is an automatic sort of thing to request it
11 or if it's something that's in your discretion. If it is
12 something that's in your discretion, then I would
13 encourage you to not allow them to leave the case open.
14 This case has been on the docket several times. I truly
15 did turn over everything that I was going to bring up. I
16 don't know if you saw my -- of course, you saw it, my
17 amended petition, which I think outlines exactly the
18 issues that I intended to raise. And so at this point in
19 time, as much as I truly adore and respect Mary Williams,
20 and Daniel Gourley, I respectfully request that we close
21 the record at this point and submit arguments?

22 MS. WILLIAMS: I'll tell you why. It was told to me
23 that there was no alibi ever found. And so today when
24 they said that there was one, I was a little surprised.
25 And I would just like the opportunity to check it out.

1 MR. KIRKLAND: I don't understand. I don't want to
2 address her directly. But I don't understand.

3 MS. WILLIAMS: I'm trying to say it was not because,
4 wasn't prepared just because I was prepared for what
5 transpired wasn't what I expected. And I think it's only
6 fair that I get an opportunity to look at that and see if
7 ...

8 MR. KIRKLAND: If that was -- if it was something
9 that I misrepresented to her, Your Honor, I agree with
10 that. If it was something that she wanted when Mr.
11 Brooks was on the stand, then I would encourage you to
12 close the record. If I misrepresented something to her,
13 though, I'll eat it. And I'll let it remain open. So I
14 hope I did not do that.

15 MS. WILLIAMS: Oh, he didn't misrepresent anything
16 in that regard to me. However, I wasn't -- what I did
17 not know was that the family was going to say that it was
18 all represented to Mr. Webb. My understanding is that he
19 said Mr. Brooks knew about all this. And I also
20 understood from Mr. Brooks that he'd never been told
21 these things, had no idea about this. And then I find
22 out today that maybe there was an idea about this. I
23 just didn't know if it was good or not. And I'm looking
24 at notes that I had from Mr. Brooks file, an
25 investigator, who say he followed a pretty different

1 path. And I'm curious to know which -- where the truth
2 lies in that. Because he has notes indicating he went to
3 some different people. And it doesn't look like he
4 followed an alibi to me. But I would just be curious to
5 know.

6 MR. KIRKLAND: If it was something that Mr. Brooks -
7 -- it was just a miscommunication between Ms. Williams
8 and Mr. Brooks, then I would encourage you to close the
9 record. She already had the records that listed Benny
10 Webb as visiting my client. My understanding is that she
11 had some documents that I've never even seen before, and
12 I'm not complaining about it. She's as up front as
13 anybody I've ever known, dealt with. But I haven't even
14 seen the --- I think it's still sitting up there. The
15 invoice from Mr. Webb. So I think every opportunity was
16 given to investigate this. It just failed to occur.

17 THE COURT: Well, and normally, I would leave it
18 open for legal arguments. But I think the problem is if
19 you're going to submit some kind of affidavit or
20 something from the investigator ...

21 MS. WILLIAMS: I don't know what I'm going to submit
22 ...

23 THE COURT: Well, then he's going to have a right --
24 if that's the case ...

25 MS. WILLIAMS: I want him to have a right to cross-

1 examine, yes.

2 THE COURT: If I keep the hearing open.

3 MS. WILLIAMS: Yeah. He would have any kind of
4 right to do that.

5 THE COURT: Right.

6 MR. KIRKLAND: But, Your Honor ...

7 THE COURT: I understand.

8 MR. KIRKLAND: Yeah. I know you do.

9 THE COURT: I'll let you submit any legal argument
10 you want to, but you know, they've got a bite at this and
11 you've got a bite at this. The State tried a murder
12 case, you've got to have all your witnesses there. But I
13 guess Mr. Webb in hindsight should have been here to try
14 and talk about what he did.

15 MS. WILLIAMS: If I subpoena every investigator ...

16 THE COURT: I understand. Maybe that's part of your
17 practice if you've got investigators in a criminal case
18 ...

19 MS. WILLIAMS: I didn't expect ...

20 THE COURT: You're right. But you usually get
21 surprises if you come to Sumter. Okay.

22 MR. KIRKLAND: Your Honor, if I may -- I have a
23 suggestion and I don't know if the rules allow this
24 because I don't know what they are. There was a lot of
25 testimony today and I am, I've got notes all over

1 everything. Would it be okay if I submitted my arguments
2 to you in writing rather than make them here in open
3 court?

4 MS. WILLIAMS: I'll be glad to do that. I'll do the
5 same.

6 THE COURT: Okay.

7 MR. KIRKLAND: And what we might be able to do is
8 just sort of draft -- and we'll work on it together,
9 draft orders for you. And then even if you don't sign my
10 order or their order, we'll enter that as our argument as
11 to why ...

12 THE COURT: We'll submit both arguments into the
13 record in case he decides he wants to appeal me. At
14 least your arguments will be in the record.

15 MR. KIRKLAND: Thank you, Your Honor.

16 THE COURT: Okay. Thank y'all.

17 MR. KIRKLAND: Thank you, Your Honor. I appreciate
18 everything.

19

20

21

22

23

24

25

The Brooks Law Offices, LLC

CHARLES T. BROOKS, III,
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

IRMA R. BROOKS
Attorney

April 7, 2011

Sumter County Courthouse
Attn: Glen Manning, Asst. Solicitor
141 North Main Street
Sumter, South Carolina 29150

RE: State of South Carolina v Maurice Abrams
Warrant No(s) M-193537, 193552, 193538-39, 193557-58, 193554

Dear Mr. Manning:

Please be advised that my client has been sitting in jail for over two years. He has been denied bond.

Please let this letter put you on notice that my client desires a hearing on his Speedy Trial Motion or a bond hearing during this time.

With kind regards, I am,

Sincerely,

Charles T. Brooks, III
CTB, III/jlb

cc: Maurice Abrams

The Brooks Law Offices, LLC

CHARLES T. BROOKS, III,
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
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Email: cbrooks@ctbrooks.com

IRMA R. BROOKS
Attorney

April 20, 2011

Sumter County Courthouse
Attn: Glen Manning, Asst. Solicitor
141 North Main Street
Sumter, South Carolina 29150

RE: State of South Carolina v Maurice Abrams
Warrant No(s) M-193537, 193552, 193538-39, 193557-58, 193554

Dear Mr. Manning:

Please advise on when my client is going to trial. My client has been in jail for over two years. We would like to have some answer about trial or bond hearing within fifteen (15) days or we will have to contact the Court.

With kind regards, I am,

Sincerely,

Charles T. Brooks, III
CTB, III/jlb

cc: Maurice Abrams

The Brooks Law Offices, LLC

Charles T. Brooks, III, Attorney

Irma R. Brooks, Attorney

309 BROAD STREET - SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 - SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

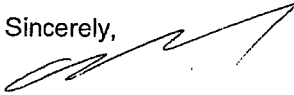
June 3, 2011

Maurice L. Abrams
Sumter-Lee Detention Center
1250 Winkles Road
Sumter, South Carolina, 29153

Dear Mr. Abrams:

Please be advised that I have been notified of trial for you the week of June 6, 2011.

Sincerely,

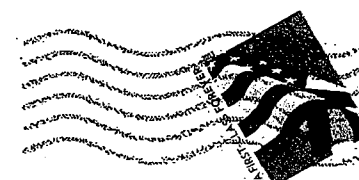


Charles T. Brooks, III

CTB/jlb

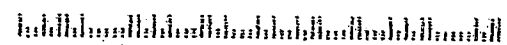
Charles T. Brooks, III
The Brooks' Law Offices, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29151

COLUMBIA, SC 292
06 JUN 2012 PM 3:1



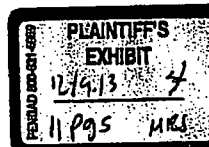
B-228
Maurice L. Abrams
Sumter-Lee Detention Center
1250 Winkies Road
Sumter, South Carolina, 29153

29153+7486



#	Event	Date Time	Log Notes	Booking #	User ID	Wkst
1	MAIL	08/19/2011 16:00:00	Not Here Rtn To S.c. Election Commission 2221 Devine Street P.o Box 5987 Cola S.c. 29250. (08/19/2011 17:23, Mrichardson, 33, Slde)	1333	mrichard	deic43
2	RELS	06/09/2011 09:20:01	Inmate Released To Self For Scdc 06/09/2011 09:20:01 -	1333	arichards	booksta
3	BOND	06/09/2011 09:12:17	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
4	BOND	06/09/2011 09:12:17	Bond Status Date Changed From 06/15/2009 15:21:28 To 06/09/2011 09:12:17	1333	arichards	booksta
5	BOND	06/09/2011 09:12:12	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
6	BOND	06/09/2011 09:12:12	Bond Status Date Changed From 06/08/2011 20:18:40 To 06/09/2011 09:12:12	1333	arichards	booksta
7	BOND	06/09/2011 09:12:09	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
8	BOND	06/09/2011 09:12:09	Bond Status Date Changed From 06/12/2009 23:04:10 To 06/09/2011 09:12:09	1333	arichards	booksta
9	BOND	06/09/2011 09:12:02	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
10	BOND	06/09/2011 09:12:02	Bond Status Date Changed From 06/15/2009 15:23:12 To 06/09/2011 09:12:02	1333	arichards	booksta
11	BOND	06/09/2011 09:11:59	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
12	BOND	06/09/2011 09:11:59	Bond Status Date Changed From 06/15/2009 15:24:02 To 06/09/2011 09:11:59	1333	arichards	booksta
13	BOND	06/09/2011 09:11:55	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
14	BOND	06/09/2011 09:11:55	Bond Status Date Changed From 06/12/2009 23:02:35 To 06/09/2011 09:11:55	1333	arichards	booksta
15	BOND	06/09/2011 09:11:50	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
16	BOND	06/09/2011 09:11:50	Bond Status Date Changed From 06/15/2009 15:25:50 To 06/09/2011 09:11:50	1333	arichards	booksta
17	BOND	06/09/2011 09:10:55	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	arichards	booksta
18	BOND	06/09/2011 09:10:55	Bond Status Date Changed From 06/12/2009 23:05:15 To 06/09/2011 09:10:55	1333	arichards	booksta
19	INMT	06/08/2011 20:20:44	Moved From Temp Location: Court - General Sess Back To Cell Location: Main, G, G, 113b.	1333	kjames	booksta
20	BOND	06/08/2011 20:15:29	Bond Amount Changed From 0.00 To 0.00	1333	kjames	booksta
21	BOND	06/08/2011 20:15:27	Bond Type Changed From Deni To Sent	1333	kjames	booksta
22	BOND	06/08/2011 20:14:42	Bond Amount Changed From 0.00 To 0.00	1333	kjames	booksta

jinnatlog



Page 1

26	INMT	06/08/2011 18:08:26	Moved From Old Cell Location: Main, G, G, 112d To New Cell Location: Main,g,g,113b	1333 rprimus booksta
			Reason For Cell Assignment Change (required): Moving From G-112 To G113	
27	INMT	06/08/2011 17:45:21	Moved From Old Cell Location: Main, B, B, 228b To New Cell Location: Main,g,g,112d	1333 rprimus booksta
			Reason For Cell Assignment Change (required): Moving From B-228 To G-112	
28	INMT	06/08/2011 08:50:44	Moved From Cell Location: Main, B, B, 228b To Temp Location: Court - General Sess.	1333 arichards booksta
29	INMT	06/07/2011 17:09:26	Moved From Temp Location: Court - General Sess Back To Cell Location: Main, B, B, 228b.	1333 wbenner johnjon
30	INMT	06/07/2011 08:21:07	Moved From Cell Location: Main, B, B, 228b To Temp Location: Court - General Sess (mass Move)	1333 wsweat johnjon
31	INMT	06/06/2011 21:19:22	Moved From Temp Location: Court - General Sess Back To Cell Location: Main, B, B, 228b.	1333 wgardne booksta
32	INMT	06/06/2011 09:04:15	Moved From Cell Location: Main, B, B, 228b To Temp Location: Court - General Sess (mass Move)	1333 wbjenki detc46
33	POD	06/06/2011 08:59:00	Abrams Goes To G/s Court [06/06/2011 09:02, Wbjenkins, 133, Side]	1333 wbjenki detc46
34	BOND	04/14/2011 14:09:34	Bond Amount Changed From 0.00 To 0.00	1333 traylee itr10
35	BOND	04/14/2011 14:09:28	Bond Amount Changed From 0.00 To 0.00	1333 traylee itr10
36	BOND	03/18/2011 19:28:58	Bond Amount Changed From 0.00 To 0.00	1333 tjackson courtney
37	VRTS	03/07/2011 14:00:00	Inv. Benny Webb In To See Thi 1/m. [03/07/2011 14:06, Mrichardson, 33, Side]	1333 mrichard slrdc
38	INCI	03/06/2011 03:50:31	Jail Incident # 201100638.	1333 wsweat johnjon
39	BOND	02/15/2011 04:19:45	Bond Amount Changed From 0.00 To 0.00	1333 jshirah mneal
40	INCI	02/05/2011 21:56:03	Jail Incident # 201100380.	1333 wsweat johnjon
41	INCI	02/04/2011 17:52:44	Jail Incident # 201100373.	1333 dneelson johnjon
42	INCI	02/01/2011 19:06:17	Jail Incident # 201100344.	1333 jshirah johnjon
43	INCI	02/01/2011 04:32:09	Jail Incident # 201100331.	1333 kwilder johnjon
44	INCI	01/27/2011 00:17:32	Jail Incident # 201100271.	1333 fwashing johnjon
45	VRTS	01/17/2011 11:30:00	Attorney Rodney Jeringan With Bells Law Firm In To See 1/m. [01/20/2011 13:25, Mrichardson, 33, Side]	1333 mrichard slrdc
46	INCI	01/16/2011 21:08:09	Jail Incident # 201100167.	1333 cmoore johnjon
47	BOND	01/07/2011 23:56:48	Bond Amount Changed From 0.00 To 0.00	1333 jshirah johnjon
48	INMT	12/26/2010 20:54:56	Moved From Cell Location: Main, B, B, 228b To Temp Location: Booking (mass Move)	1333 wbjenki @1250s
49	INMT	12/26/2010 20:54:56	Moved From Temp Location: Booking Back To Cell Location: Main B B 228b (mass Move)	1333 wbjenki @1250s
50	POD	12/07/2010 19:50:00	B228 Goeson Rec [12/07/2010 19:51, Wbjenkins, 133, Side]	1333 wbjenki johnjon

52 INMT 10/22/2010 16:39:57 Moved From Old Cell Location: Main, C, C, 1100 To New Cell Location: Main,b,b,228b
Reason For Cell Assignment Change (required):
T/s In C-pod

53 MAIL 10/19/2010 09:00:00 Must Have Fullname On Return Address Letter Rtn To 4210 Cotton Rd Sumter S.c. 29153. [10/19/2010 09:34, Mrichardson, 33, Slde] 1333 mrichard slrde

54 POD 10/18/2010 07:48:00 Inmate Receives 15min. Phone Call. [10/18/2010 07:48, Arichardson, 132, Slde] 1333 arichards detc20

55 POD 10/18/2010 07:30:00 Inmate Comes Out For Shower. [10/18/2010 07:44, Arichardson, 132, Slde] [10/18/2010 07:45, Arichardson, 132, Slde] 1333 arichards detc20

56 MAIL 10/13/2010 16:00:00 Must Have Full Name On Return Address Rtn To 4210 Cotton Rd Sumter S.c. 29153 [10/13/2010 16:54, Mrichardson, 33, Slde] 1333 mrichard slrde

57 POD 10/13/2010 12:12:00 Received Canteen From Mike W/ Swanson Canteen. [10/13/2010 12:18, Arichardson, 132, Slde] 1333 arichards detc20

58 TEL 10/13/2010 08:07:00 Inmates Uses Telephone [10/13/2010 08:31, Arichardson, 132, Slde] 1333 arichards detc20

59 POD 10/12/2010 16:51:00 Sgt. Jones Enter A/c With Grievance Forms Return To Inmate Abrams [10/12/2010 16:52, Sgaymon, 84, Slde] 1333 sgaymon detc20

60 POD 10/12/2010 10:12:00 Inmate Abrams Was Given Greivance Form # 09804 Address To Major Mcghaney [10/12/2010 10:13, Sgaymon, 84, Slde] 1333 sgaymon detc20

61 MAIL 10/07/2010 08:18:00 Mail Received From 4210 Cotton Rd. Sumter, Sc. 29153
Mail Contained No Full Name On Return Address. [10/07/2010 08:19, Clumpkin, 69, Slde] 1333 clumpki slrde

62 POD 10/06/2010 15:34:00 Sgt. Tomlin Escorted Inmate Portefrom November Into Charlie Pod To Cut Inmate Abrams's Hair. [10/06/2010 15:48, Sgaymon, 84, Slde] 1333 sgaymon detc20

