

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

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SC SUPREME COURT

RONALD TILLMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002499

APPENDIX

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1 THE COURT: I MEAN, I CAN UNDERSTAND THAT. I CAN
2 UNDERSTAND THAT. I WOULDN'T WANT TO SEE HIM AGAIN. BUT I
3 JUST DON'T BELIEVE THAT IT FITS THE MEANING OF "EXTREME."
4 AS I SAID, TO HER PROBABLY IT'S EXTREME, BUT I DON'T THINK
5 IT FITS THE MEANING OF -- OF WHAT THE GUIDELINES MEAN BY
6 "EXTREME."

7 MR. BETHEA: YES, SIR.

8 THE COURT: I THINK IT'S DIFFICULT, AND CERTAINLY
9 CAUSED HER PROBLEMS.

10 THE WEAPONS AND DANGEROUS USE AND FATALITY; NO
11 QUESTION, ANY TIME YOU'RE BRANDISHING A GUN, THAT'S
12 DANGEROUS, BUT IT -- NOBODY WAS INJURED. SO I JUST -- I'M
13 NOT GOING TO -- NOBODY WAS INJURED, FORTUNATELY. I'M
14 GOING TO TAKE THAT FACTOR INTO CONSIDERATION.

15 EXTREME CONDUCT, I THINK HIS CONDUCT MAYBE BORDERS ON
16 EXTREME CONDUCT. THE PROBATION OFFICER FEELS, AND I
17 SOMEWHAT AGREE, THAT EXTREME CONDUCT PROBABLY SHOULD BE
18 MORE THAN THREATENING CONDUCT. SO -- AND I THINK EXTREME
19 CONDUCT, WHILE THIS BORDERS ON EXTREME -- THREATENING TO
20 KILL SOMEBODY AND BEING ABUSIVE -- I AGREE WITH THE
21 PROBATION OFFICER THAT WHILE THERE ARE AMPLE GROUNDS THAT
22 I'LL DISCUSS LATER TO JUSTIFY DEPARTURE HERE. . .

23 THE CONDUCT WAS BAD, BUT I THINK, LIKE THE PROBATION
24 OFFICER, THAT "EXTREME" WOULD REQUIRE SOMEONE BEING HURT
25 IN SOME RESPECT. I DON'T BELIEVE JUST THREATENING IS

1 SUFFICIENT.

2 I'M GOING TO RUN OVER THESE THINGS. IF SOMEBODY WANTS
3 TO HEAR SOME EVIDENCE, I'LL BE GLAD TO DO IT.

4 NOW THESE GO TO THE DEFENDANT. DEFENDANT OBJECTS TO
5 THE TWO-POINT ENHANCEMENT FOR OBSTRUCTION OF JUSTICE.
6 NOW, I TRIED THIS CASE. I HEARD ALL THESE WITNESSES. I
7 HEARD HAYES MALLOY TESTIFY. I HEARD THEM ALL TESTIFY, ALL
8 THE WITNESSES WHO WERE THREATENED -- CLAIM THEY WERE
9 THREATENED. DOWNSTAIRS HERE IN THE CELLS, IN THE
10 PENITENTIARY, EVERYWHERE, THREATS WERE MADE.

11 I'M CONVINCED THAT THIS IS ONE OF, IF NOT THE MOST
12 DANGEROUS -- ONE OF THE MOST DANGEROUS PEOPLE I'VE EVER
13 HAD IN MY COURT. AND I'M CONVINCED THAT HAYES MALLOY -- I
14 LISTENED TO HIM? I WAS CONVINCED AT THE TIME HE TESTIFIED
15 THAT HE WAS TESTIFYING TRUTHFULLY. I THINK THIS DEFENDANT
16 DID THREATEN PEOPLE, DID TRY TO. . . I BELIEVE WHAT RUFUS
17 MCQUEEN TESTIFIED TO. HE'S BEEN CONVICTED OF THIS MURDER
18 NOW, WHICH HE HADN'T BEEN AT THIS TIME.

19 AS I RECALL ALSO, THERE WAS A CALL TO A BANK. HE
20 DIDN'T IDENTIFY HIMSELF. I'M CONVINCED HE EITHER MADE IT
21 OR HAD IT MADE. AND I THINK HE ATTEMPTED IN MANY WAYS TO
22 OBSTRUCT JUSTICE.

23 FROM THE MOMENT THAT THE BANK WAS ROBBED, ALL THROUGH
24 AND EVEN UP TO THE DATE THE JURY FOUND HIM GUILTY, HE
25 POSED AS A FINE YOUNG MAN, OPERATING A BUSINESS. I DON'T

1 KNOW WHAT'S HAPPENED TO THAT BUSINESS. I HOPE IT'S BEEN
2 SHUT DOWN.

3 MR. BETHEA: NO, IT HASN'T, YOUR HONOR.

4 THE COURT: STILL OPERATING?

5 MR. BETHEA: YES, SIR.

6 THE COURT: WELL, THAT'S THE WORST DEN OF
7 INIQUITY THIS COURT HAS EVER HEARD. I UNDERSTOOD IT HAD
8 BEEN SHUT DOWN---

9 MR. BETHEA: IT'S STILL OPERATING.

10 THE COURT: ---AT THE BEACH RIGHT THERE. NO
11 WONDER THEY HAVE THREATS WITH SOME OF THEM, AND THEY'VE
12 HAD A RASH OF CRIME UP IN COLUMBIA INVOLVED. I BELIEVE
13 ALL THE THINGS THAT WERE TESTIFIED TO THAT HAPPENED AT
14 THAT PLACE ARE TRUE, AND I'M JUST AMAZED THAT SOMETHING
15 HASN'T BEEN DONE ABOUT IT BY THE COUNTY AND CITY
16 AUTHORITIES TO CLOSE THAT PLACE. THAT'S THE WORST PLACE
17 THAT I'VE HEARD TESTIMONY ABOUT, AND I WAS UNDER THE
18 IMPRESSION THAT SOMETHING HAD BEEN DONE TO CLOSE IT. IT'S
19 STILL OPERATING FULLTIME?

20 MR. BETHEA: AS OF YESTERDAY.

21 THE COURT: WELL, I HOPE THAT SOMEBODY IS HERE --
22 I HOPE SOMEBODY IS HERE THAT WILL TAKE A LOOK AT THAT
23 PLACE. IT'S THE WORST THING I HEARD TESTIMONY ABOUT IN --
24 THAT'S JUST -- THAT JUST BREEDS CRIME, THAT PLACE. IT
25 SURE DOES, BUT I NEVER HEARD OF ONE. I'VE LIVED ALL OVER

1 THE SMALL TOWNS AND CITIES, AND I'VE SEEN PLACES WHERE
2 DRUG PEOPLE HANG OUT, AND CRIMES AND THINGS THAT LEAD TO
3 CRIME, BUT THAT'S GOT TO BE AS BAD AS I'VE EVER HEARD IN
4 19 YEARS ON THE BENCH.

5 AND IF I HAD ANY AUTHORITY TO DO SO, I'D WALK OUT
6 THERE AND LOCK IT UP THIS MINUTE. BUT THAT'S FOR THE
7 PEOPLE IN THE CITY AND THE COUNTY TO HANDLE, NOT FOR THIS
8 COURT. I CAN'T BELIEVE IT'S STILL GOING ON.

9 I'M CONVINCED THAT, AS I SAID, THAT THE THREATS THAT
10 HE MADE TO HAVE HAYES MALLOY, AND KILLED ONE FELLOW, I'M
11 CONVINCED THE JURY WAS RIGHT. AND I'M CONVINCED THAT HE
12 THREATENED -- HE MADE EFFORTS TO HAVE OTHER PEOPLE KILLED,
13 PARTICULARLY HAYES MALLOY. I'VE FORGOTTEN, BUT IF THERE
14 WAS ANY ATTEMPT TO KILL SHEILA SCOTT. I DON'T REMEMBER
15 SUCH TESTIMONY. BUT I DON'T THINK THERE'S ANYTHING TO THE
16 FIRST OBJECTION.

17 AND THE SECOND OBJECTION, I AGREE THAT ONE OF THE TWO
18 COURSES IS NOT CONTINUING ALONG, BUT THE OTHER THAT I
19 BELIEVE WAS DISMISSED IN THIS COURT. I DON'T KNOW WHAT IT
20 WAS, MR. BETHEA. DID WE -- DIDN'T YOU DISMISS A CHARGE?
21 DIDN'T I DISMISS A CHARGE?

22 MR. BETHEA: YES, SIR, YOU DID.

23 THE COURT: WELL, I THINK SOME -- IT'S BEEN
24 DISMISSED.

25 MR. SWERLING: THAT WAS THE OBSTRUCTION OF

1 JUSTICE CHARGE.

2 THE COURT: WHAT?

3 MR. SWERLING: THAT WAS THE OBSTRUCTION OF
4 JUSTICE CHARGE.

5 THE COURT: IN THIS COURT?

6 MR. SWERLING: COUNT FOUR.

7 THE COURT: YEAH. WELL, WE DISMISSED THAT
8 WITHOUT PREJUDICE. BUT I'M NOT GOING TO CONSIDER THE
9 COUNT ITSELF, BUT I'M GOING TO CONSIDER THE FACTS THAT I
10 HEARD TESTIFIED TO, BUT NOT JUST -- JUST THE FACT THAT HE
11 HAD BEEN CHARGED. I AGREE. THAT KIND OF COVERS -- THAT
12 COVERS THE SECOND.

13 THIRD, THE DEFENDANT OBJECTS TO THE TWO-POINT ROLE.
14 DEFENDANT AGREES HE WAS A PARTICIPANT, DENIES HE WAS A
15 DECISION-MAKER. I HEARD HIS TESTIMONY. I THINK HE WAS A
16 PLANNER, SCHEMER, HE CARRIED IT OUT. HE WAS THE -- THE
17 MAN. SO I REJECT THAT.

18 AS I UNDERSTAND, THE GUIDELINES ARE DIRECTING ANYTHING
19 COMMITTED IF YOU'RE 18 OR OLDER BE TAKEN INTO
20 CONSIDERATION. THEY DON'T MAKE THE DISTINCTION BETWEEN A
21 YOUTHFUL OFFENDER AND AN ADULT SENTENCE, IF YOU'RE 18. AS
22 I UNDERSTAND THE GUIDELINES, IF YOU'RE UNDER 18, THERE'S A
23 DIFFERENT SITUATION. BUT HERE THE ONE YOU'RE TALKING
24 ABOUT, THE DEFENDANT WAS 20, SO I DON'T AGREE THAT WE
25 SHOULDN'T DO THAT. I'LL BE GLAD TO HEAR FROM YOU.

1 MR. REEVES: YOUR HONOR, I JUST -- THAT OBJECTION
2 WAS MADE BASED ON THE FACT THAT WE FELT THAT THE
3 GUIDELINES DIDN'T ADEQUATELY TAKE THAT PARTICULAR FACT
4 INTO CONSIDERATION WHEN THEY WERE FORMULATED, IN THAT IN
5 THIS STATE YOU CAN BE, AFTER YOU REACH THE AGE OF 18,
6 STILL BE SENTENCED TO A YOUTHFUL OFFENDER ACT UNDER
7 CERTAIN CIRCUMSTANCES.

8 SINCE THE JUDGE IN THAT PARTICULAR SENTENCING
9 EVIDENTLY FELT THAT IT WAS NOT AS SERIOUS AND DID NOT
10 TREAT MR. TILLMAN AS AN ADULT AT THAT TIME, THAT GIVING
11 HIM THE ENHANCEMENT THAT LED TO HIS DETERMINATION OF
12 CRIMINAL HISTORY CATEGORY WAS ERRONEOUS IN THIS CASE,
13 BECAUSE THE GUIDELINES DON'T ADEQUATELY TAKE INTO
14 CONSIDERATION THE FACT THAT THE YOUTHFUL OFFENDER ACT
15 SENTENCE WAS IMPOSED, AND THAT'S WHY THE OBJECTION WAS
16 RAISED.

17 I DON'T DENY THAT UNDER THE GUIDELINES, HE, BECAUSE OF
18 THE -- IT WAS PAST HIS 18TH BIRTHDAY WITHIN THE RELEVANT
19 TIME PERIOD, THAT IT'S COUNTED. BUT WE WOULD ARGUE THAT
20 WASN'T -- THAT PARTICULAR FACTOR WASN'T TAKEN INTO
21 CONSIDERATION WHEN THE COMMISSION---

22 THE COURT: THERE, I THINK -- I THINK, WITHIN MY
23 DISCRETION, THAT THE FACT THAT THE GUY WAS SENTENCED UNDER
24 THE YOUTHFUL OFFENDER ACT IN THE STATE COURT, I COULD
25 CONSIDER THAT, MAYBE GIVE YOU THE BEST OF THE GUIDELINES.

1 I THINK THE GUIDELINES TOOK IT INTO CONSIDERATION. I
2 THINK THEY MADE AN ESTABLISHMENT OF 18, AND THE PEOPLE WHO
3 WROTE THE GUIDELINES KNEW ALL ABOUT THE YOUTHFUL OFFENDER
4 ACTS, BECAUSE WE'VE GOT THEM IN THE FEDERAL SYSTEM, AND
5 WE'VE GOT THEM IN -- SOUTH CAROLINA ISN'T THE ONLY STATE
6 THAT HAS THEM. WHILE I HAVEN'T CHECKED, I'M SURE THAT
7 SOUTH CAROLINA ISN'T THE ONLY STATE.

8 BUT WE'VE GOT THEM IN THE FEDERAL SYSTEM, SO IT'S NOT
9 LIKE THE WRITERS OF THE GUIDELINES DIDN'T KNOW ABOUT
10 YOUTHFUL OFFENDER ACT. AND I THINK THERE'S NO USE TO
11 CLAIM THAT IF HE HAD BEEN GIVEN A YOUTHFUL SENTENCE IN THE
12 FEDERAL COURT -- WHICH HE COULD AT 20, COULDN'T HE, MR.
13 UNITED STATES ATTORNEY?

14 MR. BETHEA: YES, SIR.

15 THE COURT: HE CAN GET OVER 23 OR 24.

16 MR. BETHEA: WELL, I THINK---

17 THE COURT: TWENTY-TWO, MAYBE.

18 MR. BETHEA: I THINK IT'S 22, JUDGE.

19 THE COURT: ANYWAY, I KNOW HE COULD AT 20. THEY
20 KNOW ABOUT THAT, AND I CAN'T BELIEVE THAT THEY DIDN'T TAKE
21 IT INTO CONSIDERATION.

22 I THINK THE THREAT TO SHEILA SCOTT WAS DIRECTLY MADE.
23 I THINK IT DID HAVE PSYCHOLOGICAL IMPACT ON HER, NOT TO
24 THE EXTENT ALLEGED BY THE PROBATION OFFICER. BUT I HEARD
25 HER TESTIFY; I WATCHED HER. AND I THINK -- I THINK IT HAD

1 AN EXTREME EFFECT ON HER PERSONALLY, BUT I JUST DON'T
2 THINK IT FITS THE EXTREME EFFECT MEANING OF THE
3 GUIDELINES.

4 MR. REEVES: YOUR HONOR, THE ONLY THING WE WOULD
5 ADD, OR LIKE THE COURT TO CONSIDER AS FAR AS THE THREAT,
6 AND I THINK THAT ALSO GOES TO THE OBSTRUCTION OF JUSTICE
7 WHICH YOU HAVE ALREADY DISCUSSED, IS THE INFORMATION
8 PROVIDED TO THE GOVERNMENT BY RUFUS MCQUEEN, WE WOULD
9 ARGUE, WOULD BE UNRELIABLE, BECAUSE WE HAVE A LETTER THAT
10 DEMONSTRATES THAT MR. TILLMAN KNEW MR. MCQUEEN WAS WORKING
11 FOR THE GOVERNMENT, OR AT LEAST TRYING TO GET INFORMATION
12 ON HIM AT THE TIME HE WAS AT THE JAIL WHEN MR. TILLMAN
13 ALLEGEDLY TOLD MR. MCQUEEN THAT HE WANTED SHEILA SCOTT
14 KILLED, OR WAS GOING TO TRY AND KILL HER.

15 AND IT WOULD BE IMPROBABLE THAT MR. TILLMAN, KNOWING
16 THAT MR. MCQUEEN WAS A SNITCH, WOULD TELL HIM THAT
17 INFORMATION, BECAUSE HE KNEW WHAT HE WAS GOING TO DO WITH
18 IT. YOUR HONOR, WE WOULD PROFFER THE LETTER, WHICH I
19 THINK THE GOVERNMENT WOULD STIPULATE TO, FOR THE COURT TO
20 CONSIDER IN HIS THREATS TO MS. SCOTT, AND ALSO ADD THAT.

21 THE COURT: THIS DIDN'T -- WAS THIS PRESENTED --
22 DID THIS COME OUT IN ANY WAY AT THE TRIAL?

23 MR. BETHEA: NO, YOUR HONOR, BUT---

24 THE COURT: I DON'T REMEMBER IT.

25 MR. SWERLING: YOUR HONOR KEPT THAT OUT.

1 MR. BETHEA: THAT LETTER, AND ALL OF THE PEOPLE
2 WHO TESTIFIED, WHO GAVE INFORMATION, SUPPOSEDLY, ABOUT
3 THAT LETTER, I CALLED IN FRONT OF THE FEDERAL GRAND JURY,
4 AND THAT HAD THAT LETTER AS AN EXHIBIT, AND HEARD ALL OF
5 THE TESTIMONY THEY'RE REFERRING TO, AND THEY STILL
6 RETURNED AN INDICTMENT AGAINST MR. TILLMAN CHARGING THE
7 OBSTRUCTION OF JUSTICE.

8 BECAUSE BASICALLY, TO SUMMARIZE WHAT IT ALL BOILS DOWN
9 TO, IS THAT ABOUT THE TIME MR. MCQUEEN WAS RELEASED FROM
10 JAIL, OR SOMETIME CLOSE THERETO, MR. TILLMAN DISCOVERED
11 THAT HAYES -- THAT HE WAS WORKING FOR THE GOVERNMENT.

12 BUT IN THE INTERIM, MR. TILLMAN HAD RUFUS MCQUEEN
13 PICKED UP AT THE JAIL AND TAKEN TO THE PARTY SHOP TO SEE
14 HAYES MALLOY. BY THE TIME HE GOT THERE, MR. TILLMAN
15 CALLED THE PARTY SHOP AND IN EFFECT CALLED EVERYTHING OFF
16 BECAUSE HE REALIZED, AND THAT LETTER RESULTED THEREFROM.

17 MR. SWERLING: YOUR HONOR, WE WOULD PROFFER THAT
18 AS WHAT THOSE WITNESSES WOULD TESTIFY IF THEY WERE CALLED,
19 AND I THINK THE GOVERNMENT HAS NO PROBLEM WITH THAT
20 STIPULATION.

21 THE COURT: NOW, YOUR PROBLEM HERE, WHAT YOU'RE
22 SAYING IS THAT HE KNEW MCQUEEN WAS -- WAS THE GOVERNMENT
23 -- WORKING FOR THE GOVERNMENT, SO TO SPEAK, OR HELPING THE
24 GOVERNMENT, AND HE WOULDN'T. . .

25 MR. SWERLING: HE WAS PLAYING ALONG WITH HIM.

1 THE COURT: SIR?

2 MR. SWERLING: HE WAS PLAYING ALONG WITH MCQUEEN.

3 THE COURT: WELL, THIS -- I MEAN, I DON'T
4 BELIEVE, IF I SAW THIS LETTER -- DID I EVEN SEE THIS
5 LETTER?

6 MR. BETHEA: NO, YOUR HONOR. IT WAS. . .

7 THE COURT: WHAT DOES THIS LETTER BASICALLY SAY?
8 IT'S FOUR PAGES -- THREE---

9 MR. SWERLING: IT BASICALLY SAYS, YOUR HONOR,
10 THAT THE PEOPLE WHO SIGNED THE LETTER, IF CALLED TO
11 TESTIFY, WOULD SAY THAT THEY KNEW THAT, FROM THE
12 BEGINNING, RUFUS MCQUEEN WAS TRYING TO SET MR. TILLMAN UP;
13 THAT MR. TILLMAN WAS AWARE OF IT; THAT MR. TILLMAN PLAYED
14 ALONG WITH HIM, BUT NEVER -- THERE BASICALLY WAS NEVER ANY
15 OVERT INTENT TO CARRY OUT THE PLAN. MR. TILLMAN, AS SOON
16 AS MR. MCQUEEN---

17 THE COURT: THIS INVOLVES A PLAN TO -- TO -- A
18 THREAT AGAINST HIM, OR TAKE SOME ACTION AGAINST SHEILA
19 SCOTT?

20 MR. SWERLING: AND MALLOY.

21 MR. BETHEA: AND HAYES MALLOY.

22 THE COURT: AND I HEARD OTHER -- THERE WAS OTHER
23 TESTIMONY ABOUT HAYES MALLOY.

24 MR. SWERLING: YES, SIR. THAT WAS SOME OTHER
25 SITUATION. BUT THIS PARTICULAR SITUATION YOUR HONOR KEPT

1 OUT OF THE TRIAL. AND MR. -- OF COURSE, MR. TILLMAN'S
2 POSITION IS HE DID NOT -- THIS LETTER WAS NOT WRITTEN AS A
3 RESULT OF FINDING OUT THAT MR. MCQUEEN WAS WORKING AS A
4 GOVERNMENT AGENT, OR GOVERNMENT INFORMANT AT THAT TIME, OR
5 THAT IT WAS DONE FROM THE INCEPTION, THAT THEY KNEW ABOUT
6 IT FROM THE INCEPTION; THAT WHEN MCQUEEN GOT OUT OF JAIL,
7 HE CALLED THE U. S. MARSHAL'S OFFICE, WHICH IS STIPULATED
8 TO BY THE GOVERNMENT AND THE DEFENSE, TO TELL THEM OF
9 MCQUEEN'S INTENT TO TRY AND DO HARM TO HAYES MALLOY AND TO
10 MS. SCOTT.

11 THAT WAS ON THE DAY HE WAS RELEASED; AND ON THE
12 FOLLOWING MORNING, THAT CALL WAS MADE. AND ON MONDAY --
13 THIS WAS ON A FRIDAY -- ON MONDAY HE CALLED THE BANK AND
14 SPOKE WITH THE PRESIDENT OF THE BANK, I BELIEVE, AND TOLD
15 HIM THAT MS. SCOTT WAS IN DANGER ALSO FROM MR. MCQUEEN.

16 THE COURT: WHO MADE THOSE CALLS?

17 MR. SWERLING: MR. TILLMAN. AND I THINK THAT'S
18 STIPULATED THOSE CALLS WERE MADE.

19 MR. BETHEA: YES, SIR.

20 MR. SWERLING: OF COURSE, THE GOVERNMENT CONTENDS
21 THEY WERE MADE AFTER. AS I UNDERSTAND IT, THEIR
22 CONTENTION IS THAT THE CALLS WERE MADE AFTER TILLMAN FOUND
23 OUT THAT MCQUEEN WAS AN INFORMANT. BUT WE CONTEND THAT
24 TILLMAN DID NOT KNOW THAT, THAT HE DID THAT TO PROTECT
25 MALLOY AND TO PROTECT MS. SCOTT, BECAUSE HE KNEW ALL ALONG

1 THAT MCQUEEN WAS AN INFORMANT AND WAS A DANGEROUS
2 INDIVIDUAL HIMSELF.

3 THE COURT: NOW, WAS THERE SOME TESTIMONY THAT --
4 WASN'T THERE TESTIMONY, WHETHER I HEARD IT EITHER IN OR
5 OUT OF THE PRESENCE OF THE JURY, ABOUT HIS SOLICITING
6 MCQUEEN TO TAKE SOME ACTION AGAINST. . .

7 MR. BETHEA: YES, SIR.

8 MR. SWERLING: YOU HEARD THAT OUTSIDE THE JURY'S
9 PRESENCE, YOUR HONOR. THAT WAS WHEN WE WERE GOING INTO
10 WHETHER OR NOT TO LET IN OTHER RELEVANT CONDUCT, AS I
11 RECALL.

12 THE COURT: IN THAT FOUR-FOUR?

13 MR. SWERLING: FOUR-FOUR. AND -- BUT THAT'S THE
14 ISSUE WE'RE TALKING ABOUT HERE, IS THAT MR. TILLMAN
15 INFORMED THE MARSHAL OF MCQUEEN'S INTENT, AND ALSO
16 INFORMED THE BANK OF THE INTENT AS SOON AS MCQUEEN GOT OUT
17 OF JAIL, THE DAY HE GOT OUT.

18 AND THERE'S NO DISPUTE BETWEEN THE GOVERNMENT AND
19 DEFENSE ABOUT THE FACT THAT THE CALLS WERE MADE AND THAT
20 LETTER WAS WRITTEN. THE DISPUTE IS AS TO WHETHER OR NOT
21 TILLMAN KNEW MCQUEEN WAS AN INFORMANT AT THE TIME THE
22 CALLS WERE MADE AND THE LETTER WAS WRITTEN OR NOT.

23 THE COURT: AND WHAT'S THE GOVERNMENT'S POSITION?

24 MR. BETHEA: WELL, YOUR HONOR, IN SHORT, IN QUICK
25 SUMMARY, RUFUS MCQUEEN WAS IN JAIL WITH MR. TILLMAN. AND

1 HE TESTIFIED BEFORE THE GRAND JURY, AND I'M PRETTY SURE HE
2 TESTIFIED OUT OF THE HEARING OF THE JURY IN THIS CASE,
3 THAT MR. TILLMAN SOLICITED HIM TO KILL HAYES MALLOY AND
4 SHEILA SCOTT. AND THAT HE NOTIFIED THE GOVERNMENT OF
5 THAT, AND THE F.B.I. THEN SET UP A SURVEILLANCE
6 TRANSACTION. MR. MCQUEEN WAS RELEASED ON FRIDAY
7 AFTERNOON.

8 THE COURT: WASN'T HE PICKED UP BY THE
9 DEFENDANT'S MOTHER OR SOMETHING?

10 MR. BETHEA: YES, SIR. BUT JUST PRIOR, EARLIER,
11 WHEN MR. MCQUEEN WAS BEING BROUGHT BACK TO THE JAIL,
12 ANOTHER PRISONER SAW HIM COMING IN, AND THAT PRISONER ALSO
13 TESTIFIED BEFORE THE GRAND JURY THAT HE WENT AND TOLD MR.
14 TILLMAN ABOUT THAT.

15 WELL, MR. MCQUEEN -- MRS. TILLMAN DID SHOW UP, AND DID
16 PICK HIM UP, AND TOOK HIM TO THE PARTY SHOP. AND ON THE
17 WAY DOWN THERE, SHE MENTIONED THAT HE WAS LOOKING FOR
18 HAYES MALLOY, RIGHT.

19 NOW, BY THE TIME THEY GOT DOWN THERE, I THINK MR.
20 TILLMAN HAD REALIZED THAT MCQUEEN WAS NOT REALLY A HIT
21 MAN, BUT HE WAS A SNITCH. AND HE CALLED THE PARTY SHOP,
22 AND AT THAT POINT THE THING FELL APART. BUT SHE DID THEN
23 TAKE HIM ON TO A MOTEL, ALL OF WHICH MR. MCQUEEN HAD TOLD
24 US WHAT WAS SET UP BEFOREHAND.