63 POD 10/06/2010 12:10:00 Inmate Abrams Was Escorted To The Shower By Sgt. Tomlin [10/06/2010 12:11, Sgaymon, 84, Slde] 1333 sgaymon detc20

64 POD 10/06/2010 11:28:00 Inmate Abrams, Maurice Was Given Grievance Form #05881 [10/06/2010 11:29, Sgaymon, 84, Slde] 1333 sgaymon detc20

65 RECL 10/01/2010 11:36:49 Inmate Was Reclassified From - Min To Max . Inmate Was Reclassified From - Min To Max . Inmate Is In Charlie Pod Per Dir Major 1333 ewilliam detc20

66 INCI 09/29/2010 03:28:42 Jail Incident # 201002522. 1333 amcmill booksup

67 INMT 09/27/2010 13:37:31 Moved From Old Cell Location: Main, J, J, 205 To New Cell Location: Main,c,c,110b
Reason For Cell Assignment Change (required):
Per Director Major 1333 rhammet booksta

68 INCI 09/27/2010 13:23:50 Jail Incident # 201002508. 1333 aglover booksup

69 BOND 09/17/2010 16:55:43 Bond Amount Changed From 0.00 To 0.00 1333 mneal booksta

73 BOND	09/17/2010 16:54:37	Bond Amount Changed From 0.00 To 0.00	1333 mneal booksta
74 BOND	09/17/2010 16:54:34	Bond Type Changed From 1st To Deni	1333 mneal booksta
75 BOND	09/17/2010 16:47:35	Bond Amount Changed From 0.00 To 0.00	1333 mneal booksta
76 BOND	09/17/2010 16:47:34	Bond Type Changed From 1st To Deni	1333 mneal booksta
77 BOND	09/17/2010 16:47:03	Bond Amount Changed From 0.00 To 0.00	1333 mneal booksta
78 BOND	09/17/2010 16:47:00	Bond Type Changed From 1st To Deni	1333 mneal booksta
79 BOND	09/17/2010 16:46:34	Bond Amount Changed From 0.00 To 0.00	1333 mneal booksta
80 BOND	09/17/2010 16:46:32	Bond Type Changed From 1st To Deni	1333 mneal booksta
81 BOND	09/17/2010 16:45:51	Bond Amount Changed From 0.00 To 0.00	1333 mneal booksta
82 BOND	09/17/2010 16:45:49	Bond Type Changed From 1st To Deni	1333 mneal booksta
83 INCI	09/14/2010 21:54:37	Jail Incident # 201002372.	1333 jshirah booksta
84 INMT	09/14/2010 20:30:23	Moved From Old Cell Location: Main, B, B, 223b To New Cell Location: Main,j,j,205	1333 sgaymon booksta
Reason For Cell Assignment Change (required): Time Up In Bravo Pod			
85 INMT	09/02/2010 09:12:39	Moved From Old Cell Location: Main, E, E, 222 To New Cell Location: Main,b,b,223b	1333 wbenner johnjon
Reason For Cell Assignment Change (required): New Location Per Ssgt. Ricks			
86 INCI	08/25/2010 08:44:29	Jail Incident # 201002192.	1333 jdixon johnjon
87 INMT	08/25/2010 08:13:43	Moved From Old Cell Location: Main, B, B, 110i To New Cell Location: Main,e,e,222	1333 ewilliam booksta
Reason For Cell Assignment Change (required): Time Up In Bravo			
88 INMT	08/06/2010 01:13:40	Moved From Temp Location: Court- Bond Sldc Back To Cell Location: Main, B, B, 110i.	1333 rsmiling johnjon
89 INMT	08/06/2010 01:13:04	Moved From Temp Location: Court - General Sess To New Temp Location: Court- Bond Sldc.	1333 rsmiling johnjon
90 INMT	08/05/2010 07:40:28	Moved From Cell Location: Main, B, B, 110i To Temp Location: Court - General Sess.	1333 bfournmo johnjon
91 INMT	08/04/2010 18:59:09	Moved From Temp Location: Court - General Sess Back To Cell Location: Main, B, B, 110i.	1333 rprimus johnjon
92 INMT	08/04/2010 07:56:00	Moved From Cell Location: Main, B, B, 110i To Temp Location: Court - General Sess.	1333 bfournmo johnjon
93 INCI	08/03/2010 19:34:31	Jail Incident # 201002022.	1333 nmcmill booksup
94 POD	08/03/2010 19:25:00	Inmate Was Moved To Bravo 110 From K-201 From His Return From Court [08/03/2010 19:26, Ajones, 102, Sldc]	1333 ajones detc37
95 INMT	08/03/2010 19:18:22	Moved From Temp Location: Court - General Sess Back To Cell Location: Main B B 110i (mass Move)	1333 fwashing johnjon
96 INMT	08/03/2010 19:14:04	Moved From Old Cell Location: Main, K, K, 201 To New Cell Location: Main,b,b,110i	1333 fwashing johnjon

97	INMT	08/03/2010 08:17:20	Moved From Cell Location: Main, K, K, 201 To Temp Location: Court - General Sess (mass Move)	1333	wbjenki	detc37
98	INMT	07/31/2010 15:53:04	Moved From Old Cell Location: Main, B, B, 112i To New Cell Location: Main,k,k,201	1333	Igreen	booksta
Reason For Cell Assignment Change (required): Inmate Move From B-pod To K-pod						
99	BOND	07/09/2010 03:50:24	Bond Amount Changed From 262.50 To 262.50	1333	kjames	booksta
100	BOND	07/09/2010 03:50:22	Bond Type Changed From Sb To Ts	1333	kjames	booksta
101	BOND	07/09/2010 03:50:18	Bond Status Changed From Active Bond, Awaiting Bond, Sentenced To Inactive, Bonded Out Or Time Served Or Release	1333	kjames	booksta
102	BOND	07/09/2010 03:50:18	Bond Status Date Changed From 05/27/2010 23:17:11 To 07/09/2010 03:50:18	1333	kjames	booksta
103	INCI	07/02/2010 15:56:17	Jail Incident # 201001657.	1333	tnelson	detc46
104	BOND	06/02/2010 17:06:15	Bond Amount Changed From 525.00 To 262.50	1333	rdickey	booksta
105	INMT	06/02/2010 16:36:48	Moved From Temp Location: Court- Bond Slrde Back To Cell Location: Main B B 112i (mass Move)	1333	jshirah	bpod
106	INMT	06/02/2010 14:27:29	Moved From Cell Location: Main, B, B, 112i To Temp Location: Court- Bond Slrde.	1333	jshirah	bpod
107	INMT	05/29/2010 09:42:43	Moved From Temp Location: Court- Bond Slrde Back To Cell Location: Main, B, B, 112i.	1333	ctomlin	booksup
108	BOND	05/29/2010 09:42:35	Bond Amount Changed From 0.00 To 525.00	1333	ctomlin	booksup
109	BOND	05/29/2010 09:42:28	Bond Type Changed From 00 To Sb	1333	ctomlin	booksup
110	INMT	05/29/2010 08:39:51	Moved From Cell Location: Main, B, B, 112i To Temp Location: Court- Bond Slrde (mass Move)	1333	wsvent	bpod
111	INCI	05/21/2010 13:56:56	Jail Incident # 201001235.	1333	cmoore	bpod
112	INCI	05/20/2010 23:43:45	Jail Incident # 201001225.	1333	pdukes	detc37
113	INMT	05/20/2010 22:29:08	Moved From Old Cell Location: Main, K, K, 206 To New Cell Location: Main,b,b,112i	1333	rhammet	booksta
Reason For Cell Assignment Change (required): For Fighting In Kilo						
114	MAIL	05/05/2010 11:52:00	Letter Returned Hav 2 Abrams Returned To Franceen Abrams 315 Bowman St. Sumter S.c. (05/05/2010 11:54, Mrichardson, 33, Slde]	1333	mrichard	slrde
115	INMT	04/19/2010 07:54:55	Moved From Temp Location: Booking Back To Cell Location: Main, K, K, 206.	1333	rsmiling	bpod
116	INMT	04/19/2010 07:54:31	Moved From Cell Location: Main, K, K, 206 To Temp Location: Booking.	1333	rsmiling	bpod
117	MAIL	03/26/2010 16:38:00	Mail Was Addressed To Maurice Abrams 1250 Winkles Rd. Sumter, S.c. 29153. Sender: Whitney Washington- Abrams 4940 Narrow Paved Rd. Lynchburg, S.c. 29080	1333	mrichard	slrde

16:40, Mrichardson, 33, Side]

118 INMT 02/04/2010 22:54:00 Moved From Old Cell Location: Main, B, B, 228i To New Cell Location: Main,k,k,206 1333 landerso booksta

Reason For Cell Assignment Change (required):
Move From Bravo Pod By Sgt Ricks

119 INMT 01/11/2010 03:48:21 Moved From Old Cell Location: Main, B, B, 218b To New Cell Location: Main,b,b,228i 1333 jshirah bpod

Reason For Cell Assignment Change (required):
Room Needed Repairs

120 INCI 01/10/2010 22:51:14 Jail Incident # 201000067. 1333 jshirah bpod

121 INCI 01/06/2010 00:41:01 Jail Incident # 201000034. 1333 hnobles detc37

122 INMT 01/05/2010 23:57:54 Moved From Old Cell Location: Main, K, K, 206 To New Cell Location: Main,b,b,218b 1333 fwashing bpod

Reason For Cell Assignment Change (required):
Inmate Moved To Pod Due To Disruption Of Pod

123 BOND 11/12/2009 17:00:55 Bond Amount Changed From 0.00 To 0.00 1333 ewilliam detc16

124 BOOK 10/21/2009 15:30:00 Auomey Visit (10/21/2009 15:31, Nnathaniel, 103, Side) 1333 nnathani detc37

125 INCI 10/20/2009 14:06:55 Jail Incident # 200901950. 1333 cmoores bpod

126 INMT 10/20/2009 13:18:02 Moved From Old Cell Location: Main, B, B, 206b To New Cell Location: Main,k,k,206 1333 tjackson booksta

Reason For Cell Assignment Change (required):
Time Up In Bravo

127 INCI 09/30/2009 12:24:05 Jail Incident # 200901787. 1333 traylee detc32

128 INCI 08/18/2009 03:34:17 Jail Incident # 200901277. 1333 fwashing bpod

129 INCI 08/17/2009 04:58:09 Jail Incident # 200901265. 1333 landerso bpod

130 PARO 07/31/2009 11:14:00 Inmates B. Witherspoon And R. Woods Exits To Booking (07/31/2009 11:15, Mnelson, 60, Side) 1333 mnelson detc19

131 INMT 07/19/2009 07:08:51 Moved From Temp Location: Booking Back To Cell Location: Main, B, B, 206b. 1333 azuell detc37

132 INMT 07/19/2009 07:08:17 Moved From Cell Location: Main, B, B, 206b To Temp Location: Booking. 1333 azuell detc37

133 BOND 06/16/2009 18:30:06 Bond Amount Changed From 0.00 To 0.00 1333 tjackson booksta

134 BOND 06/16/2009 18:30:05 Bond Type Changed From 00 To 1st 1333 tjackson booksta

135 BOND 06/16/2009 18:30:00 Bond Amount Changed From 0.00 To 0.00 1333 tjackson booksta

136 BOND 06/16/2009 18:29:56 Bond Type Changed From 00 To 1st 1333 tjackson booksta

137 BOND 06/16/2009 18:29:50 Bond Amount Changed From 0.00 To 0.00 1333 tjackson booksta

138 BOND 06/16/2009 18:29:48 Bond Type Changed From 00 To 1st 1333 tjackson booksta

139 BOND 06/16/2009 18:29:30 Bond Amount Changed From 0.00 To 0.00 1333 tjackson booksta

140 BOND 06/16/2009 18:29:25 Bond Type Changed From 00 To 1st 1333 tjackson booksta

143 INMT 06/15/2009 07:40:12 Moved From Old Cell Location: Main, G, 113a To New Cell
Location: Main,b,b,206b

1333 tjackson booksta

Reason For Cell Assignment Change (required):
Move Per Director / Is To Be In Room Alone Is On Pc

144 BOND 06/14/2009 11:12:54 Bond Amount Changed From 0.00 To 0.00

1333 ymanley booksta

145 BOND 06/14/2009 11:12:45 Bond Type Changed From 00 To 1st

1333 ymanley booksta

146 BOND 06/14/2009 11:12:27 Bond Amount Changed From 0.00 To 0.00

1333 ymanley booksta

147 BOND 06/14/2009 11:12:26 Bond Type Changed From 00 To 1st

1333 ymanley booksta

148 BOND 06/14/2009 11:11:04 Bond Amount Changed From 0.00 To 0.00

1333 ymanley booksta

149 BOND 06/14/2009 11:11:02 Bond Type Changed From Sb To 1st

1333 ymanley booksta

150 BOND 06/14/2009 11:09:56 Bond Amount Changed From 0.00 To 0.00

1333 ymanley booksta

151 BOND 06/14/2009 11:09:32 Bond Amount Changed From 0.00 To 0.00

1333 ymanley booksta

152 BOND 06/14/2009 11:09:31 Bond Type Changed From 00 To Sb

1333 ymanley booksta

153 INMT 06/12/2009 23:07:18 Assigned To Cell Location: Main,g,g,113a

1333 mneal booksta

154 BOOK 06/12/2009 22:55:00 Started Booking Process

1333 mneal booksta

Wednesday, 8/19/09

NAME	9:00AM	NAME	9:30AM	NAME	10:00AM	NAME
A/C		A/C		A/C		A/C
A/C		A/C		A/C		A/C
A/C		A/C		A/C		A/C
A/C		A/C		A/C		A/C
B	~~Brooks Aubrey 128~~	B	~~Howe out shift~~	B	~~Matson 110~~	B
B		B		B		B
B		B		B		B
B		B		B		B
D		D		D		D
L						SLADE, John
D		D		D		Wilson John
D		D		D		
D		D		D		
E		E	Joyner Johnny E103	E	Beam Mark E218	E Euten Willi
E		E		E	Thomas Ronnie E138	E Kenney Alt
E		E		E		
E		E		E		
J/K		J/K		J/K	Christopher, Shemar K 215	J/K
J/K		J/K		J/K		J/K
J/K		J/K		J/K		J/K
J/K		J/K		J/K		J/K
H/C	BROOKS Aubrey	H/C		H/C		H/C

OTHER	OTHER	OTHER	OTH
	L Ann Stevens	Daniel Weaver	
	Archib Calvert Douglas Williams	Cathy Butler Tina Murphy	
	Remero Davis Bo Co Garber	Dale Reno	
	Warren Bondar Jessica B. Davis	Will Payne E113 EVANS Sam	A1208 Bna
	Shane Foxworth	John Cowell D229 Tadder Dan	B 208 Cal
	Derrick Miles Samuel Gove	D227 Taylor	B 206 QB
	Richard Seiner Jason Pinkston	D139 Candy Madala	K 203 Bu
	Clarence Lowery Tioban White	K 210 Bna	B213 Jenk

* ATTORNEY, INVESTIGATOR, MINISTER

8034362223

04:38:24 p.m.

01-27-2017

13/42

803436223

LICENSE TO BE RETURNED ONCE THEY EXIT THE FACILITY

PAGE 21 OF

DATE 8-19-0

BY SIGNING BELOW, I RELEASE THE SLRDC AND THEIR OFFICERS, SERVANTS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, JUDGE
 EXECUTION OF ANY AND EVERY KIND OR NATURE WHATSOEVER THAT MAY ARISE FROM PARTICIPATION OF THE VISITING AG
 AND SO INDEMNIFY AND SAVE HARMLESS THE SUMTER-LEE REGIONAL DETENTION CENTER AND THEIR OFFICERS, SERVA
 AND EMPLOYEES FROM ALL CLAIMS OR CAUSES OF ACTION IN CONNECTION THEREWITH. I HAVE READ AND UNDERSTAND ALL OF
 OF THIS RELEASE. I EXECUTE IT VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE.

TIME IN	VISITOR'S NAME	VISITOR'S AGENCY	AREA VISITING	BADGE NUMBER
15:09	M. Doherty	FBI		2775
16:09	J. Dalton	RNPD		
16:09	J. L. Craig	Attorney		—
16:09	Lauren Stevens	PD		15
16:09	Thomas Fullard	McGaney		14
16:09	Jeffrey Johnson	McGaney		16
16:09	Murphy	See Clients		9
16:09	John Davis	Pub Def.		9
16:09	Gwendene Jackson			
16:09	Lauren Stevens	PD	A	8
16:09	BY SIGNING BELOW, I RELEASE THE SLRDC AND THEIR OFFICERS, SERVANTS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, JUDGE EXECUTION OF ANY AND EVERY KIND OR NATURE WHATSOEVER THAT MAY ARISE FROM PARTICIPATION OF THE VISITING AG AND SO INDEMNIFY AND SAVE HARMLESS THE SUMTER-LEE REGIONAL DETENTION CENTER AND THEIR OFFICERS, SERVA AND EMPLOYEES FROM ALL CLAIMS OR CAUSES OF ACTION IN CONNECTION THEREWITH. I HAVE READ AND UNDERSTAND ALL OF OF THIS RELEASE. I EXECUTE IT VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE.			

04:38:42 P.M. 01-27-2017

16/42

LICENSE TO BE RETURNED ONCE THEY EXIT THE FACILITY

PAGE 5

OF

DATE

BY SIGNING BELOW, I RELEASE THE SLRDC AND THEIR OFFICERS, SERVANTS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, JUDICIAL PROSECUTION OF ANY AND EVERY KIND OR NATURE WHATSOEVER THAT MAY ARISE FROM PARTICIPATION OF THE VISITING AND/OR AGENTS AND SO INDEMNIFY AND SAVE HARMLESS THE SUMNER-LEE REGIONAL DETENTION CENTER AND THEIR OFFICERS, SERVANTS AND EMPLOYEES FROM ALL CLAIMS OR CAUSES OF ACTION IN CONNECTION THEREWITH. I HAVE READ AND UNDERSTAND ALL OF THIS RELEASE. I EXECUTE IT VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE.

TIME IN	VISITOR'S NAME	VISITOR'S AGENCY	AREA VISITING	BADGE NUMBER
8:35	Charles Alessandro	BIBLE STUDY	K	8
8:35	DON BARBER	" "	D	6
8:35	Bill Lyle	" "		10
8:35	Russell Throup	" "	J	11
8:35	BOOBY ENGLISH	" "	J	15
8:39	John Martin	" "	K	12
	Jim Shuping	" "	C	16
	Alan Burk	" "	B	7
	John Feeney	" "	E	13
	Ernest Hendrick	" "		
	Wesley Planchon	" "	K	17

04:39:07 P.M. 01-27-2017

15/42

GE. / ON

ॐ नमो भगवते वासुदेवाय

STATE, C. BELOW, I RELEASE THE SLRDC AND THEIR OFFICERS, SERVANTS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, JUDICIAL OR OTHERWISE, OF ANY AND EVERY KIND OR NATURE WHATSOEVER THAT MAY ARISE FROM PARTICIPATION OF THE VISITING AND DETENTION OF ME AND SO INDEMNIFY AND SAVE HARMLESS THE SUMTER-LEE REGIONAL DETENTION CENTER AND THEIR OFFICERS, SERVANTS, AGENTS AND EMPLOYEES FROM ALL CLAIMS OR CAUSES OF ACTION IN CONNECTION THEREWITH. I HAVE READ AND UNDERSTAND ALL CONTENTS OF THIS RELEASE. I EXECUTE IT VOLUNTARILY AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE.

[illegible]

Items Released to Solicitor's Office For Defense Attorneys:

1. Incident report # 09053672
2. Investigative Summary Report – Victim: Markeith Ford
3. Handwritten Statement of Teresa Ford: 06/05/09
4. Handwritten Statement of Tony Lowery: 06/07/09 & 06/08/09
5. Field Notes of Inv. Tommy Barron: 05/19 & 05/20/09
6. Waiver of Rights – Fredrick Owens: requests attorney
7. Waiver of Rights – Maurice Abrams: refused to sign
8. Search Warrant – 70 South Forge Apts: 06/11/09
9. Search Warrant – Blue 1984 Chevy Caprice ELS-324: 06/12/09
10. Money Grams sold to Markeith Ford at Lee's Grocery, S. Lafayette Dr., Sumter, SC: Fax dated 10/02/09
11. Autopsy Report #FA09-363: 06/03/09 Dr. Ross & Dr. Panella
12. Photos of Markeith Ford
13. S.L.E.D. Toxicology and bullet fragment report: 06/03/09
14. S.L.E.D. Trace Evidence Report – black & burgundy jogging suit: 06/16/09 Item #8
15. Item #8 resubmitted: 07/02/09 S.L.E.D. Report
16. Line-up Photos – Lowery and Abrams

3- CD's - (1) Adams 1984 Chevy (2) 911 Audio Phone
(3) EL-Cheapo's Video

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 2010-GS-43-0885

The State,

Plaintiff,

vs.

MAURICE L. ABRAMS,

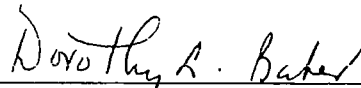
Defendant.

CERTIFICATE OF MAILING

Dorothy L. Baker does hereby certify that she placed in the United State mail box a copy of Supplemental Rule 5 Disclosure and Motion for Reciprocal Discovery and Disclosure (Memorandum Summary of Proposed Testimony) in the above-referenced matter dated, May 16, 2011, the same being address to:

Charles T. Brooks, III, Esquire
PO Box 3512
Sumter, South Carolina 29151
Attorney for the Defendant

on May 16, 2011, and that sufficient postage was affixed thereto.



Dorothy L. Baker

Sumter, South Carolina
May 16, 2011

CASE # 39053672

VOLUNTARY STATEMENT

LAST NAME <u>LOWERY</u>	FIRST NAME <u>Tony</u>	MIDDLE NAME <u>Nickell</u>	AGE <u>30</u>	D.O.B. <u>9-3-78</u>
NICKNAME/AKA <u>NONE</u>	M ☒ F ☐	SSN <u>238-29-3144</u>	STREET ADDRESS <u>422 E. Charlotte Ave.</u>	
CITY <u>Sumter</u>	STATE <u>SC</u>	ZIP <u>29150</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE <u>778-6476</u>	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION <u>Unemployed</u>	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>6-7-09 / 4:25 PM</u>		
LOCATION OF INTERVIEW <u>LEC</u>				
INTERVIEWING AGENT <u>LT. D. E. FLORENE</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Tony M. Lowery understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 12 + 2 yrs grade in school. College

On 5-19-09 I got a call from a friend needing help to put Net Zero on his computer. The males name was (Fred Owens). On the way 2 Fred's House. I got a phone call from Steve asking do I know the old Lee's Grocery and I said yes. Steve picked me up between the hours of 7pm - 8pm. At that time we went 2 Lee's grocery ^{to} to pick up a friend of Steve's that goes by the name Ju Ju. When we arrived at the store we saw Marice and two of his friends. We spoke and then I went to the store to use the restroom. While about to enter the store I ran into an old friend name (Butt-butt) I spoke, and while speaking Marice went into the store ahead of me. He had a red shirt put on his head. He was taking a long time so I asked the clerk did they have another bathroom and he told me yes so I went. As I came out of the restroom I started to buy a candy bar but chose not to. Going back to the car I saw that Ju Ju was there and went to Steve's car so we could leave. Marice and the other 2 guys were gone and at that time Steve said I seen ^{the} where (Max) went let's see what they are doing. We went and didn't see them, at that time (Max) called Steve phone and that they were at gates for us to come

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 6-7-09 Time: 6:22 pm Tony M. Lowery
Signature of person giving voluntary statement

WITNESS: LT. D. E. Florene WITNESS: _____

I certify that I have been given a copy of this statement consisting of 3 pages.

VOLUNTARY STATEMENT SUPPLEMENTALTony Lowery

Statement of, Continued.

When arriving at gates (Moe) asked what we were doing tonight Steve said nothing because I have my son with me, and I have to drop (Ju Ju) off. (Moe) said I need someone to ride with me to drop the 2 guys off because I'm feeling sleepy. So I decided to ride with (Moe). At that point he went down Lafayette and passed the store (Lee's) and then took several side streets until ending up on Newberry. Where then one of the guys said (Moe) you passed it then he pulled over in the field. It was in between the trailer and the school. (Moe) and the 2 guys got out of the car the one dressed like me had a black Highpoint 9mm, and the other passed (Moe) a 357 long noise revolver. When I saw that I got scared and didn't know what to do. At that time (Moe) and the light-skinned one went into the trailer the 3rd one stayed outside at the car. (Hineda Town car) I then saw the 3rd dark-skinned guy going toward the car looking for something. I really couldn't believe what I was seeing. At that time I got out of the ^{CAR} and went to the house. The light-skinned one jumped as if I startled him and said to me what are you doing? I started cursing and asking them what the hell are you doing? Then I looked up and saw (Moe) in the door of the trailer with the ^{CAR} gun pointed to the victims head. The guy at the car yelled I got it. Then I stepped closer and said (Moe) let's go. At that time (Moe) shot the victim in the head. When the shot was fired we all ran to the car and left. I started fussing and yelling at (Moe) asking why he did that, that it was so stupid of him. We stopped at the stop sign at the end of S. Main and then Moe told me to shut-up. Asked the other guys, did you get it? They said yes. I told (Moe) to get me home. he drove me home and told me to keep my mouth closed. I got out of the car and went into the house. The Steve I'm talking about is (Steve Witherspoon) and Morice is Morice Abrams who also used the last name Mr. Fadden.

Person giving statement to place initials behind last word of statement as appears on last page.

LT DeLeon
6-7-09/6:22 pm

Tony M. Lowery
Signature of person giving voluntary statement

VOLUNTARY STATEMENT SUPPLEMENTALTony Lowery

Statement of, Continued.

At Lee's Grocery while meeting Morice and his 3 Friends the light complected one was dressed almost identical with the same jogging suit and also almost the same ~~build~~ ^{the} build.

2 Days after the ~~in~~ ^{the} shooting, ME and Steve was at the church and Morice called Steve's phone to tell me and Steve to come over. I told Steve I didn't want to go but he said he didn't want ~~me~~ ^{me} to drive me home and go all the way back to Morice's house. So I rode with him to Spanish gardens. Steve went into the Apt. to talk to Morice in which he stayed about 20 min and then he and Morice came out and at that time Morice opened his trunk to reveal a big block of Marijuana wrapped in second wrap, and said that he had to split it with his boys. also that they had gotten \$80 from the victim and \$2600. out of the car. And At that time Steve took me home and I haven't seen Morice since.

Person giving statement to place initials behind last word of statement as appears on last page.

LT D. E. Lee
6-7-09/6:22 pm

Tony M. Lowery
Signature of person giving voluntary statement

CASE # 09053672

VOLUNTARY STATEMENT

LAST NAME <u>LOWERY</u>	FIRST NAME <u>Tony</u>	MIDDLE NAME <u>Mitchell</u>	AGE <u>30</u>	D.O.B.
NICKNAME/AKA	M ☒ F ☐ SSN <u>238-29-3144</u>	STREET ADDRESS <u>422 E Charlotte Ave.</u>		
CITY <u>Sumter</u>	STATE <u>SC</u>	ZIP <u>29150</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE <u>778-6476</u>	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION <u>Unemployed</u>	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>6-8-09 / 2:10 pm</u>		
LOCATION OF INTERVIEW <u>LEC</u>				
INTERVIEWING AGENT <u>LT. D.E. Florence</u>	DEPARTMENT <u>SCSO</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Tony M. Lowery understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 12 + 2 year grade in school. College

(OBJ) ON 6-8-09 I spoke with my Father and wanted him to contact LT. Florence (OBJ) So I could correct some information in my Statement and to also give him new information. Several facts on the initial statement were wrong and I'm now going to give LT. Florence the true statement. On 5-19-09 Fred Owens called me about helping him put NetZero on his computer which was around 7pm-8pm. At that time I left my house and walked to his house on Bagnal and Dogwood. When arriving at Fred's house he told me that he needed a ride to do something. I then told him I got it and called Steve Withers. At around 8:30pm or 8:45pm Steve drove up with Morice Adams. In his own vehicle behind him. Steve told me Tony Lowery, Morice Adams, and Fred Owens that he would follow us because his son was with him and he had to go and see one of his friends which goes by the name Ju-Ju. So me, Fred, and Morice drove off in his car. At that point we all drove to the El-Chapo (the old Lee's Grocery) with Steve following us in his car. We were suppose to meet one of Fred's friends. While waiting at the store for Fred's friend I went to the restroom in the store. On the way in I spoke to a friend of mine's name

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 6-8-09 Time: 3:33pm

Tony M. Lowery
Signature of person giving voluntary statement

WITNESS: LT. D.E. Florence

WITNESS: _____

I certify that I have been given a copy of this statement consisting of 3 pages.

VOLUNTARY STATEMENT SUPPLEMENTALTony Lowery 2ND STATEMENT

Statement of, Continued.

Butt-Butt. While speaking to Butt-Butt (Morice) walked Pass me and went on into the store. When I got into the store Morice was already in the restroom, I waited a while and then asked the Clerk when Morice was taking to long, do they have another restroom he said yes and I went to use the restroom. After using the restroom I was going to buy something after looking around I decided not to buy nothing that I could eat at home. So then I exited the store to find out that Steve had left and Fred's Friend has not shown up yet. So ME, Fred, and Morice went to Harrison St. to pick up Fred's Friend. When turning off of Lafayette, we left onto Shannon, and a Right onto Harris we sat in front of the House for 3 min and this light colored Stocky Fellow came out wearing blue jeans, a black shirt and a jacket just like mine. He got into the car and we left to go back to the store, we didn't stop we drove by the store. Turned around and passed the store again, at that time Fred said to Morice let's make a right turn here I know where he's at. We then took several back streets and ended up at the Field next to the trailer on West Newberry. At that time I said what's up and Morice said I've got to get something I'll be right back. When I turned around to look out of the window I saw Fred give Morice the revolver and I saw the other guy have a black 9mm. The 9mm looked like a High Point. They then went up to the trailer and went in. It was so smooth like the door was open. I then saw Fred outside going threw the car and Morice standing in the door of the trailer and had the revolver pointed at the head of the victim. I then got out of the car and ran up the street to the trailer and then I scared the light skinned one and he said what are you doing I said Ma what the hell are you doing? At that time Fred yells I've got it and I turn to Morice and say Mo lets go.

Person giving statement to place initials behind last word of statement as appears on last page.

LT DE-6e
5-8-09/3:33 pmTony M. Lowery
Signature of person giving voluntary statement

VOLUNTARY STATEMENT SUPPLEMENTALTony Lowery's 2nd STATEMENT

Statement of, Continued.

and almost at that time I ran to the steps of the trailer and morice then pulls the trigger and shot the victim in the head. When we heard the shot we all ran for morice's car. We get in and drove off. Further down the street I jumped out and asked again what the Hell is going on? Morice said Shut up. I ask for his phone still scared and not remembering I had a phone. So I pull out my phone and calls Steve to pick me up. Steve said why what's up? I told him your stupid ASS cousin just shot someone and I need to get away from him. he said okay where are you I'm on the way. I told him I'm running toward East Boys and that's where he picked me up from and took me home.

The part about ME and Steve meeting with Morice at Spanish Gardens on the first statement is all true.

The reason I didn't mention Fred Owens in my initial statement is because of the people he knows and his brother knows. I just really felt if I didn't say Fred's name that my family would be safe because that's the kind of people they are. That they would try to harm my family.

Person giving statement to place initials behind last word of statement as appears on last page.

LT DeFlower
6-8-07/3:33pm

Tony M. Lowery
Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF SUMTER.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A BLUE 1984 CHEVY CAPRICE VIN #1G1AN69H6EH100218, DISPLAYING SC TAG ELS 324 AS WELL AS ALL
CLOSED OR LOCKED CONTAINERS THEREIN.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT
(SECTION B)

ANY ILLEGAL DRUGS, MONEY, MONEY ORDERS OR RECEIPTS, FIREARMS, AMMUNITION, CLOTHING,
FINGERPRINTS, IDENTIFICATION, AS WELL AS ANY OTHER ITEMS RELATED TO THE MURDER AT #2 W.
NEWBERRY AVE OR OTHER CRIMINAL ACTIVITY.

This Search Warrant shall not be valid for more than ten days from date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to
Issuing Judge

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identify of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

SUMTER, S.C.

ON THIS 12TH DAY OF JUNE, 2009

CERTIFIED TRUE COPY OF ORIGINAL
CERTIFIED TRUE COPY OF ORIGINAL

Marcus H. Hoke
SUMTER COUNTY SUMMIT COURT

DATE 6-12-09

June 12, 2009/ 8:45 AM

Signature of Judge

(L.S.)