25 THE COURT: MCQUEEN, AT LEAST HE WAS UNDER OATH

1 TESTIFYING; THAT HE TESTIFIED TO ALL THIS, DIDN'T HE,
2 BEFORE THIS COURT?

3 MR. BETHEA: YES, SIR. I CAN REPRESENT TO THE
4 COURT THAT HE TESTIFIED TO ALL OF THAT BEFORE THE GRAND
5 JURY, AND WE ALSO HAVE A BODY RECORDING---

6 THE COURT: HE TESTIFIED TO THAT OUT OF THE
7 PRESENCE OF THE JURY, BEFORE ME.

8 MR. BETHEA: AND WE ALSO HAVE A BODY RECORDING
9 THAT WAS PLACED ON MCQUEEN WHERE MRS. TILLMAN ASKED HIM ON
10 THE WAY DOWN TO THE PARTY SHOP IF HE WAS LOOKING FOR HAYES
11 MALLOY.

12 THE COURT: THIS DOESN'T SURPRISE ME. I DON'T
13 KNOW WHETHER IT WAS TOLD TO ME, OR WHETHER I HEARD HAYES
14 MALLOY -- OR MCQUEEN TESTIFY TO THAT OUT OF THE PRESENCE
15 OF THE JURY.

16 MR. SWERLING: YES, SIR. THE ISSUE, THOUGH, YOUR
17 HONOR, WHAT TILLMAN'S MOTHER PICKED HIM UP FOR THE PURPOSE
18 OF TAKING HIM DOWN TO THE PARTY SHOP, BECAUSE TILLMAN HAD
19 ORIGINALLY TALKED ABOUT GIVING HIM A JOB AT THE PARTY
20 SHOP. TILLMAN THEN CALLED THE PARTY SHOP AS SOON AS --
21 WHEN -- AFTER HIS MOTHER PICKED HIM UP, AND...

22 THE COURT: WHO DID THIS, HAYES?

23 MR. SWERLING: ---CALLED ARTHUR ROBERTS, WHO RAN
24 THE PARTY SHOP, AND TOLD HIM NOT DISCUSS ANYTHING, AND NOT
25 TO EVEN CONVERSE WITH MR. MCQUEEN.

1 THE COURT: WASN'T MCQUEEN ONE OF THESE PEOPLE
2 WHO HAVE BEEN IN AND OUT OF TROUBLE, DRUG ADDICT?

3 MR. SWERLING: HE'S GOT A RECORD AS LONG AS MY
4 ARM, YOUR HONOR.

5 THE COURT: WELL, HE WOULD HAVE BEEN A PERFECT --
6 HE WOULD HAVE BEEN A PERFECT EMPLOYEE AT THAT PARTY SHOP.
7 THEY SHOULD GIVE HIM A JOB. HE WOULD BE A PERFECT FELLOW
8 TO BE WORKING THERE. THEY COULDN'T PICK A BETTER FELLOW
9 TO HAVE IN THAT PLACE. IF I WERE LOOKING THE WORLD OVER
10 TO PICK A MAN TO PUT IN CHARGE OF THE PARTY SHOP, THE WAY
11 -- WHAT IT DOES, I WOULD PUT HAYES. THAT'S WHAT I
12 THOUGHT. THAT'S WHO I WOULD PICK. HE'D KNOW EVERYTHING.
13 THERE WASN'T ANYTHING THAT THEY COULD DO THAT HE WOULDN'T
14 KNOW ABOUT.

15 MR. SWERLING: OF COURSE, YOUR HONOR, ALSO WE
16 WOULD LIKE TO STATE THAT THAT CHARGE HAS BEEN DISMISSED BY
17 THE GOVERNMENT. MRS. TILLMAN -- WE WOULD SUBMIT THAT MR.
18 MCQUEEN WAS THE INDIVIDUAL WHO RAISED THE ISSUE ABOUT
19 GOING TO SEE HAYES MALLOY, AND NOT MRS. TILLMAN.

20 THE COURT: WELL. . .

21 MR. BETHEA: YOUR HONOR, I HAVE A COPY OF THE
22 GRAND JURY TESTIMONY OF MRS. TILLMAN AND THE BODY
23 RECORDING, IN WHICH YOU CAN SEE CLEARLY THAT IT'S MRS.
24 TILLMAN THAT RAISED HAYES MALLOY.

25 THE COURT: I REMEMBER SEEING THAT. I REMEMBER

1 THINKING ABOUT IT BEFORE, AND THINKING THEY WERE FAR
2 BETTER PEOPLE THAN THEIR SON, AND THEY WERE TRYING TO HELP
3 HIM. I MEAN, I -- I DON'T THINK SHE TESTIFIED.

4 MR. SWERLING: NO, YOUR HONOR, BUT THERE'S NO
5 INDICATION THAT SHE KNEW -- EVEN IF WHAT THE GOVERNMENT
6 SAYS IS CORRECT, THERE'S NO INDICATION SHE KNEW ANYTHING
7 ABOUT ANY ALLEGED PLANS, ANYWAY. BUT I THINK YOUR HONOR
8 EVEN MADE A COMMENT ABOUT THAT AT THE TRIAL.

9 THE COURT: I THINK WHATEVER CONDUCT THEY DID,
10 SOME OF IT I REMEMBER THAT I THOUGHT, PARTICULARLY THE
11 FELLOW, I DIDN'T BELIEVE; BUT I DON'T BELIEVE ANYBODY
12 UNDER -- OUGHT TO LIE UNDER OATH AND NOT TELL THE TRUTH
13 UNDER OATH. I MEAN, BUT. . .

14 I THINK, MYSELF, I DON'T KNOW WHAT I'D DO IF MY SON
15 HAD A SIMILAR PROBLEM. I WOULDN'T. . . I DON'T MEAN I'M
16 APPROVING IN ANY WAY PERJURY, BUT. . .

17 MR. SWERLING: YOUR HONOR, I GUESS WHAT I WAS
18 TRYING TO SAY WAS THAT THE TAPES DO NOT REFLECT THAT MRS.
19 TILLMAN IN ANY WAY, EVEN IF YOU ACCEPT THE GOVERNMENT'S
20 PROPOSITION THAT HE WAS TAKING -- SHE WAS TAKING HAYES
21 MALLOY -- I MEAN, TAKING MCQUEEN DOWN THERE TO SEE HAYES
22 MALLOY -- DOES NOT REFLECT THAT SHE KNEW WHAT THE -- THE
23 PLANS THAT THE GOVERNMENT ALLEGES WERE GOING TO TAKE
24 PLACE. THAT'S ALL I WAS TRYING TO SAY.

25 THE COURT: I WAS FINDING WHAT PARAGRAPH WE WERE

1 LOOKING AT NOW.

2 MR. BETHEA: I THINK IT WAS THE FIFTH PARAGRAPH
3 YOU'RE ON.

4 THE COURT: THE FIFTH: "THE DEFENDANT OBJECTS TO
5 ANY INFORMATION WITH REFERENCE TO THREATS MADE TO SHEILA
6 SCOTT." I TALKED ABOUT THEM. PROBATION OFFICER FEELS THE
7 DEFENDANT MASTERMINDED. I'VE TALKED ABOUT THAT. SIX, THE
8 ATTORNEY -- PARAGRAPH 43.

9 B., "THERE'S NO CORROBORATING INFORMATION TO SUPPORT
10 THE CHARGE OF EXTRAORDINARY MEANS TO CONCEAL THE
11 COMMISSION OF ANOTHER OFFENSE." WELL, NOW, THERE'S A LOT
12 OF TESTIMONY ABOUT HIM KILLING -- PAYING SOMEBODY TO DO
13 IT. THAT WAS THE REASON HE ROBBED THE BANK. AND I
14 BELIEVE THAT. I HAVEN'T HEARD IT.

15 CERTAINLY I DON'T KNOW HOW YOU COULD OBSTRUCT JUSTICE
16 MORE. THAT'S ENOUGH. WHETHER -- I MEAN, I DON'T NEED TO
17 PAY ANY ATTENTION TO WHAT -- WHETHER RUFUS MCQUEEN WAS --
18 WHETHER HE WAS PLAYING RUFUS MCQUEEN ON, OR WHETHER HE
19 WASN'T. I HAVE NO CONCERN.

20 MR. REEVES: JUDGE, AS FAR AS THE OBSTRUCTION OF
21 JUSTICE, I'D LIKE TO POINT OUT ONE OTHER THING ABOUT -- IN
22 THIS CASE, MR. TILLMAN WAS AT ONE TIME CHARGED. THAT
23 CHARGE WAS DISMISSED WITHOUT PREJUDICE AND COULD BE
24 BROUGHT BACK UP AT ANY TIME. UNDER THE GUIDELINES, WE
25 DON'T ARGUE WITH THE FACT THAT YOU CAN CONSIDER OTHER

1 INFORMATION TO CONSIDER WHETHER THIS -- MR. TILLMAN
2 OBSTRUCTED JUSTICE, OR IMPEDED JUSTICE IN ANY WAY.

3 BUT I WOULD POINT OUT THAT IF THIS WERE TRIED, IF THE
4 CHARGE -- IF HE HAD BEEN CHARGED AND THAT CHARGE WERE
5 TRIED, THE GOVERNMENT WOULD HAVE BEEN REQUIRED TO PROVE
6 THAT, OR PROVE THE ELEMENTS OF THAT CHARGE BEYOND A
7 REASONABLE DOUBT.

8 IN THIS CASE, USING THE OBSTRUCTION OF JUSTICE UNDER
9 THE GUIDELINES, THE ONLY REQUIREMENT IS IS TO A
10 PREPONDERANCE OF THE EVIDENCE, WHICH LOWERS THE
11 GOVERNMENT'S BURDEN, AND IN FACT LOWERS THE BURDEN WHERE
12 THE---

13 THE COURT: WHAT OBSTRUCTION OF JUSTICE CHARGE,
14 WHICH ONE ARE YOU TALKING ABOUT, THE ONE ABOUT MCQUEEN?

15 MR. REEVES: COUNT FOUR, YOUR HONOR, THAT WAS
16 DISMISSED BY THE. . .

17 THE COURT: WELL, COUNT FOUR WAS -- WHAT WAS
18 COUNT FOUR?

19 MR. BETHEA: THAT WAS THE ONE, THE THREAT TO KILL
20 HAYES MALLOY AND SHEILA SCOTT.

21 THE COURT: I DON'T REMEMBER, EXCEPT -- I DON'T
22 REMEMBER ANYTHING MUCH ABOUT TESTIMONY TO KILL SHEILA
23 SCOTT.

24 MR. SWERLING: YOUR HONOR KEPT THAT OUT, BECAUSE
25 HE FELT THAT IT WAS A PREJUDICIAL JOINDER.

1 THE COURT: RIGHT. BUT I REMEMBER TESTIMONY
2 ABOUT THREATS TO KILL HAYES MALLOY. AND THAT CAME OTHER
3 THAN -- THAT CAME FROM RUFUS MCQUEEN, THAT HE HAD TRIED TO
4 EMPLOY HIM TO DO IT, DIDN'T HE?

5 MR. BETHEA: YES, SIR.

6 THE COURT: SOMEBODY ELSE -- THAT RUFUS MCQUEEN
7 THE ONLY WITNESS TO TESTIFY ABOUT THAT?

8 MR. BETHEA: WELL, YOUR HONOR, SINCE YOU KEPT IT
9 OUT OF THE TRIAL, THE ONLY TESTIMONY WOULD HAVE BEEN OUT OF
10 THE PRESENCE OF THE JURY.

11 THE COURT: I KNOW THAT.

12 MR. BETHEA: AND WE DIDN'T GET INTO A GREAT DEAL
13 OF DETAIL. I THINK WE DID HAVE QUITE A BIT OF HEARING ON
14 THE QUESTION OF WHETHER OR NOT TO SEVER IT, AND AT THAT
15 POINT YOU WOULD HAVE HEARD A GREAT DEAL ABOUT THAT
16 CHARGE.

17 MR. SWERLING: BUT THERE WAS NO TESTIMONY, I
18 THINK IS -- RIGHT, THERE WAS NO TESTIMONY?

19 THE COURT: I DIDN'T THINK -- I HEARD ENOUGH FROM
20 RUFUS MCQUEEN, AND FROM HIS THREATS TO OTHER PEOPLE, THAT
21 I BELIEVED THAT THEY TESTIFIED TO, WHILE HE MAY NOT HAVE
22 BEEN GUILTY -- WHILE THERE MAY BE NO EVIDENCE IN THE
23 RECORD, THAT FROM -- ABOUT SHEILA SCOTT, FROM THE
24 TESTIMONY IN THIS CASE, HE MADE ALL KIND OF THREATS.

25 I DON'T KNOW WHETHER SOMEBODY TOLD ME THIS, OR WHETHER

1 IT WAS TESTIMONY. I GUESS IT WAS TESTIMONY, BECAUSE
2 NOBODY WOULD HAVE TOLD ME. IT WAS TESTIMONY ABOUT OTHER
3 THREATS HE MADE, EVEN DOWNSTAIRS. WASN'T THERE
4 TESTIMONY---

5 MR. BETHEA: YES, SIR.

6 THE COURT: ---BY THE MARSHAL ABOUT THAT?

7 MR. BETHEA: TWO UNITED STATES MARSHALS TESTIFIED
8 TO A THREAT AGAINST GABBY WELLS.

9 MR. SWERLING: JACKIE WELLS.

10 THE COURT: YES. I MEAN, HE MADE ENOUGH THREATS
11 TO OBSTRUCTION OF JUSTICE -- WELL, I DON'T KNOW WHETHER
12 THERE WAS ANY THREAT TO KILL SHEILA SCOTT. THERE'S REALLY
13 NO CONTEST. YOU WANT TO DISREGARD THAT, I'LL BE GLAD TO
14 DISREGARD IT. AND THAT'S JUST NOT. . .

15 MR. REEVES: WELL, WHAT I WAS TRYING TO POINT OUT
16 IN THE GUIDELINES, I THINK THAT'S AN INHERENT PROBLEM WITH
17 THEM, BECAUSE IT ALLOWS THE COURT TO CONSIDER INFORMATION
18 THAT IS LESS -- AS A BURDEN OF PROOF, IS LESS UNDER THE
19 GUIDELINES THAN IT WOULD BE IF HE WERE TRIED.

20 THE COURT: I'M CONVINCED BEYOND A REASONABLE
21 DOUBT NOT THE -- THE STATEMENT I MADE ABOUT HIS CONDUCT,
22 HIS THREATS, HIS OBSTRUCTION OF JUSTICE, I SAT HERE AND
23 HEARD THEM. I WATCHED THE WITNESS. I'M CONVINCED EVERY
24 STATEMENT I MADE, THAT THE GOVERNMENT PROVED BEYOND A
25 REASONABLE DOUBT.

1 THE GUIDELINES MAY -- I DON'T NECESSARILY -- IT'S SORT
2 OF LIKE PROBATION REVOCATIONS. AS I UNDERSTAND THIS, THE
3 GUIDELINES HAVE CHANGED NOW, I DON'T THINK -- THE FELLOW
4 IS CHARGED -- SOMEBODY IS CHARGED WITH PROBATION
5 REVOCATION. WELL, THE PROBATION PEOPLE HAVE GOT TO PROVE
6 BY THE PREFONDERANCE OF THE EVIDENCE THAT HE VIOLATED
7 THEIR -- THEIR CONDITION OF PROBATION.

8 BUT I MAY CAN PROVE IT BY A JURY, BY THE SAME -- I
9 MEAN, I MAY CAN PROVE IT BEYOND A RESONABLE DOUBT, BUT I
10 THINK THAT'S ONLY FAIR, AND INVOLVES TAKING A PERSON'S
11 LIBERTY.

12 AND I DON'T CONSIDER ANY CONDUCT IN A CRIMINAL CASE
13 THAT ISN'T PROVED BEYOND A RESONABLE DOUBT. I THINK WHEN
14 YOU TAKE SOMEBODY'S LIBERTY INTO CONSIDERATION, THAT
15 THAT'S A STANDARD THAT I DON'T THINK OUGHT TO CHANGE, AND
16 IT DOESN'T CHANGE ABOUT, AS FAR AS I'M CONCERNED.

17 THAT WOULDN'T MAKE ANY DIFFERENCE TO ME. I MEAN, I
18 HEARD THIS CASE. THIS IS THE WORST CASE I EVER HEARD IN
19 19 YEARS. I MEAN, I HEARD IT; I BELIEVED IT, BEYOND A
20 RESONABLE DOUBT. I BELIEVED IT BEYOND ANY DOUBT. THAT'S
21 A PRETTY STRONG BELIEF OF THE THINGS THAT I HEARD.

22 MR. SWERLING: YOUR HONOR, WE WOULD JUST SAY THE
23 RECORD, WE WOULD SUBMIT, DOES NOT REFLECT -- AND OF
24 COURSE, WE DO NOT HAVE THE RECORD BEFORE US TO LOOK BACK
25 AT -- THAT MR. TILLMAN DID MAKE ANY THREATS TO ANYONE

1 OTHER THAN THE TESTIMONY THAT WAS PRESENTED BY MARSHALS
2 CONCERNING GABBY WELLS. AND OF COURSE, THERE WERE TWO
3 SIDES TO THAT PARTICULAR ISSUE.

4 THE COURT: I AGREE WITH THAT, BUT I HEARD THE
5 TESTIMONY. I HEARD RUFUS MCQUEEN TESTIFY OUT OF THE
6 PRESENCE OF THE JURY, OR ANY PRESENCE, BUT I HEARD HIM
7 TESTIFY, AND I BELIEVED HIM. I BELIEVED EVERYTHING -- I
8 BELIEVED HIM. I BELIEVED THIS DEFENDANT, WHETHER OR NOT
9 HE KNEW HE WAS -- THAT WHETHER OR NOT HE KNEW MCQUEEN WAS
10 WORKING WITH THE STATE OR NOT, I BELIEVE HE'S JUST MEAN
11 ENOUGH AND DANGEROUS ENOUGH TO MAKE THOSE THREATS. I
12 BELIEVE HE MADE THEM. I BELIEVE HE MADE THE THREATS THE
13 MARSHALS TALKED ABOUT.

14 I'VE NEVER SEEN A MORE DANGEROUS DEFENDANT. I BELIEVE
15 HE -- I AGREE WITH THE JURY VERDICT, FROM WHAT I HEARD,
16 THAT THIS SCOTT -- WAS THAT THE NAME? WHAT WAS THE
17 FELLOW'S NAME?

18 MR. SWERLING: SUTTON.

19 MR. BETHEA: DONALD SUTTON.

20 THE COURT: SUTTON. THE JURY PROVED THAT TO BE
21 CORRECT. AND I BELIEVE THE GOVERNMENT PROVED EVERY BIT OF
22 IT, BEYOND A REASONABLE DOUBT, IN MY MIND. IF EVER I SAW A
23 CASE PROVED TO A CERTAINTY, I THINK THIS CASE WAS PROVED
24 TO A CERTAINTY. IF THERE IS SUCH A THING AS PROVING A
25 CASE TO A CERTAINTY. I THINK THAT PUBLISHES ALL THE

1 OBJECTIONS.

2 MR. REEVES: YOUR HONOR, WE DID RAISE -- THE
3 PRE-SENTENCE REPORT INDICATED AT THE END THAT THERE WERE
4 GROUNDS FOR AN UPWARD DEPARTURE.

5 THE COURT: YES, SIR.

6 MR. REEVES: AND WE WOULD ARGUE THAT -- POINT OUT
7 THAT THE -- MR. TILLMAN'S ACTIVITIES HAVE BEEN TAKEN INTO
8 CONSIDERATION BY THE GUIDELINES. HE'S BEEN ENHANCED TO
9 LEVEL FOUR, WHICH IS TWO LEVELS FROM THE MOST SERIOUS.
10 THAT ALL THE RELEVANT FACTORS TAKEN INTO CONSIDERATION,
11 AND THAT THE GUIDELINE RANGE THAT'S BEEN ASSIGNED TO HIM,
12 WHICH I BELIEVE IS 77 TO 96 MONTHS, PLUS THE 60 MONTHS
13 CONSECUTIVE, WOULD ACCURATELY REFLECT HIS CONDUCT, AND
14 ADEQUATELY REFLECT THE FACTS AND CIRCUMSTANCES OF THIS
15 CASE.

16 THE COURT: WELL, I DON'T BELIEVE THAT THE
17 GUIDELINES SETTING FORTH THE 77/96 MONTHS FOR THIS
18 DEFENDANT TAKE INTO CONSIDERATION THE TOTAL PICTURE OF
19 THIS DEFENDANT'S CONDUCT. I MEAN, I SAT HERE AND HEARD
20 THIS. I WATCHED HIM. I WATCHED HIS WITNESSES. THEY
21 COMMITTED PERJURY, A NUMBER OF THEM, AT HIS INSISTENCE. I
22 THINK HE THREATENED -- I'M CONVINCED BEYOND A REASONABLE
23 DOUBT HE THREATENED PERSON AFTER PERSON.

24 HE'S DANGEROUS. LAW AND ORDER DON'T MEAN ANYTHING TO
25 HIM. LIFE DOESN'T MEAN ANYTHING TO HIM. IF THERE'S ANY

1 PERSON THAT I'VE EVER SEEN IN 19 YEARS WHO SHOULD RECEIVE
2 -- WHO SHOULD HAVE A DEPARTURE UPWARD, AND FOR WHOM
3 THERE'S NO -- YOU COULDN'T WRITE THE GUIDELINES STRONG
4 ENOUGH TO TAKE CARE OF HIM, THIS DEFENDANT WHO COMMITS
5 THIS, AND WHO HAS AN UTTER AND TOTAL DISREGARD FOR THE
6 LAW. THAT'S MY FEELING ABOUT IT.

7 AND I'M NORMALLY -- I'M NORMALLY -- WELL,
8 "COMPASSION," THAT IS NOT A GOOD WORD. I'M NORMALLY
9 LENIENT. I'M NORMALLY LENIENT. IF ANYBODY HAS ANYTHING
10 GOOD TO BRING ON, I WOULD, AND I GIVE THEM THAT
11 CONSIDERATION AND CONCERN. AND I THINK SOMEBODY WHO'S
12 DONE SOMETHING BAD, BUT HAS HAD A GOOD LIFE, AND HE
13 SHOULDN'T BE -- IF YOU'RE GOING TO SENTENCE SOMEBODY LIKE
14 THAT, I THINK YOU'VE GOT -- YOU CAN'T LEAVE THE GOOD
15 BEHIND AND JUST TAKE THE BAD. I MEAN, I BELIEVE THAT, AND
16 I SENTENCE PEOPLE WITH THAT IN MIND.

17 I DON'T SEE ANYTHING GOOD IN THIS DEFENDANT. I JUST
18 SEE A VICIOUS CRIMINAL WHO'S GOT A TOTAL AND UTTER
19 DISREGARD FOR LAW AND FOR HUMAN LIFE. AND IF EVER AN
20 UPWARD DEPARTURE IS WARRANTED, IT'S WARRANTED IN THIS
21 CASE, AND I'M GOING TO APPLY AN UPWARD DEPARTURE.

22 NOW, I'LL BE GLAD TO HEAR FROM -- IF ANYBODY -- MR.
23 SWERLING, DO YOU HAVE ANYTHING ELSE YOU WANT TO SAY?

24 MR. SWERLING: YOUR HONOR PLEASE, JUST---

25 THE COURT: AND THE DEFENDANT, OR ANYBODY ELSE

1 THAT YOU WANT.

2 MR. SWERLING: YOUR HONOR, WE WOULD JUST LIKE TO
3 LET YOU KNOW A LITTLE BIT ABOUT HIS BACKGROUND SINCE HE
4 DID NOT TESTIFY. HE IS 30 YEARS OLD. HE FINISHED THE
5 ELEVENTH GRADE, GOT AN EQUIVALENT HIGH SCHOOL DEGREE. HE
6 ATTENDED COURSES AT U.S.C., HE ATTENDED COURSES AT
7 BENEDICT COLLEGE. HE'S BEEN LIVING IN A COLUMBIA
8 COMMUNITY FOR ABOUT 15 YEARS.

9 YOUR HONOR HEARD HIS FATHER TESTIFY HE WAS A RETIRED
10 -- RETIRED MILITARY WITH 25 YEARS' SERVICE, AND THEN ALSO
11 TEN YEARS' SERVICE IN THE CIVIL SERVICE, FOR A TOTAL OF 35
12 YEARS' GOVERNMENT SERVICE. HIS MOTHER WORKS AS A
13 PRINTER. HE HAS TWO BROTHERS AND A SISTER.

14 HE HAS, EXCEPT FOR THE PERIODS OF TIME WHEN HE HAS
15 BEEN INVOLVED WITH THE LAW, WHICH WAS REFLECTED IN THE
16 PRE-SENTENCE REPORT, HE HAS ALWAYS BEEN GAINFULLY
17 EMPLOYED. HE HAS BEEN A PROFESSIONAL BOXER. HE WAS A
18 FORKLIFT DRIVER. HE WORKED AT THE GREENVILLE GENERAL
19 HOSPITAL AS A NURSE'S ASSISTANT. HE WORKED AT THE FACULTY
20 HOUSE AS A WAITER FOR SEVERAL YEARS, DIRECTLY UNDER
21 PRESIDENT HOLDERMAN.

22 IN THE LAST COUPLE OF YEARS PRIOR TO THIS EVENT, HE
23 WAS -- HE RAN THE PARTY SHOP FOR HIS FATHER. HE ALSO HAD
24 A TALENT PROMOTIONAL BUSINESS THAT HE OPERATED. BASICALLY
25 HAD A VERY GOOD WORK ETHIC, AND MADE SOME MONEY, AND MADE

1 A CONTRIBUTION IN THAT RESPECT.

2 YOUR HONOR, AS FAR AS THE SENTENCE THAT YOU WOULD
3 IMPOSE IN THIS CASE, WE WOULD ASK YOUR HONOR NOT TO, OF
4 COURSE, IMPOSE AN UPWARD DEPARTURE. WE COULD ASK YOUR
5 HONOR TO SENTENCE MR. TILLMAN WITHIN THE SENTENCING GUIDE-
6 LINE RANGE. WHEN HE WAS CONVICTED OF THE MURDER CHARGE,
7 HE WAS SENTENCED TO LIFE IN PRISON IN SOUTH CAROLINA.
8 WHICH, YOUR HONOR, FOR THE COURT'S INFORMATION, IS A
9 20-YEAR SENTENCE WITHOUT PAROLE, OR AMOUNTS TO NO PAROLE
10 FOR A PERIOD OF 20 YEARS.

11 THE COURT: HE COULD SERVE, AS I UNDERSTAND, FOR
12 20 YEARS.

13 MR. SWERLING: RIGHT. CAN NOT EVEN BE
14 CONSIDERED. SO MR. TILLMAN, JUST ON THAT CHARGE ALONE,
15 WILL NOT EVEN BE ELIGIBLE FOR PAROLE FOR A PERIOD OF 20
16 YEARS IF THAT CONVICTION IS AFFIRMED.

17 WE WOULD ASK YOUR HONOR NOT ONLY NOT TO IMPOSE AN
18 UPWARD DEPARTURE IN THE CASE, BUT TO CONSIDER ALLOWING THE
19 FEDERAL SENTENCE THAT YOU DO IMPOSE TO RUN CONCURRENT WITH
20 THE STATE SENTENCE, AND ALLOW THAT TO BE SERVED IN A SOUTH
21 CAROLINA FACILITY WITHIN THE DEPARTMENT OF CORRECTIONS.