Case #.....: 09053672
Incident Type.....: MURDER/BURLARY 1ST/ ARMED ROBBERY
Incident Location.....: 2 WEST NEWBERRY AVE,
Victim(s).....: MARKEITH FORD
Address.....: 24 LOGAN ST, SUMTER
Suspect.....: MAURICE ABRAMS/ TONNY LOWERY/ FRED OWENS
Address.....: SEE INCIDENT REPORT
Case Investigated by....: LT. DAVID E. FLORENCE

ON 5-19-09, TERESA FORD CALLED LAW ENFORCEMENT AND STATED THAT SHE, MARKEITH FORD AND JIMMY JENKINS WERE AT HER HOUSE WATCHING A BASKETBALL GAME ON TV, WHEN TWO BLACK MALES ENTERED THE RESIDENCE AND TOLD MARKEITH FORD, 'WHERE'S THE MONEY NIGGA, I KNOW YOU GOT IT.' TERESA SAID THAT THE SUBJECTS TOOK MARKEITH'S CAR KEYS, ONE SUBJECT LATER IDENTIFIED AS TONY LOWERY WENT OUTSIDE WITH THE CAR KEYS WHILE THE OTHER SUBJECT, LATER IDENTIFIED AS MAURICE ABRAMS, STAYED IN THE RESIDENCE AND HELD THEM AT GUNPOINT. TERESA FORD STATED THAT ONE SUBJECT WAS LIGHT SKINNED WITH A BEARD AND THE OTHER SUBJECT WAS TALL, SKINNY AND HAD A RED T-SHIRT AROUND HIS HEAD. ONE SUBJECT HAD A SILVER REVOLVER AND THE OTHER HAD WHAT LOOKED LIKE A 9MM HANDGUN. A SHORT TIME LATER THE LIGHT SKINNED BLACK MALE RETURNED TO THE HOUSE FROM THE CAR AND SAID, "LET'S GO MOE". TERESA STATED THAT WHEN MOE WAS WALKING OUT OF THE FRONT DOOR OF THE RESIDENCE HE STOPPED AND FIRED ONE SHOT INTO MARKEITH'S HEAD AND FLED THE SCENE. INV. GARDNER, BARRON, AND CAPT. TURNER RESPONDED TO THE SCENE FOR PROCESSING. FORD'S VEHICLE WAS TOWED TO PUBLIC WORKS FOR PROCESSING, AND MARKEITH FORD WAS TRANSPORTED TO TUOMEY HOSPITAL FOR TREATMENT. CAPTAIN TURNER WENT TO THE EL-CHEAPO'S STATION ON SOUTH LAFAYETTE DRIVE AFTER RECEIVING INFORMATION THAT THE SUSPECTS WERE IN THE STORE EARLIER. CAPTAIN TURNER LET TERESA FORD VIEW THE VIDEO AND SHE POSITIVELY IDENTIFIED THE TWO SUBJECTS ON THE VIDEO AS THE SAME ONE'S WHO COMMITTED THE CRIME AT HER RESIDENCE. CAPTAIN TURNER WAS ABLE TO OBTAIN STILL PHOTOS FROM THE VIDEO TAPE FOR EVIDENCE. DEPUTY WILLIAM FLOYD TOOK THE INITIAL INCIDENT REPORT AND SGT. DENNISON, DEPUTY ROBERT MOYE, AND LT. RICK NELSON WERE ALSO ON THE SCENE TO ASSIST. CAPTAIN TURNER TOOK PHOTOS OF THE SCENE. INV. BARRON ALSO WROTE A STATEMENT, SEE ATTACHED.

OCT - 5 2009

STATEMENT ON WHAT HE DID AND WHAT TERESA FORD STATED, SEE ATTACHED STATEMENT.

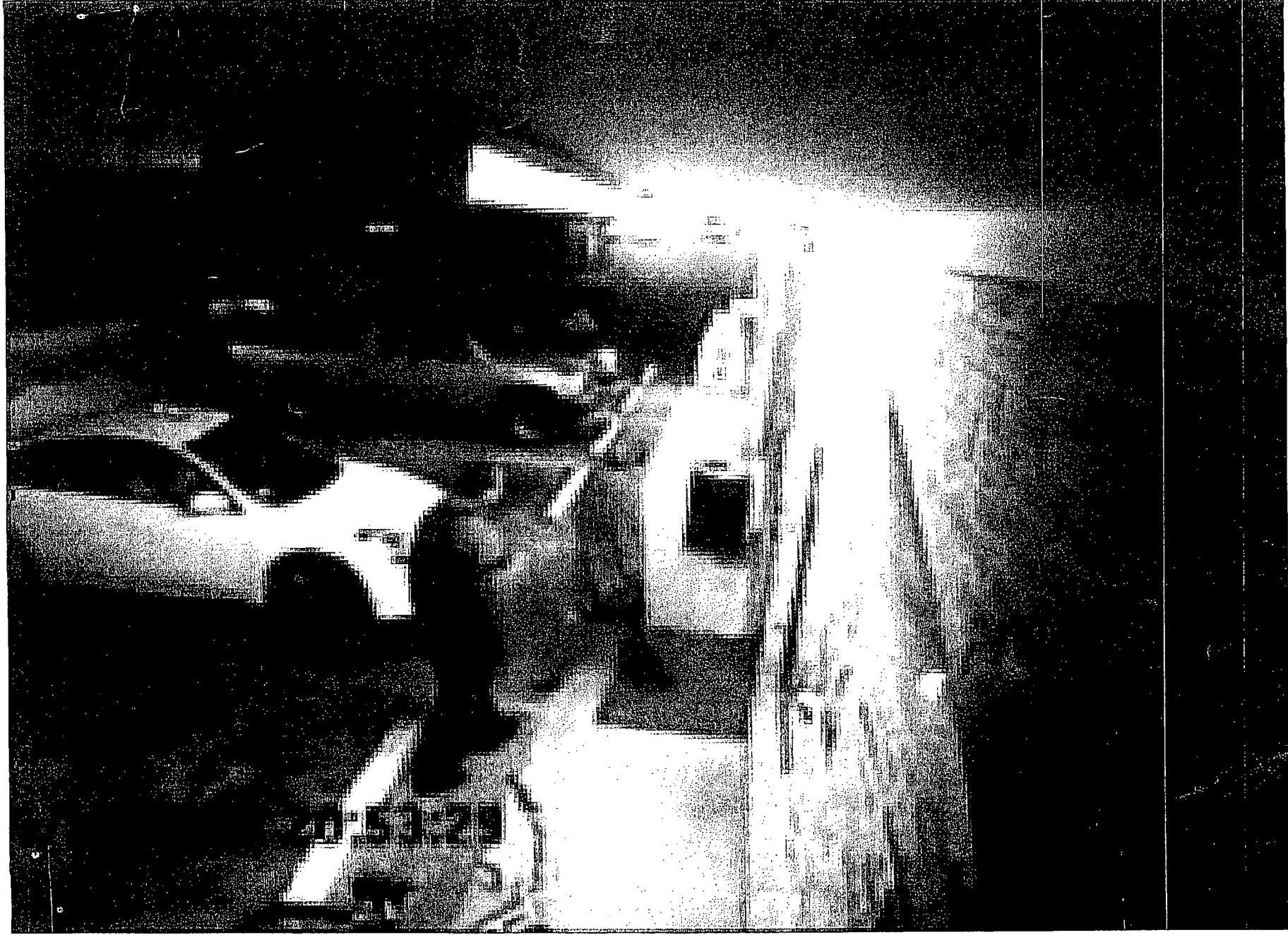
ON 5-21-09, THIS CASE WAS ASSIGNED TO ME FOR FOLLOW UP. I RECEIVED ALL INFORMATION FOR CAPTAIN TURNER THAT HAD BEEN COLLECTED TO THIS POINT. I FOLLOWED UP ALL INFORMATION THAT CAME IN BUT WAS UNABLE TO DEVELOP ANY SUSPECTS. CAPTAIN TURNER ALSO TURNED OVER 2 CELL PHONES SEIZED FROM THE SCENE.

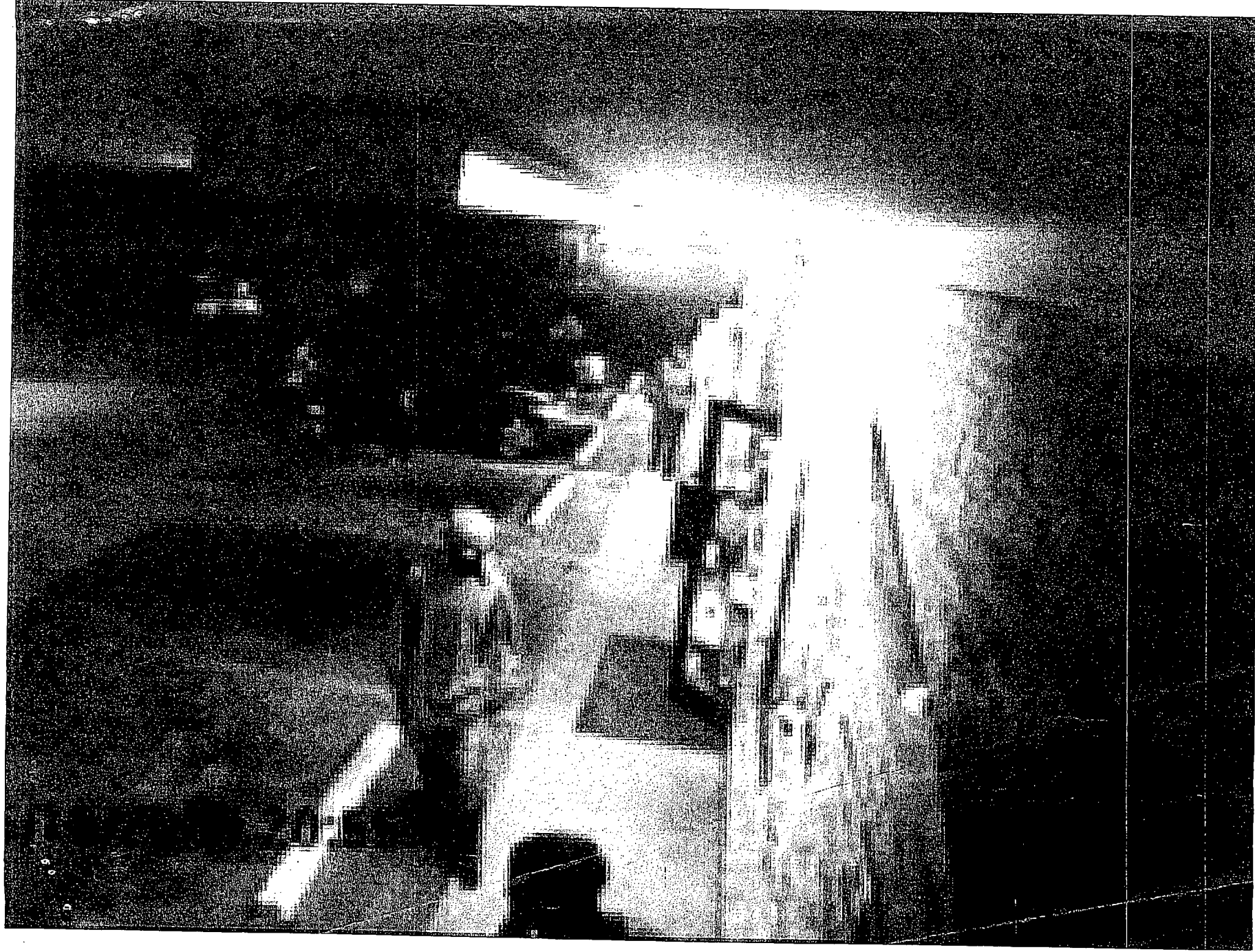
ON 5-28-09, CAPTAIN TURNER RECEIVED A FAX FROM TERRY GRANT THE REGISTERED OWNER OF THE LINCOLN TOWNCAR MARKEITH FORD WAS DRIVING. IT WAS RELEASED TO CAROLYN WELLS AT TERRY GRANTS REQUEST ON 6-1-09, SEE PROPERTY RELEASE FORM. I SPOKE WITH MARKEITH FORD'S FATHER MR. WASHINGTON, WHO ALSO WORKS AT THE STORE AND ADVISED THAT ABRAMS AND LOWERY WERE IN THE STORE DURING ONE OF THE TIMES FORD WAS IN THERE. THE STORE OWNER ALSO ADVISED ME THAT MARKEITH FORD PURCHASED A LARGE QUANTITY OF MONEY GRAMS AT \$500.00 EACH OVER THE COURSE OF THE DAY HE WAS KILLED. THE STORE OWNER GAVE ME 18 MONEY GRAM SERIAL NUMBERS THAT MARKEITH FORD PURCHASED FOR A TOTAL OF APPROXIMATELY \$9000.00.

ON 6-1-09, MARKEITH FORD DIED AT PALMETTO RICHLAND HOSPITAL FROM HIS INJURY.

ON WEDNESDAY, JUNE 3TH, 2009, AN AUTOPSY WAS PERFORMED ON FORD. I SUBMITTED PHOTOS TO THE NEWS MEDIA IN ORDER TO TRY AND GENERATE SOME CALLS FROM THE PUBLIC REQUESTING ASSISTANCE ON IDENTIFYING THE TWO SUBJECTS IN THE PHOTOS.

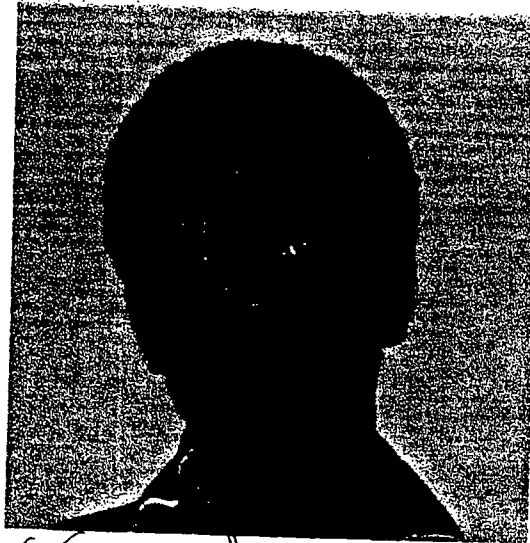
ON THURSDAY, JUNE 4TH, 2009, I RECEIVED A CALL FROM AN ANONYMOUS PERSON STATING THAT THE SUBJECT IN THE JOGGING SUIT LOOKS LIKE TONY LOWERY. I RAN SCDL CHECK ON LOWERY AND FOUND THAT LOWERY LOOKED JUST LIKE THE SUBJECT ON THE VIDEO. AT APPROXIMATELY 10:30 PM, SHERIFF DENNIS CALLED ME BY PHONE AND ADVISED ME THAT HE JUST RECEIVED A CALL FROM SAM LOWERY WHERE MR. LOWERY ADVISED HIM THAT THE SUBJECT IN THE PHOTO WITH THE SWEAT SUIT WAS HIS SON, TONY LOWERY. I SPOKE WITH MR. LOWERY AND HE STATED THAT WHEN HE LOCATED TONY HE WAS GOING TO BRING HIM IN TOO ME.







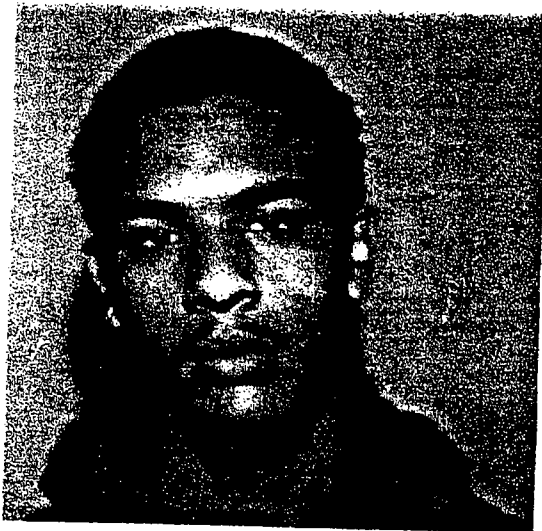
1



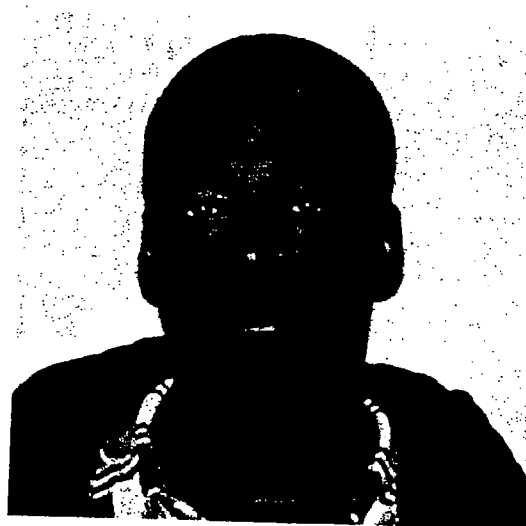
Tony M. Perry
6-7-09 2 6:25 PM



3



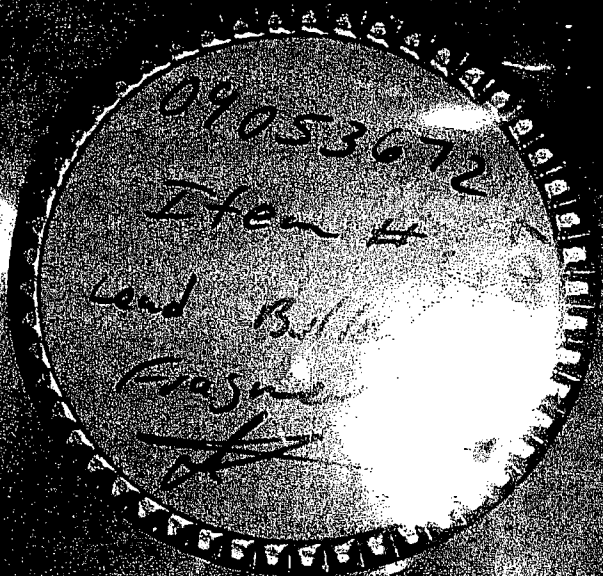
4



5



6



STATE LAW ENFORCEMENT DIVISION
EVIDENCE

Sealing Official: Roberts
Date: 5/12/11
Agency: _____
Agency Case #: SLED
Department: _____
Analyst: _____
Subject/Victim: _____
Item #: _____

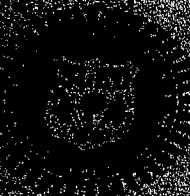


SLED LAB#

L09-06667 CH C



Sumter County Sheriff's Department
Reentry Case# 19-00000000



S.C. LAW ENFORCEMENT DIVISION

EVIDENCE

Sealing Officer

Date:

Agency:

Agency Case#:

Department:

Analyst:

Subject/Victim:

Item #:

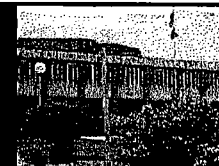
L09-06667 CH C

L09-06667 CH C





Sumter County Third Judicial Circuit Public Index



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Switch View

George Tomson VS Anthony Nocerino

Case Number:	2009CV431011757	Court Agency:	Sumter Magistrate Court	Filed Date:	04/09/2009
Case Type:	Civil	Case Sub Type:	Rule to Vacate PS	File Type:	
Status:	Dismissed	Assigned Judge:	Ward, Kathy Lynn		
Disposition:	Dismissed without Prejudice	Disposition Date:	04/28/2009	Disposition Judge:	Ward, Kathy Lynn
Original Source Doc:		Original Case #:			
Judgment Number:	2009CV431011757	Court Roster:			

Case Parties | **Judgments** | Tax Map Information | Associated Cases | Actions | Financials

Click the  icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
 Brooks, Charles Thomas	309 Broad St. Sumter SC 29150				Plaintiff Attorney		05/23/2012
Tomson, George					Plaintiff		04/28/2009
Nocerino, Anthony	5670 Dubose Siding Road Sumter SC 29153	White	M	12/16/1952	Defendant		04/28/2009
 Tomson, George					Plaintiff		04/28/2009
Brooks, Charles Thomas	309 Broad St. Sumter SC 29150				Plaintiff Attorney		05/23/2012

CMSWeb 6.1

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-778-

Homegoing Service

For Our Dearly Beloved

Geneva Moore Witherspoon

May 17, 1919 - June 8, 2007



Friday, June 15, 2007
Joy Temple Church
424 Howard Avenue
New Haven, CT 06519

Wake - 9:00 a.m.
Funeral - 11:00 a.m.

Bishop Dozier C. Shields, Officiating

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2012CP4300713**

Maurice Abrams

2016 APR -8 AM 9:31

South Carolina State of

JOSEPH C. ROBERTS, JR.
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAMES A. ALLEN
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2131

Judge Code

4/8/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Maurice Abrams #346362 Lee Corr Inst 990 Wisacky
Hwy Bishopville, SC 29010
Bradley Myers Kirkland 2007 Lincoln St. Columbia, SC
29201

Donzel Goulet
~~Alan McCrory Wilson~~ PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ALAN WILSON
ATTORNEY GENERAL



RECORDED
2016 APR -7 PM 3:03
CLERK OF COURT
SUMTER COUNTY, SC
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

April 5, 2016

The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

Re: Maurice Lionel Abrams, #346362 v. State of South Carolina
2012-CP-43-713

Dear Mr. Campbell:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable R. Ferrell Cothran, Jr., in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC/cc
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 APR -7 PM 3:03

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Maurice Lionel Abrams, #346362,)
Clerk of Court)
Applicant,)
SUMTER COUNTY, S.C.)

Case No. 2012-CP-43-713

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief application filed on April 17, 2012. The Respondent made its Return on November 30, 2012. An evidentiary hearing into the matter was convened on December 19, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Bradley M. Kirkland. The Respondent was represented by Assistant Attorney General Mary Williams of the South Carolina Attorney General's Office.

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. The Applicant was indicted during the July 2010 term of the Sumter County Grand Jury for Murder Armed Robbery, Burglary 1st Degree, and Possession of a Firearm During Commission of a Violent Crime (2010-GS-43-0885). Charles Brooks, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty on all charges on June 8, 2011. Judge King sentenced the applicant to life imprisonment for Murder, life imprisonment for Burglary 1st Degree, thirty years for

Armed Robbery, and 5 years for Possession of a Weapon During a Violent Crime; all sentences were to run consecutively.

The Applicant appealed to the South Carolina Court of Appeals. An order of dismissal was issued on March 15, 2012, after Applicant notified the Court of his desire to withdraw the appeal. The Remittitur was issued on April 24, 2012.

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of Counsel
 - a. "Failure to call witnesses."
 - b. "Failure to object to evidence/Brady violations."
 - c. "Conflict of Interest/exist attorney represented victim in this case."

Through PCR Counsel, Bradley Kirkland, Applicant amended his application to include the following grounds:

1. Applicant's trial counsel, Charles Brooks, III, failed to visit Mr. Abrams a sufficient number of times prior to trial to prepare the case for trial. Applicant retained Mr. Brooks for two murder cases: the "Dubose Siding" case and the "Markeith Ford" case. The Markeith Ford case is the subject of this PCR. Applicant maintains that Mr. Brooks did not meet with him at all concerning the Markeith Ford case. Mr. Abrams became aware of a trial date on the Markeith Ford case the first day of trial. On that day he was transported to the Courthouse and informed his trial would begin that week. At that meeting Mr. Abrams made Mr. Brooks aware of issues 2-4 of this PCR application. Mr. Brooks took no steps to investigate the issues prior to trial.
2. Counsel failed to move to suppress several items introduced at the trial of Mr. Abrams. Mr. Abrams specifically asked Mr. Brooks to make the motions and Mr. Brooks failed to do so.
 - a. Mr. Brooks failed to make a motion to suppress the introduction of the items found as a result of a search of Mr. Abrams car. Mr. Abrams claims that the car was seized without a warrant. A warrant was obtained the next day to search the car.
 - b. Mr. Brooks failed to make a motion to suppress the El Cheapo's store video. Mr. Abrams claims that he is not on the video and it is impossible to see anything clearly on the video and therefore it should have been suppressed.
 - c. Mr. Brooks failed to make a motion to suppress the photo identification made by Tony Lowery.

3. Applicant's counsel failed to investigate and present an alibi defense on behalf of Mr. Abrams despite being informed of the defense by Mr. Abrams and his mother, Catherine McFadden.
 - a. The murder for which Mr. Abrams was convicted occurred on May 19, 2009. (Transcript pp. 79-80, 116)
 - b. On that night and at that time Mr. Abrams was with his mother and other family members in the Spanish Gardens Apartment complex.
4. Counsel failed to call witnesses that would have discredited the testimony of the co-defendants at Mr. Abrams' trial and failed to properly cross examine the witnesses called by the state at trial. The primary witnesses against Mr. Abrams were Tony Lowery and Frederick O'Neal Owens. Owens and Lowery claimed that they were with Mr. Abrams at the time of the murder. (Transcript 232-234, 303-306)
 - a. Both witnesses claimed that Terrance Lemon was with them during the murder and that he participated in the crime. (Transcript pp. 219-238, 261-276, 290-291, 296-299, 303-305, 322-323, 326-329, 334). Mr. Lemon was accused of setting up the robbery and providing a gun for the robbery. Mr. Lemon was never charged in the offense. Mr. Lemon denies that he was present during the offense or that he was involved in any way with the offense. Mr. Lemon was not called as a witness at Mr. Abram's trial.
 - b. At trial, Tony Lowery claimed that Steve Witherspoon saw Mr. Abrams after the robbery with a large block of marijuana that he had stolen from Markeith Ford. (Transcript pp. 308-310). Steve Witherspoon was also with them just prior to the robbery at El Cheapo's gas station. (Transcript p. 296). Steve Witherspoon was not interviewed or called as a witness and denies being involved in the case.
 - c. Tony Lowery provided two separate written statements to the police. In the first statement Mr. Lowery claimed that Mr. Witherspoon picked him up on the way to Fred Owen's house. They went to Lee's Grocery (aka El Cheapo's) to pick up a friend of Witherspoon named JuJu. Maurice and two of his friends were there. (Presumably Terrance Lemon and Frederick Owens). Lowery went to the restroom and when he returned Maurice and the two others were gone. Moe (aka Maurice) called Witherspoon's phone and told them to meet up at Gate gas station. When they arrived at Gate Witherspoon had to leave to take his kids home. Maurice asked Lowery to ride with him because he was feeling sleepy and needed to take the two others home. They then did the robbery but Lowery was not ever told there would be a robbery. Two days later Lowery was with Witherspoon. Maurice called Witherspoon's phone and asked him to come over. They rode over to Maurice's home and showed Witherspoon a big block of marijuana in his trunk they they stole during the robbery/murder.
 - d. In the second statement by Lowery he admitted that he had not told the truth in his first statement. He claimed that Fred Owens, a co-defendant, called him to help with his computer. He walked over to Owens' house. While there Owens said he needed a ride somewhere so Lowery called Witherspoon to pick them up. Witherspoon arrived with Abrams following in his own vehicle. Witherspoon had his kid with him so Owens and Lowery got in Abrams' car and went to El Cheapo's. Lowery went to use the restroom and when he got back Witherspoon was gone. They all got in the car to pick up Terrance Lemon on Harrison Street.

They then went to do the robbery/murder and Lowery knew nothing about it. After the robbery they went down the street and Lowery jumped out the car and called Witherspoon to come get him. He told Witherspoon that, "Your stupid ass cousin just shot someone and I need to get away from him." Witherspoon picked him up. He said 2 days later he saw the brick of marijuana as indicated in his first statement.

- e. Mr. Lowery's testimony was most similar to his second statement although most of the details were omitted.
- 5. Counsel failed to object to the introduction of several pieces of physical evidence that had not been provided to the defense prior to trial.
 - a. Counsel failed to object to the introduction of the bullet fragments entered into evidence. (Counsel for Applicant believes these items are Exhibit Nos.: 19, 29; Transcript pp. 194-195).
 - b. Counsel failed to object to the gunshot residue and the witnesses that testified concerning the gunshot residue that was found on the jacket. (Exhibit 30, 31; Transcript pp. 376-391).
 - c. Counsel failed to object to the introduction of the red jacket on the basis that it was a Rule 5/Brady violation and it was the result of an illegal search.
- 6. Counsel failed to disclose to Applicant a conflict of interest in representing Applicant. Applicant has learned that Mr. Brooks represented George Tomson in a lawsuit against Anthony Nocerino. Nocerino was the victim in the "Dubose Siding" murder case. In that case Mr. Abrams was accused of murdering Nocerino. Applicant believes that the murder of Mr. Nocerino prevented the civil suit from going forward and Mr. Brooks should have made the applicant aware of the potential conflict.

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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

**1. Ineffective assistance of counsel for failing to visit
Applicant prior to trial.**

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to meet with Applicant a sufficient amount of times prior to trial is meritless. This Court finds credible Trial Counsel's testimony that he visited Applicant at jail. (Tr. p. 155 line 25—p.156 line 2; p. 155 line 7-22). Trial Counsel further testified that there was "a lot of communication" with Applicant's mother as she would call or visit Trial Counsel every day. (App. p. 154 lines 17-24; p. 155 line 18-22). This Court notes Applicant's mother,

Catherine McFadden, confirmed that she was in constant contact with Trial Counsel. (App. p. 116 lines 21-25). Trial Counsel further testified that he hired a private investigator, Benny Webb, who met with Applicant on at least one occasion, to conduct an investigation to Applicant's alleged alibi witnesses and Applicant's co-defendants. (App. p. 156 lines 2-19; p. 158 lines 2-13). Trial Counsel stated that he discussed the various aspects of the case, the strengths of the State's case, and potential trial strategy. (Tr. p. 158 line 17—p. 159 line 16).

This Court finds that Trial Counsel met with Applicant and his family members on several occasions prior to trial. This Court notes that "even if the meetings were brief, this fact along is not indicative of inadequate trial preparation." See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). Based off of the forgoing, this Court finds Applicant failed to prove that Trial Counsel was deficient in his alleged failure to meet a sufficient numbers of times prior to trial.

Additionally, this Court finds Applicant has failed to present any credible evidence or argument as to how Trial Counsel's alleged lack of preparation prejudiced him. This Court notes Applicant argues that additional meetings would have led to Trial Counsel more fully investigating his alibi witnesses. This Court finds Applicant's argument lacks merit. Trial Counsel stated that his investigator, Benny Webb, investigated Applicant's alibi witnesses and found them not credible. (Tr. p. 158 line 2—p.159 line 16). Trial Counsel further stated that in his experience, "family members...especially daddy's and mama's, tend to not be very credible when it comes to an alibi." (Tr. p. 158 line 23—p. 159 line 2). This Court notes that this is not a situation where Trial Counsel failed to investigate potential alibi witnesses. Instead, Trial Counsel strategically chose not to call Applicant's alibi witnesses after a thorough investigation and determination that they were simply not credible. Therefore, Applicant has failed to show

how additional meetings would have changed Trial Counsel's opinion that his alibi witnesses lacked credibility.

Applicant further claims that additional meetings would have led to the discovery of additional witnesses who could have impeached Frederick Owens and Tony Lowery's trial testimony. In support of his allegation, Applicant presented testimony from Stephen Witherspoon (hereinafter "Witherspoon") and Mary Smith (hereinafter "Smith"). Witherspoon was named by Tony Lowery as a participant in the armed robbery and murder. Witherspoon claimed that he did not see Frederick Owens, Tony Lowery, or Maurice Abrams at all on May 19th. (Tr. p. 97 lines 9-20). Smith corroborated Witherspoon's testimony by stating that she was with Witherspoon on May 19th. (Tr. p. 101 line 15—p. 103 line 22). This Court finds Applicant's argument that Witherspoon and Smith's testimony would have undermined both Frederick Owen and Tony Lowery's trial testimony unpersuasive. A brief review of the trial transcript reveals that Trial Counsel thoroughly impeached both Frederick Owens and Tony Lowery at trial. The use of both Witherspoon and Smith as impeachment witnesses during trial would have been cumulative at best. This Court further notes that both Witherspoon and Smith are cousins of Applicant.¹ (Tr. p. 99 lines 4-8; p. 195 lines 21-22). Regardless, neither Witherspoon nor Smith's testimony would have had any meaningful impact on Applicant's trial as Trial Counsel thoroughly and systematically impeached both Tony Lowery and Frederick Owens during his cross-examination.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

¹ Trial Counsel opined that close family members do not make credible witnesses.

omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance.

2. Failure to investigate and present alibi defense.

This Court finds Applicant’s allegation that Trial Counsel was ineffective for failing to investigate and present an alibi defense at trial is meritless. [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable.” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). In the instant case, Trial Counsel credibly testified that Applicant never brought up the possibility of an alibi defense. (Tr. p. 159 lines 4-16). Trial Counsel explained that the alibi was never a serious consideration because “there was never a situation of [Applicant] saying to [Trial Counsel], hey, man, I know for sure I was at such and such place. And A, B, C, and D, know I was there. That never came across in our conversation...” (Tr. p. 159 lines 6-9). Trial Counsel explained that the only person raising an alibi defense was Applicant’s mother, Catherine McFadden. (Tr. p. 172 lines 11-19). Trial Counsel stated that he spoke with McFadden “about everything,” including the alleged alibi. (Tr. p. 172 lines 20-24).

In addition to speaking with McFadden personally, Trial Counsel stated that he hired Benny Webb to investigate into the possibility of an alibi defense. (Tr. p. 158 line 2—p.159 line 16). Both Applicant and McFadden confirmed that Webb spoke with McFadden. (Tr. p. 20 lines 12-14; p. 59 line 10—p. 60 line 2; Tr. p. 118 lines 2-25). Trial Counsel stated that he and Benny Webb both believed that Applicant’s alibi was not credible. (Tr. p. 158 line 2—p.159 line 16).

Trial Counsel opined that “family members...especially daddy’s and mama’s, tend to not be very credible when it comes to an alibi.” (Tr. p. 158 line 23—p. 159 line 2).