22 TAKING INTO CONSIDERATION THAT HE IS NOT GOING TO BE
23 ELIGIBLE FOR PAROLE FOR AT LEAST 20 YEARS, WHICH WOULD
24 MAKE HIM 50 YEARS OLD BEFORE HE'D EVEN BE ELIGIBLE FOR
25 PAROLE UNDER THE STATE SENTENCE, AND WE THINK THAT THAT

1 WOULD ADEQUATELY REFLECT WHATEVER CRIMINAL CONDUCT HE HAS
2 BEEN CONVICTED OF. IT'S AN ADEQUATE PUNISHMENT FOR THAT.
3 HE WILL BE WELL INTO HIS MIDDLE AGES BEFORE HE IS EVEN
4 CONSIDERED FOR PAROLE.

5 AND WE WOULD JUST ASK YOUR HONOR TO DO THOSE TWO
6 THINGS: NOT UPWARD DEPART, AND TO RUN THE SENTENCE
7 CONCURRENT. I DON'T KNOW IF MR. TILLMAN HAS ANYTHING HE
8 WOULD LIKE TO SAY TO THE COURT, BUT WE WOULD GIVE HIM THE
9 OPPORTUNITY TO DO SO.

10 THE COURT: GLAD TO HEAR FROM HIM.

11 THE DEFENDANT: OKAY. FIRST OF ALL, WHEN I CAME
12 TO THIS COURTROOM, I FELT THAT THINGS WASN'T GOING TO
13 HAPPEN FOR ME ANYWAY. I KNEW BEFORE I CAME IN HERE THAT
14 THEY WAS GOING TO FIND ME GUILTY. BEFORE I CAME HERE
15 TODAY FOR THIS SENTENCING, I WAS ALREADY INFORMED THAT MY
16 SENTENCE WOULD BE RUNNING CONSECUTIVE BY A TALK FROM THE
17 U. S. MARSHALS WITH THE PEOPLE THAT I'VE TALKED TO. SO
18 WHEN I CAME IN HERE---

19 THE COURT: WAIT A MINUTE, LET ME -- THEY MAY
20 HAVE IMAGINED THAT.

21 THE DEFENDANT: YES.

22 THE COURT: THEY MAY HAVE A BASIS FOR IMAGINING
23 IT, BUT LET ME ASSURE YOU THAT I NEVER DISCUSSED THIS
24 SENTENCE WITH ANYONE. THEY MAY HAVE IMAGINED THAT, THEY
25 MAY HAVE SAID THAT, BUT I NEVER DISCUSSED YOUR SENTENCE

1 WITH ONE SOUL. GO AHEAD.

2 THE DEFENDANT: THIS IS WHAT I WAS TOLD, YOUR
3 HONOR. AND I AM NOT -- I'M NOT A MURDERER. I DID NOT
4 MURDER DONALD SUTTON. REGARDLESS WHETHER ANYBODY BELIEVE
5 ME OR NOT.. I DID NOT KILL HIM. AND I WILL NEVER ADMIT
6 THAT I KILLED HIM. I DIDN'T ROB NO BANK TO GET MONEY TO
7 KILL DONALD SUTTON. AND BEFORE I LEAVE THIS EARTH, I WILL
8 TRY MY BEST TO PROVE THAT I DIDN'T KILL DONALD SUTTON.

9 I'M -- I'M MAD. YES, I'M MAD. I WAS MAD BECAUSE OF
10 THE PEOPLE THAT CAME IN. EVERYBODY WAS A NOBODY, BUT WHEN
11 THEY CAME IN THIS COURT, THEY WERE SOMEBODY. THEY MADE
12 THEM TO BE SOMEBODY. I AM SOMEBODY TOO. AND I DO HAVE
13 FEELINGS. AND I KNOW I'M NOT A MURDERER. I KNOW, AND I'M
14 NOT GOING TO LET THESE PEOPLE SAY I AM A MURDERER. THEY
15 MAY HAVE PROVED IT RIGHT NOW, BUT I'M NOT A MURDERER, AND
16 I'M TO NOT GOING TO SIT DOWN AND LET ANYBODY CALL ME ONE,
17 BECAUSE I'M NOT.

18 I DIDN'T KILL DONALD SUTTON. AND MRS. SUTTON, I DID
19 NOT KILL DONALD. I DON'T CARE WHAT ANYBODY IN THIS
20 COURTROOM SAYS, OR MAKE ME BE WHAT THEY WANT ME TO BE.
21 I'M NOT GOING TO BE WHAT THEY WANT ME TO BE; I'M GOING TO
22 BE WHAT I HAVE TO BE. AND IF I HAVE TO DIE TRYING TO
23 PROVE THAT I DIDN'T KILL DONALD, THEN THAT'S THE WAY IT
24 WILL BE. BECAUSE I'M NOT A MURDERER.

25 I DIDN'T ROB NO BANK TO GET NO MONEY TO PAY HAYES

1 MALLOY TO KILL DONALD SUTTON. HAYES MALLOY HAS USED THIS
2 COURTROOM AND THE STATE SYSTEM TO GET OUT OF HIS CHARGES.
3 THEY DISMISSED EVERY CHARGE AGAINST HIM. HE WILL BE --
4 AND NEVER BE CONVICTED FOR ANY CHARGES. HAYES IS A
5 MURDERER, OR IS A HELPER OF A MURDERER. I DID NOT KILL
6 DONALD, AND I'M NEVER GOING TO LET ANYBODY MAKE ME OUT TO
7 BE THE ONE THAT KILLED DONALD SUTTON.

8 AND I DIDN'T RECEIVE A FAIR TRIAL. ONE OF THE LADIES
9 ON THE JURY CALLED MY MOTHER, TOLD MY MOTHER I WAS FOUND
10 GUILTY EVER BEFORE THEY EVER DELIBERATED THIS CASE.

11 PEOPLE HAVE SAID THINGS ABOUT ME THAT WASN'T TRUE.
12 PEOPLE MADE ME TO BE THINGS THAT THEY WANTED ME TO BE.
13 BUT THEY -- PEOPLE HAVE SAID THINGS ABOUT ME THAT'S NOT
14 TRUE. THEY'VE TOLD PEOPLE THINGS ABOUT ME THAT WASN'T
15 TRUE. THEY'VE SCARED MY WITNESSES OFF, AND I HAVE NEVER
16 TRIED TO GET ANYBODY TO COME IN THIS COURTROOM AND LIE FOR
17 ME.

18 I'VE GOTTEN PEOPLE, THE ONLY PEOPLE THAT I CAN GET.
19 YOU DON'T FIND PEOPLE THAT HANG AROUND A PARTY SHOP THAT
20 LOOK LIKE SOMEBODY, ESPECIALLY IN THAT NEIGHBORHOOD. I
21 COULDN'T GO OUT AND FIND PEOPLE THAT WORE SUITS, LIKE
22 THESE PEOPLE, THE WITNESSES, WORE SUITS. I COULDN'T FIND
23 THOSE TYPE OF PEOPLE. THE ONLY PEOPLE I COULD GET TO COME
24 TESTIFY FOR ME WERE THE PEOPLE THAT HANG AROUND A PARTY
25 SHOP, AND THOSE PEOPLE THAT HANG AROUND A PARTY SHOP, MOST

1 OF THEM HAVE CRIMINAL RECORDS. MOST -- YOU'RE NOT GOING
2 TO FIND---

3 THE COURT: I AGREE WITH THAT.

4 THE DEFENDANT: YOU'RE NOT GOING TO FIND
5 DECENT---

6 THE COURT: YOU MIGHT HAVE MADE SOME MISTAKES
7 BEFORE, BUT YOU NEVER MADE A TRUER STATEMENT THAN YOU JUST
8 MADE. THERE'S NOTHING BUT A BUNCH OF CRIMINALS HAND OUT
9 THERE, AND DRUG ADDICTS.

10 THE DEFENDANT: YOU CAN'T FIND---

11 THE COURT: IF YOU HAVE TO RELY ON THOSE PEOPLE
12 THAT HANG OUT AT THAT PLACE, YOU HAVE TO RELY ON DRUG
13 ADDICTS AND CRIMINALS. AND I AGREE WITH IT. ONE THING I
14 AGREE WITH, AND THAT SHOP IS A BREEDING -- IS A PLACE
15 WHERE CRIME BREEDS. I AGREE WITH THAT. GO AHEAD.

16 THE DEFENDANT: AND LIKE I SAY, IT'S THINGS LOOK
17 REAL BAD. AND, YOUR HONOR, I'M NOT THE TYPE OF PERSON.
18 EVERYBODY HAS FORMED AN OPINION ABOUT ME BECAUSE OF THE
19 FACT THAT I -- I MEAN, I SUPPOSED TO STAND UP AND JUST ACT
20 LIKE A NORMAL PERSON WITH THESE TYPE OF CHARGES ON ME. I
21 -- I MEAN, EVERYBODY SAY, "WELL, OKAY, I SUPPOSED TO" --
22 YOU KNOW, I SUPPOSED TO BE LUCKY-GO-HAPPY. I'M NOT A
23 PERSON THAT WOULD -- WOULD ANYBODY WOULD LIKE TO BE
24 CHARGED WITH A CRIME, KNOWING THAT HE DIDN'T COMMIT THAT
25 CRIME.

1 AND I -- YES, I WAS MAD, AND I SAID SOME THINGS, BUT
2 EVERYBODY HEAR WHAT I SAY. NOBODY EVER HEARS WHAT ANYBODY
3 ELSE HAD TO SAY TO ME, OR THREATENED ME. BECAUSE LIKE I
4 SAY, HAYES MALLOY SAT AROUND HERE, AND HE LAUGHED, AND HE
5 PLAYED REAL WELL, AND HE PLAYED THE SYSTEM.

6 BUT THE ONLY THING I ASK THE STATE, IF THEY'RE GOING
7 TO ALLOW, DON'T CLOSE THAT CASE, BECAUSE I'M NOT THE ONE
8 THAT KILLED DONALD SUTTON. THEY GOT WHO THEY WANTED, THEY
9 GOT ME. THEY GOT WHO THEY WANTED. I'M THE ONE THAT THEY
10 WANTED, BECAUSE THEY BEEN WANTING ME FOR AWHILE. BUT NOW
11 THEY HAVE ME, BUT THEY DON'T HAVE THE RIGHT PERSON. I'M
12 NOT THE ONE THAT KILLED DONALD SUTTON. I DID NOT KILL
13 HIM, NEVER WILL I -- AND I WILL DIE BEFORE I EVER ADMIT
14 THAT I KILLED DONALD SUTTON, BECAUSE I KNOW I DIDN'T KILL
15 HIM.

16 THE COURT: ANYTHING ELSE?

17 MR. SWERLING: YOUR HONOR, I WOULD POINT OUT THAT
18 MR. TILLMAN IS CORRECT THAT THE MURDER CHARGES AGAINST MR.
19 MALLOY WERE NOT PROSSED THE DAY BEFORE HE TESTIFIED. AND
20 IF ANYBODY EVER HAD A MOTIVE, OR BIAS OR PREJUDICE TO GAIN
21 SOMETHING FROM TESTIMONY, I WOULD SUBMIT THAT HE DID.

22 THE COURT: ALL RIGHT, SIR.

23 MR. REEVES: YOUR HONOR, I WOULD ASK THE COURT TO
24 CONSIDER, SINCE IT IS OBVIOUS THE COURT HAS CONSIDERED
25 UPWARD DEPARTURE, THAT THE NEXT LEVEL UP WHICH WOULD

1 ADEQUATELY COVER WHATEVER FACTORS THE COURT FEELS WARRANT
2 DEPARTURE, AND WOULD ASK THE COURT TO CONSIDER A SENTENCE
3 WITHIN THE GUIDELINE RANGE OF THE NEXT LEVEL UP. IN OTHER
4 WORDS, A LEVEL 24 UNDER THE CURRENT 35, WHICH IS THE NEXT
5 PROCEEDING.

6 AND I BELIEVE THAT WOULD ADEQUATELY TAKE INTO
7 CONSIDERATION THE FACTORS THE COURT HAS SET FORTH AS BEING
8 FACTORS THAT INFLUENCED THE COURT'S DECISION FOR AN UPWARD
9 DEPARTURE.

10 THE COURT: WELL, THE RECORD -- THE COURT ADOPTS
11 THE PRE-SENTENCE REPORT, WITH WHATEVER MODIFICATIONS I HAD
12 TO SAY ABOUT IT, AS THE FACTUAL FINDINGS AND LEGAL
13 CONCLUSION OF THE COURT.

14 OF COURSE, I WASN'T PRESENT, THANK THE LORD, AT THE
15 COMMISSION OF ANY OF THESE CRIMES, THREATS. BUT I'M
16 CERTAIN, NOT BEING THERE, AS I COULD BE, THE JURY'S FOUND
17 ONE CRIME PROVED BEYOND A RESONABLE DOUBT. I THOUGHT IT
18 WAS PLAIN FROM TESTIMONY THAT I HEARD. I'M CONVINCED
19 BEYOND A RESONABLE DOUBT THAT THESE THREATS THAT WE
20 DISCUSSED WERE MADE. I'M SURE AS I'M SITTING IN THIS
21 CHAIR THAT HE ROBBED THAT BANK AND THREATENED THAT LITTLE
22 GIRL. I'M POSITIVE OF ALL THAT. HE---

23 MR. SWERLING: YOUR HONOR, I APOLOGIZE. I DIDN'T
24 REALIZE MR. TILLMAN HAD COME IN. HE WAS NOT HERE WHEN WE
25 STARTED THE PROCEEDING. HE WOULD LIKE TO SAY SOMETHING.

1 IF YOUR HONOR PLEASE.

2 THE COURT: I'LL BE GLAD. I'M ALWAYS GLAD TO
3 HEAR FROM SOMEBODY.

4 MR. SWERLING: THANK YOUR HONOR. HIS MOTHER HAS
5 BEEN HERE, BUT I DIDN'T REALIZE HIS FATHER HAD WALKED IN.

6 THE COURT: I THINK THE PARENTS SUFFERED, YOU
7 KNOW, ABOUT AS BAD AS THE -- AS THE CHILD. I MEAN, I'LL
8 BE GLAD TO HEAR FROM YOU, MR. TILLMAN.

9 MR. TILLMAN: YOUR HONOR, MY NAME IS THOMAS
10 TILLMAN, UNITED STATES NAVY, RETIRED.

11 THE COURT: YES, SIR, I REMEMBER YOU FROM THE
12 TRIAL.

13 MR. TILLMAN: I HEARD A LOT OF INFORMATION BEING
14 PUT OUT IN THE COURT, EVEN ABOUT MY BUSINESS.

15 THE COURT: YES, SIR. WHAT I SAID, I BELIEVE.

16 MR. TILLMAN: AND WE RAISED RONALD THE BEST WE
17 COULD. BUT IN THE LAST THREE CASES THAT WE HAD AGAINST
18 RONALD, THIS IS NOTHING BUT A CHARADE.

19 THE COURT: TALK A LITTLE LOUDER. I CAN'T HEAR
20 YOU.

21 MR. TILLMAN: ANYWAY, I'VE HEARD MOST OF THE
22 TESTIMONY. A LOT THAT I DIDN'T HEAR. THE NAMES THAT YOU
23 CALLED, THAT I WOULDN'T NEVER BELIEVE ANYTHING THEY WOULD
24 EVER SAY. PARTICULARLY HAYES MALLOY, GABBY WELLS. THOSE
25 PEOPLE, I WOULDN'T BELIEVE IF THEY SAID IT WAS A GOLDEN

1 TRUCK ROLLING DOWN THE STREET, AND THERE WAS A GOLD TRUCK
2 ROLLING DOWN THE STREET.

3 THOSE PEOPLE ARE UNDESIRABLE PEOPLE. I MEAN
4 UNDESIRABLE. GABBY WELLS, I'VE SEEN HIM SITTING DOWN
5 BESIDE A KID AND JUMPED ON HIM AND TRIED TO TAKE HIS MONEY
6 FROM HIM. I CALLED THE OFFICER. HAYES MALLOY, HE TRIED
7 -- HE ALMOST KILLED MY PARTNER. HE SHOT THROUGH MY
8 BUSINESS DOOR. THESE---

9 THE COURT: I REMEMBER TESTIMONY ABOUT THAT.

10 MR. TILLMAN: YEAH. RIGHT. BUT THESE PEOPLE ARE
11 UNDESIRABLE PEOPLE. MY SON IS NOT AN UNDESIRABLE PERSON,
12 NOT JUST BECAUSE HE'S MY SON. HE HAS BEEN RUNNING WITH
13 THE LAW, BUT WHEN HE CAME BACK HOME HE WAS SQUARED AWAY,
14 AND THAT'S WHY I PUT HIM IN CHARGE OF MY BUSINESS. NOW,
15 HAYES---

16 THE COURT: YOU SEEM TO BE A NICE PERSON. YOU
17 MUST STAY AWAY FROM THAT BUSINESS.

18 MR. TILLMAN: NO, I'M THERE EVERY NIGHT. AND THE
19 BUSINESS IS A BUILDING WITH FOUR WALLS IN IT. THE
20 NEIGHBORHOOD -- NOW, THEY'RE TALKING ABOUT CLOSING---

21 THE COURT: LET'S DON'T YOU AND I TALK ABOUT YOUR
22 BUSINESS, THEN. I'VE HEARD ALL I WANT TO HEAR ABOUT
23 THAT. I MEAN, I'LL BE GLAD TO HEAR ANYTHING YOU'VE GOT TO
24 SAY ABOUT THE BOY AND THE WITNESSES. I DON'T WANT TO HEAR
25 ANY MORE ABOUT YOUR BUSINESS.

1 MR. TILLMAN: OKAY. BUT RONALD IS A GOOD
2 PERSON. RONALD HAS GOT A KIND HEART. RONALD DOESN'T HAVE
3 ANY BAD BLOOD IN HIM. NOW, I TALKED TO HIM ABOUT THE BANK
4 ROBBERY. I TALKED TO HIM ABOUT EVERYTHING. HE CAME TO ME
5 AND HIS MOTHER. HE SAID HE DIDN'T DO ANYTHING, EVEN THE
6 MURDER. HE SAID, "IF I DID, I WOULDN'T WANT YOU TO SPEND
7 A DIME ON ME." HE SAID, "BUT I AM NOT GUILTY OF ANYTHING,
8 DOING ANYTHING WRONG."

9 I SAID, "WELL, RONALD, I KIND OF BELIEVE YOU THIS
10 TIME." I SAID, "A FEW OTHER TIMES THAT YOU CAME TO ME,
11 YOU KNOW, KIND OF PULLED MY LEG." BUT ME AND RONALD GOT
12 PRETTY CLOSE. PRETTY CLOSE.

13 AND HE WAS STRICTLY A LITTLE YOUNG BUSINESSMAN, AS FAR
14 AS I WAS CONCERNED. BECAUSE A MAN WOULDN'T WORK FOUR JOBS
15 AND GO OUT AND ROB A BANK. RONALD WAS WORKING ABOUT FOUR
16 JOBS. HE WAS WORKING FULLTIME FOR ME, FULLTIME NEXT DOOR
17 TO THE ASHLEY CONTAINER PAPER COMPANY, PLUS HE WAS BOOKING
18 THE SHOWS, DANCING. HE HAD HIS WHOLE LIFE GOING FOR HIM.
19 AND THAT DON'T TELL ME A MAN WOULD GO OUT AND ROB A BANK.
20 I DON'T BELIEVE SO.

21 EVEN WITH DONALD SUTTON, HIS BEST FRIEND. I EVEN
22 HELPED RAISE HIS BEST FRIEND. THEY'RE NEXT DOOR
23 NEIGHBORS, RIGHT ACROSS THE STREET. DONALD USED TO STAY
24 OVER AT MY HOUSE ALL THE TIME. THE DAY HE GOT OUT OF JAIL
25 HE WAS OVER AT MY HOUSE. HIM AND RONALD WERE RIGHT BACK

1 TOGETHER. THESE WERE GOOD FRIENDS. YOU JUST DON'T GO OUT
2 AND KILL A GOOD FRIEND LIKE THAT. EVERY TIME I LOOK UP, I
3 SEE RONALD, I SEE DONALD. THESE KIDS WERE REAL CLOSE.
4 RONALD AND DONALD, THAT'S WHAT I CALLED THEM. AND I NAMED
5 THE BOY "DUCK," BECAUSE I RAISED HIM.

6 '76, I MOVED BACK TO COLUMBIA. THEY WERE LITTLE KIDS
7 THEN. DONALD USED TO STAY OVER AT MY HOUSE ALL THE TIME.
8 I WAKE UP IN THE MORNING, THERE WAS DONALD, EATING
9 BREAKFAST. DONALD SAY, "I STAYED OVER HERE LAST NIGHT."
10 HE CONSTANTLY STAYED AT MY HOUSE. WHEN RONALD CAME HOME,
11 HIM AND DONALD WAS THE CLOSEST FRIENDS YOU COULD EVER
12 SEE.

13 AND TO KILL SOMEBODY OVER A BURGER KING ROBBERY, IT
14 DOESN'T MAKE SENSE. IT DOESN'T ADD UP.

15 I'VE HEARD A LOT, I EVEN HAD PHONE CALLS. SAY A MAN
16 TOLD ME JUST LAST WEEK---

17 THE COURT: I CAN'T HEAR YOU, SIR.

18 MR. TILLMAN: A GENTLEMAN TOLD ME JUST LAST WEEK,
19 HE SAYS, "RONALD DIDN'T ROB THE BANK. AND RONALD DIDN'T
20 KILL DONALD." HE SAID, "BUT I'M NOT AT LIBERTY TO TELL
21 YOU WHO TOLD ME." I GET THE PHONE CALLS. PEOPLE CALL ME
22 SAY, "HEY, YOUR SON DIDN'T DO IT." I SAID, "WELL, WHAT"
23 -- I SAID, "WELL, WHY DIDN'T SOMETHING" -- AND THIS WAS A
24 LAW ENFORCEMENT AGENCY TELLING ME THAT. BUT THEY GOT --
25 THE MAN WILL NOT COME FORWARD BECAUSE HE JEOPARDIZES HIS

1 JOB.

2 MY WIFE GOT PHONE CALLS. EVEN THE GENTLEMAN CALLED MY
3 HOUSE TOLD MY WIFE, SAID, "YOUR SON DIDN'T DO THIS."

4 THE COURT: DO YOU KNOW WHO THOSE PEOPLE WERE?

5 MR. TILLMAN: I DON'T KNOW.

6 MRS. TILLMAN: HE WOULDN'T GIVE ME A NAME.

7 MR. TILLMAN: WE GOT PHONE CALLS. THE MAN CALLED
8 THE HOUSE.

9 MRS. TILLMAN: THEY SAYS EVERYTHING THAT LED --
10 THEY CHECKED ON RON AND MURDER, LED TO HAYES MALLOY. AND
11 HE CALLED ME TWICE. AND HE SAID, "IF I COME FORWARD, MY
12 LIFE WILL BE IN DANGER, AND MY FAMILY." HE SAYS, "BUDDY
13 BETHEA WAS OUT TO GET RONALD." HIM AND RONALD RAN MY
14 BUILDING. AND SAID, "BUDDY BETHEA IS AFTER RONALD, AND
15 IT'S PERSONAL."

16 HE SAID THEY WAS REMOVING THINGS FROM THE COMPUTER
17 THAT WOULD HELP RONALD. AND EVERYTHING HE WENT TO
18 INVESTIGATE ON RONALD POINT TO HAYES MALLOY. HE SAID THAT
19 WAS NOTHING. HE WAS THE INVESTIGATOR. AND I ASKED HIM,
20 "PLEASE COME FORWARD."

21 AND IF I HAD'VE KNOWN THAT HE WAS GOING TO CALL BACK,
22 AND WHAT TIME, I'D HAVE TAPED HIM TO BRING TO COURT AND
23 PROVE THAT I'M NOT LYING. HE DIDN'T KNOW TO CALL ME, HE
24 CALLED SUTTON'S MOTHER. I DON'T KNOW WHAT HE SAID TO HER,
25 BUT HE CALLED HER FIRST, AND HE CALLED ME ON A SATURDAY

1 MORNING ABOUT SEVEN O'CLOCK.

2 HE SAID, "MRS. SUTTON IS NOT HOME." HE SAID, "BUT I
3 WILL CALL HER BACK SUNDAY," AND HE DID, BECAUSE SHE WAS
4 OUT OF TOWN AT A CONVENTION. HE CALLED HER, BECAUSE SHE
5 TOLD ME. AND HE SAID, "YOUR SON DID NOT KILL DONALD. THE
6 EVIDENCE DO NOT PROVE IT." AND I WAS EVEN TOLD THAT
7 RONALD CASE, THE FEDERAL HAD CHANGED RON CASE NUMBER. AND
8 HE SAY, "I DON'T KNOW WHAT IT IS, THAT BUDDY BETHEA IS
9 AFTER YOUR SON." HE SAID, "BUT IT'S PERSONAL."

10 AND WE WAS THINKING, I ASKED HIM, "RONALD, WHAT, DO
11 YOU KNOW BUDDY BETHEA? HAVE YOU EVER HAD A RUN-IN WITH
12 BUDDY BETHEA?" HE SAYS, "NO, MOMMA, I NEVER KNOWN BUDDY
13 BETHEA UNTIL THIS BANK ROBBERY." AND THEN WE WAS LOOKING
14 IN THE PAPER. I SAW HIS WEDDING PICTURE, AND IT HAD,
15 "DILLON, SOUTH CAROLINA." AND HE SAID TO ME, "THE ONLY
16 THING, THIS COULD BE THE REASON, BECAUSE I'VE BEEN ACCUSED
17 OF ROBBING A BURGER KING IN DILLON."

18 AND HE SAID, "I DON'T KNOW IF THIS THE REASON OR NOT."
19 HE SAID, "BUT I DID NOT ROB NO BANK." AND HE SAID, "I DID
20 NOT KILL DONALD.".

21 AND WHOEVER THE INVESTIGATOR WAS, I ASKED HIM TO
22 PLEASE COME FORWARD. BUT HE SAYS HIS LIFE, HIS FAMILY --
23 HE HAVE TO THINK ABOUT HIS FAMILY, AND HE HAVE TO THINK
24 THAT BUDDY BETHEA -- HE ASKED QUESTIONS. BUDDY BETHEA
25 TOLD HIM, "IF YOU DON'T KEEP YOUR MOUTH CLOSED, YOU WILL

1 NOT HAVE A JOB."

2 THE COURT: NOW, LET ME TELL YOU, THERE ARE TWO
3 THINGS I'M HEARING. YOU'VE BEEN TALKING ABOUT YOUR SON,
4 THE SOLICITOR'S OFFICE AND THE UNITED STATES ATTORNEY'S
5 OFFICE.

6 MRS. TILLMAN: YES.

7 THE COURT: I BELIEVE I KNOW AS MUCH ABOUT THE
8 TWO OF THEM, MORE THAN THE AVERAGE PERSON, AND AS MUCH AS
9 ANY JUDGE.

10 MRS. TILLMAN: YES.

11 THE COURT: FIRST OF ALL, I'VE KNOWN, TO START
12 WITH, THE SOLICITOR. I'VE KNOWN SOLICITOR ANDERS FOR
13 ABOUT AS FAR AS BACK AS -- I'M A LOT OLDER THAN HE IS,
14 BECAUSE HE GREW UP, AND I HIRED HIM. I THINK HE'S A
15 PERSON OF CHARACTER AND INTEGRITY. I THINK HE RUNS THAT
16 OFFICE THAT WAY. I THINK HE'S DONE CREDIT TO THE
17 SOLICITOR'S OFFICE, AND TO -- BEEN A CREDIT TO HIMSELF AND
18 AS WELL AS TO HIS OFFICE DURING HIS TENURE IN OFFICE. AND
19 I THINK THE CITIZENS OF RICHLAND COUNTY HAVE BEEN
20 FORTUNATE TO HAVE HIM AS SOLICITOR, AND I DON'T THINK HE
21 WOULD PARTICIPATE IN ANYTHING.

22 MRS. TILLMAN: NO, I WASN'T TALKING ABOUT
23 SOLICITOR ANDERS, YOUR HONOR.

24 THE COURT: WELL, YOU WERE TALKING ABOUT THE
25 PROSECUTION OF YOUR BOY FOR THE MURDER. I THINK -- I

1 DON'T THINK MR. ANDERS WOULD HAVE ALLOWED THAT TO GO FORTH
2 IF HE HAD REACHED ANY AGREEMENT. AND I DON'T THINK
3 ANYBODY IN HIS OFFICE, OR MR. ANDERS, TRIED TO SET YOUR
4 SON UP. AND I SCHEDULE THE UNITED STATES ATTORNEY'S
5 OFFICE.

6 MRS. TILLMAN: NO.

7 THE COURT: I'VE KNOWN MR. BETHEA EVER SINCE HE'S
8 BEEN THERE. NOT NEARLY AS LONG AS I'VE KNOWN MR. ANDERS.
9 BUT I'VE KNOWN THE UNITED STATES ATTORNEY WHO WAS IN
10 OFFICE DURING THE TIMES OF THIS TRIAL AND INVESTIGATION.
11 I'VE KNOWN MR. BETHEA. I BELIEVE THEY HAVE BEEN PEOPLE OF
12 CHARACTER AND INTEGRITY, AND I DON'T BELIEVE BUDDY BETHEA
13 WOULD THREATEN ANYBODY WITH THEIR JOB IF THEY TOLD THE
14 TRUTH. IF I THOUGHT THERE WAS ANY MERIT IN THAT, HE
15 WOULDN'T BE IN THIS COURTROOM.

16 I THINK HE'S A MAN OF CHARACTER AND INTEGRITY. I JUST
17 HAVEN'T KNOWN HIM AS LONG AS I'VE KNOWN MR. ANDERS, AND I
18 JUST. . . I CAN UNDERSTAND YOURS AND YOUR HUSBAND'S
19 BELIEF. I MEAN, I'D BE -- GOD FORBID IT, WITH MY SON, I'D
20 BE THERE JUST LIKE YOU ARE.

21 MRS. TILLMAN: NO, IF RONALD---

22 THE COURT: THERE'S NOTHING I WOULDN'T SAY OR DO
23 IN HIS BEHALF, AND I'M NOT SO SURE THAT -- WHAT I'D DONE.
24 I'D DO ANYTHING TO HELP HIM.

25 MRS. TILLMAN: YOUR HONOR. . .

1 THE COURT: I TRY TO KEEP MYSELF WITHIN THE
2 BOUNDS OF THE TRUTH. BUT I DON'T KNOW, IF I HAD A SON
3 FACED WITH WHAT YOURS IS FACED WITH, WHAT I'D DO.

4 MRS. TILLMAN: I WOULDN'T LIE FOR MYSELF.

5 THE COURT: IF YOU FACE IT, YOU'VE GOT TO GO DOWN
6 THAT ROAD BEFORE YOU EVER UNDERSTAND IT. AND THANK GOD I
7 HAVEN'T BEEN DOWN IT.

8 MRS. TILLMAN: BUT I WOULD NOT LIE FOR HIM, YOUR
9 HONOR. LIKE I TOLD RONALD, IF I EVEN THOUGHT HE WOULD
10 KILL DONALD, HE WOULD HAVE TO GO WITH THE PUBLIC
11 DEFENDER. I WOULDN'T---

12 THE COURT: WELL, THE JURY FOUND HIM GUILTY.

13 MRS. TILLMAN: YEAH, HE BEEN FOUND GUILTY.

14 THE COURT: AND I BELIEVE HE WAS FOUND GUILTY
15 BECAUSE HE WAS GUILTY. I HEARD ENOUGH TO MAKE ME THINK
16 THAT. I BELIEVE HE GOT A FAIR TRIAL. I DON'T BELIEVE MR.
17 ANDERS WOULD HAVE HAD ANYTHING BUT A FAIR TRIAL COME OUT
18 OF HIS OFFICE. I THINK HE GOT A FAIR TRIAL IN THIS COURT,
19 BECAUSE I DON'T THINK MR. BETHEA WOULD HAVE ANYTHING
20 ELSE.

21 IT DOESN'T MEAN -- I UNDER--- ONE THING I DO
22 UNDERSTAND. I UNDERSTAND YOUR FEELINGS, AND I UNDERSTAND
23 YOUR FEELINGS. AND I UNDERSTAND THE FACT THAT YOU BELIEVE
24 WHAT YOUR SON TELLS YOU, BECAUSE I BELIEVE WHAT MY
25 CHILDREN TELL ME. I MEAN, I -- THANK GOD THEY'RE NOT

1 INVOLVED IN ANYTHING. I'VE NEVER HAD ANY CAUSE TO DOUBT
2 THEM. AND I'M SURE, AS I'VE SAID TEN TIMES, IF THEY WERE
3 IN TROUBLE, I THINK 99 PERCENT OF US WOULD BE STANDING UP
4 SIDE BY SIDE. AND I THINK YOU OWE THAT TO YOUR CHILDREN.

5 I'M NOT FAULTING YOU FOR WHAT YOU'VE GOT TO SAY AND
6 FOR WHAT YOU MAY BELIEVE. I'M JUST TELLING YOU THAT I
7 DON'T BELIEVE, EITHER IN THE SOLICITOR'S OFFICE OR IN THE
8 UNITED STATES ATTORNEY'S OFFICE, THERE WAS ANYBODY WHO
9 TRIED TO PARTICIPATE AND FRAME YOUR SON, OR TO WITHHOLD
10 THE TRUTH, OR TO THREATEN ANYBODY.

11 I THINK THEY FELT, AS THIS COURT FEELS, THAT HE HAD
12 COMMITTED A CRIME. THEY PRESENTED THE EVIDENCE TO A JURY,
13 AND I THINK THE JURY SYSTEM IS THE GREAT THING ABOUT THIS
14 COUNTRY. IT BRING PEOPLE TOGETHER FROM ALL WALKS OF
15 LIFE. THEY COME IN, AND SOMEHOW OR ANOTHER THEY SEEM TO
16 GET A ROBE AROUND THEM, JUST LIKE ANYBODY CONNECTED WITH
17 THE COURT. AND IT'S JUST AMAZING HOW THEY -- THEY THINK
18 TOGETHER AND REASON TOGETHER. AND WHEN SOMEBODY IS NOT
19 GUILTY, THEY BRING IN A NOT GUILTY VERDICT.

20 WHEN SOMEBODY IS GUILTY, YOU HAVE -- YOUNG AND OLD,
21 MALE AND FEMALE, BLACK AND WHITE, THEY JUST SEEM TO MELD
22 INTO ONE. THE JURY SYSTEM IS THE GREATEST THING ABOUT
23 THIS COUNTRY. AND HE'S BEEN BEFORE TWO JURIES, AND BOTH
24 OF THEM FOUND HIM GUILTY.

25 I HEARD THIS CASE, AND I'M CONVINCED FROM WHAT I

1 HEARD, THERE WASN'T ANY QUESTION IN MY MIND ABOUT HIS
2 GUILT. IF I HADN'T HEARD ANYTHING BUT THAT LITTLE GIRL
3 TESTIFY, AND WHAT I -- THERE WAS A LOT OF OTHER TESTIMONY,
4 BUT I JUST MEAN, THAT IN ITSELF WAS ENOUGH.

5 AND I'M NOT SURPRISED THEY FOUND HIM GUILTY OF KILLING
6 DONALD SUTTON. I KNOW YOU DON'T THINK SO, AND I'M NOT
7 TRYING TO TALK YOU INTO THINKING SO. BUT I'M JUST SAYING,
8 LOOKING AT IT OBJECTIVELY, AS I TRY TO DO. AND I'M
9 CONVINCED HE MADE ALL THESE OTHER THREATS.

10 HE'S RIGHT ABOUT ONE THING, THAT THERE WASN'T ANYBODY
11 -- EXCEPT ABOUT THE ROBBERY, BUT THERE WASN'T ANYBODY
12 ABOUT ALL THIS OBSTRUCTION OF JUSTICE AND THREATS
13 TESTIFYING BUT A BUNCH OF CRIMINALS, BECAUSE THAT'S WHO
14 WAS INVOLVED IN IT.

15 AND I TRY TO LOOK AT THEM AND LOOK AT THEIR MOTIVES.
16 AND I TELL EVERY JURY, "YOU'VE GOT TO GIVE THEIR TESTIMONY
17 CAREFUL CONSIDERATION. LOOK AT IT MORE CAREFULLY THAN THE
18 AVERAGE PERSON'S TESTIMONY, BECAUSE THEY'VE BEEN CONVICTED
19 OF CRIMES, AND THEY'RE -- THEY'RE ADDICTED TO A DIFFERENT
20 SORT OF VALUE OF WHAT'S TRUE AND WHAT'S -- ABOUT TELLING
21 THE TRUTH, THAN THE AVERAGE PERSON. YOU HAVE GOT TO LOOK
22 AT -- YOU'VE GOT TO SCRUTINIZE THEIR TESTIMONY CAREFULLY."
23 I GIVE IT THAT SAME SCRUTINY.

24 BUT AS I SAID, I'M NOT TRYING TO ARGUE WITH YOU. AND
25 I UNDERSTAND YOUR POSITION, THE TWO OF YOU. I JUST

1 DISAGREE WITH YOU, AND THAT'S -- THAT'S THAT. I DON'T
2 KNOW OF ANYTHING MORE TO SAY. WE'RE NOT HERE TO TRY HIM
3 FOR THE BANK ROBBERY, WE'RE NOT HERE TO TRY HIM FOR
4 MURDER. HE'S HAD A JURY CONVICT HIM OF BOTH. WE'RE HERE
5 FOR ME TO SENTENCE HIM, AND I'VE GOT TO TAKE THAT INTO
6 CONSIDERATION.

7 MRS. TILLMAN: MAY I SAY ONE MORE THING?

8 THE COURT: YES, MA'AM.

9 MRS. TILLMAN: IN YOUR CONSIDERATION---

10 THE COURT: I CAN'T -- MRS. TILLMAN, I BELIEVE
11 I'M GETTING OLD, BECAUSE I CAN'T HEAR.

12 MRS. TILLMAN: I SAY, IN YOUR CONSIDERATION,
13 WOULD YOU KEEP HIM IN SOUTH CAROLINA, YOU THINK?

14 THE COURT: WELL, AS I UNDERSTAND, HE'S BEGUN THE
15 SERVICE -- IS HE IN STATE OR FEDERAL CUSTODY? HE'S IN THE
16 STATE, YEAH.

17 MR. SWERLING: STATE CUSTODY RIGHT NOW, YOUR
18 HONOR, AS FAR AS I KNOW.

19 THE COURT: IS THAT CORRECT, MR. BETHEA?

20 MR. BETHEA: YES, SIR, I THINK---

21 THE COURT: WELL, IF HE'S IN STATE CUSTODY, HE'S
22 GOT THE SENTENCE HE'S GOT, UNLESS IT'S OVERTURNED ON
23 APPEAL. YOU KNOW, HE'S BEEN GOING BACK AND FORTH FROM
24 STATE TO FEDERAL CUSTODY. I DON'T KNOW WHICH SENTENCE
25 HE'S GOING TO SERVE FIRST, WHETHER HE'S GOING TO SERVE THE

1 SENTENCE I IMPOSE UPON HIM OR THE STATE SENTENCE. DO YOU
2 KNOW, MR. UNITED STATES ATTORNEY?

3 MR. BETHEA: YOUR HONOR, HE WAS IN FEDERAL
4 CUSTODY FROM THE DAY HE WAS ARRESTED, AND THE STATE HAD A
5 WRIT TO GET HIM FOR PURPOSES OF THAT TRIAL. AND THEY GOT
6 HIM FOR PURPOSES OF THE MURDER TRIAL, AND THEN RETURNED
7 HIM TO RICHLAND COUNTY DETENTION CENTER. SO HE IS STILL A
8 FEDERAL PRISONER AND IS IN FEDERAL CUSTODY AT THIS TIME.

9 THE COURT: WELL, IF I SENTENCE HIM, IS HE GOING
10 TO BE -- WHATEVER SENTENCE I IMPOSE UPON HIM, WHICH
11 SENTENCE -- SHE MADE A QUESTION ABOUT KEEPING HIM HERE.
12 IS HE GOING TO BEGIN SERVING HIS FEDERAL SENTENCE OR HIS
13 STATE SENTENCE?

14 MR. BETHEA: SINCE HE'S IN FEDERAL CUSTODY, HE
15 WOULD BEGIN SERVING THE FEDERAL SENTENCE FIRST.

16 MR. SWERLING: WHICH, OF COURSE, IF YOUR HONOR
17 WOULD CONSIDER ALLOWING THAT TO RUN CONCURRENT WITH THE
18 STATE SENTENCE, THEN THAT WOULD -- HE'S WITHIN THE
19 DEPARTMENT OF CORRECTIONS, AND THAT WOULD SOLVE THAT
20 PROBLEM.

21 THE COURT: WELL, I DON'T AGREE.

22 MR. BETHEA: JUDGE, ONE OTHER FACTOR I'D JUST
23 LIKE TO POINT OUT FOR THE RECORD IS THAT WHEN MR. TILLMAN
24 WAS SENTENCED BY JUDGE RUSHING IN THE STATE MURDER CHARGE,
25 HE WOULD HAVE BEEN SENTENCED TO LIFE WITHOUT PAROLE EXCEPT

1 FOR THE FACT THAT JUDGE RUSHING DID NOT CONSIDER THE
2 FEDERAL BANK ROBBERY CHARGE, BECAUSE HE HAD NOT YET BEEN
3 SENTENCED. SO HE COULD GIVE NO WEIGHT TO THAT.

4 IT WOULD HAVE GIVEN HIM TWO PRIOR FELONIES, AND WOULD
5 HAVE MADE HIM AS A MANDATORY LIFE SENTENCE WITHOUT
6 PAROLE. BUT JUDGE RUSHING, SINCE HE HAD NOT YET BEEN
7 SENTENCED IN THIS CASE, DID NOT CONSIDER THE BANK ROBBERY
8 CHARGE.

9 THE COURT: IS THAT A STATEMENT MADE ON THE
10 RECORD?

11 MR. SWERLING: WELL, YOUR HONOR, THE FACT THAT
12 THE STATUTE SAYS THAT IT HAS TO BE SOMETHING HE HADN'T
13 BEEN SENTENCED FOR, AND HE HAD NOT BEEN SENTENCED.

14 THE COURT: I HAVE ENOUGH TROUBLE KEEPING UP WITH
15 THESE GUIDELINES, I CAN'T KEEP UP WITH THE STATE TOO. BUT
16 I FEEL, AS OUR CONVERSATION HAS INDICATED, THAT THIS CASE
17 DEMANDS AN UPWARD SENTENCE, AN UPGRADE. AN UPWARD
18 DEPARTURE, I GUESS IS THE TECHNICAL TERM. SO IN CRIMINAL
19 -- FOR THE REASONS THAT I'VE STATED, IN CRIMINAL 88-32,
20 UNITED STATES AGAINST RONALD TILLMAN, THE SENTENCE AND
21 JUDGMENT OF THE COURT IS THAT THE DEFENDANT BE COMMITTED
22 TO THE BUREAU OF PRISONS FOR A PERIOD OF 20 YEARS. AND BE
23 GIVEN, UPON RELEASE, IF HE'S THEN SERVED FIVE YEARS'
24 SUPERVISED RELEASE, THAT ANY RESTITUTION BE DISREGARDED.
25 THERE'S NO WAY HE CAN MAKE ANY RESTITUTION. HE PAY

1 SPECIAL ASSESSMENT OF \$50.00.

2 AS TO COUNT TWO, THE SENTENCE AND JUDGMENT OF THE
3 COURT, THAT THE DEFENDANT BE COMMITTED TO THE BUREAU OF
4 PRISONS FOR A PERIOD OF FIVE YEARS CONSECUTIVE TO HIS
5 SENTENCE AS TO COUNT ONE. THAT UPON RELEASE, HE BE
6 SENTENCED TO A PERIOD OF FIVE YEARS -- THREE YEARS, I
7 THINK, IS THE MAXIMUM. SO THREE YEARS' SUPERVISED
8 RELEASE. SENTENCE IN COUNT ONE, THAT HE PAY NO -- THERE
9 BE NO RESTITUTION, AND THAT SPECIAL ASSESSMENT OF \$50.00
10 BE PAID.

11 IN COUNT -- THE SENTENCE IN COUNT TWO WILL RUN
12 CONSECUTIVE IN ALL RESPECTS TO THE SENTENCE IN COUNT ONE.

13 I DON'T HAVE ANYTHING TO DO WITH THE STATE SENTENCE.
14 AND SINCE THIS IS A PRIMARY SENTENCE, I DON'T MAKE ANY
15 RECOMMENDATION -- ANY FURTHER RECOMMENDATION. I'VE SAID
16 WHAT I'VE SAID ABOUT IT. THIS IS A HEAVY SENTENCE. BUT
17 I'VE NEVER SEEN A CRIME MORE MENIAL.

18 AND ONE THING THIS DEFENDANT SAID IS TRUE, AND I HOPE,
19 SOMEHOW OR ANOTHER, SOMETHING WILL BE DONE. BECAUSE I
20 BELIEVE HE -- HE SAID THERE WEREN'T ANYTHING BUT CRIMINALS
21 AND DRUG ADDICTS HANG OUT THERE. HE MAY NOT HAVE TOLD THE
22 TRUTH ABOUT ANYTHING ELSE, BUT HE TOLD THE TRUTH ABOUT
23 THAT. MR. UNITED STATES ATTORNEY, I DON'T KNOW WHO -- MR.
24 UNITED STATES ATTORNEY?

25 MR. BETHEA: YES, YOUR HONOR.

1 THE COURT: I'M GOING TO SUGGEST TO YOU, OR
2 DIRECT YOU TO, AT LEAST, WHILE I DON'T HAVE ANYTHING TO DO
3 WITH LAW ENFORCEMENT IN RICHLAND COUNTY OR THE CITY OF
4 COLUMBIA, BUT I'M GOING TO DIRECT YOU TO ADVISE THOSE WHO
5 DO HAVE CHARGE OF THAT, OF THE SENTIMENTS THAT I'VE
6 EXPRESSED ABOUT THAT PARTY SHOP.

7 MR. BETHEA: YES, SIR.

8 THE COURT: IT WOULD SURPRISE ME. ALL RIGHT.
9 GOOD LUCK TO YOU. THANK YOU.

10 MR. SWERLING: THANK YOU. YOUR HONOR, DID YOU
11 CONSIDER WHETHER YOU'RE NOT GOING TO RUN IT CONCURRENT
12 WITH THE STATE SENTENCE?

13 THE COURT: NO. I'LL LET THE STATE WORRY ABOUT
14 THAT.

15 MR. SWERLING: JUDGE, CAN I TALK TO YOU ABOUT
16 ANOTHER MATTER JUST BRIEFLY?

17 THE COURT: UH-HUH.

18 (HEARING ENDED AT 11:04 A.M.; DEFENDANT RECALLED AT
19 11:09 A.M. AS FOLLOWS):

20 THE COURT: MR. TILLMAN, I NEGLECTED TO TELL YOU
21 -- FIRST OF ALL, MR. SWERLING, OTHER THAN THE MATTERS
22 WE'VE DISCUSSED, THE TWO OF YOU WENT OVER THE PRE-SENTENCE
23 REPORT, AND OTHER THAN THE OBJECTION THAT YOU RAISED, YOU
24 DON'T HAVE ANY OTHER OBJECTION?

25 MR. SWERLING: NO, SIR.

1 MR. REEVES: THAT WAS ALL.

2 THE COURT: I FORGET AND NEGLECTED TO TELL YOU
3 THAT YOU HAVE A RIGHT TO APPEAL, AND YOU'VE GOT TEN DAYS.
4 I BELIEVE IT'S TEN.

5 MR. REEVES: TEN DAYS FROM TODAY, JUDGE.

6 THE COURT: TEN DAYS TO FILE NOTICE OF APPEAL
7 THROUGH YOUR ATTORNEYS. NOW, IF YOU WANT THIS CASE
8 APPEALED, YOU BE SURE THAT -- THAT TEN DAYS IS A MANDATORY
9 TEN DAYS. SOMETHING'S GOT TO BE DONE IN TEN DAYS. I'M
10 SURE THEY'LL TELL YOU THAT, BUT I WANT TO TELL YOU
11 PERSONALLY. ALL RIGHT?

12 MR. SWERLING: THANK YOU, YOUR HONOR.

13 MR. BETHEA: THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU.

15 (PROCEEDINGS CONCLUDED AT 11:11 A. M.)

16

17

* * *

18

19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
20 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

21

22

23

March 13, 1990 Katie Hanwell Bailey

24

DATE

KATIE HANWELL BAILEY, R.P.R.

25



CAF

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

July 22, 1999

Assistant Appellate Defender Melody J. Brown
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: Tillman, Ronald v. State

Dear Counsel:

Enclosed is the order of this Court issued pursuant to your Petition for Writ of Certiorari and Motion to Supplement the Appendix in the above entitled matter:

The remittitur in this matter will be forwarded to the Clerk of Court for Richland County pursuant to the provisions of Rule 221 of the South Carolina Appellate Court Rules.

By copy of this letter and order we are advising opposing counsel of the action of the Court in this matter.

Very truly yours,


CLERK

ATTORNEY GENERAL'S OFFICE

RECEIVED 7-27-99
ADMINISTRATIVE INSTRUCTIONS
FILE ☒ OPEN ☐ END
HAVE ☐ COPIES MADE
ROUTE TO ☐
ORDER: ☐ TRANSCRIPT
FILE ☐ EDD ☐ CLERK RECORDS

DES/dmh

Enclosure

cc: ✓ Assistant Deputy Attorney General Teresa A. Knox

6 COPY FILE

The Supreme Court of South Carolina

Ronald Tillman, Petitioner,

v.

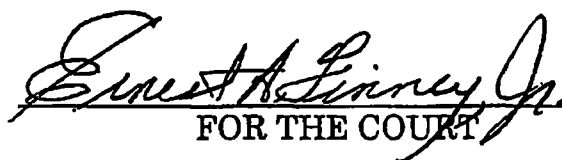
State of South Carolina, Respondent.

O R D E R

Petitioner asks this Court for permission to supplement the appendix in his petition for a writ of certiorari from the denial of his post-conviction relief application. The motion to supplement is denied.

After a review of the petition and the return, the petition for a writ of certiorari is denied. However, since petitioner is incarcerated in another jurisdiction, the statute of limitations applicable to post-conviction relief actions, S.C. Code Ann. § 17-27-45 (Supp. 1998), shall not apply to any application for post-conviction relief filed by petitioner within one year after petitioner is returned to this jurisdiction.

IT IS SO ORDERED.

 C.J.
FOR THE COURT

Columbia, South Carolina

July 22, 1999



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080

August 9, 1999

REMITTITUR

The Honorable Barbara Scott
Clerk of Court, Richland County
Post Office Box 2766
Columbia, SC 29202-2766

Re: Tillman, Ronald v. State
95-CP-40-2449

Dear Ms. Scott:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

Brenda F. Shealy
DEPUTY CLERK

BFS/mgh

Enclosure

cc: Assistant Appellate Defender Melody J. Brown
✓ Assistant Deputy Attorney General Teresa A. Knox

ATTORNEY GENERAL'S OFFICE

RECEIVED 8-10-99
ADMINISTRATIVE SERVICES
FILED
HAVE
COPIES TO
COURT REPORTERS
PER RECORDS CLERK RECORDS
OTHER

02CP400971

STATE OF SOUTH CAROLINA

County of RICHLAND

In the Court of Common Pleas

RONALD S. TILLMAN , #85375-071*Full name and prison number (if any) of Applicant.*

vs.

STATE OF SOUTH CAROLINA ,*Name of Respondent.*APPLICATION FOR
POST-CONVICTION RELIEFFILED
02 MAR -1 AM 8:35
CLERK OF COURT
SOUTH CAROLINA
RICHLAND COUNTYINSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention FEDERAL CORRECTIONAL INSTITUTION , P.O. BOX 724 , EDGEFIELD ,
SOUTH CAROLINA 29824
2. Name and location of Court which imposed sentence 5th JUDICIAL CIRCUIT , RICHLAND
COUNTY JUDICIAL CENTER , COLUMBIA , SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 89-GS40-0745
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 15 , 1990 , LIFE
 - (b) _____
 - (c) _____

3. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty X _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

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

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

i. THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. AFFIRMED THE CONVICTION

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) ACTUAL INNOCENCE

(c) PROSECUTORIAL MISCONDUCT

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

(a) SEE ATTACHED SUMMARY OF GROUNDS

(b) SEE ATTACHED SUMMARY OF GROUNDS

(c) SEE ATTACHED SUMMARY OF GROUNDS

SUMMARY OF GROUNDSGROUND ONE : ACTUAL INNOCENCESUPPORTING FACTS:

The petitioner never received a fair trial and/or sentencing determination when counsel of record , as well the State of South Carolina attorney for the Richland county conspire to deny the petitioner due process rights under the United States Constitution to a fair trial . Both counsels knew or should have known that Hayes Malloy's testimony was false when they knew that Malloy fail the polygraph test given by officer Burnette in regards to the shooting of Donald Sutton . The facts supporting this case if the petitioner was given a fair trial would have shown that the petitioner was actual innocence of the killing of Donald Sutton .

SUMMARY OF GROUNDSGROUND TWO: PROSECUTORIAL MISCONDUCT

SUPPORTING FACTS: The State Attorney for the Richland county for the district of South Carolina knowingly used false testimony against the petitioner when the State attorney for the Richland county made a deal with Hayes Malloy for his testimony against the petitioner for promises to dismiss Hayes Malloy's pending case before the court , as well as the States Attorney for the Richland county knowingly making a deal not to charge Hayes Malloy with the murder of Donald Sutton if Hayes Malloy testified against the petitioner to save Malloy's own neck . The actions by the State attorney for the Richland county violated the petitioner rights to due process and equal protection under the United States Constitution .

SUMMARY OF GROUNDSGROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSELSUPPORTING FACTS:

The petitioner was the victim of woefully ineffective assistance of counsel in that counsel of record failed to timely object to and or preserve for appellate review the erroneous instructions to the jury by the trial court of murder , and counsel of record failure to object to the State attorney using perjury testimony by Hayes Malloy denied the petitioner the rights to a fair trial . Also , counsel of record had a strong conflict of interest when his law firm represented the state witness Hayes Malloy for a assault and battery when Hayes Malloy shoot up the petitioner's father-party shop .