This Court finds Trial Counsel fully investigated the alibis and found them to be not credible. Trial Counsel reasoned that close familial relations do not make credible witness. Trial Counsel further noted Applicant himself never denied being present at the scene of the crime. This Court notes that Trial Counsel’s decision not to call various witnesses at trial because of credibility is a valid strategy. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (finding that “trial counsel adequately put forth a defense by calling the only witness whom he believed to be credible and supportive of the defense strategy”); Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011) (finding that “[a] witness’s credibility and demeanor is crucial to an attorney’s trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions”).

Here, Trial Counsel conducted a thorough investigation into the alibi defense and found it not to be credible. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). This Court finds Trial Counsel adequately investigated the alibi witnesses, determined that they were not credible, and instead chose the valid strategy of attacking the credibility of Applicant’s co-defendants. Based off of the foregoing, Applicant can show no deficiency on the part of Trial Counsel.

Additionally, Applicant still can show no prejudice as this Court finds Applicant's alibi witnesses Catherine McFadden and Michael McFadden were not credible witnesses based off of their demeanor and presentation during the PCR hearing. This Court notes that both Catherine McFadden and Michael McFadden are close relatives of Applicant. This Court finds that neither of their testimonies would have changed the outcome of trial.

3. Failure to investigate or call witnesses to discredit the testimony of the alleged co-defendants in the case.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to call witnesses to discredit the testimony of the alleged co-defendants is meritless. The Applicant introduced Plaintiff's 6 and 7 into evidence. These were written statements made by Tony Lowery. In each of the statements it is alleged that Witherspoon was with Owens, Lowery, and Abrams just prior to the armed robbery and Murder. Furthermore Owens and Lowery testified at the Applicant's trial that Witherspoon was with Applicant just prior to the robbery and murder. (Tr. p. 222-223; p. 296). Lowery also testified that Witherspoon met with the Applicant and saw the marijuana and money taken during the robbery.

During the PCR hearing Witherspoon testified that on May 19th, the day of the murder, he rode with his sister Mary Smith to Manning, South Carolina to purchase a dog. (Tr. p. 92 lines 6—p. 94 line 13). After purchasing the dog, they rode back to his sister's, Mary Smith's, house, where he stayed until the early morning hours of May 20th. (Tr. p. 94 lines 14—p.96 line 18). Witherspoon claimed that he did not see Owens, Lowery, or Applicant at all on May 19th. (Tr. p. 97 lines 9-20). During the PCR hearing, Smith corroborated Witherspoon's whereabouts on May 19th into the early morning hours of May 20th.

Applicant argues that Trial Counsel should have investigated and called Witherspoon as a witness to further impeach the testimony of his two co-defendant's Owens and Lowery.

However, this Court notes Trial Counsel's strategy was to impeach and discredit Applicant's co-defendants through other available means. It is apparent from the record that Trial Counsel was able to successfully discredit both of Applicant's co-defendants, Owens and Lowery. (Tr. p. 251—p. 276; p. 321—p.348). In light of Trial Counsel's thorough cross-examination, this Court finds Witherspoon's testimony would have had little impact on the trial itself.

4. Trial Counsel failed to advise Applicant of a conflict of interest.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to advise of a potential conflict of interest is meritless. Applicant explained that the victim in the Dubose Siding case was Anthony Nasareno². Applicant testified that he believed that trial counsel had a conflict of interest because the civil suit against Mr. Nasareno was ultimately dismissed because he was murdered. Applicant stated that he believed that his counsel was upset that Nasareno was murdered and, because of the duty he owed to George Thompson, he failed to put forth the necessary effort to defend the Applicant at his trial. Applicant explained the evidence of the conflict as follows:

Q: All right. So this is a little bit tough to understand, I think, for most people. So you're saying, and I'm trying to reiterate what you just said. So what you're saying is because this person died and it was believed that you were the killer, that then Brooks could not go through with the lawsuit and so he lost money because of this?

A: He felt it was a conflict. And that's why he didn't call my witnesses. And that's why he didn't object to the Brady violations. And that's why he never made my suppressions. This is why I'm here today. (PCR Tr. p. 78)

[...]

Q: Were there any indications from the way that you and Brooks interacted that gave you the impression that he had turned on you the way you're describing?

² For the purpose of this Order, the PCR Hearing Transcript's spelling of "Nasareno" has been adopted. However, this is the same individual referenced in Applicant's Amended Application as Anthony Nocerino.

A: In my trial, I was trying to speak to him. I was trying to speak to him. He kept throwing his hand in my face. I know he did.

Q: So you're just saying as a human being, you picked up on something concerning his attitude towards you and it changed somehow?

A: Yeah. (PCR Tr. p. 79)

[...]

A: I was prejudiced because of the conflict of interest.

Q: Okay.

A: And if he would have did those things and called my witnesses the results of the trial would have been different, hands down. (PCR Tr. p. 79-80).

Trial counsel was called by the State and he explained his relationship with George Thompson and Anthony Nasareno as follows:

What had happened was, Mr. Thompson and Mr. Nasareno, way before I even got involved with Mr. Abrams, I used to do some real estate closing. They'd asked me to do a closing where they had bought some piece of property. And we closed the transaction. This might have been a year before Maurice was ever involved or was ever even thought of or anything like that. And we did the transaction. And then -- I mean, that was basically it. And then I want to say shortly before Mr. Nasareno got killed, Mr. Nasareno's wife had asked me to look into getting a divorce against him. And Mr. Thompson had said that Mr. Nasareno owed him some money from that transaction, I guess the arrangement that they had, that I wasn't privy to had soured. But Mr. Nasareno technically was just a real estate client. In practicing in the private sector and I'm sure, the Judge probably understands what I'm talking about. You just -- people come in, you do a closing. You don't really have a whole lot of interaction or attorney/client relation with them, except for that particular transaction. That's all I had with Mr. Nasareno. And I think when I did the trial of that case, I told Mr. Abrams about it. But we put that on the record so there was no issue. (PCR Tr. p. 149-150)

Trial counsel further testified that the civil suit was ultimately dismissed because Mr. Nasareno was murdered. (PCR Tr. p. 150-151).

This Court notes that it is well established that the fact that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, an applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance.” Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (emphasis added).

This Court finds Trial Counsel credibly testified that he advised Applicant of any possible conflict of interest. Furthermore, this Court finds that no actual conflict existed between Trial Counsel and Applicant due to Trial Counsel's prior representation of an obscure third party. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, this Court notes Applicant failed to present any credible evidence that Trial Counsel's prior relationship with the victims amounted to a conflict of interest. Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

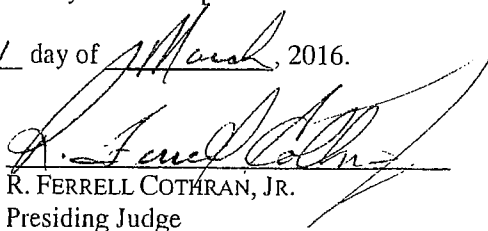
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

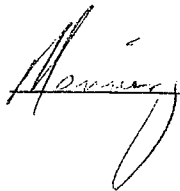
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, 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 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of March, 2016.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2016 APR 26 PM 1:55

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Maurice Lionel Abrams, #00346362,

Case No. 2012-CP-43-713

Applicant,

v.

State of South Carolina,

Respondent.

JAMES D. HAINBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

NOTICE OF MOTION AND
MOTION FOR AMENDMENT
AND RECONSIDERATION
PURSUANT TO RULES 52(a),
52(b) AND 59(e), SCRCP

TO: DANIEL GOURLEY, ASSISTANT ATTORNEY GENERAL

Please take notice that on the eleventh day after the service hereof upon you, or as soon thereafter as counsel may be heard, at a time and place to be fixed by the R. Ferrell Cothran, Jr., Applicant, Maurice Abrams, shall move the Court pursuant to Rules 52(a), 52(b) and 59(e), SCRCP, for an Order to alter or amend the Final Order filed on April 8, 2015, a copy of which received in the U.S. Mail by Bradley M. Kirkland, LLC, on April 13, 2016, having been served by mail upon Applicant by the Sumter County Clerk of Court. This Motion is timely, having been served within 10 days after receiving written notice of entry of the Order and pursuant to Rule 6, SCRCP.

Defendant is moving for a reconsideration and alteration and amendment of the Final Order on the following grounds and concerning the following errors and omissions:

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. The Applicant was indicted during the July 2010 term of the Sumter County

Grand Jury for Murder Armed Robbery, Burglary 1st Degree, and Possession of a Firearm During Commission of a Violent Crime (2010-GS-43-0885). Charles Brooks, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Howard P. King. Applicant was found guilty on all charge on June 8, 2011. Judge King sentenced the applicant to life imprisonment for Murder, life imprisonment for Burglary 1st Degree, thirty years for Armed Robbery, and 5 years imprisonment for Possession of a Weapon During a Violent Crime, with all sentences to run consecutively.

The Applicant appealed to the South Carolina Court of Appeals, and an order of dismissal was issued on March 15, 2012, after Applicant notified the Court of his desire to withdraw the appeal. The Remittitur was issued on April 24, 2012.

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

- I. Ineffective assistance of Counsel
 - a. "Failure to call witnesses."
 - b. "Failure to object to evidence/Brady violations."
 - c. "Conflict of Interest/exist attorney represented victim in this case."

Through PCR Counsel, Bradley Kirkland, Applicant amended his application to include the following grounds:

1. Applicant's trial counsel, Charles Brooks, III, failed to visit Mr. Abrams a sufficient number of times prior to trial to prepare the case for trial. Applicant retained Mr. Brooks for two murder cases: the "Dubose Siding" case and the "Markeith Ford" case. The Markeith Ford case is the subject of this PCR. Applicant maintains that Mr. Brooks did not meet with him at all concerning the Markeith Ford case. Mr. Abrams became aware of a trial date on the Markeith Ford case the first day of trial. On that day he was transported to the Courthouse and informed his trial would begin that week. At that meeting Mr. Abrams made Mr. Brooks aware of issues 2-4 of this PCR application. Mr. Brooks took no steps to investigate the issues prior to trial.
2. Counsel failed to move to suppress several items introduced at the trial of Mr. Abrams. Mr. Abrams specifically asked Mr. Brooks to make the motions and Mr. Brooks failed to do so.

- a. Mr. Brooks failed to make a motion to suppress the introduction of the items found as a result of a search of Mr. Abrams car. Mr. Abrams claims that the car was seized without a warrant. A warrant was obtained the next day to search the car.
 - b. Mr. Brooks failed to make a motion to suppress the El Cheapo's store video. Mr. Abrams claims that he is not on the video and it is impossible to see anything clearly on the video and therefore it should have been suppressed.
 - c. Mr. Brooks failed to make a motion to suppress the photo identification made by Tony Lowery.
3. Applicant's counsel failed to investigate and present an alibi defense on behalf of Mr. Abrams despite being informed of the defense by Mr. Abrams and his mother, Catherine McFadden.
 - a. The murder for which Mr. Abrams was convicted occurred on May 19, 2009. (Transcript pp. 79-80, 116)
 - b. On that night and at that time Mr. Abrams was with his mother and other family members in the Spanish Gardens Apartment complex.
4. Counsel failed to call witnesses that would have discredited the testimony of the co-defendants at Mr. Abrams' trial and failed to properly cross examine the witnesses called by the state at trial. The primary witnesses against Mr. Abrams were Tony Lowery and Frederick O'Neal Owens. Owens and Lowery claimed that they were with Mr. Abrams at the time of the murder. (Transcript 232-234, 303-306)
 - a. Both witnesses claimed that Terrance Lemon was with them during the murder and that he participated in the crime. (Transcript pp. 219-238, 261-276, 290-291, 296-299, 303-305, 322-323, 326-329, 334). Mr. Lemon was accused of setting up the robbery and providing a gun for the robbery. Mr. Lemon was never charged in the offense. Mr. Lemon denies that he was present during the offense or that he was involved in any way with the offense. Mr. Lemon was not called as a witness at Mr. Abram's trial.
 - b. At trial, Tony Lowery claimed that Steve Witherspoon saw Mr. Abrams after the robbery with a large block of marijuana that he had stolen from Markeith Ford. (Transcript pp. 308-310). Steve Witherspoon was also with them just prior to the robbery at El Cheapo's gas station. (Transcript p. 296). Steve Witherspoon was not interviewed or called as a witness and denies being involved in the case.
 - c. Tony Lowery provided two separate written statements to the police. In the first statement Mr. Lowery claimed that Mr. Witherspoon picked him up on the way to Fred Owen's house. They went to Lee's Grocery (aka El Cheapo's) to pick up a friend of Witherspoon named JuJu. Maurice and two of his friends were there. (Presumably Terrance Lemon and Frederick Owens). Lowery went to the restroom and when he returned Maurice and the two others were gone. Moe (aka Maurice) called Witherspoon's phone and told them to meet up at Gate gas station. When they arrived at Gate Witherspoon had to leave to take his kids home. Maurice asked Lowery to ride with him because he was feeling sleepy and needed to take the two others home. They then did the robbery but Lowery was not ever told there would be a robbery. Two days later Lowery was with Witherspoon. Maurice called Witherspoon's phone and asked him to come over. They rode over to Maurice's home and showed Witherspoon a big block of

- marijuana in his trunk they they stole during the robbery/murder.
- d. In the second statement by Lowery he admitted that he had not told the truth in his first statement. He claimed that Fred Owens, a co-defendant, called him to help with his computer. He walked over to Owens' house. While there Owens said he needed a ride somewhere so Lowery called Witherspoon to pick them up. Witherspoon arrived with Abrams following in his own vehicle. Witherspoon had his kid with him so Owens and Lowery got in Abrams' car and went to El Cheapo's. Lowery went to use the restroom and when he got back Witherspoon was gone. They all got in the car to pick up Terrance Lemon on Harrison Street. They then went to do the robbery/murder and Lowery knew nothing about it. After the robbery they went down the street and Lowery jumped out the car and called Witherspoon to come get him. He told Witherspoon that, "Your stupid ass cousin just shot someone and I need to get away from him." Witherspoon picked him up. He said 2 days later he saw the brick of marijuana as indicated in his first statement.
 - e. Mr. Lowery's testimony was most similar to his second statement although most of the details were omitted.
5. Counsel failed to object to the introduction of several pieces of physical evidence that had not been provided to the defense prior to trial.
- a. Counsel failed to object to the introduction of the bullet fragments entered into evidence. (Counsel for Applicant believes these items are Exhibit Nos.: 19, 29; Transcript pp. 194-195).
 - b. Counsel failed to object to the gunshot residue and the witnesses that testified concerning the gunshot residue that was found on the jacket. (Exhibit 30, 31; Transcript pp. 376-391).
 - c. Counsel failed to object to the introduction of the red jacket on the basis that it was a Rule 5/Brady violation and it was the result of an illegal search.
6. Counsel failed to disclose to Applicant a conflict of interest in representing Applicant. Applicant has learned that Mr. Brooks represented George Tomson in a lawsuit against Anthony Nocerino. Nocerino was the victim in the "Dubose Siding" murder case. In that case Mr. Abrams was accused of murdering Nocerino. Applicant believes that the murder of Mr. Nocerino prevented the civil suit from going forward and Mr. Brooks should have made the applicant aware of the potential conflict.

SUMMARY OF APPLICABLE LAW

This Court had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. The 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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

ISSUE 1: Applicant's trial counsel, Charles Brooks, III, failed to visit Mr. Abrams a sufficient number of times prior to trial to prepare the case for trial

A. Summary of Testimony

The Applicant testified that he met with his attorney for the first time on during the month of February, 2010. At that meeting the Applicant said he talked briefly with trial counsel about his alibi in the Markeith Ford murder case (the subject of this PCR). (PCR tr. p. 6,8). The Applicant claimed that he did not have any discovery materials concerning the Markieth Ford¹ case at that time. (PCR tr. p. 8). The next time the Applicant says he saw trial counsel of in August of 2010. At that time trial counsel only discussed the Dubose Siding case as it was going to trial that month. (PCR Tr. p. 10-12). After that meeting the Applicant went to trial on the Dubose Siding case. The case ended in a mistrial. (PCR Tr. p. 12).

The next meeting that the Applicant claims to have had with trial counsel was on June 6, 2011, the first day of the Markeith Ford murder trial which is the subject of this PCR. Between the Dubose Siding case and the Markeith Ford murder trial Applicant claimed that the only contact he had with trial counsel was copies of several letters asking the prosecutor for a bond hearing. (PCR Tr. p. 15-16).