This representation of Hayes Malloy should have been brought to the attention of the trial court so the petitioner could have received an fair representation my counsel of record .

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

- i. N/A
 ii. N/A
 iii. N/A

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

- i. N/A
 ii. N/A
 iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) THE petitioner is incarcerated in federal custody and at the present
 (b) time could not obtained the information that he needed to present to
 (c) this court as well as not being in South Carolina jurisdiction .

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

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

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

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

- i. JACK B. SWERLING , 1720 MAIN STREET , SUITE 301 , COLUMBIA ,
SOUTH CAROLINA 29201

ii. _____

iii. _____

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

- i. N/A
 ii. _____
 iii. _____

18. State clearly the relief you seek in filing this application.

THE CONVICTION AND SENTENCE VACATE AND SET ASIDE FOR A NEW TRIAL.

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

YES/FEDERAL SENTENCE

1560

STATE OF SOUTH CAROLINA

VERIFICATION

County of RICHLANDI, RONALD S. TILLMAN #85375-071

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.

Ronald S. Tillman
RONALD S. TILLMAN

SWORN to and subscribed before me this

26th

day of

FebruaryX 2002Thurshundray C. Reverette

(L.S.)

Notary Public

My Commission Expires:

9/17/2008

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

I, RONALD S. TILLMAN #85375-071

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

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Ronald S. Tillman
Applicant

RONALD S. TILLMAN #85375-071

SWORN or affirmed to and subscribed before me this

26th

day of

FebruaryX 2002Thurshundray C. Reverette

Notary Public

THE STATE OF SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN,
PETITIONER,

v.

STATE OF SOUTH CAROLINA,
RESPONDENT(S).

CASE No. _____

(In Re: 89-GS40-0745)

BEFORE THE HONORABLE JUDGE

DON S. RUSHING

02 MAR - 1 AM 8:35
C.C.C. & G.S.
A. SCOTT

FILED

PETITIONER'S REQUEST TO AMEND APPLICATION
FOR POST-CONVICTION RELIEF

COMES NOW the petitioner , Ronald S. Tillman , in the above entitled matter and respectfully request that this Honorable Court will allow the petitioner leave to amend his application for post-conviction relief , and states the following:

1). The petitioner is unable to research the issues properly that he has presented before this Honorable Court in his application for post-conviction relief , because he is in federal custody and the law library here at FCI-Edgefield , South Carolina do not have the State of South Carolina law books , and the petitioner is without access to the State of South Carolina law books , and/or trial transcripts to prepare a proper post-conviction relief petition .

2). The petitioner will be effectively precluded from presenting to this court any thing than conclusory allegations based upon his memory of the trial and sentencing proceedings which , at this late date , has been distorted by the passage of time .

3). That the petitioner has contacted the clerk of the court for the Richland county , as well as his previously counsel of record in this case for a copy of the transcripts of the trial and sentencing proceedings and/or jury instructions , but that a counsel and the clerk of court for the State of South Carolina for Richland county has not provided the petitioner with a copy of the proceedings or other documents requested .

4). That the petitioner is an indigent and do not have access to the States of South Carolina law books or other documents to properly prepare his application for post-conviction relief .

5). The petitioner is a layperson and respectfully need more time to amend his application for post-conviction relief , and the State of South Carolina will not be perjudice by this request for the petitioner to amend his application for post-conviction relief .

WHEREFORE: the petitioner respectfully requests that this Honorable Court will allow the petitioner the time needed for leave to amend his application for post-conviction relief .

Respectfully submitted ,

DATED: February 26, 2002

Ronald S. Tillman
RONALD S. TILLMAN

Reg. No. 85375-071
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 724
EDGEFIELD, SOUTH CAROLINA 29824

CERTIFICATE OF SERVICE

I , hereby certifies that a true copy of the documents in the
above matter has been served on opposing counsel by mailing one(1)
copy in an envelope properly addressed with postage prepaid this
26th day of February , 2002 .

RUBY BRICE McCLAIN
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA , SOUTH CAROLINA 29211

Ronald S. Tillman
RONALD S. TILLMAN
REG. No. 85375-071

THE STATE OF SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN ,
PETITIONER,

v.

STATE OF SOUTH CAROLINA ,
RESPONDENT(S).

CASE No. _____

(In Re: 89-GS40-0745)

BEFORE THE HONORABLE JUDGE
DON S. RUSHING

AFFIDAVIT IN SUPPORT OF PETITIONER'S
APPLICATION FOR POST-CONVICTION
RELIEF

FILED
02 MAR - 1 AM 8:35
D. REBARA A. SCOTT
C.C.C. & G.S.

COMES NOW the petitioner , Ronald S. Tillman , in the
above-entitled case and says as follows under the pains and penalties
of perjury :

1). I make this affidavit in support of my Application for
Post-conviction relief with a sound mind .

2). That the petitioner states that he did not kill , one
Donald I. Sutton , nor did he go with anyone to kill Donald I.
Sutton .

3). That the petitioner states that he asked for a polygraph
test to be administer to him to prove his actual innocence but this
request was denied by the trial court , as well as the State of

South Carolina attorney's office .

4). The petitioner conclude that the Honorable Judge Rushing should have been aware of Malloy failing the polygraph test that was administer by officer John Burnette , maybe the Honorable Judge Rushing might have investigated into the matter at hand to determine how many polygraph tests that was administer to Malloy and to determine if he failed each one that was administer to him .

5). The petitioner also conclude that the death of two innocence victims Clarence McKay and Caroline Swinson could have been avioded if the state prosecutor had not withheld exculpatory evidence from the trial court and the defense counsel . Had this evidence not been with held from the trial court as well as the defense counsel , it would had shown that Malloy did kill Donald Sutton . This evidence would have shown that Ronald S. Tillman did not kill one Donald Sutton .

6). The petitioner conclude that the prosecutor allowed another convicted felon Clarence Well to walk free in his aid to convict an innocence man (Ronald S. Tillman) . No one was put on notice when these two convicted felons was release back into an social environment . Moreover , Ms. Beth West became another victim of Clarence Well , as she was assaulted vicious and robbed by Clarence Well . The trial court heard Clarence Well state to the court that he was there to testify truthfully against the petitioner Ronald S. Tillman and that he was not going to commit

any other crime . However . Ms. Beth West found - out the hard way , when she became an victim of Clarence Well .

7). The petitioner conclude that he was woefully a victim of counsel errors and misrepresentation , as well as victim of prosecutorial misconduct when both counsels of record knew or should known that the petitioner trial was not a fair trial under the United States Constitution.

DECLARATION

I, Ronald S. Tillman declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge . Sign this 26th day of February , 2002 .

CERTIFICATE OF SERVICE

I. Ronald S. Tillman hereby certify that a true and correct copy of the foregoing pleading have been foreward by United States Mail , this 26th day of February , 2002 , to the Fifth Judicial Circuit Courthouse , Columbia , South Carolina 29201

Ronald S. Tillman
RONALD S. TILLMAN
REG. No. 85375-071

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Fifth Judicial Circuit

2002-CP-40-0971

Ronald S. Tillman, S.C.D.C.)

No. 222153)

Applicant,)

v.)

RETURN AND MOTION TO DISMISS

State of South Carolina,)

Respondent.)

Respondent (the State), making its Return and Motion to Dismiss to the Application for Post-Conviction Relief (PCR) filed March 1, 2002, would respectfully show this Court:

I.

The Applicant is presently confined in the Federal Correctional Institution in Edgefield, South Carolina pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the February 1989 term of the grand jury for Richland County for Murder (89-GS-40-0745). He was represented by Jack B. Swerling, Esq. On January 15, 1990, the Applicant underwent a trial by jury and was found guilty as indicted. He was sentenced by the Honorable Don S. Rushing to confinement for Life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jack B. Swerling, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tillman, Op. No. 1666 (S.C. Ct. App. filed May 28, 1991). The appeal was remitted on June 13, 1991.

The Applicant subsequently filed an application for PCR on July 17, 1995 in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel,
2. Brady Violation, and
3. Judge abused his discretion and denied the defendant a fair trial."

The State filed its Return and Motion to Dismiss without Prejudice on September 3, 1996. The Applicant was represented by Tara Dawn Shurling, Esq. Teresa Knox of the South Carolina Office of the Attorney General represented the State. By Order dated March 24, 1997, the Honorable Casey Manning dismissed the Applicant's Application for PCR without prejudice pending the return of the Applicant to custody in the South Carolina Department of Corrections. The Applicant then filed a timely notice of appeal. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari and affirmed the PCR Court's denial of his first PCR case on July 22, 1999.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

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,
2. Actual Innocence, and
3. Prosecutorial Misconduct.

III.

First, the State submits that the current Application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2001), an inmate is required to file a post-

conviction relief application "within one year after the entry of a judgment of conviction"

For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statute's effective date to file an application. See Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred on January 15, 1990. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on March 1, 2002, exceeding the applicable statute of limitations by five and a half years. Accordingly, since the Applicant did not present these allegations in a timely manner, this Application should be summarily dismissed with prejudice as barred by the statute of limitations.

V.

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

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA

Chief Capital & Collateral Litigation

B. ALLEN BULLARD, JR.
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Post Office Box 11549
Columbia, South Carolina 29211

Columbia, South Carolina
June 12, 2002

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2002-CP-40-0971

RONALD S. TILLMAN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return and Motion to Dismiss of the Respondent been served upon the Applicant, Ronald S. Tillman, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 12th day of June, 2002, to the below address:

Ronald S. Tillman, 85375-071
Edgefield Federal Correctional Institution
Post Office Box 724
Edgefield, South Carolina 29824



DAVID A. SPENCER
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN, S.C.D.C.)
No. 222153)

2002-CF-40-0971

APPLICANT,

v.

STATE OF SOUTH CAROLINA,
RESPONDENT.

APPLICANT'S REPLY TO RESPONDENT'S
RETURN AND MOTION TO DISMISS

Applicant Ronald S. Tillman (hereinafter referred to as "Applicant") , acting pro-se, in the above entitled matter respectfully files his reply to the State's Return and Motion To Dismiss under the Uniform Post-Conviction Procedure Act . This reply is based upon the attached memorandum of points and authorities , the exhibits attached hereto , the files and record in this case , and upon such further argument as may had at any hearing on this matter .

DATED THIS 17 DAY OF JUNE , 2002.

Respectfully submitted ,

Ronald S. Tillman
RONALD S. TILLMAN, PRO-SE
REG. No. 85375-071
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 724
EDGEFIELD, SOUTH CAROLINA 29824

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN, S.C.D.C.)
No. 222153)

2002-CP-40-0971

APPLICANT,)

v.)

APPLICANT'S MEMORANDUM OF POINTS

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

AND AUTHORITIES:

I.

INTRODUCTION

Applicant Ronald S. Tillman ("Applicant") is presently confined at the Federal Correctional Institution in Edgefield , South Carolina . The Applicant was indicted by the Richland County Court of General Sessions for murder in February, 1989 . At trial and sentencing applicant was represented by Jack B. Swerling , Esquire , and Jennifer Kneece Shealy , Esquire . On or about January 23 , 1990 , applicant proceeded to trial by jury before the Honorable Don. S. Rushing, Presiding Circuit Judge. At the conclusion of this proceeding applicant was found guilty and was sentenced by the trial court to LIFE imprisonment. A timely Notice of Appeal was filed on Applicant's behalf and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. See: State v. Tillman , op. No.1666(S.C.Ct. App. filed May 28 , 1991). After applicant's direct appeal of his conviction and sentence , he filed his first post-conviction relief application on or about July 17 , 1995 , alleging the following grounds for relief:

- 1). Ineffective Assistance of Counsel,
- 2). Brady Violation, and
- 3). Judge abused his discretion and denied the defendant a fair trial .

The Court of Common Pleas for the County of Richland, Chief Administrative Judge, L. Casey Manning , Fifth Judicial Circuit, ordered on March 24 , 1997 , that the Application for post-conviction relief (hereinafter referred to as "PCR") be dismissed without prejudice cause applicant was not in the State of South Carolina nor was subject to this State's jurisdiction at this time. (See Court's Order attached hereto as exhibit 1). The State never objected to the order by the Court , and the State in it's first Return and Motion to Dismiss filed October 6, 1995 , sought an order of Dismissal without prejudice. (See State's Return and Motion To Dismiss as Exhibit 2). Applicant was not in South Carolina jurisdiction to have a just ruling on applicant's PCR , and after a review of the petition and the return by the Supreme Court of South Carolina , the applicant's writ of certiorari was denied and the Supreme Court clearly stated that:

" However , since petitioner is incarcerated in another jurisdiction , the statute of limitations applicable to post-conviction relief actions, S.C. Code Ann. § 17-27-45 (Supp.1998), shall not apply to any application for post-conviction relief filed by petitioner within one year after petitioner is returned to this jurisdiction." (See the Supreme Court of South Carolina's order attached hereto as Exhibit 3).

Once applicant came within the jurisdiction of South Carolina , and well within the one year limitation period applicant filed his PCR as ordered by the Supreme Court of South Carolina .

Applicant respectfully submits that for the reasons hereinafter set forth , the State's arguments are without merit and his PCR should be granted .

II.

ARGUMENTA). THE INSTANT PCR IS TIMELY AND THEREFORE SHOULD NOT BE DISMISSED.

As a threshold matter , the State of South Carolina argues that applicant's current Application for PCR is time-barred because it is successive to the Applicant's prior application for PCR . (See Respondent's Return and Motion To Dismiss at pgs. 3 and 4 dated 6/12/02 attached hereto as Exhibit 4).

After a review of the Respondent's Return and Motion to Dismiss the applicant is forced to contend that it contained all form and very little substance . It is apparent that the Respondent is attempting to overwhelm the Court with a litany of case citation designed to obscure the fact that it could not otherwise present any plausible argument which in any way controverts the applicant's position that his present PCR is not a successive application . In short , the instant application for PCR is timely and should not be dismiss . If this Honorable Court should order that the present PCR should be dismissed as successive and untimely it would be a total miscarriage of justice because applicant's initial motion filed in 1995 was technically and legally vioded as the Court exercised it's discretion to notice the lack of jurisdiction to entertain the motion as pursuant to South Carolina's laws . The applicant must be within the jurisdictional parameters of the State of South Carolina in order to receive post-conviction relief . As such , the subsequent motion for PCR could not be second or successive as applicant's first motion never existed and was not ruled on the merits of claims for relief .

The United States Supreme Court in Steward v. Martinez-Villareal, 523 U.S. 637 (1998), definitively rejected the State's argument that such refilings come within the statutory restrictions upon successive petitions. See id. at 643-45. Accord Slack v. McDaniel, 529 U.S. 473, 478, 486-90(2002). In short , the instant PCR is timely .

B). APPLICANT HAS DEMONSTRATED EXTRAORDINARY CIRCUMSTANCES BEYOND HIS CONTROL TO JUSTIFY TOLLING OF THE STATUTE OF LIMITATIONS SHOULD IT BE REQUIRED.

On July 17, 1995, Applicant representative filed a Supplemental Reply To Respondent's Return and Motion To Dismiss , asking this Court to consider the following:

- 1). The Act which added Section 17-27-45 to the Uniform Post-Conviction Relief¹, Acts/4323AC.94, contain a Saving Clause . (See attached Supplemental Reply To Return and Motion To Dismiss as Exhibit No. 5).

As discussed in Applicant's past "Supplemental Reply To Respondent's Return and Motion To Dismiss" , every relevant signal- from the Act plain language , to its legislative history , to its structure-points in the same direction to have the new one year statute of limitation imposed on Post-Conviction Relief Applications by Section 17-27-45 be applied prospectively to cases where the crimes occurred after the enactment of this legislation .

Accordingly , this Court should treat the instant "PCR"

1. S.C. Code Ann. § 17-27-10 (1985 Cum Sup.).

motion as timely filed and consider his pleadings based on the merits.

C). APPLICANT IS ENTITLED TO AN HEARING ON HIS "PCR" APPLICATION.

Applicant is entitled to an hearing pursuant to S.C. Ann. Section 17-27-80. "before any judge of , a court of competent jurisdiction in the county in which the conviction took place the application shall be heard." The applicant is well within the jurisdiction of this Court to be heard on the merits of his "Ineffective Assistance of Counsel , Actual Innocence , and Prosecutorial Misconduct" claims, to develop a record of applicant's claims .

Applicant has identified to this Court that his "PCR" was file on time and his "PCR" is not a successive application . If , applicant is to have a fair and just opportunity to present his claims this Honorable Court will have to truly review the record of this case to see that the applicant never was in the jurisdiction of this Honorable Court to be heard on the merits of his "PCR" .

III

CONCLUSION

For all the foregoing reasons , Applicant Ronald S. Tillman, respectfully prays that this Honorable Court will grant his "PCR" Application , and order appropriate relief , balancing fundamental fairness with the interest of justice .

DATED THIS 17 DAY OF JUNE , 2002.

Respectfully submitted ,

Ronald S. Tillman

RONALD S. TILLMAN# 85375-071

UNIT C-3

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 724

EDGEFIELD , S.C . 29824

E X H I B I T S : (1) ONE TO (5) FIVE

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)

95-CP-40-2449-

Ronald Tillman, 85375-071,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL
WITHOUT PREJUDICE

FILED
 97 MAR 26 AM 11:28
 BARBARA A. SCOTT
 C.C.C.

This matter comes before this Court by way of an Application for Post-Conviction Relief dated July 17, 1995. The Respondent made its Supplemental Return and Motion to Dismiss Without Prejudice on September 3, 1996.

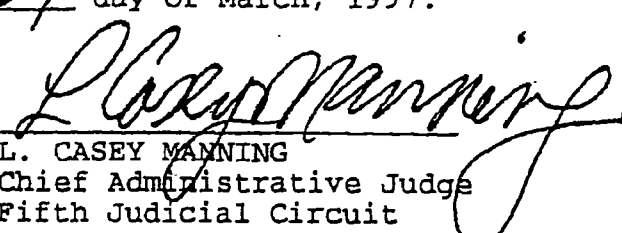
In his Application, the Applicant alleges the following additional ground for relief:

1. Ineffective assistance of counsel.
2. Brady violation.
3. Judge abuse his discretion and denied the defendant a fair trial.

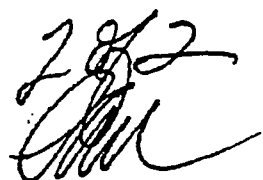
This Court finds that the Application should be dismissed without prejudice. It appears that the Applicant is not in the State of South Carolina nor subject to this State's jurisdiction at this time. The records before this Court reflect that the Applicant is currently incarcerated in Atlanta, Georgia. Furthermore, this Court finds that this State has neither the right, duty or authority to force the State of Georgia to release the Applicant for purposes of a

Post-Conviction Relief hearing in this State. State v.
Knowles, _____ S.C. _____, 270 S.E.2d 133 (1980); Cushman v.
Nash, 473 U.S. 716, 105 S.Ct. 3401 (1985).

AND, IT IS THEREFORE ORDERED that the Application is
dismissed without prejudice this 24 day of March, 1997.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina



COPY

72

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald Tillman, 85375-071,)
)
 Applicant,)

95-CP-40-2449

v.)

REPLY TO RESPONDENT'S RETURN
 AND MOTION TO DISMISS

State of South Carolina,)
)
 Respondent.)

FILED
 95 OCT 23 PM 12:21
 BARBARA A. SCOTT
 C.C.C. & G.S.

The Applicant filed his Application for Post-Conviction Relief on July 17, 1995. The Respondent made its Return and Motion to Dismiss on October 6, 1995. Counsel for the Applicant received service on October 10, 1996. The Applicant now urges this Court to deny the Respondent's Motion to Dismiss his Application for Post-Conviction Relief. In support of that position he would show unto this Court the following.

I.

The Applicant is presently confined in Atlanta, Georgia. He was indicted by the Richland County Court of General Sessions for murder in February, 1989. In the trial court he was represented by Jack B. Swerling, Esquire, and Jennifer Kneece Shealy, Esquire. On January 23, 1990, he proceeded to trial by jury before the Honorable Don S. Rushing, Presiding Circuit Judge. At the conclusion of this proceeding he was found guilty as charged and was sentenced by the trial court to life imprisonment.

The Applicant filed a timely Notice of Intent to Appeal his conviction and sentence. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction.

II.

The Respondent submits that this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, et. seq. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offense(s) he challenges in this application on January 23, 1990. The Court of Appeal's decision affirming the conviction was filed on May 28, 1991, and the remittitur was sent down on September 9, 1991. This application was filed on July 17, 1995, well after the statutory filing period had expired.

The South Carolina Supreme Court has held that a motion for summary judgement may properly be used to raise the defense of statute of limitations. McConnell v. Consolidated School District of Aiken, ___ S.C. ___, 455 S.E.2d 638 (1994). Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by statute.

The Supreme Court of South Carolina

Ronald Tillman, Petitioner,

v.

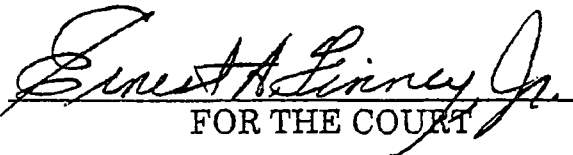
State of South Carolina, Respondent.

O R D E R

Petitioner asks this Court for permission to supplement the appendix in his petition for a writ of certiorari from the denial of his post-conviction relief application. The motion to supplement is denied.

After a review of the petition and the return, the petition for a writ of certiorari is denied. However, since petitioner is incarcerated in another jurisdiction, the statute of limitations applicable to post-conviction relief actions, S.C. Code Ann. § 17-27-45 (Supp. 1998), shall not apply to any application for post-conviction relief filed by petitioner within one year after petitioner is returned to this jurisdiction.

IT IS SO ORDERED.

 C.J.
FOR THE COURT

Columbia, South Carolina

July 22, 1999

EXHIBIT (4) FOUR

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
	)	2002-CP-40-0971
	)	
Ronald S. Tillman, S.C.D.C.	)	
No. 222153	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent (the State), making its Return and Motion to Dismiss to the Application for Post-Conviction Relief (PCR) filed March 1, 2002, would respectfully show this Court:

I.

The Applicant is presently confined in the Federal Correctional Institution in Edgefield, South Carolina pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the February 1989 term of the grand jury for Richland County for Murder (89-GS-40-0745). He was represented by Jack B. Swerling, Esq. On January 15, 1990, the Applicant underwent a trial by jury and was found guilty as indicted. He was sentenced by the Honorable Don S. Rushing to confinement for Life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jack B. Swerling, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tillman, Op. No. 1666 (S.C. Ct. App. filed May 28, 1991). The appeal was remitted on June 13, 1991.

The Applicant subsequently filed an application for PCR on July 17, 1995 in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel,
2. Brady Violation, and
3. Judge abused his discretion and denied the defendant a fair trial."

The State filed its Return and Motion to Dismiss without Prejudice on September 3, 1996. The Applicant was represented by Tara Dawn Shurling, Esq. Teresa Knox of the South Carolina Office of the Attorney General represented the State. By Order dated March 24, 1997, the Honorable Casey Manning dismissed the Applicant's Application for PCR without prejudice pending the return of the Applicant to custody in the South Carolina Department of Corrections. The Applicant then filed a timely notice of appeal. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari and affirmed the PCR Court's denial of his first PCR case on July 22, 1999.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

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,
2. Actual Innocence, and
3. Prosecutorial Misconduct.

III.

First, the State submits that the current Application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2001), an inmate is required to file a post-

conviction relief application "within one year after the entry of a judgment of conviction"

For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statutes effective date to file an application. See Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred on January 15, 1990. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on March 1, 2002, exceeding the applicable statute of limitations by five and a half years. Accordingly, since the Applicant did not present these allegations in a timely manner, this Application should be summarily dismissed with prejudice as barred by the statute of limitations.

V.

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

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

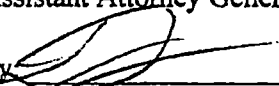
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA

Chief Capital & Collateral Litigation

B. ALLEN BULLARD, JR.
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Post Office Box 11549
Columbia, South Carolina 29211

Columbia, South Carolina
June 12, 2002

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2002-CP-40-0971

RONALD S. TILLMAN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return and Motion to Dismiss of the Respondent
been served upon the Applicant, Ronald S. Tillman, by mailing one (1) copy in an envelope properly
addressed with postage prepaid this 12th day of June, 2002, to the below address:

Ronald S. Tillman, 85375-071
Edgefield Federal Correctional Institution
Post Office Box 724
Edgefield, South Carolina 29824



DAVID A. SPENCER
ATTORNEY FOR RESPONDENT

COPY

EXHIBIT(5) FIVE

77

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
 Ronald Tillman, 85375-071,	)	 95-CP-40-2449
Applicant,	)	SUPPLEMENTAL
	)	REPLY TO RESPONDENT'S RETURN
v.	)	AND MOTION TO DISMISS
State of South Carolina,	)	
Respondent.	)	

The Applicant filed his Application for Post-Conviction Relief on July 17, 1995. The Respondent made its Return and Motion to Dismiss on October 6, 1995. Counsel for the Applicant received service on October 10, 1996. On October 19, 1995, the Applicant filed a Reply to the State's Motion to Dismiss.

In addition to the arguments and authorities set forth in the Applicant's Reply to the State's Return and Motion to Dismiss, the Applicant would ask this Court to consider the following.

1. The Act which added Section 17-27-45 to the Uniform Post-Conviction Relief Procedure Act¹, Acts\4323AC.94², contains a Savings Clause. This Clause, found at Section 19 of the Act, specifically states,

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect are *saved*. The provisions of the act apply prospectively to crimes and offenses committed after the effective date of this act. The provisions of this act apply prospectively to all sentences pronounced on or after the effective date of this act, except where a penalty greater than

¹ S.C. Code Ann. §17-27-10 (1985 Cum. Sup.).

² A copy of which is attached as ATTACHMENT A.

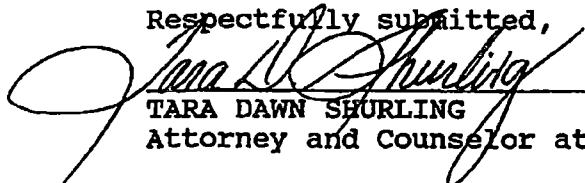
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95 NOV 27 AM 11:53
BARBARA A. SCOTT
C.C.C. & S.

the one in effect on the date of the offense as committed would be required. Notwithstanding the provisions of the section, Section 16-1-60 applies retroactively and prospectively.

The Applicant would submit that this language from the Joint Acts and Resolutions of this act, clearly evidences the intent of the legislature to have the new one year statute of limitations imposed on Post-Conviction Relief Applications by Section 17-27-45 be applied prospectively to cases where the crimes occurred after the enactment of this legislation.

WHEREFORE, the Applicant asks that the Respondent's Motion to Dismiss be denied.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law

3610 Landmark Drive, Suite F
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 27th day of November, 1995.

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

95-CP-40-2449

RONALD TILLMAN #85375-071,

APPLICANT,

v.

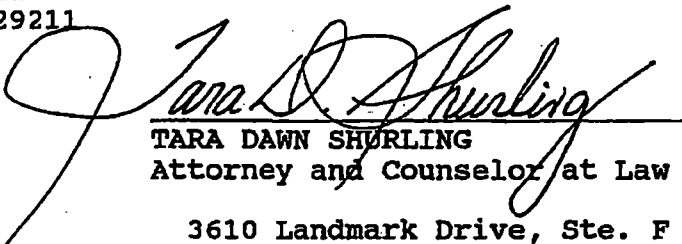
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Supplemental Reply to Respondent's Return and Motion to Dismiss in the above matter has been served on opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 27th day of November, 1995.

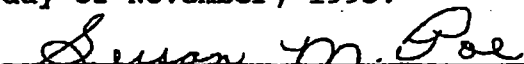
Ruby Brice McClain
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, S. C. 29211


TARA DAWN SHURLING
Attorney and Counselor at Law

3610 Landmark Drive, Ste. F
Columbia, South Carolina 29204
(803) 738-8622
(803) 738-1600 (Fax)

ATTORNEY FOR APPLICANT.

SWORN TO BEFORE me this 27th
day of November, 1995.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/21/98.

(L.S.)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

RONALD S. TILLMAN, S.C.D.C.)

No. 222153)

APPLICANT ,)

v.)

STATE OF SOUTH CAROLINA ,)

RESPONDENT.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

2002-CP-40-0971

PETITION FOR A WRIT OF HABEAS CORPUSAD TESTIFICANDUM

NOW COMES , the applicant Ronald S. Tillman (hereinafter referred to as "Applicant"), respectfully requests that this Honorable Court will issue a writ of habeas corpus ad testificandum requiring the Federal Bureau of Prisons in care of the Warden at the Federal Correctional Institution in Edgefield , South Carolina , to bring the applicant before the Court for a hearing on his Post-Conviction Relief Application . The applicant states the following reasons in support :

1). The Applicant Post-Conviction Relief Application (PCR) depends in large part on applicant's own testimony . Since applicant is within the jurisdiction of South Carolina , the present of applicant is an issue in this matter , the Court should be allowed to hear the applicant's testify to the jurisdictional aspect in this case.

2). The applicant is proceeding pro-se in this matter and should therefore be produced to manage the presentation of his

case, to cross-examine the Respondent who testify and their witnesses, and to hear the Respondent's case and present appropriate rebuttal evidence . Also , applicant is a layperson and need access to the State of South Carolina legal representation in this matter .

Applicant requests that the Respondents bear the costs of the implementation of the terms of this writ .

WHEREFORE: applicant prays that this Honorable Court shall grant a petition for a writ of habeas corpus ad testificandum and any other relief this Court deems just and proper .

DATED THIS 17 DAY OF JUNE , 2002 .

Respectfully submitted ,

Ronald S. Tillman
RONALD S. TILLMAN#85375-071
UNIT C-3
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 724
EDGEFIELD , S . C. 29824

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Fifth Judicial Circuit

2002-CP-40-0971

Ronald S. Tillman, S.C.D.C.)

No. 222153)

Applicant,)

v.)

RULE TO SHOW CAUSE

State of South Carolina,)

Respondent.)

FILED
2002 JUL 31 AM 11:18
C.C.C. & C.S.
BRIAN J. HARRIS, CLERK

This matter is before this Court by way of an application for post-conviction relief filed March 1, 2002. The State made its return and motion to dismiss on June 12, 2002, requesting that this application be summarily dismissed as being successive and untimely filed. This Court announces its intention to grant the State's motion and summarily dismiss this application with prejudice. This Court has before it the pleadings of both parties, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the Federal Correctional Institution in Edgefield, South Carolina pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the February 1989 term of the grand jury for Richland County for Murder (89-GS-40-0745). He was represented by Jack B. Swerling, Esq. On January 15, 1990, the Applicant underwent a trial by jury and was found guilty as indicted. He was sentenced by the Honorable Don S. Rushing to confinement for Life.

GTC,

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jack B. Swerling, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tillman, Op. No. 1666 (S.C. Ct. App. filed May 28, 1991). The appeal was remitted on June 13, 1991.

The Applicant subsequently filed an application for PCR on July 17, 1995 in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel,
2. Brady Violation, and
3. Judge abused his discretion and denied the defendant a fair trial."

The State filed its Return and Motion to Dismiss without Prejudice on September 3, 1996. The Applicant was represented by Tara Dawn Shurling, Esq. Teresa Knox of the South Carolina Office of the Attorney General represented the State. By Order dated March 24, 1997, the Honorable Casey Manning dismissed the Applicant's Application for PCR without prejudice pending the return of the Applicant to custody in the South Carolina Department of Corrections. The Applicant then filed a timely notice of appeal. The South Carolina Supreme Court denied the Applicant's Petition for Writ of Certiorari and affirmed the PCR Court's denial of his first PCR case on July 22, 1999.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel,
2. Actual Innocence, and
3. Prosecutorial Misconduct.

GC#2

DISCUSSION

For the following reasons, this Court finds that it must summarily dismiss this application with prejudice:

Statute of limitations

This application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. Therefore, this Court finds it must summarily dismiss the Application for PCR as successive.

Statute of limitations

The statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2001), an inmate is required to file a post-conviction relief application "within one year after the entry of a judgment of conviction" For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statute's effective date to file an application. See Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred on January 15, 1990. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on March 1, 2002, exceeding the applicable statute of limitations by five and a half years. Accordingly, since the Applicant did not present these allegations in a timely manner, this Application must be summarily dismissed with prejudice as barred by the statute of limitations.

Summary dismissal

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that it must summarily dismiss the Application for PCR as successive and for failure to file within the time mandated by statute.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this order should not become final by filing any reasons he may have with the Clerk of Court for Richland County, South Carolina; and sending a copy of the same to Dave Spencer, Assistant Attorney General; Office of the South Carolina Attorney General; PO Box 11549; Columbia, SC 29211.

AND IT IS SO ORDERED this 13 day of JUNE, 2002.



G. Thomas Cooper
Administrative Judge
Fifth Judicial Circuit

Cowins, A, South Carolina.

DATE: AUGUST 12, 2002

TO: BARBARA A. SCOTT
RICHLAND COUNTY
CLERK OF COURT
P.O. BOX 2766
COLUMBIA, SOUTH CAROLINA 292202-2766

FROM: RONALD S. TILLMAN#85375-071
UNIT C-3/ROOM#321
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 725
EDGEFIELD ,SOUTH CAROLINA 29824

RE: CASE NO. 2002-CP-0971; TILLMAN v. STATE OF SOUTH CAROLINA:

Dear Clerk of the Court:

Please find the enclosed documents for filing within your court as soon as possible.

1). Applicant Show Cause, along with Memorandum of Points and Authorities in support of applicant's show cause petition. 2). Applicant motion for appointment of counsel.

In closing , applicant would like to thank you for your time and attention into this matter.

RST/rst
enclosures

Sincerely yours,

Ronald S. Tillman
RONALD S. TILLMAN

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN, S.C.D.C.

No. 222153

2002-CP-40-0971

APPLICANT,

v.

APPLICANT'S SHOW CAUSE

STATE OF SOUTH CAROLINA,

RESPONDENT.

Applicant Ronald S. Tillman (hereinafter referred to as "Applicant"), acting pro-se, hereby respectfully moves to show cause why this Honorable Court should allow applicant's post-conviction relief application. Applicant's show cause is based upon the attached memorandum of points and authorities, the files and record in this case, and upon such further arguments as may be had at any hearing on this matter.

DATED THIS 12TH DAY OF AUGUST , 2002.

Respectfully submitted,

Ronald S. Tillman

RONALD S. TILLMAN

REG. No. 85375-071

Unit C-3/Room#321

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 725

EDGEFIELD, SOUTH CAROLINA

29824

STATES OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	
RONALD S. TILLMAN, S.C.D.C.	)	2002-CP-40-0971
No. 222153	)	
APPLICANT,	)	MEMORANDUM OF POINTS AND AUTHORITIES
v.	)	IN SUPPORT OF APPLICANT'S SHOW CAUSE
STATE OF SOUTH CAROLINA,	)	PETITION
RESPONDENT.	)	

I.

INTRODUCTION

Applicant Ronald S. Tillman, hereby respectfully submits his show cause petition as to why this Honorable Court should not dismiss applicant's post-conviction relief application. This show cause order arise from the applicant's Uniform Post Conviction Procedure Act, pursuant to §17-27-10. (See Court's Rule To Show Cause Order attached hereto as exhibit "A").

FACTUAL AND PROCEDURAL BACKGROUND

The history of this case was set forth by applicant in his pro-se post-conviction relief application filed on or about March 1, 2002. There is no need to repeat these facts herein this show cause petition.

DISCUSSION

As a result of the aforementioned Rule to Show Cause, applicant is in federal custody and his post-conviction relief application should not be summarily dismissed with prejudice until the applicant has been brought before this Honorable Court for an evidentiary hearing on applicant's post-conviction relief application and oral testimony or other evidence is taken for the record.

The State of South Carolina has originally argued that the applicant was time-barred, and that the application for post-conviction relief(PCR) must be summarily dismissed because it is successive to the applicant's prior application for PCR, pursuant to S.C.Code Ann. §17-27-90(1985). This Honorable Court should totally disregard the State of South Carolina motion to dismiss because the Uniform Post-Conviction Procedure Act(the Act) is silent as to its application to post conviction relief(PCR) in cases where the Supreme Court of South Carolina has tolled the statute of limitation for applicants.

The applicant argues that the Court never ruled on the merits of applicant's prior application for PCR, so therefore the PCR that is before this Honorable Court is not successive to the applicant's prior application for PCR.

It is applicant's position that "The Supreme Court of South Carolina" tolled applicant's statute of limitation until applicant was returned to this jurisdiction. (See the Supreme Court of South Carolina Order dated July 22, 1999, attached hereto as exhibit "B").

The applicant has filed his PCR for section 17-27-45 within one year. Therefore the time limitation of S.C. Code Ann. §17-27-90 do not apply and applicant's PCR is timely filed. The applicant has presented several issues, upon which this Court has both criminal and equity jurisdiction over the matters contained in applicant's PCR. The applicant believes that the issues are cognizable in that they involve a fundamental defect causing a complete miscarriage of justice. See: Davis v. United States, 417 U.S. 333 (1974).

Applicant has sought relief under the aegis of the Uniform Post Conviction Procedure Act on the basis of two jurisdiction grounds. First, there is no other adequate remedy by which the applicant can gain access to the courts or effectively test the legality of his conviction and sentence. Second, the one year period of limitation is inapplicable to this PCR being filed within one year of applicant's return to this jurisdiction. This PCR therefore falls with the one year period during which to file and allows this Court to take jurisdiction over the matter. (See The Supreme Court of South Carolina Order dated July 22, 1999 attached hereto as exhibit "B").

Further, applicant's issues contained in his PCR will reveal that the applicant conviction and sentence was not authorized by law or is otherwise open to collateral attack, and the applicant avers that such a denial or infringement of the constitution rights of the applicant has occurred so as to render the judgment vulnerable to collateral attack requiring the Court to vacate and set aside the judgment,

resentence the applicant , or correct the sentence as may appear appropriate.

To summarily dismiss applicant's PCR that is now before the Court as successive to the prior application for PCR would have a draconian result. Such an application would be a violation of the EX POST FACTO clause of the Constitution. Applicant is serving a life sentence and must minimize the chances that his PCR application would be barred as untimely. Preparing a PCR application and submitting it before the applicant is within the jurisdiction of South Carolina places an extreme unfair burden on the applicant. The record is replete with documentation supporting applicant position on the foundation that applicant's PCR now before the Court is not successive and/or time barred; the Supreme Court of South Carolina clearly stated that " applicant SHALL not apply to any application for post-conviction relief until one year after applicant is returned to the jurisdiction of South Carolina. " This Court is fully aware of the conflict in this case and applicant's has not been able to fully review all of his trial and sentencing transcripts and other case documents. Only recently did applicant receive some of his trial transcripts; and has not been able to fully review them as well as access to the State law books for the State of South Carolina due to the inadequate law library here at Edgefield Federal Correctional Institution in South Carolina. The applicant clearly would like to state that while his request for PCR review was clearly well past the one year

limitation subsequent to the final disposition of his case, he was nevertheless well within the one year limitation with respect to the Supreme Court of South Carolina Order entered on or about July 22, 1999, as well as one year from the discovery of new evidence which demonstrates not only his actual innocence, but also the clear absence of the court's subject matter jurisdiction which was previously unknown to him and only uncovered after his exercise of reasonable diligence .

In the Court's Rule To Show Cause Order entered on or about June 13, 2002, the court fails to properly address the Supreme Court of South Carolina Order entered on or about July 22, 1999, with respect to the applicant being incarcerated in another jurisdiction. The State Supreme Court for South Carolina clearly stated in its order that "the statute of limitation applicable to post-conviction relief actions, S.C.Code Ann. §17-27-45 (Supp. 1998), shall not apply to any application for post-conviction relief filed by petitioner within one-year after petitioner is returned to this jurisdiction."

The applicant states that this contention by this Honorable Court to summarily dismiss this matter in its entirety and not hear the merits of his PCR will again deny applicant equal standard required to show ineffective assistance of counsel and his actual innocence, as well as showing that his prior PCR was not heard on the merits. Applicant's PCR ~~claims before this Honorable Court~~ now are not and can not be time barred because the Supreme Court of South Carolina clearly tolled the time for applicant to file his PCR.

CONCLUSION

For all the foregoing reasons, applicant Ronald S. Tillman, respectfully prays that this Honorable Court will disregard the Respondent's Motion To Dismiss , as well as to summarily dismiss the applicant's PCR with prejudice, and in so doing, Order and evidentiary hearing pursuant to section 17-27-80, with the applicant present at said hearing, and/or grant his PCR now before the Court as his original PCR, and order appropriate relief, balancing human fairness with the interest of justice.

Dated this 12TH day of August , 2002.

Respectfully submitted,

Ronald S. Tillman

RONALD S. TILLMAN

Reg. No. 85375-071

Unit C-3/Room#321

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 725

EDGEFIELD, SOUTH CAROLINA

29824

APPLICANT'S EXHIBITS "A" AND "B"

FORM 4

EXHIBIT "A"

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 02-CP-40-971Ronald S. TillmanState of S.C.

PLAINTIFF(S)

DEFENDANT(S)

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.
- ☐ 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 _____.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 2 day of Aug, 2002 to attorneys of record or to parties (when appearing pro se) as follows:Ronald S. Tillman# 85375-071P.O. Box 724Edgefield SC 29824

ATTORNEY(S) FOR THE PLAINTIFF(S)

B Allen Bullard

ATTORNEY(S) FOR THE DEFENDANT(S)

Barbara G. Scott
CLERK OF COURT

EXHIBIT (B)

The Supreme Court of South Carolina

Ronald Tillman, Petitioner,

v.

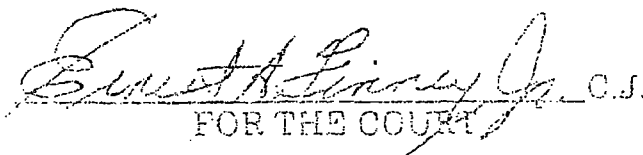
State of South Carolina, Respondent.

O R D E R

Petitioner asks this Court for permission to supplement the appendix in his petition for a writ of certiorari from the denial of his post-conviction relief application. The motion to supplement is denied.

After a review of the petition and the return, the petition for a writ of certiorari is denied. However, since petitioner is incarcerated in another jurisdiction, the statute of limitations applicable to post-conviction relief actions, S.C. Code Ann. § 17-27-45 (Supp. 1998), shall not apply to any application for post-conviction relief filed by petitioner within one year after petitioner is returned to this jurisdiction.

IT IS SO ORDERED.

 C.J.
FOR THE COURT

Columbia, South Carolina

July 22, 1999

FILED
STATES OF SOUTH CAROLINA

202 AUG 15 AM 8:23
IN THE CIRCUIT COURT

BARBARA A. SCOTT
C.C.C. & G.S.

CASE No. 2002-CP-40-0971

RONALD S. FILLMAN,

APPLICANT,

v.

STATE OF SOUTH CAROLINA ,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Applicant' Show Cause. with attached memorandum of points and authorities, in the above matter has been served on the clerk of the Court for Richland County , South Carolina , and opposing counsel for the State of South Carolina ,by mailing in an envelope properly addressed with postage prepaid this 12TH day of August, 2002.

TO: BARBARA A. SCOTT
RICHLAND COUNTY
CLERK OF COURT
P.O. BOX 2766
COLUMBIA, SC 292202-2766

and to

DAVE SPENCER
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE SOUTH CAROLINA ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, SC 29211

Ronald S. Tillman
RONALD S. TILLMAN
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 725
EDGEFIELD, SC 29824

FILED

STATE OF SOUTH CAROLINA

2002 AUG 15 AM 8:23

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

BARBARA A. SCOTT

C.C.C. & G.S.

FIFTH JUDICIAL CIRCUIT

RONALD S. TILLMAN, S.C.D.C.)

No. 222153)

2002-CP-0971

APPLICANT,)

v.)

APPLICANT'S MOTION FOR APPOINTMENT

STATE OF SOUTH CAROLINA,)

OF COUNSEL

RESPONDENT.)

Applicant Ronald S. Tillman, acting pro-se, in the above entitled matter respectfully request that this Honorable Court to appoint counsel to represent him in this case for the following reasons:

- 1). The applicant is unable to afford counsel in this matter.
- 2). The issues involved in this case are complex.
- 3). The applicant, as a federal prisoner, has extremely limited access to any of the State of South Carolina law books.
- 4). The applicant has a limited knowledge of the law of South Carolina.

WHEREFORE: Applicant respectfully prays that this Honorable Court will appoint counsel .

Dated this 12th day of August, 2002.

Respectfully submitted,

Ronald S. Tillman
 RONALD S. TILLMAN, PRO-SE
 Reg. No. 85375-071
 Unit C-3/Room#321
 Federal Correctional Institution
 P.O. Box 725
 Edgefield, South Carolina 29824

indeed

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2002-CP-40-0971

Ronald S. Tillman,

Applicant,

vs.

State of South Carolina,

Respondent.

BOOK **DD** PAGE **725**

ORDER OF DISMISSAL

FILED
ON JUN 14 PM 2:51
BARBARA A. SCOTT
C.C.C. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed March 1, 2002. The Respondent made its Return on June 12, 2002. An evidentiary hearing into the matter was convened on May 27, 2004 at the Richland County Courthouse. The Applicant was not present at the hearing. He was represented by D. Christopher Shea, Esquire. The Respondent was represented by Lakesha Jeffries of the South Carolina Attorney General's Office. After the case was called the Respondent moved pursuant to Rule 41(b), SCRPC, to dismiss this matter due to the Applicant's failure to prosecute.

The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). This Court finds the Respondent's motion well taken and hereby dismisses this matter with prejudice.

*and
#1*

IT IS THEREFORE ORDERED:

BOOK DD PAGE 728

1. The above captioned application is dismissed without prejudice for failure of the Applicant to prosecute; and,
2. The Applicant has one (1) year from the date of his release from his federal sentence and return to this state's jurisdiction to re-file this application for post conviction relief.

AND IT IS SO ORDERED this 11th day of June, 2004.



The Honorable Alison R. Lee
Presiding Judge
5th Judicial Circuit

Columbia, South Carolina.

arl
#2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2002-CP-40-0971

Ronald S. Tillman,
Applicant,

vs.

State of South Carolina,
Respondent.

AMENDED ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed March 1, 2002. The Respondent made its Return on June 12, 2002. An evidentiary hearing into the matter was convened on May 27, 2004 at the Richland County Courthouse. The Applicant was not present at the hearing. He was represented by D. Christopher Shea, Esquire. The Respondent was represented by Lakesha Jeffries of the South Carolina Attorney General's Office. After the case was called the Respondent moved pursuant to Rule 41(b), SCRCP, to dismiss this matter due to the Applicant's failure to prosecute.

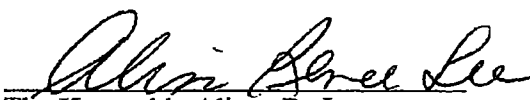
The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). This Court finds the Respondent's motion well taken and hereby dismisses this matter without prejudice.

and
#1

IT IS THEREFORE ORDERED:

1. The above captioned application is dismissed without prejudice for failure of the Applicant to prosecute; and,
2. The Applicant has one (1) year from the date of his release from his federal sentence and return to this state's jurisdiction to re-file this application for post conviction relief.

AND IT IS SO ORDERED this 16th day of June, 2004.


The Honorable Alison R. Lee
Presiding Judge
5th Judicial Circuit

Columbia, South Carolina.

al
#2

2:06-cv-00896-SB-RSC Date Filed 03/20/2006 Entry Number 4 Page 1 of 19
 Case 1:06-cv-00046-RHC-ESH Document 1-1 Filed 01/25/2006 Page 1 of 16

UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 BEAUMONT DIVISION

FILED
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF TEXAS

JAN 25 2006

RONALD S. TILLMAN
 PETITIONER,

BY DAVID J. MALAND, CLERK
 DEPUTY *mp*

VS.

CASE NO. 89-GS-40-0745

STATE OF SOUTH CAROLINA
 DEPARTMENT OF PROBATION,
 PAROLE AND PARDON SERVICES
 RESPONDENTS ET. AL.

1:06CV00046

PETITION FOR WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. 2241

May It Please This Honorable Court,

COMES NOW, Ronald S Tillman (Hereinafter) Petitioner, who respectfully petitions this Honorable Court to issue the writ of Habeas Corpus pursuant to 28 U.S.C. 2241, upon the State of South Carolina Department Of Probation, Parole and Pardon Services, for the following reasons.

(1)

The State of South Carolina Department Of Probation, Parole and Pardon Services, has violated the Constitutions Ex Post Facto Clause, The State Of South Carolina Department Of Probation, Parole and Pardon Services, changed petitioners punishment after it was imposed by the court.

(2)

SUMMARY OF ARGUMENT

On January 15th 1990, petitioner was sentenced to a paroleable Life term of imprisonment by the Honorable Don S. Rushing, In the

A TRUE COPY CERTIFY
 DAVID J. MALAND, CLERK
 U.S. DISTRICT COURT
 EASTERN DISTRICT, TEXAS
 BY *[Signature]*

2:06-cv-00896-SB-RSC Date Filed 03/20/2006 Entry Number 4 Page 2 of 19
Case 1:06-cv-00046-RHC-ESH Document 1-1 Filed 01/25/2006 Page 2 of 16

State of South Carolina, Court of General Sessions, Richland County.

In case No. 89-GS-40-0745, at petitioners sentencing, Judge Rushing squarely rejected the state prosecutors request to enhance petitioners sentence to life with no parole. Please see attached transcripts from petitioners sentencing hearing page 1123 line 18 thru 25 highlighted. Please also see transcript page 1124 lines one thru 25. Attached as exhibits, showing the above mentioned sentencing hearing.

(3).

ARGUMENT

EX POST FACTO VIOLATION

Petitioner, asserts that article 1 of the United States Constitution provides that neither Congress nor any State shall pass any "EX POST FACTO LAW". (see ART. I, 9, CL3; ART. I, 10, CL1. When petitioner was sentenced, the sentence included initiall parole consideration of a defendant serving a sentence of Life at 20 years. The South Carolina Department Of Probation, Parole and Pardon Services changed petitioner sentence to a non-paroleable life term of imprisonment, Under its rules or regulations, Section 24-21-640, and Section 16-1-60. (see attached copy of letter from South Carolina Department Of Probation, Parole and Pardon Services. Petitioner contends that this action by the Parole Board violates the ex post facto clause, as it changes petitioners punishment. At the time the Constitution was drafted, the phrase "Ex Post Facto Law" was a term of art with a well-established meaning. (see CALDER VS. BULL, 3 U.S. (DALL) 386, 1 Led. 648 (1798))

Justice Chase,s Opinion in CALDER, indentified several legislative acts that clearly implicated the core concerns of the various ex post facto clauses that existed at the time of the constitution framing.

One such legislative Act he noted was "Every Law That Changed The Punishment, and Inflicts A Greater Punishment, Than The Law Annexed To The Crime When Committed". Id. at 390, 1 Led. at 650 (Opinion Of Chase, J) (emphasis in original).

The Supreme Court's ex post facto rulings have been faithful to the original principle that "Every Law That Changes The Punishment, And Inflicts A Greater Punishment Than The Law Annexed To The Crime When Committed", violates the ex post facto provision. See MILLER VS. FLORIDA 482 U.S. 423, 429 (1987) Weaver VS. GRAHAM, 450 U.S. 24, 28 (1981), DOBBERT VS. FLORIDA, 432 U.S. 282, 292 (1977).

Before addressing the substantive issue of whether the Boards actions violates the ex post facto clause, three preliminary issues must be addressed. First, are the Boards rules laws within the meaning of the ex post facto clause? Second, are parole consideration hearings a part of parole eligibility? Third, are the ex post facto clause's restrictions applicable to a change in parole eligibility?

The first preliminary issue;

The South Carolina Legislature has delegated to the parole Board the authority to enact "rules and regulations" concerning parole, see Section 24-21-640 and Section 16-1-60. South Carolina Board Of Probation Parole and Pardon Services. This delegation mandates that the Board's rules and regulations "contain and eligibility requirement for parole of Life sentences unenhanced, which shall set forth the time when the automatic initial consideration for parole of prisoners who have unenhanced life sentences. If the South Carolina Legislature had passed the parole consideration rule at issue, the rule clearly would be a law and the ex post facto clause would obviously apply. The inquiry is whether

the parole Boards's rule is the equivalent of a law for ex post facto purposes. The effect of the Legislature's delegation is to grant the Parole Board Quasi-Legislative Power. The Parole Boards rules and regulations have the force and effect of law. Since the Legislature delegated to the Board The Power to enact rules and regulations concerning parole consideration, the rules or regulations enacted by the Board are subject to the ex post facto clause's prohibitions. This rule must be viewed as tantamount to a statute for the purpose of determining whether its application to petitioner runs afoul of the ex post facto clause, LOVE VS. FITZ HARRIS, 460 f.2d 382, 385 (9th Cir. (1972)) (A state parole authority's change in the interpretation of parole eligibility provision is subject to ex post fact constraints because the agency's interpretation had the effect of Law).

The Second Preliminary Issue:

Concerns whether a Parole consideration is part of the prisoners punishment. The enhancement of a penalty seems to come within the same mischief as the creation of a penalty, after the fact. CALDER VS. BULL 3 DALL at 397 (Paterson J) FLETCHER VS PECK, 6 CRANCE 87, 138, 3 Led. 162 (1810), Only an unusual Prisoner could be expected to think that he is not suffering a penalty when even though he is eligible for parole and might be released if granted a hearing, but is denied that hearing. See Rodriguez vs. United States Parole Commission 594 F2d 170 (7th Cir. 1979, Rodriguez involved a change that effectively eliminated all opportunity for parole release. As is the case with petitioner.

The Third Preliminary Issue:

Concerns whether the ex post fact clause applies to a change in

parole eligibility. "A Repealer of Parole eligibility previously available to imprisoned offenders would clearly present a serious question under the ex post facto clause...WARDEN VS. MARRERO 417 U.S. 653, 663 (1974). SHEPARD VS. TAYLOR 556 F.2d 648, 654 (2nd Cir. 1977). Parole eligibility is part of the sentence imposed as punishment for a crime and therefore subject to the prohibitions of the ex post facto clause. See Fender vs Thompson 883 F.2d 303, 306, (4th Cir. 1989) (Retrospective application of a statute changing parole eligibility would substantially alter the consequences attached to a crime already completed and therefore chance the punishment). SCHWARTZ VS. MUNCY 834 F.2d 396, 398 N.8 (4th Cir. 1987). (Parole eligibility is part of the law annexed to the crime at the time of a persons offense).