The next contact that the Applicant claims to have had with his attorney was on the first day of the Markeith Forder murder trial. In support of his position the Applicant introduced a letter from trial counsel post marked June 3, 2011, advising him of his trial on June 6, 2011. The Applicant claimed he did not receive the letter until June 7, 2011, the second day of the Markeith Ford trial. (PCR Tr. p. 17-18). In further support of his claim that trial counsel failed to meet with him to discuss his cases in detail, the Applicant introduced the detention center log files for all visits made to the Applicant (Plaintiff's 4). There is no indication in the records that trial counsel met with Mr. Abrams. However, the records did indicate that the investigator hired by trial counsel did meet with Mr. Abrams. (PCR Tr. p. 19-22)

¹ Mr. Brooks represented the Applicant on two separate cases referred to as the "Markieth Ford" case and the "Dubose Siding" case. The Markieth Ford case is the subject of this PCR.

The Applicant testified that trial counsel sent him the discovery materials but never met with him to review the materials. In support of his claim the Applicant introduced a certificate of mailing of the discovery materials dated May 16, 2011. (Plaintiff's 6). This date was approximately 3 weeks prior to the start of the Markeith Ford trial.

Trial counsel admitted that the dates on the June 3, 2011, letter were accurate. He stated that he often visited inmates at the detention center but gave no specifics as to how many times he met with the Applicant or what they discussed. At the hearing he did not refer to any notes concerning visits with the Applicant and did not recall specific dates of meetings with the Applicant. He stated that he would have known about the trial in advance but did not specifically testify as to when he met with the Applicant or when he notified him about the trial. However, he said that he spoke with the Applicant's mother very often. (PCR Tr. p. 151-156).

B. Findings of Fact and Conclusions of Law

It is well settled law that a lawyer must communicate with his client a sufficient number of times to ensure that the defendant understands the charges, the evidence against him and the defendant has an opportunity to assist in the preparation of his defense. See Smith v. State, 404 S.C. 493, 745 S.E.2d 378, (2012.). The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation. Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). Additionally, a petitioner must offer evidence of how additional preparation or communication would have resulted in a different outcome. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998).

This issue is closely linked to Issue 3 and Issue 4 of the Applicant's petition. The Applicant appeared to have a clear recollection of his visits with trial counsel. Trial counsel, on the other hand, had no direct recollection of when he visited the Applicant or what was discussed

during those meetings. Both the jail visitation logs as well as trial counsel's last minute notice of trial appear to corroborate the Applicant's testimony that he had very little contact with trial counsel concerning the Markeith Ford case. The Applicant, as well as Catherine McFadden, made it clear that they wanted to discuss an alibi defense with trial counsel but trial counsel has little to no recollection of those discussions. (See Issue 3). This appears to corroborate Applicant's testimony that he only discussed his defense briefly one time in February of 2010.

When considering this issue along with the allegations and testimony contained in Issue 3 and Issue 4 of the Applicant's petition this Court should have found that counsel's conduct was deficient and he did not maintain sufficient contact with his client. Further the Court should have determined that the failure to properly communicate with his client and his family prejudiced the defendant. This finding should have been made considering that trial counsel was minimally aware of an alibi defense as discussed in Issue 3 and appeared confused as to which case the alibi would apply. Further communication with the Applicant would have clearly been beneficial in resolving any misunderstanding trial counsel might have had. Additionally, as discussed in Issue 3 of this Rule 59(e), it is likely the alibi defense would have had an impact on the outcome of the trial. Nevertheless, this defense was never considered by trial counsel, in large part it appears, because of his lack of information concerning the defense. This Court should have found that by failing to adequately communicate with the Applicant trial counsel's representation was deficient and likely had an impact on the outcome of the Applicant's trial. The Applicant is, therefore, entitled to a new trial.

ISSUE 3: Failure to Investigate or Present Alibi Defense

A. Summary of Testimony

Four witnesses provided testimony concerning the issue of alibi at the PCR hearing: Maurice Abrams, Catherine McFadden, Michael McFadden and Charles Brooks.

Maurice Abrams, the Applicant, testified that on March 7, 2011, as evidenced by Exhibit 4 of the PCR hearing, had a jail visit with private investigator Benny Webb. Mr. Webb had been retained by Charles Brooks, trial attorney for the Applicant, to investigate Mr. Abrams' cases.² At that meeting Mr. Abrams testified that he told Mr. Webb that he had an alibi for the "Markieth Ford" case. The Markieth Ford case is the subject of this PCR hearing. He told Mr. Webb that his alibi witnesses were his mother, Catherine McFadden; his uncle, Michael McFadden; and his brother, who did not testify at the PCR hearing. Mr. Abrams also testified that he told his attorney about his alibi on the day of his trial. He did not tell his attorney earlier because his attorney did not specifically discuss the Markieth Ford trial with Mr. Abrams prior to the actual trial. (PCR Tr. p. 59-61)

Mr. Abrams testified that on the day of the murder, May 19, 2010, he and his family were having a "memorial dinner" for his grandmother that had passed several years prior. At this time Mr. Abrams was living with his mother. He recalled waking up at around 10:00 am that morning and that his mother was cooking for the dinner later that day. He did not leave the house until later in the day when the Applicant and his mother, Catherine McFadden, went to the Gate gas station to purchase gas with her DSS voucher at about 4:00 pm. Ms. McFadden owned two cars and asked the Applicant to follow her to the gas station in one of the cars so she could put fuel in both. (PCR Tr. p. 63-65).

The Applicant followed his mother to the gas station and she filled up the car she was driving and then the Applicant pulled up to the pump to add fuel to the car he was driving. At

² Mr. Brooks represented the Applicant on two separate cases referred to as the "Markieth Ford" case and the "Dubose Siding" case. The Markieth Ford case is the subject of this PCR.

that point a dispute occurred between Ms. McFadden and an employee at Gate gas station. The Applicant believed the dispute involved fueling two cars with a DSS voucher. Once the dispute was resolved the Applicant and his mother went to visit his grandmother. The Applicant fed his dogs that were at his grandmother's house and went home. His mother stayed with his grandmother for some time after the Applicant left. (PCR Tr. p. 65-67)

The Applicant arrived home at around 6 or 7 pm the same day. From that point forward the Applicant ate and socialized. He did not leave the apartment again until the next morning. He recalls that his uncle, his mother and his little brother were present. The Applicant slept on the couch and recalled being awakened at around 10:30 pm when his uncle left to go to Karaoke. He woke up because the alarm system in the apartment makes a noise whenever the front door was opened. However, the Applicant did not leave the apartment at that time. (PCR Tr. p. 67-74). Therefore, according to the Applicant's testimony, he could not have been present at the location of the murder because he was asleep at his mother's house.

Catherine McFadden, the Applicant's mother corroborated the testimony given by the Applicant. Initially, Ms. McFadden testified that she, shortly after retaining Mr. Brooks, informed him of the alibi in the Markieth Ford case. She also at some point spoke to the investigator, Benny Webb, concerning the alibi. (PCR Tr. p. 118-119).

Ms. McFadden said that her grandmother was born on May 17 and on each May 17 since her passing they would have a memorial dinner in her honor.³ However, the year of the murder, her birthday fell on a Sunday. Ms. McFadden's mother and brother are members of a church choir group that travelled to North Carolina that Sunday to perform. Consequently, most of the family was in North Carolina on May 17 of that year. For that reason they were unable to hold

³ Plaintiff's exhibit 17, an obituary for Ms. McFadden's grandmother, was introduced into evidence. The exhibit indicated that the date of birth for Ms. McFadden's grandmother was May 17, 1919, and her death was June 8, 2007.

the memorial dinner on May 17. Ms. McFadden moved the memorial dinner to Tuesday. She was unable to have the dinner on Monday because she had to work that day. (PCR Tr. p. 124-127).

Ms. McFadden recalled on Tuesday, May 19, 2009, that she began cooking when she woke up and continued cooking until around 2:00 pm. At around 4:00 pm she and the Applicant went to the Gate gas station to put fuel in both her vehicles. There was an argument between the store clerk and Ms. McFadden because the clerk believed she was using her DSS voucher to put gas in a car that belonged to someone else. Ms. McFadden showed the clerk that both registrations were in Ms. McFadden's name. At that point the Applicant and Ms. McFadden went to Ms. McFadden's mother's house. Ms. McFadden remained at her mother's house for approximately 1.5 hours. At that point she returned home. (PCR Tr. p. 127-130).

When she arrived home a few people had eaten and were leaving. However, the Applicant, his brother and his uncle were still present. She corroborated the Applicant's testimony that the Applicant socialized, played video games and did not leave the apartment for more than 5 minutes at a time to smoke cigarettes on occasion. She also said that her front door makes a beeping noise when someone opens it and she could see into the living room from her bedroom. She was certain that the Applicant did not leave that evening. (PCR Tr. p. 130-132).

Ms. McFadden testified that she had to go to work at 4:00 am the next morning (May 20) but did not go to bed until after 11:15 pm. She recalls that time specifically because she watches the first 15 minutes of the evening news every night at 11:00 pm. After she went to sleep she does recall the front door opening and her brother said he was going to Karaoke. She believes it was around 12:00 am. (PCR Tr. p. 130-134). Ms. McFadden was adamant that the Applicant did not leave the house that evening.

Michael McFadden, the brother of Catherine McFadden and uncle of the Applicant testified as to the alibi as well. Mr. McFadden corroborated the testimony of both the Applicant and Ms. McFadden. Mr. McFadden recalled going to North Carolina on Sunday for his church choir on May 17. He recalled that May 17 was the date his grandmother was born. He recalled that they were unable to hold the memorial dinner on Monday because Ms. McFadden had to work that day. He stated that he arrived at Ms. McFadden's apartment at around 4:00 pm and the Applicant and Ms. McFadden were leaving to go get gas. He recalled the names of the people that were at the gathering. He stated that the Applicant and Ms. McFadden got back to the apartment around 6:30 or 7:00 pm. At that point everyone that was still in attendance socialized and watched videos of his grandmother. (PCR Tr. 138-142).

He described the apartment and corroborated the fact that a person sitting in the bedroom could see into the living room. He corroborated that the Applicant did not leave the apartment for more than 5 minutes at a time to smoke a cigarette. He testified that he did not leave the apartment until around 12:00 am and, at that time, the Applicant was asleep on the couch. (PCR Tr. 142-144).

Trial attorney for the Applicant, Charles Brooks, testified that he hired an investigator to assist him with the Applicant's cases. Mr. Brooks testified that his investigator did discuss the alibi defense with the Applicant's family. (PCR Tr. p. 158-159, 169). He also admitted that he spoke to Ms. McFadden about the alibi defense. (PCR Tr. p. 172-173). However, Mr. Brooks did not find the alibi credible because he did not think close family members made good alibi witnesses. (PCR Tr. p. 158-159, 172). Mr. Brooks did not offer any other specific reason as to why the alibi was not credible.

At times Mr. Brooks appeared to be somewhat confused as to which case the alibi might

apply to since he represented the Applicant on several cases:

Q: Okay. And do you recall Ms. Catherine McFadden telling you about the alibi in this case?

A: She indicated to me -- remember now, he had three separate cases, all serious. So remember one of them was assault and battery with intent to kill. She indicated that on one of these, he may have been someplace with some family. But that's why I got Mr. Webb. (PCR Tr. p. 158).

[...]

Q: And you don't recall Maurice telling you [during trial] he was with his mom or his dad?

A: That would have been the time he could have said, I was with my mother. Even though, you know, there might have been some issue about whether or not they were alibi and that kind of stuff. (PCR Tr. p. 161).

[...]

Q: Okay. From what I understood, based on the conversations that you had with Benny, I believe you said his name is?

A: Benny Webb.

Q: Benny Webb, Mr. Webb. That you realized that there was a possibility of raising an alibi defense. Something was mentioned that raised the possibility of it?

A: Well, an alibi defense, but it was never as to what case. Okay.

Q: Okay. Okay.

A: Because remember now, he's got Dubose Siding Road, he's got this one, and he also has this other one. (PCR Tr. p. 169-170).

There is no indication in the record that Mr. Brooks tried to clear up any confusion as to which case the alibi would actually apply. He also did not testify as to what his understanding was of the alibi defense. Nevertheless, he repeatedly claimed that he did not feel the alibi was credible. (PCR Tr. p. 158-159, 172-173, 183, 185).

Mr. Brooks claimed that he believed the state's case was very weak. Although there was

some physical evidence in the case, Mr. Brooks testified that he was not concerned about it at all as it did not clearly tie the Applicant to the crime. His main concern was that two of the five participants in the robbery were going to testify against the Applicant and implicate him in the crime. (PCR Tr. p. 167-168). Mr. Brook's strategy to defend the case was to "hard-cross" the two cooperating witnesses and he did not consider raising an alibi defense. (PCR Tr. p 173).

However, prior to the start of the trial, Mr. Brooks was informed that the victim's sister, Teresa Ford, intended to identify the Applicant at the trial as the shooter. The fact that she could identify the Applicant was never revealed in the discovery materials. (PCR Tr. p. 152-154). Mr. Brooks objected to her identifying the Applicant at the trial because he was given no notice of her ability to identify his client but his objection was overruled. This, according to Mr. Brooks, had a dramatic impact on his planned defense:

A: The first time I learned of Teresa Ford's ability to identify him was in court.

Q: Right?

A: And I raised that issue as you see that in the transcript.

Q: I saw it. You did.

A: And obviously --- so going in, you know, I had a different game plan.

Q: Right.

A: Obviously, that game plan had to change in light of Judge King's ruling ... (PCR Tr. p. 175)

However, Mr. Brooks was resolute that despite the fact that he needed to change his "game plan" to counter Ms. Ford's testimony he never considered a potential alibi defense despite being aware the defense existed:

Q: But at that point in time, don't you think it would have been prudent to start thinking, you know, maybe this alibi thing, maybe I need to start looking into this. Or maybe Steve

Witherspoon or Terrance Lemon, maybe I need, you know, figure out if I need to call them. Because now the dynamics have changed. Did you ever -- did that cross your mind?

A: No. (PCR Tr. p. 178)

Instead, it appears that Mr. Brooks believed that the best course of action was for his own client to waive his constitutional right against self-incrimination and take the stand to defend himself:

A: As a matter of fact, during the trial Mr. Webb was there, I thought Maurice could have and should have taken the stand.

Q: Okay.

A: And I still think if he had taken the stand, then he probably would not have been convicted of murder. [. . .] (PCR Tr. p. 159-160).

[. . .]

Q: You were put in a position where my understanding from your direct testimony -- I mean, on direct, was that you felt like to save the save the case at that point, and things had changed ...

A: That's correct.

Q: ... you needed Maurice to take the stand?

A: Correct.

Q: Because you didn't have anything that effectively combated what you felt like was that identification by...

A: Teresa Ford. (PCR Tr. p. 182).

When Mr. Abram's exercised his right to not take the stand in his own defense, Mr. Brooks felt that there as simply no other defense available to him despite the fact he earlier admitted to having known about the alibi and had spoken to, at least, his investigator and the mother of the Applicant about the alibi.

Q: Mr. Brooks, when your client didn't want to testify, did you feel like you wanted to

put up a case at that point?

A: When he did not want to testify?

Q: Uh-huh (affirmative).

A: We didn't have anything else. (PCR Tr. p. 182).

However, despite never having considered calling any alibi witnesses, Mr. Brooks did admit at one point that he and his investigator might have spent more time trying to develop the alibi had he known that Theresa Ford would identify the Applicant at trial:

A: [. . .] I say that to get, you know, to his -- to be fair to Maurice, if we knew that Teresa was going to say, yes, I pointed him out etcetera, etcetera, then perhaps, you know, we may have done some things differently as far as whether or not, you know, maybe -- I'm speaking -- I want to be careful. I'm not speaking for Benny Webb. Maybe he would have done a little more in terms of maybe developing more of an alibi.

B. Findings of Fact and Conclusions of Law

1. First prong of Strickland: Deficient Performance

The South Carolina Supreme Court recently addressed the issue of failing to investigate or call a potential alibi witness. Walker v. State, 397 S.C. 226, 723 S.E.2d 610, (2012). In the Walker case trial counsel had never been told about the alibi but was aware of the alibi based on her review of the evidence. “[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.” Edwards, 392 S.C. at 456, 710 S.E.2d at 64. The Walker Court determined that duty to investigate a potential witness is even more critical when the witness might provide an alibi. Accordingly, the Sixth Amendment requires that criminal defense attorneys thoroughly investigate potential alibi witnesses.

The Walker Court cited Strickland, in which the Supreme Court of the United States stated that strategic choices made after thorough investigation of law and facts relevant to

plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.... [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. 466 U.S. at 690–91, 104 S.Ct. 2052; see Council v. State, 380 S.C. 159, 175, 670 S.E.2d 356, 364 (2008).