A law that is seemingly procedural will still violate the clause if the law alters A substantive right. WEAVER, 450 U.S. at 29 N 12, 101 S.Ct. at 964 N. 12 (1981).

Parole eligibility is not merely procedural. The South Carolina Board Of Parole And Pardon Services elimination of a parole hearing in petitioners case does not simply alter the methods employed to determine whether an otherwise eligible prisoner is granted parole. A parole hearing is both in law and in practice an important component of a prisoner parole eligibility.

This change is a substantive one that effectively disadvantages this petitioner from ever being eligible for parole.

Petitioner, request the court issue the writ of Habeas Corpus upon the South Carolina Board Of Parole And Pardon Services to refrain from

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denying petitioner a parole hearing upon his eligibility of parole.

RESPECTFULLY SUBMITTED

Ronald S. Tillman
RONALD S. TILLMAN
REG. NO. 85375-071
UNITED STATES PENITENTIARY
P.O. Box 26030
BEAUMONT, TEXAS, 77720-6030

State of South Carolina
 Department of Probation, Parole and Pardon Services

MARK SANFORD
 Governor



SAMUEL B. GLOVER
 Director

221 DEVINE STREET, SUITE 600
 POST OFFICE BOX 30666
 COLUMBIA, SOUTH CAROLINA 29230
 Telephone: (803) 734-9220
 Facsimile: (803) 734-9440
 www.state.sc.us/ppp

February 7, 2005

RE: NON ELIGIBILITY FOR PAROLE

Ronald Tillman #85375-071
 United States Penitentiary
 P.O. Box 26030
 Beaumont, Texas 77720-6030

Dear Mr. Tillman:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

<u>Violent Crime</u>	<u>Indictment Number</u>	<u>Parolable</u>	<u>Sentence</u>
Murder (16-3-10)	89-GS-40-0745	No	01/23/90
Armed Robbery (16-11-330) (A)	78-GS-40-1997		10/10/78

1 SHOTGUN. IT IS THE POSITION OF THE STATE THAT THIS GENTLEMAN
2 IS A CAREER CRIMINAL AND WE WOULD ASK THAT YOU GIVE HIM THE
3 MAXIMUM SENTENCE UNDER THE LAW. LIFE WITHOUT PAROLE.

4 THE COURT: ALL RIGHT. MR. SWERLING, THE STATE IS
5 ASKING THE COURT TO EXTEND THE PENALTY BEYOND THE NORMAL LIFE
6 ALLEGING A CAREER CRIMINAL SAYING THAT HIS RECORD CONSTITUTES
7 THE LIFE WITHOUT PAROLE APPLICATION. WHAT'S YOUR VIEW?

8 MR. SWERLING: I THINK THEY HAVE TO PUT THE DEFENDANT ON
9 NOTICE OF THAT BEFORE THE TRIAL WHICH THEY DID NOT DO.

10 THE COURT: I'LL RESERVE THAT ISSUE FOR THE TIME BEING.
11 THAT'S WHAT I WOULD HAVE THOUGHT, TOO, BUT WE'LL LOOK AT IT.

12 MR. SWERLING: I THINK THE STATUTE MIGHT EVEN SAY THAT
13 THEY HAVE TO BE APPRISED OF THAT.

14 MR. BILTON: YOUR HONOR, I WOULD THINK THAT UNDER THE
15 OMNIBUS CRIME ACT THAT WITH HIS THREE PRIOR HOUSEBREAKINGS
16 THAT HE WOULD FALL IN THAT CATEGORY.

17 ~~THE COURT: THE QUESTION HERE IS NOT THE QUESTION OF HOW~~
18 ~~THE COURT: THE QUESTION HERE IS NOT THE QUESTION OF HOW~~
19 ~~MURDER IS A MORE SERIOUS CRIME THAN A HOUSEBREAKING. THAT'S~~
20 ~~DATE, YOU'VE GOT TO BE IN THERE FOR TWENTY YEARS. THAT'S THE~~
21 ~~MURDER IS A MORE SERIOUS CRIME THAN A HOUSEBREAKING. THAT'S~~
22 ~~WITHOUT PAROLE FOR THIRTY. HAD IT BEEN A MURDER FOR HIRE AS~~
23 IT ALMOST WAS IT COULD HAVE BEEN THE DEATH PENALTY
24 APPLICATION. NOW THE OBLIGATION UNDER THE VIOLATION IS A
25 LIFE SENTENCE WHICH IS PAROLE AT TWENTY. YOU NOW ASK ME TO

1 HAVE HIM DETERMINED AND CLASSIFIED AS A CAREER CRIMINAL WHICH
2 RAISES THE LIFE WITHOUT PAROLE SPECTRUM. I'M UNSURE,
3 COUNSEL, BUT I'M GOING TO LOOK AT IT.

4 MR. SWERLING: YOUR HONOR, IF YOU WOULD ALLOW US TO
5 SUBMIT SHORT BRIEFS OR MEMORANDUMS PRIOR TO YOUR RULING OR
6 TAKE IT UNDER ADVISEMENT, I'D ASK THE OPPORTUNITY TO DO THAT
7 PRIOR TO THE IMPOSITION OF SENTENCE.

8 THE COURT: WELL, THIS IS RIGHT IMPORTANT. IT AFFECTS
9 THE LENGTH OF TIME PEOPLE SERVE. COUNSEL, I DON'T WANT TO
10 HOLD ANYTHING IN ABEYANCE BUT I WANT TO GIVE YOU A FAIR
11 OPPORTUNITY TO LOOK AT IT AND COUNSEL FOR THE STATE AS WELL
12 AND THE COURT AS WELL. I'D LIKE TO RESOLVE IT BEFORE I LEAVE
13 HERE THIS WEEK. I DON'T LIKE LEAVING THINGS LIKE THIS
14 UNRESOLVED. THEY JUST TEND TO STAY UNRESOLVED AND I DON'T DO
15 THAT. I'M GOING TO DECIDE IT AND I'M GOING TO DECIDE IT IN
16 THE WAY THAT I BELIEVE IS RIGHT IN ACCORDANCE WITH THE LAW.

17 MR. SWERLING: YOUR HONOR, I THINK IF WE LOOK AT THE
18 STATUTE--IT'S BEEN A LONG TIME SINCE I'VE LOOKED AT THAT
19 STATUTE BUT I THINK THAT--

20 THE COURT: HOW ABOUT IN THE MORNING? DO YOU THINK THAT
21 IN THE MORNING WOULD GIVE YOU ENOUGH TIME?

22 MR. SWERLING: YOUR HONOR, I HAVE NO PROBLEM WITH THAT
23 UNLESS--I HAVE AN OBLIGATION IN ORANGEBURG.

24 THE COURT: HAVE THEY SENT FOR YOU?

25 MR. SWERLING: MAYBE YOUR HONOR COULD DISCUSS THAT WITH

1 THEY ARE ENTITLED TO PUT THOSE IN. NOW, THE COURT MAY RULE
 2 THAT'S INSUFFICIENT, AND THIS IS HIS TIME. I THINK HE'S
 3 CLEARLY ENTITLED TO PRESENT THOSE ON THE ISSUE AND PRESERVE
 4 IT, AND THEY MAY BE RIGHT BUT YOU KNOW THE CASE LAW IN THE
 5 INTERPRETATION OF PENAL STATUTES ARE WHAT THEY ARE STRICTLY
 6 INTERPRETED AND I'M GOING TO STRICTLY INTERPRET IT. I THINK
 7 YOUR CLIENT PROBABLY DESERVES THE OTHER BUT I'M GOING TO
 8 FOLLOW THE INTERPRETATION AS I UNDERSTAND THE LAW. IN THAT
 9 IT'S STRICTLY INTERPRETED AND I'M GOING TO INTERPRET IT
 10 STRICTLY BECAUSE THIS CRIME WAS NOT DEFINED IN THE STATUTE
 11 CONFIDENTIALITY, INTERPRETATION. HE'S NOT A
 12 SENTENCER FOR THE FIRST ONE AND THE STATUTE REQUIRES BOTH IN
 13 STATUTE. BUT I'M GOING TO INTERPRET IT IF YOU WANT. I'M GOING TO
 14 ALTERNATIVE VIEW IN THAT REGARD BUT I DO THINK IT'S
 15 BEST TO GO WITH THE FIRST OR NOT. THE HOUSE HAS DECIDED TO
 16 CONSTITUTE THE BUILDING IN THE SECOND DEGREE AND, OF COURSE,
 17 UNDER THE BUILDING ACT, IT'S A BUILDING, AND IT'S A
 18 BUILDING AS IT'S A RESIDENCE, NOW.

19 MR. SWERLING: WELL, YOUR HONOR, MY POSITION ABOUT THE
 20 INDICTMENTS WOULD BE THAT THERE'S NO WAY THAT THE COURT CAN
 21 DISTINGUISH AT THIS TIME. THEY ARE NOT RELEVANT BECAUSE THEY
 22 DON'T DEFINE WHETHER OR NOT THE RESIDENCES OR THE--THEY DON'T
 23 DEFINE WHAT WAS BROKEN INTO AS BEING A BUILDING OR A
 24 DWELLING. I DON'T--

25 THE COURT: WELL, I DON'T KNOW. HE'S LIMITED TO

1 WHATEVER IT IS. MR. SWERLING, I APOLOGIZE FOR STEPPING ON
2 YOU AGAIN.

3 MR. SWERLING: NO, THAT'S ALL RIGHT. I JUST DON'T THINK
4 THEY ARE RELEVANT AT THIS TIME AND NO FOUNDATION HAS BEEN
5 LAID TO OFFER THEM AS BEING HIS PRIOR VIOLENT CRIMES.

6 THE COURT: WHY WOULDN'T THEY?

7 MR. SWERLING: THEY ARE MERE ALLEGATIONS ABOUT THE FACT
8 THAT A HOUSEBREAKING OCCURRED.

9 THE COURT: YOU KNOW, THE CASE THAT--AND I WAS TRYING TO
10 REMEMBER WHICH ONE IT WAS--THAT DEALT WITH THE ISSUE YOU
11 DEALT WITH IN THE TRIAL OF THIS CASE AND THEY SUBMITTED THE
12 INDICTMENT AND IN THAT CASE THEY SAID THAT THE COURT DID NOT--
13 THEY DID NOT PUT ONE IN AND THE INDICTMENT WOULD HAVE BEEN
14 SUFFICIENT OR INDICATED THAT. I THOUGHT YOU OUGHT TO GET THE
15 WARRANT. YOU HAD THE WARRANTS AND EVERYTHING TO PUT IN THE
16 RECORD AND THEN WE TOOK SOME TESTIMONY ON THE ISSUE AND WHAT
17 IT WAS WHETHER OR NOT ASSAULT AND BATTERY OF A HIGH AND
18 AGGRAVATED NATURE WAS A CRIME OF MORAL TURPITUDE AND UNDER
19 THE FACTS CLEARLY IT WAS NOT. THE TESTIMONY THAT WE HAD WAS
20 IT WAS NOT AN INTENT TO KILL, HE WAS NOT CUT AND IT SHOULD
21 NOT HAVE BEEN A CRIME OF MORAL TURPITUDE BUT AT LEAST WE TOOK
22 TESTIMONY AND EVIDENCE TO DETERMINE IT AND THE SUPREME COURT
23 HAS GOT A GOOD RECORD THERE. ~~BEHINDING THEM ARE ENTITLED AND~~
24 ~~SMUGGING TO GET THEM PUT THEM IN HANDS THEM UP HERE AND THE~~
25 ~~ME SEE WHICH ONES YOU'VE GOT. I THINK THEY'VE GOT A PROBLEM~~

1 AND I'VE INSTRUCTED THEM HOW THEY CAN PRESERVE THE RECORD.
 2 THEY ARE ALL CERTIFIED INDICTMENTS, AREN'T THEY? WAIT A
 3 MINUTE, THIS ISN'T GOING TO DO YOU ANY GOOD. THEY'VE HANDED
 4 ME A COPY OF NO. 882, STATE VS. RONALD STAFFORD, ALTHOUGH,
 5 INDICTMENT FOR HOUSEBREAKING AND LARCENY AND IT'S A CERTIFIED
 6 TRUE COPY FROM THE DISTRICT COURT IN DICKENS FOR
 7 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 8 883, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 9 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 10 884, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 11 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 12 885, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 13 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 14 886, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 15 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 16 887, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 17 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 18 888, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 19 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 20 889, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 21 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 22 890, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 23 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.
 24 891, STATE VS. RONALD STAFFORD, INDICTMENT FOR
 25 HOUSEBREAKING AND LARCENY AND A CERTIFIED TRUE COPY OF NO.

15 MR. SWERLING: OF COURSE, THAT'S MY POSITION.

16 THE COURT: THAT'S NOT GOING TO HELP YOU. AND THE OTHER
 17 ONE SAYS A BUSINESS ESTABLISHMENT, TOO. BOTH OF THESE ARE
 18 BUSINESS ESTABLISHMENTS. IT HAS TO FALL WITHIN SOME CRITERIA
 19 OF THAT STATUTE BESIDES THAT.

20 MR. MORTON: YES, SIR, I UNDERSTAND.

21 THE COURT: BUT THAT'S ALL YOU'VE GOT. YOU ARE ENTITLED
 22 TO MARK THEM. I'M GOING TO HAVE THE COURT REPORTER MARK THEM
 23 AS STATE'S EXHIBIT WHATEVER NUMBER THEY ARE FOR THE PURPOSE
 24 OF THIS HEARING.

25 (INDICTMENTS ARE RECEIVED INTO EVIDENCE AS STATE'S

1 EXHIBIT #56)

2 THE COURT: ANYTHING ELSE, SOLICITOR?

3 MR. MORTON: NO, SIR, YOUR HONOR.

4 THE COURT: ANYTHING FROM THE DEFENSE?

5 MR. SWERLING: YOUR HONOR, WE WOULD JUST ASK FOR LEAVE
6 TO SUPPLEMENT THE RECORD WITH THE ACTUAL INCIDENT REPORTS IN
7 THE CASE TO ESTABLISH THAT THEY WERE IN FACT BUSINESSES.

8 THE COURT: ALL RIGHT.

9 MR. MORTON: YOUR HONOR, I THINK THE ISSUE IS WHETHER
10 THEY WERE IN THE NIGHTTIME OR NOT.

11 MR. SWERLING: AND ALSO WHAT TIMES THEY WERE.

12 MR. MORTON: I DON'T HAVE ANY OBJECTION TO THAT.

13 THE COURT: IF YA'LL DON'T HAVE ANY OBJECTION, HOW CAN
14 I HAVE ANY OBJECTION? BUT FOR THE PURPOSE OF RIGHT NOW I'M
15 RENDERING MY DECISION BASED ON THE INDICTMENTS AND THEY
16 CLEARLY DO NOT GIVE ME SUFFICIENT INFORMATION TO REACH THAT
17 CONCLUSION AND I SO REACH.

18 MR. SWERLING: WELL, YOUR HONOR, THAT'S FINE. WE WOULD
19 WITHDRAW IT. WE ARE NOT GOING TO SUPPLEMENT.

20 ~~THE COURT: IF YA'LL DON'T HAVE ANY OBJECTION, HOW CAN I HAVE ANY OBJECTION? BUT FOR THE PURPOSE OF RIGHT NOW I'M RENDERING MY DECISION BASED ON THE INDICTMENTS AND THEY CLEARLY DO NOT GIVE ME SUFFICIENT INFORMATION TO REACH THAT CONCLUSION AND I SO REACH.~~

21 ~~MR. SWERLING: YOUR HONOR, WE WOULD JUST ASK THE COURT~~

22 ~~TO CONSIDER THE HAVING MR. SWERLING RECEIVE CREDIT FOR THE~~

23 ~~TIME HE'S BEEN INCARCERATED ON THE MURDER CHARGE SINCE~~

24 ~~JANUARY 14TH, 1989, AND ALSO WOULD ASK THE COURT TO CONSIDER~~

25 ~~RUNNING THE STATE SENTENCE CONCURRENT WITH ANY FEDERAL~~

1 SENTENCE, THAT HE'S TO RECEIVE BY JUDGE BLATT ON FEBRUARY
2 14TH.

3 THE COURT: IS HE SERVING ANY SENTENCE RIGHT NOW?

4 MR. SWERLING: NO, SIR.

5 MR. MORTON: NO, SIR, HE'S AWAITING SENTENCE.

6 THE COURT: ANYTHING ELSE?

7 MR. SWERLING: NO, SIR.

8 MR. MORTON: YOUR HONOR, BEFORE YOU SENTENCE HIM I WOULD

9 ASK LEAVE TO SUPPLEMENT THE RECORD WITH THE INCIDENT REPORT.

10 THE COURT: ANY OBJECTION?

11 MR. SWERLING: YES, SIR, I WOULD. THE SENTENCING

12 HEARING IS NOW AND I THINK THE COURT HAS TO MAKE A DECISION.

13 I THINK WE COULD BE CRITICIZED BY ALLOWING THE DECISION TO BE

14 MADE WITHOUT THE FULL FACTS BEFORE THE COURT AND THAT'S ONE

15 OF THE REASONS WHY I WITHDREW IT AND I THINK THE COURT OUGHT

16 TO RENDER A DECISION BASED UPON WHAT IT HAS BEFORE IT.

17 MR. MORTON: WE JUST WANT TO PROTECT OUR RIGHT TO

18 APPEAL, OF COURSE, THE SENTENCE, YOUR HONOR. WE JUST MAKE

19 THAT REQUEST THAT WE BE ALLOWED TO SUPPLEMENT THE RECORD WITH

20 THE INCIDENT REPORTS ON THOSE HOUSEBREAKING CONVICTIONS.

21 MR. SWERLING: YOUR HONOR, I'D SUBMIT WE'D HAVE THE

22 RIGHT TO AN EVIDENTIARY HEARING IF THEY WANT TO DO THAT AND

23 I JUST THINK THAT JUST PROTRACTS IT. CERTAINLY MR. TILLMAN

24 COULD REFUTE WHAT'S IN THE INCIDENT REPORTS ABOUT THE TIME OF

25 DAY OR WHETHER IT WAS A BUILDING OR NOT EVEN THOUGH THERE HAS

1 BEEN A FLEA. AS I UNDERSTOOD THE STATE'S POSITION LAST WEEK
2 THE FACT THAT SOMEONE PLED GUILTY TO HITTING SOMEONE WITH A
3 MACHETE WAS NOT AN ADMISSION THAT THEY COMMITTED A CRIME OF
4 MORAL TURPITUDE. SO, HE COULD CONTEST IT. HE HAS A RIGHT TO
5 CONTEST IT AND IF THEY WANT TO PUT IN EVIDENCE, SUPPLEMENTING
6 HIS RECORD THEN HE WOULD HAVE A RIGHT TO CONTEST THAT.

7 ~~THE COURT: THIS IS THE SENTENCING HEARING. THIS IS THE~~
8 ~~TIME. THE COURT IS NOT CONCERNED WITH ANYTHING THAT MAY BE A~~
9 ~~REMARKS. ANYTHING THAT MAY BE A REMARKS. ANYTHING THAT MAY BE A~~

10 ~~ARE~~ ARE YA'LL READY?

11 MR. SWERLING: YES, SIR.

12 THE COURT: ANYTHING ELSE?

13 MR. SWERLING: NO, SIR.

14 MR. MORTON: NO, SIR.

15 THE COURT: ANYTHING ELSE?

16 DEFENDANT TILLMAN: YES SIR. I WOULD LIKE TO SAY TO THE
17 SUTTON FAMILY, LIKE I SAY, I WAS FOUND GUILTY, YES, BUT IT'S
18 NOT YET OVER BECAUSE I DIDN'T KILL DONALD. AND WHEN IT ALL
19 COMES OUT EVERYTHING WILL BE ALL RIGHT. AND I'M SORRY FOR
20 WHAT YOU HAD TO GO THROUGH AND TO PUT YOUR FAMILY THROUGH IT
21 AND TO PUT MY FAMILY THROUGH IT. I'M SORRY FOR TAKING YOU
22 THROUGH THAT BUT IT'S NOT YET OVER WITH BECAUSE, YOU KNOW,
23 IT'S NOT FINISH AND I WISH IT COULD BE. I WISH THING COULD
24 HAVE BEEN DIFFERENT BUT MY SYMPATHIES ARE WITH YOU AND, LIKE
25 I SAY, I'M SORRY FOR WHAT HAS HAPPENED AND I WISH I COULD

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1 CHANGE THINGS BECAUSE NOBODY CARES. EVERYBODY IS HERE TO DO
2 A JOB BUT I CARE. AS LONG AS I CARE THEY CAN DO WHAT THEY
3 WANT TO TO ME BECAUSE THEY DON'T CARE.

4 THE COURT: ANYTHING ELSE, MR. SWERLING?

5 MR. SWERLING: NO, SIR.

6 ~~THE COURT WAS REQUIRED BY THE STATUTES OF THIS STATE,~~
7 ~~MR. TILLMAN, YOU HAVE BEEN FOUND GUILTY OF THE CRIME OF MURDER~~
8 ~~BY A JURY AND THE COURT HAS IDENTIFIED YOUR POST TRIAL MOTIONS~~
9 AS A RESULT I'VE EXTENDED TO YOU THE OPPORTUNITY TO SUBMIT
10 ANY FURTHER EVIDENCE. ~~THE STATE HAS MOVED FOR ENHANCEMENT OF~~
11 ~~YOUR SENTENCE FROM LIFE IN PRISON TO DEATH. FROM THE EVIDENCE THAT~~
12 ~~THE STATE HAS PRESENTED, THE COURT FINDS THAT YOU ARE A DANGEROUS~~
13 ~~PERSON WHO SHOULD BE IMPRISONED FOR LIFE IN PRISON.~~
14 ~~CORRECTIONS. YOUR HONORABLE COURT HAS DECIDED TO GIVE YOU A~~
15 ~~NO CREDIT IS TO BE GIVEN FOR TIME SERVED~~
16 OR AWAITING TRIAL. ONCE AGAIN, I APPRISE YOU OF YOUR RIGHT
17 TO APPEAL. YOU MUST DO SO BY FILING YOUR NOTICE OF INTENT TO
18 APPEAL WITH THIS COURT AND WITH THE SUPREME COURT WITHIN TEN
19 DAYS. DO YOU UNDERSTAND THAT, SIR?

20 DEFENDANT TILLMAN: YES, SIR.

21 THE COURT: GOOD LUCK TO YOU, SIR.

22

23

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 BEAUMONT DIVISION

RONALD S. TILLMAN §
 VS. § CIVIL ACTION NO. 1:06cv46
 STATE OF SOUTH CAROLINA §

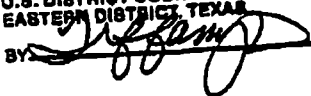
MEMORANDUM OPINION REGARDING VENUE

Petitioner Ronald S. Tillman, an inmate confined the Federal Correctional Institute at Beaumont, Texas, proceeding *pro se*, filed this petition for writ of habeas corpus.

Discussion

Petitioner is not challenging the federal conviction which led to his incarceration at the Federal Correctional Institute at Beaumont. Instead, petitioner asserts that the South Carolina Department of Probation, Parole and Pardon Services has improperly concluded he is ineligible to be considered for parole with respect to a criminal conviction in a South Carolina state court. He states that while the state court refused to sentence him to life imprisonment without the possibility of parole, the Department of Probation, Parole and Pardon Services considers him ineligible for parole.

As petitioner is not challenging his current federal conviction, but is instead challenging actions taken by South Carolina officials regarding a South Carolina state court

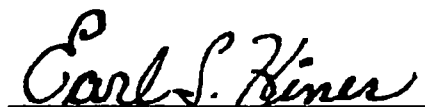
A TRUE COPY I CERTIFY
 DAVID J. MALAND, CLERK
 U.S. DISTRICT COURT
 EASTERN DISTRICT TEXAS
 BY: 

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conviction, the court is of the opinion this petition should be transferred to a forum where a South Carolina state inmate would pursue a petition for writ of habeas corpus.

As a result, this petition for writ of habeas corpus will be transferred to the United States District Court for the District of South Carolina. A Transfer Order shall be entered in accordance with this Memorandum Opinion.

SIGNED this 24 day of February, 2006.


EARL S. HINES
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 BEAUMONT DIVISION

RONALD S. TILLMAN

\$

VS.

\$

CIVIL ACTION NO. 1:06cv46

STATE OF SOUTH CAROLINA

\$

2006 MAR 20 PM 1:10

TRANSFER ORDER

This action came on before the Court, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED and ADJUDGED that this action is TRANSFERRED to the United States District Court for the District of South Carolina.

SIGNED this 24 day of February, 2006.

Carl S. Hines
 EARL S. HINES
 UNITED STATES MAGISTRATE JUDGE

ATTEST: I CERTIFY
 DAVID J. MALAND, CLERK
 U.S. DISTRICT COURT
 EASTERN DISTRICT, TEXAS

BY *[Signature]*

RECEIVED
USDC CLERK, CHARLESTON, SC

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

2006 MAR 27 A 10 57

Ronald S. Tillman, #85375-071,

Petitioner,

vs.

State of South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

C/A No. 2:06-896-SB-RSC

ORDER MAR 29 2006

LEGAL-DEPT

The is an action seeking habeas corpus relief under 28 U.S.C. § 2241. The petitioner is a federal prisoner imprisoned in Federal Correctional Institution at Beaumont, Texas. This habeas action was transferred to this Court from the United States District Court for the Eastern District of Texas.

TO THE CLERK OF COURT:

The Clerk of Court shall serve the § 2241 petition and this Order upon the Respondent, South Carolina Department of Probation, Parole and Pardon Services.

The Clerk of Court shall not enter any change of address submitted by the petitioner which directs that mail be sent to a person other than the petitioner unless that person is an attorney admitted to practice before this Court and the attorney has entered an appearance in this action.

TO THE RESPONDENT:

The Respondent shall file an answer or other response to the petition as soon as reasonably possible but no later than fifty (50) days from the date of service. See e.g. Kramer v. Jenkins, 108 F.R.D. 429, 430-433 (N.D.Ill. 1985) (court has discretionary authority to fix time for response to habeas corpus).

TO THE PETITIONER:

After the appearance in this action by counsel for the respondent, the petitioner shall serve a copy of any subsequent pleading, motion or other paper filed by the petitioner in

this Court upon counsel for the Respondent(s). See Rule 5 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.). Any subsequent document(s) filed in this Court shall have a signed Certificate of Service attached, which states who was served, what document was served, and how the document was served.

In any future filings with this Court, the petitioner is directed to use letter-sized paper only and to write or type text on one side of a sheet of paper only. Do not write or type on both sides of any sheet of paper.¹ The petitioner is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom and sides of each paper submitted. The petitioner will strictly comply with requirements for "short and plain" statements of claims and defenses in all pleadings under Rule 8 Fed. R. Civ. P. as well as the requirements for "concise summary," "concise statement" and "brevity" set forth in Local Civil Rule 7.05 of the United States District Court for the District of South Carolina.

The petitioner must place the Civil Action Number (C/A No.) listed above on any document filed in this case.

The petitioner is a *pro se* litigant. The petitioner's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised in writing (Post Office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address, and include the docket number(s) of any pending case(s) you have filed in this Court. Your failure to do so will not be excused by the court.

Put this order with your own record of this case so that you will not overlook your duty. If an attorney serves you by mail on behalf of a respondent or a respondent, you also have a duty to notify that attorney if your address is to be changed for mail purposes. The petitioner is, hereby, informed that if his address changes in the future, he must provide *his* prison or jail address.

¹ Pursuant to Section 205 of the E-Government Act of 2002, Pub. L. 107-347, December 17, 2002, 111 Stat. 2899, this Court has implemented Electronic Case Filing (ECF). For this purpose, *pro se* filings are scanned to create electronic docket records. Therefore, the use of only one side of a sheet of letter-sized paper is required.

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IT IS SO ORDERED.


Robert S. Carr
United States Magistrate Judge

March 27, 2006
Charleston, South Carolina

The petitioner's attention is directed to the important warning on the next page.

IMPORTANT INFORMATION PLEASE READ CAREFULLY**WARNING TO PRO SE LITIGANTS**

All Documents That You File with the Court Will Be Available to the Public on the Internet Through Pacer (Public Access to Court Electronic Records) and the Court's Electronic Case Filing System.

YOU ARE RESPONSIBLE FOR PROTECTING YOUR IDENTITY FROM POSSIBLE THEFT. YOU MUST REMOVE CERTAIN PERSONAL IDENTIFYING INFORMATION FROM ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING. IT IS NOT THE COURT'S RESPONSIBILITY TO REMOVE PERSONAL IDENTIFYING INFORMATION FROM YOUR DOCUMENTS BEFORE THEY ARE ELECTRONICALLY DOCKETED.

Under the Privacy Policy of the Judicial Conference of the United States, a litigant, whether represented by counsel or appearing pro se, must not put certain types of the litigant's (or any other person's) personal identifying information in documents submitted for filing to any United States District Court. This rule applies to ALL documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party for filing. If the litigant finds it necessary to submit a document containing personal identifying information, the litigant must "black out" or redact the personal identifying information prior to submitting the document to the Office of the Clerk of Court for filing.

1. Types of personal information that MUST be removed or redacted from documents before filing:

- (a) **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number shall be used.
- (b) **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child shall be used.
- (c) **Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year shall be used.
- (d) **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers shall be used.
- (e) **Juror Information.** If a document containing identifying information about a juror or potential juror must be filed (e.g., verdict form or indictment), all personal information identifying a juror or potential juror must be redacted.

2. Other sensitive personal information of the litigant (or any other person) that should be considered for possible removal or redaction:

Any personal identifying number, including a driver's license number; medical records; employment history; individual financial information; proprietary or trade secret information; information regarding an individual's cooperation with the government; information regarding the victim of any criminal activity; national security information; and/or sensitive security information described in 49 U.S.C. § 114(s).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Tillman, #85375-071,

C/A No. 2:06-896-SB-RSC

Petitioner,

VS.

MOTION FOR SUMMARY JUDGMENT

**State of South Carolina Department
of Probation, Parole and Pardon
Services,**

Respondent.

The Respondent, above-named, by and through its undersigned attorneys, would respectfully move this Court, pursuant to Rules 12(b) & 56(b) F.R.C.P., for summary judgment based on the pleadings.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
ID No. 4425

J. BENJAMIN APLIN
Assistant Chief Legal Counsel, SCDPPPS
ID No. 9180

ATTORNEYS FOR RESPONDENTS

s/ J. Benjamin Aplin

By:

J. Benjamin Aplin, ID No. 8190

1642

South Carolina Department of Probation
Parole, and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29205
Telephone: (803) 734-9220

May 1, 2006

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Tillman, #85375-071,

Petitioner,

vs.

State of South Carolina Department
of Probation, Parole and Pardon
Services,

Respondent.

C/A No. 2:06-896-SB-RSC

**RETURN AND MEMORANDUM
OF LAW IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Respondent hereby makes Return to the March 27, 2006, Order filed by the Honorable Robert S. Carr, United States Magistrate Judge, and responds to the allegations in the pro se Petition for Writ of Habeas Corpus. Respondent submits that it is entitled to summary judgment because Petitioner has not exhausted available state court remedies and because Petitioner has failed to state a claim for which relief can be granted.

I. PROCEDURAL HISTORY

Petitioner is presently confined in the Federal Correctional Institution in Beaumont, Texas. In 1978 Appellant was charged in Richland County, South Carolina with Armed Robbery (78-GS-40-1997). On October 19, 1978, he waived presentment to the grand jury and pled guilty as charged. Petitioner was sentenced under the South Carolina Youthful Offender Act to an indeterminate sentence not to exceed 6 years imprisonment suspended upon the service of three (3) years. (Respondent's Exhibit #1). Appellant did not appeal his conviction and has since satisfied this sentence. Appellant was subsequently indicted at the February, 1989, term of the grand jury for Richland County for murder (89-GS-40-0745). He was represented by Jack

Swerling, Esquire. On January 15-23, 1990, Petitioner proceeded to trial by jury and was convicted as charged. He was sentenced by the Honorable Donald S. Rushing to life imprisonment. (Respondent's Exhibit #2).¹

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected by Mr. Swerling and Jennifer Kneece Shealy, Esquire. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Tillman, Op. No. 1666 (S.C. Ct. App. filed May 28, 1991). (Respondent's Exhibit #5). On June 12, 1991, Petitioner submitted a Petition for Rehearing (Respondent's Exhibit #6) and in an Order dated June 20, 1991, the Petition was denied. (Respondent's Exhibit #7). The remittitur was sent down on June 13, 1991. (Respondent's Exhibit #8).

On July 17, 1995, Petitioner filed an application for post-conviction relief (PCR) (95-CP-40-2449) in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. Brady violations; and
3. Judge abused his discretion and denied the defendant a fair trial.

The State filed its Return and Motion to Dismiss without Prejudice on October 6, 1995.

(Respondent's Exhibit #9). Petitioner was represented by Tara Dawn Shurling, Esquire. The State was represented by Teresa Knox of the South Carolina Office of the Attorney General. By

¹ During the sentencing portion of the trial, it appears the Solicitor invoked his discretion under Section 17-25-45(2) (Supp. 1990) and asked the court to find the conviction was a third conviction for a "violent crime as defined in Section 16-1-60," which would render the sentence as one of "life imprisonment without parole." S.C. Code Ann. § 17-25-45(1) (Supp. 1990). The Court declined the request, finding the Solicitor had not satisfied the elements of the statute. (Respondent's Exhibits #3 & #4).

Order dated March 24, 1997, the Honorable Casey Manning dismissed the Application without prejudice pending the return of the Applicant to the custody of the South Carolina Department of Corrections (SCDC). (Respondent's Exhibit #10). On April 4, 1997, Petitioner filed a Motion to Alter or Amend (Respondent's Exhibit #11) and in an Order dated July 13, 1998, that Motion was denied. (Respondent's Exhibit #12). Petitioner filed a timely notice of appeal. The South Carolina Supreme Court denied the Petition for Writ of Certiorari and affirmed the PCR Court's denial of the Application on July 22, 1999.

On March 1, 2002, Petitioner filed a second Application for PCR (02-CP-40-971) in which he alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. Actual innocence; and
3. Prosecutorial misconduct.

On June 12, 2002, the State filed a Return and Motion to Dismiss. (Respondent's Exhibit #13). In a Rule to Show Cause dated June 13, 2002, the Honorable G. Thomas Cooper expressed his intent to summarily dismiss the matter in its entirety. On May 27, 2004, a hearing was convened at the Richland County Courthouse. Petitioner was not present at the hearing but was represented by Christopher Shea, Esquire. The State was represented by Lakesha Jeffries of the South Carolina Attorney General's Office. In an Order of Dismissal dated June 11, 2004, and an Amended Order of Dismissal dated June 16, 2004, the Honorable Alison R. Lee dismissed the Application for failure to prosecute. (Respondent's Exhibits #14 and #15).

On February 7, 2005, Respondent advised Appellant in a "final decision" letter that he is ineligible for parole based on Section 24-21-640 of the South Carolina Code, which prohibits the

Parole Board from granting parole to a prisoner serving a sentence for a subsequent violent offense. (Respondent's Exhibit #16). In a document dated March 9, 2005, Appellant filed an appeal with the Administrative Law Court challenging the Respondent's final decision regarding his parole eligibility. (Respondent's Exhibit #17). On July 5, 2005, Respondent served and filed a Brief addressing Petitioner's claims. (Respondent's Exhibit #18). Petitioner subsequently submitted a "Traverse Response Brief To Respondent's Brief to Dismiss" to the ALC. (Respondent's Exhibit #19). As of the date of filing, a decision on Petitioner's appeal has not be rendered by the ALC.

On January 25, 2006, Petitioner filed the instant pro se § 2241 Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Texas. In a Transfer Order issued February 24, 2006, by the Honorable Earl S. Hines, United States Magistrate Judge, the Petition was transferred to this Court. In an Order dated March 27, 2006, the Honorable Robert S. Carr, United States Magistrate Judge, directed that Respondent file an answer or other response to the Petition. This Return and Motion for Summary Judgment follows.

Respondent attaches the following Exhibits to this Return and incorporate these documents by reference:

1. Indictment and Sentencing Sheet for 78-GS-40-1997;
2. Indictment and Sentencing Sheet for 89-GS-40-0745;
3. S.C. Code § 17-25-45 (Supp. 1990);
4. Pages 1123 to 1141 of trial transcript for 89-GS-40-0745;
5. S.C. Court of Appeals Opinion filed May 28, 1991;
6. Petition for Rehearing dated June 20, 1991;

7. Order dated June 20, 1991, denying Petition for Rehearing;
8. Remittitur dated June 13, 1991;
9. Return and Motion to Dismiss dated October 6, 1995;
10. Order dated March 24, 1997;
11. Motion to Alter or Amend dated April 4, 1997;
12. Order dated July 13, 1998;
13. Return and Motion to Dismiss dated June 12, 2002;
14. Order of Dismissal dated June 11, 2004;
15. Amended Order of Dismissal dated June 16, 2004;
16. Final decision letter dated February 7, 2005;
17. Notice of Appeal Dated March 9, 2005;
18. Brief dated July 5, 2005;
19. Traverse Response Brief To Respondent's Brief to Dismiss;

II. HABEAS ALLEGATIONS

Petitioner raises a single allegation in his *pro se* Petition for Writ of Habeas Corpus:

GROUND ONE: That the Respondent has violated the Constitution's Ex Post Facto Clause by changing his punishment after it was imposed by the sentencing court.

SUPPORTING FACTS: Petitioner asserts that Respondent has erroneously taken away his parole eligibility. He also asserts that Respondent may not now decide he is ineligible for parole as a subsequent violent offender (S.C. Code Ann. § 24-21-640) because the trial court already determined this not to be the case.

In his attached brief, Petitioner addresses three "preliminary issues" in support of his underlying claim that his parole eligibility has been unlawfully taken by Respondent.

III. DISCUSSION

Respondent submits it is entitled to summary judgment for the following reason. "Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court." O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). "The exhaustion doctrine ... is now codified at 28 U.S.C. § 2254(b)(1)." Id. (internal citations omitted). "The exhaustion requirement ... serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981). "An exception is made only if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief." Id. See also Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997) (recognizing that, although not jurisdictional, the exhaustion requirement is strictly enforced; and that failure to exhaust remedies will be excused only where exhaustion requirement is expressly waived by the state or petitioner has technically complied therewith).

As shown in the procedural history, Petitioner clearly has not exhausted available state court remedies as required by § 2254(B)(1)(A), O'Sullivan and Rose v. Lundy, 455 U.S. 509 (1982). Indeed, as demonstrated in the attachments, he is arguing the same allegations raised in this Habeas Petition as he has presented in his pending appeal with the ALC. In South Carolina, an allegation that parole eligibility has been unlawfully denied may be raised for consideration by way of an appeal to the ALC. Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000);

Here, Petitioner is pursuing precisely such a claim through his appeal with the ALC. If he receives an unfavorable decision, it can be appealed to the Circuit Court, the South Carolina Court of Appeals, and ultimately the South Carolina Supreme Court. Therefore, Respondent submits that Petitioner has adequate and available state remedies which must be exhausted before he can pursue federal habeas corpus.

Respondent further submits it is entitled to summary judgment because Petitioner has failed to state a claim for which relief can be granted. Petitioner asserts that Respondent has erroneously taken away his parole eligibility. He also asserts that Respondent may not now decide he is ineligible for parole as a subsequent violent offender because the trial court already determined this not to be the case. Respondent submits these assertions have no merit. Petitioner is not, and has never been, parole eligible on his current sentence due to the terms of Section 24-21-640 of the South Carolina Code. It provides:

The [parole] board must not grant parole, nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.

S.C. Code Ann. § 24-21-640 (1989 & Supp. 2005). In determining whether an offender is a subsequent violent offender, the subsequent crime must have been committed after June 3, 1986, and have been defined as violent at the time of the commission of the crime. The prior crime can be committed at any time, including after the offense date of the subsequent crime because the focus is on the date of sentencing for the subsequent crime. There is an exception where the subsequent crime was committed during the period of January 1, 1994, through January 12, 1995. During this "window" the prior crime must also have been defined as violent at the time the prior

crime was committed. With the exception of this window, there is no ex post facto where an inmate is treated as a subsequent violent offender based in part on a prior conviction which was not defined as violent on the date that prior crime was committed. Sullivan v. State, 504 S.E.2d 110 (1998); Phillips v. State, 504 S.E.2d 111 (1998). In the case at bar, Petitioner was convicted of armed robbery in 1978. He is currently serving a life sentence for a murder committed in 1989. In 1989, both crimes were defined as violent crimes by Section 16-1-60 of the South Carolina Code. Thus, under the clear terms of Section 24-21-640 of the Code, Petitioner is not eligible for parole on his subsequent violent conviction. Petitioner's ineligibility for parole has nothing to do with Section 17-25-45; therefore, the trial court's consideration of that statute has no bearing on Respondent's final decision.

Each and every allegation contained within the Petition, not hereinbefore either expressly admitted, qualified or explained, including the substantive ground raised, is hereby denied.

IV. CONCLUSION

WHEREFORE, having made its Return and Motion for Summary Judgment, the Respondent requests that the Petition be denied and dismissed with prejudice.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
ID No. 4425

J. BENJAMIN APLIN
Assistant Chief Legal Counsel, SCDPPPS
ID No. 9180

ATTORNEYS FOR RESPONDENTS

s/ J. Benjamin Aplin
By: _____
J. Benjamin Aplin, ID No. 9180

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Telephone: (803) 734-9220

May 1, 2006.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ronald S. Tillman,

Petitioner,

v.

S.C. Department of Probation, Parole,
and Pardon Services,

Respondent.

Civil Action No. 2:06-0896

ORDER

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This matter is before the Court upon the Petitioner's pro se petition for a writ of habeas corpus filed under 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, the Court referred the matter to United States Magistrate Judge Robert S. Carr for initial review.

BACKGROUND

Presently, Petitioner Ronald S. Tillman is confined in the Federal Correctional Institution in Beaumont, Texas, where he is serving a sentence for a federal criminal conviction unrelated to the state probation matter at issue in his application for a writ of habeas corpus.

In 1978, the Petitioner faced charges of armed robbery in Richland County, South Carolina. On October 19, 1978, he waived presentment to the grand jury and pleaded guilty as charged. The court sentenced the Petitioner under the South Carolina Youthful Offender Act to an indeterminate sentence not to exceed six years imprisonment, suspended on the service of three years imprisonment. The Petitioner did not appeal this conviction, and he since has satisfied this sentence.

In February 1989, the Petitioner was indicted for murder in Richland County, South Carolina. Attorney Jack Swerling represented the Petitioner. The Petitioner proceeded to trial from January 15-23, 1990, after which, the jury convicted the Petitioner as charged. The Honorable Donald S. Rushing sentenced the Petitioner to life imprisonment. During sentencing, the solicitor appears to have invoked his discretion under section 17-25-45 of the South Carolina Code and asked the court to find the Petitioner's conviction to be a third conviction for a "violent crime as defined in section 16-1-60," which would make his sentence "life imprisonment without parole." S.C. Code Ann. § 17-25-45(1) (Supp. 1990). Judge Rushing declined the solicitor's request, finding that the solicitor had not satisfied the elements of the statute.

The Petitioner, with the aid of attorneys Jack Swerling and Jennifer Kneece Shealy, filed a notice of appeal. The South Carolina Court of Appeals affirmed the Petitioner's conviction and sentence. See State v. Tillman, Op. No. 1666 (S.C. Ct. App. Filed May 28, 1991). On June 12, 1991, the Petitioner submitted a petition for rehearing, which the court denied in an Order dated June 20, 1991. The remittitur was sent down on June 13, 1991.

On July 7, 1995, the Petitioner, who was represented by attorney Tara Dawn Shurling, filed an application for post-conviction relief ("PCR"), wherein he alleged the following grounds for relief: (1) ineffective assistance of counsel; (2) Brady violations; and (3) that the judge abused his discretion and denied the Petitioner a fair trial.

In an Order dated March 24, 1997, the Honorable Casey Manning dismissed the Petitioner's PCR application without prejudice pending the return of the Petitioner to the custody of the South Carolina Department of Corrections. The Petitioner filed a motion to alter or amend, which the court denied in an Order dated July 13, 1998. The Petitioner

then filed a timely notice of appeal; however, the South Carolina Supreme Court denied the Petitioner a writ of certiorari on July 22, 1999.

Thereafter, on March 1, 2002, the Petitioner filed a second PCR application, wherein he alleged the following grounds: (1) ineffective assistance of counsel; (2) actual innocence; and (3) prosecutorial misconduct. The State responded to the Petitioner's application with a motion to dismiss on June 12, 2002. In a Rule to Show Cause dated June 13, 2002, the Honorable Thomas G. Cooper expressed his intent to summarily dismiss the matter in its entirety. Then, on May 27, 2004, the court held a hearing at the Richland County Courthouse. The Petitioner was not present, but he was represented by attorney Christopher Shea. In an Order of Dismissal dated June 11, 2004, and an Amended Order of Dismissal dated June 16, 2004, the Honorable Alison R. Lee dismissed the application for failure to prosecute.

On February 7, 2005, the Respondent, South Carolina Department of Probation, Parole, and Pardon Services, advised the Petitioner in a "final decision" letter that he is ineligible for parole based on section 24-21-640 of the South Carolina Code, which prohibits the Parole Board from granting parole to a Petitioner serving a sentence for a subsequent violent offense. See S.C. Code Ann. § 24-21-640. On March 9, 2005, the Petitioner filed an appeal with the Administrative Law Court ("ALC"), challenging the Respondent's final decision regarding his parole eligibility. On July 5, 2005, the Respondent served and filed a brief addressing the Petitioner's claims. The Petitioner subsequently filed a "Traverse Response Brief to Respondent's Brief to Dismiss." As of this date, the ALC has not rendered a decision on the Petitioner's appeal.

On January 25, 2006, the Petitioner, proceeding pro se, filed the present § 2241

petition for a writ of habeas corpus in the United States District Court for the Eastern District of Texas. In his petition, Tillman asserts that the respondent has violated the United States Constitution's Ex Post Facto clause by changing his punishment after the court imposed it.

In a Transfer Order issued February 24, 2006, United States Magistrate Judge Earl S. Hines transferred the petition to this Court. On March 27, 2006, United States Magistrate Judge Robert S. Carr directed the Respondent to file an answer or other response to Tillman's petition. Thereafter, on May 1, 2006, the Respondent filed a motion for summary judgment, arguing that the Petitioner has not exhausted his state remedies as required by law. See 28 U.S.C. § 2254(b)(1). Consistent with Roseboro v. Garrison, the Court provided the Petitioner with a copy of the Respondent's motion along with an explanation of the procedural rules governing the Respondent's motion. Thereafter, on July 11, 2006, the Petitioner filed a response in opposition to the Respondent's motion.

After examining the issues at hand, the Magistrate Judge filed a Report and Recommendation (R&R), recommending that the Court grant the Respondent's motion for summary judgment and dismiss the petition without prejudice as an unexhausted petition. Attached to the R&R was a notice alerting the parties of the right to file written, specific objections to the R&R within ten days and alerting the parties of the serious consequences of failing to do so. On October 12, 2006, the Petitioner filed timely objections to the R&R as well as a motion to stay the proceedings pending the ALC's decision. On October 26, 2006, the Respondent filed a response in opposition to the Petitioner's motion to stay the proceedings.

STANDARD OF REVIEW

The Court is charged with conducting a de novo review of any portion of the R&R to which a specific objection is registered and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). Any written objection must specifically identify the portions of the R&R to which the objection is made and the basis for the objection. Id. After a review of the entire record, the R&R, and Tillman's objections to the R&R, the Court finds that the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of law. Accordingly, the Court adopts the R&R and incorporates it by specific reference into this Order.

DISCUSSION

I. The Petitioner has not exhausted his state remedies.

In his § 2241 petition, the Petitioner asserts as his sole ground for relief that the Respondent violated the ex Post Facto Clause of the United States Constitution by changing his punishment after it was imposed by the sentencing court. Specifically, the Petitioner asserts that the Respondent has erroneously taken away his parole eligibility.

In its motion for summary judgment, the Respondent submits that it is entitled to summary judgment because the Petitioner has not exhausted his available state remedies.

 See 28 U.S.C. § 2254(b). In fact, the Petitioner filed an appeal with the ALC on March 9, 2005, but this appeal is still pending before the ALC.¹ Additionally, should the Petitioner

¹ In an effort to ensure utmost accuracy and fairness, this Court contacted the ALC on March 12, 2007, to inquire about the status of the Petitioner's appeal. According to the

receive an unfavorable decision from the ALC, he can appeal such decision to the Circuit Court, then to the South Carolina Court of Appeals, and ultimately, to the South Carolina Supreme Court. In light of the aforementioned, the Court agrees with the Magistrate Judge's conclusion that the Petitioner has adequate and available state remedies that he must exhaust before the Court can consider his § 2241 petition on the merits.

A. The Petitioner's Objections to the R&R

On October 12, 2006, the Petitioner filed objections to the R&R. In his objections, the Petitioner seems to ask the Court to make an exception to the exhaustion requirement, asserting that he "has not had an opportunity to obtain redress of the alleged violations . . ." (Obj. at 2.) The Petitioner also asserts that the state has waived its right to whether exhaustion is required and that the state failed to appeal and exhaust his sentencing. Finally, the Petitioner asserts that the Magistrate Judge's findings of fact are erroneous.

First, the Court denies the Petitioner's request for the Court to make an exception to the exhaustion requirement, as the law plainly requires that the Petitioner exhaust his remedies before bringing a § 2241 action. See, e.g., O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999) ("Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court. In other words, the state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas corpus petition."); see also 28 U.S.C. § 2254(b)(1).²

ALC's records, the Petitioner's appeal is still active and pending.

² 28 U.S.C. § 2254(b) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that —

Here, the Petitioner asserts that he has not had the opportunity to obtain redress, but this assertion is erroneous, as the Petitioner currently has an appeal pending with the ALC. Stated another way, the Petitioner has not shown an absence of a state corrective process or that circumstances exist to render such state process ineffective. Therefore, the Court denies the Petitioner's request for an exception to the exhaustion requirement. See also 28 U.S.C. § 2254(3)(c) ("An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.").

Next, the Court also rejects the Petitioner's assertion that the state of South Carolina has waived its rights to whether exhaustion is required. Pursuant to 28 U.S.C. § 2254(3), "[a] state shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement." Here, there has been no express waiver of the exhaustion requirement, and therefore, the "state shall not be deemed to have waived the exhaustion requirement." 28 U.S.C. § 2254(3). Likewise, the Court rejects the Petitioner's assertion that the state of South Carolina "defaulted" by failing to appeal and exhaust his initial sentencing, as this objection is simply without merit.

 Finally, the Court rejects the Petitioner's objection to the Magistrate Judge's findings of fact. Although the Petitioner asserts that these findings of fact are erroneous, nowhere

(A) the applicant has exhausted the remedies available in the courts of the State; or
(B)(i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

does he point to any specific errors or even state why or how the findings of fact are erroneous. The Court overrules such an unspecific and unsubstantiated objection, especially in light of the fact that the Petitioner admits in his pleadings that he has a pending appeal before the ALC.

II. Good cause does not support a stay and abeyance of Tillman's petition.

In addition to filing the aforementioned objections to the R&R, the Petitioner also filed a motion to stay "any and/or all pending proceeding[s] under 28 U.S.C. § 2241." The Respondent filed a response in opposition to the Petitioner's motion, alleging that the Petitioner has failed to present valid grounds to support the issuance of a stay in this matter. For the following reasons, the Court agrees with the Respondent.

First, the Petitioner has adequate and available state remedies that he must exhaust before seeking habeas corpus relief in federal court. Moreover, it is apparent that the Petitioner is attempting to exhaust such remedies at this time, as he currently has an appeal pending at the ALC. And again, should he receive an unfavorable decision from the ALC, he can appeal this decision, ultimately, to the South Carolina Supreme Court. Finally and most importantly, in light of all of the circumstances, the Court finds that "good cause" does not support the stay and abeyance of the Petitioner's habeas corpus petition. See Rhines v. Weber, 544 U.S. 269, 270 (2005) (stating that "stay and abeyance should be available only in limited circumstances and only "when the district court determines there was good cause for the petitioner's failure to exhaust his claims"); cf. Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005) ("A petitioner's reasonable confusion about whether a state filing would be timely would ordinarily constitute 'good cause' for him to file in federal court [and ask the federal court to stay and abey the federal proceedings pending

exhaustion.]"). Here, the Court finds that the Petitioner has demonstrated neither "reasonable confusion" about whether his state filing is timely nor good cause for his failure to exhaust his claims. Accordingly, the Court determines that stay and abeyance would serve only to frustrate the objective of encouraging finality of state court judgments and to undermine the goal of streamlining federal habeas corpus proceedings by reducing a petitioner's incentive to exhaust his claims in state court before filing a federal petition. See Rhines, 544 U.S. at 270. Therefore, the Court denies the Petitioner's motion to stay the present § 2241 petition.

CONCLUSION

Based on the foregoing, it is

ORDERED that the Petitioner's objections are overruled, the Magistrate Judge's R&R is adopted as the Order of the Court, and the Petitioner's § 2241 petition is dismissed *without prejudice* for refiling upon exhaustion. It is further

ORDERED that the Petitioner's motion to stay the proceedings pending the ALC's decision is **DENIED**. The Court dismisses the petition without prejudice for refiling upon exhaustion of the Petitioner's claim.

IT IS SO ORDERED.

#9
[Signature]

[Signature]
The Honorable Sol Blatt, Jr.
Senior United States District Judge

March 14, 2007
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

RONALD TILMAN, 222153)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

APPLICATION FOR
POST-CONVICTION RELIEF

2011 NOV -3 PM 4:13
FILED
RICHLAND COUNTY
CLERK OF COURT
C.C.P. & G.S.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Richland County General Sessions, 1701 Main St. Columbia, SC 29201
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 1989-GS-40-0745 murder
 - (b) _____
 - (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 23, 1990 life imprisonment
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty YES
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list
- (a) the name of each Court to which you appealed:
 - i. The Supreme Court of South Carolina. transferred to S.C. Court of Appeals