However, in the present case there is no indication that a thorough investigation was ever conducted by trial counsel. Trial counsel recalls speaking with his investigator and Ms. McFadden about the alibi defense but gave no details of the conversations he had with either and Mr. Webb did not testify at the PCR hearing. Furthermore, trial counsel was unable to articulate a strategic reason for more fully investigating the alibi defense other than his opinion that the alibi was not credible based on the fact that the alibi witnesses were family members. Even after trial counsel's original strategy to "hard-cross" the alleged co-defendants fell apart he still insisted that he did not consider presenting an alibi defense. That being said, however, Mr. Brooks did admit that he and his investigator might have put more emphasis in their investigation of the alibi had they known that Ms. Ford would identify the Applicant at trial.

This should have found that Mr. Brooks was aware of the alibi defense. The Court should have further determined that Mr. Brooks offered no testimony that he had fully investigated the alibi prior to trial. He only appears to have discussed it in passing with Ms. McFadden and his investigator. At times he appeared confused as to which case the alibi might have been applied. Furthermore, Mr. Brooks offered no credible strategic reason for failing to consider the alibi defense. Mr. Brooks' only reason for not considering the defense was that he did not feel it was credible based on the fact that the Applicant's family members were the

witnesses. The Court should not have been convinced trial counsel's apparent strategy is acceptable under Strickland and its progeny. It is often the case that defendants that wish to raise an alibi defense must rely on their friends and family to testify. It is only natural that a person would spend more of their time with friends and family than with others. Finally, Ms. McFadden and Michael McFadden were both present at the trial and could have been called as witnesses on short notice. (PCR Tr. p. 120, 147). Therefore the Court should have ruled that the first prong of Strickland has been met by the applicant and trial counsel's performance was deficient.

2. Second Prong of Strickland: Prejudice

The Walker Court provided guidance on determining if failing to investigate or present an alibi defense was prejudicial to the Applicant. According to the Walker opinion, Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995), established a framework for analyzing an alleged failure to investigate an alibi witness. When a PCR applicant alleges trial counsel failed to investigate or present an alibi witness, the PCR court must make two findings to determine if counsel's deficient performance constitutes prejudice under Strickland. First, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi. Second, the court must assess the witness's credibility. In making the first finding, the court must consider the entire record to determine what the testimony would have been if it had been presented at trial. The PCR court must consider the testimony as a whole, take it as true and credible, and view it in the light most favorable to the PCR applicant.

In the present case this Court finds that the testimony of Catherine McFadden, Michael McFadden and Maurice Abrams clearly met the legal definition of alibi. The armed robbery and murder were allegedly committed on May 19, 2009, at approximately 10:30 p.m. (Trial Tr. 164-

165). Both Ms. McFadden and Mr. McFadden testified that they clearly remember being at the apartment with the Applicant at that time. Therefore, the testimony clearly meets the definition of alibi as set out in Glover.

The court should have determined that the alibi testimony, as a whole, appears to be true and credible in the light most favorable to the Applicant. Both Ms. McFadden and Mr. McFadden remember May 19, 2009, in great detail. The reason that they remember this date in particular was because it was the date that a memorial dinner was being held honoring their deceased mother. The witnesses were able to recall with great clarity what they did throughout the day. There is no reason for the Court to believe, applying the standard set forth in Glover, that the testimony given by the McFadden's would have been considered unreliable to a jury, particularly when considering the testimony in the light most favorable to the Applicant. During cross examination of each of these witnesses each was steadfast in their recollection of events and particularly that the Applicant was with them at the time of the armed robbery and murder.

Therefore, the Court should have ruled that trial counsel was deficient by failing to investigate and present an alibi in the present case. Furthermore the failure to investigate and present an alibi did prejudice the defendant likely had an impact on the outcome of the trial. Based on this determination the Applicant submits he is entitled to a new trial.

**ISSUE 4: Counsel Failed to Investigate or Call Witnesses to Discredit the
Testimony of the Alleged Co-defendants in the Case**

A. Summary of Testimony

The Applicant introduced Plaintiff's 6 and 7 into evidence. These were written statements made by Tony Lowery. In each of the statements it is alleged that Steve Witherspoon was with them just prior to the armed robbery and Murder. Furthermore Mr. Owens and Mr.

Lowery testified at the Applicant's trial that Steve Witherspoon was with Mr. Abrams just prior to the robbery and murder. (Trial Tr. p. 222-223, 296). Tony Lowery also testified that Steve Witherspoon met with the Applicant and saw the marijuana and money taken during the robbery. (Trial Tr. p. 308-310). However, Steve Witherspoon was not called as a witness by trial counsel to discredit the testimony that he was with Mr. Abrams just prior to the armed robbery and murder.

At the PCR hearing Steve Witherspoon testified that he recalled that on the day of the murder he was with his sister picking up a new dog and that he was with her throughout the even into the early morning hours of the 20th. (PCR Tr. p. 92-97). He specifically did not recall going to El Cheapo's or interacting with Tony Lowery, Maurice Abrams or Frederick Owens. (PCR Tr. 97). Although He was interviewed by police he was never asked about being at El Cheapo's with anyone on the night of the murder. (PCR Tr. p. 98). Steve Witherspoon's sister Mary Smith also testified at the PCR hearing. She believed that they picked up the dog on a Wednesday (rather than Tuesday, May 19th). (PCR Tr. p. 105). Maurice Abrams testified that he told his investigator, Benny Web, to find Mr. Witherspoon because he knew that he was not with Mr. Witherspoon the night of the crime. (PCR Tr. p. 35-36). However trial counsel admitted that he knew Mr. Witherspoon was a potential witness but never attempted to contact him. (PCR Tr. p. 178-179)

B. Findings of Fact and Conclusions of Law

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all

reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent**634 investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions....” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Id. at 690, 104 S.Ct. 2052.

In the present case Mr. Witherspoon was not interviewed or called as a witness at the applicant's trial. No reason was given by trial counsel for failing to investigate this particular witness. The witness appeared to have a very clear recollection of where he was on May 19th, the day of the murder. His sister however, seemed to recall that they bought the dog on Wednesday the 20th, rather than May 19th. This detail does not appear to be particularly relevant as Mr. Witherspoon was certain he never met up with Tony Lowery, Frederick Owens, Terrance Lemon or Maurice Abrams at the El Cheapos gas station.

Based on the fact that Mr. Witherspoon was in fact a material witness that had exculpatory information concerning Mr. Abrams the Court should have ruled that trial counsel's failure to investigate or call Mr. Witherspoon was deficient performance. Furthermore the Court should have ruled that Mr. Witherspoon's testimony, particularly when considered in light of Mr.

Abrams' alibi was credible. This Court should have further ruled that failing to investigate or call Mr. Witherspoon ultimately prejudiced Mr. Abrams as he would have corroborated the testimony of Mr. McFadden and Ms. McFadden that the Applicant did not have a meeting with Mr. Witherspoon at a gas station on May 19th. Consequently, the Applicant submits he is entitled to a new trial.

ISSUE 6: Applicant's trial counsel failed to make petitioner aware of a conflict of interest with another client represented by trial counsel

A. Summary of Testimony

The Petitioner testified that his trial counsel also represented George Thompson in a civil lawsuit. The lawsuit was filed against Anthony Nasareno. In support of his position Petitioner put into the record Plaintiff's Exhibit 16 which was a copy of the S.C. Public Index listing the case docket number as well as participants in the civil action. (PCR Tr. p. 76-78).

Petitioner explained that the victim in the Dubose Siding case was Anthony Nasareno.⁴ Petitioner testified that he believed that trial counsel had a conflict of interest because the civil suit against Mr. Nasareno was ultimately dismissed because he was murdered. Petitioner stated that he believed that his counsel was upset that Nasareno was murdered and, because of the duty he owed to George Thompson, he failed to put forth the necessary effort to defend the Petitioner at Petitioner's trial. The Petitioner explained the evidence of the conflict as follows:

Q: All right. So this is a little bit tough to understand, I think, for most people. So you're saying, and I'm trying to reiterate what you just said. So what you're saying is because this person died and it was believed that you were the killer, that then Brooks could not go through with the lawsuit and so he lost money because of this?

A: He felt it was a conflict. And that's why he didn't call my witnesses. And that's why he didn't object to the Brady violations. And that's why he never made my suppressions. This is why I'm here today. (PCR Tr. p. 78)

⁴ Mr. Brooks represented the Applicant on two separate cases referred to as the "Markieth Ford" case and the "Dubose Siding" case. The Markieth Ford case is the subject of this PCR. The Petition was ultimately acquitted in the Dubose siding case.

[...]

Q: Were there any indications from the way that you and Brooks interacted that gave you the impression that he had turned on you the way you're describing?

A: In my trial, I was trying to speak to him. I was trying to speak to him. He kept throwing his hand in my face. I know he did.

Q: So you're just saying as a human being, you picked up on something concerning his attitude towards you and it changed somehow?

A: Yeah. (PCR Tr. p. 79)

[...]

A: I was prejudiced because of the conflict of interest.

Q: Okay.

A: And if he would have did those things and called my witnesses the results of the trial would have been different, hands down. (PCR Tr. p. 79-80)

Trial counsel was called by the State and he explained his relationship with George Thompson and Anthony Nocereno as follows:

What had happened was, Mr. Thompson and Mr. Nasareno, way before I even got involved with Mr. Abrams, I used to do some real estate closing. They'd asked me to do a closing where they had bought some piece of property. And we closed the transaction. This might have been a year before Maurice was ever involved or was ever even thought of or anything like that. And we did the transaction. And then -- I mean, that was basically it. And then I want to say shortly before Mr. Nasareno got killed, Mr. Nasareno's wife had asked me to look into getting a divorce against him. And Mr. Thompson had said that Mr. Nasareno owed him some money from that transaction, I guess the arrangement that they had, that I wasn't privy to had soured. But Mr. Nasareno technically was just a real estate client. In practicing in the private sector and I'm sure, the Judge probably understands what I'm talking about. You just -- people come in, you do a closing. You don't really have a whole lot of interaction or attorney/client relation with them, except for that particular transaction. That's all I had with Mr. Nasareno. And I think when I did the trial of that case, I told Mr. Abrams about it. But we put that on the record so there was no issue. (PCR Tr. p. 149-150)

Trial counsel further testified that the civil suit was ultimately dismissed because Mr. Nocereno

was murdered. (PCR Tr. p. 150-151)

B. Summary of Law

In a PCR proceeding, the applicant who claims his or her attorney had a conflict of interest bears the burden of demonstrating he or she is entitled to relief. *Jordan v. State*, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013). "Until [an applicant] shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation." *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993). The mere possibility of "a conflict of interest is insufficient to impugn a criminal conviction." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). "While unconstitutional multiple representation is never harmless error, multiple representation standing alone is not violative of the Sixth Amendment." *Vance v. State*, 275 S.C. 162, 163, 268 S.E.2d 275, 275 (1980) (citation omitted). Additionally, "breach of an ethical standard does not necessarily make out a denial of the Sixth Amendment guarantee of assistance of counsel." *Nix v. Whiteside*, 475 U.S. 157, 165, 106 S.Ct. 988, 89 L.Ed.2d 123 (1986).

"To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest *adversely affected his attorney's performance*." *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (emphasis added).

When an actual conflict of interest exists,

[C]ounsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest.... Prejudice is presumed only if the defendant demonstrates that counsel actively represented conflicting interests and that

an actual conflict of interest adversely affected his lawyer's performance. Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (emphases added) (citation and internal quotation marks omitted); see also State v. Sterling, 377 S.C. 475, 480, 661 S.E.2d 99, 101 (2008) (holding prejudice is presumed when an actual conflict adversely affects pretrial strategies as well as the defense at trial). "[A] defendant must establish that an actual conflict of interest *adversely affected his lawyer's performance*." Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) (emphasis added). "The Sullivan standard requires a showing that (1) petitioner's lawyer operated under a conflict of interest and (2) *such conflict adversely affected his lawyer's performance*. If the petitioner makes this showing, prejudice is presumed and nothing more is required for relief." United States v. Nicholson, 611 F.3d 191, 205 (4th Cir.2010) (emphasis added) (citation and internal quotation marks omitted).

In order to prevail on a conflict claim, a habeas petitioner must establish, under the second prong of Cuyler, that the actual conflict of interest compromised his attorney's representation. This occurs when an attorney takes action for one client that is necessarily adverse to another, or when an attorney fails to take action for one client for fear of injuring another. In analyzing this issue, we use the three-factor test described in Mickens v. Taylor, 240 F.3d 348, 361 (4th Cir.2001), *aff'd*, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002)

First, the petitioner must identify a plausible alternative defense strategy or tactic that his defense counsel might have pursued. Second, the petitioner must show that the alternative strategy or tactic was objectively reasonable under the facts of the case known to the attorney at the time of the attorney's tactical decision. [To demonstrate objective reasonableness,] the petitioner must show that the alternative strategy or tactic was clearly suggested by the circumstances. Finally, the petitioner must establish that the defense counsel's failure to pursue

that strategy or tactic was linked to the actual conflict. *Stephens v. Branker*, 570 F.3d 198, 209 (4th Cir.2009).

A defendant has established an adverse effect if he proves that his attorney took action on behalf of one client that was necessarily adverse to the defense of another or failed to take action on behalf of one because it would adversely affect another. Thus, both taking action and failing to take actions that are clearly suggested by the circumstances can indicate an adverse effect. An adverse effect can arise at any stage of the litigation including pretrial investigation or entry of a plea. *Mickens*, 240 F.3d at 360.

C. Findings of Fact and Conclusions of Law

In the present case the Court should have found that Petitioner had clearly established a potential conflict of interest in that the death of Anthony Nocereno adversely affected trial counsel and his former client, George Thompson. The death of Nocereno not only caused damage to his client, Mr. Thompson, but effectively ended a lawsuit filed by trial counsel in which trial counsel, presumably, would have potentially profited. The Petitioner was adamant that trial counsel's conduct toward the Petitioner changed when the conflict came to light.

Petitioner established in previous issues that there was an alternative defense strategy that would have been viable had trial counsel invested effort into finding witnesses or preparing an alibi defense. This strategy (as discussed in issues 1, 3, and 4) was objectively reasonable under the facts of the case and was clearly suggested by the circumstances. Finally, the Court should have found the Petitioner to be credible when he alleges that trial counsel's behavior towards him and his case changed when trial counsel became aware of the conflict. This Court should not have found that trial counsel's explanation that there was no conflict to be credible. Therefore, Petitioner's case should be remanded to the Circuit Court for a new trial.

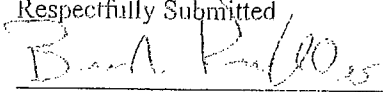
ALL OTHER ALLEGATIONS

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 Rule 59(e) motion are hereby abandoned by the Petitioner.

CONCLUSION

Based on all the foregoing, this Court should have concluded that the Applicant established constitutional violations or deprivations that require this court to grant his application. Therefore, this application for post-conviction relief should be affirmed.

Respectfully Submitted,



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April 22, 2016
Columbia SC

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT
Case No. 2013-DR-40-4173

DIAHNNIE HELPER,)
Plaintiff,)

vs.)

VERNON HELPER,)
Defendant.)

CERTIFICATE OF SERVICE

RECORDED
2016 APR 26 PM 1:58
CLERK OF COURT
SOUTH CAROLINA
FAMILY COURT

I, Danita Martin, hereby certify on that on April 22, 2016, I served a copy of the
NOTICE OF MOTION AND MOTION FOR AMENDMENT AND
RECONSIDERATION PURSUANT TO RULES 52(a), 52(b) AND 59(e), SCRCP on
Daniel Gourley, Assistant Attorney General by hand delivering the motion to the
following address:

Daniel Gourley, Assistant Attorney General
SC Attorney General's Office
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, S.C. 29201

April 22nd 2016
Date

Danita Martin
DANITA MARTIN

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Maurice Lionel Abrams, #00346362,

Case No. 2012-CP-43-713

Applicant,

v.

ORDER

State of South Carolina,

Respondent.

RECEIVED

JUL 15 2016

60 SUPREME COURT

This matter is before the Court pursuant to Rule 59(e) SCRPC. The Applicant seeks an Order of this Court amending or altering the Order of Dismissal dated March 31, 2016.

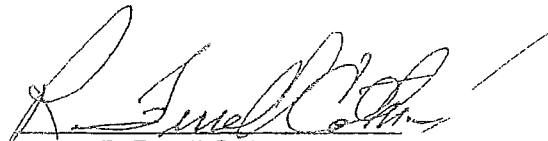
Applicant's Rule 59(e) Motion to Alter or Amend is substantially the same as Applicant's proposed order granting relief, which was denied. The Order of Dismissal was filed with the Sumter County Clerk of Court on April 8, 2016. Applicant's Rule 59(e) motion was filed on April 26, 2016.

The Order of Dismissal sets out the reasons the Court denied and dismissed with prejudice the Application for Post-Conviction Relief. Applicant's Rule 59(e) Motion offers no new grounds for reconsideration. Therefore, the motion for amendment and reconsideration is hereby DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: May 18, 2016


R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit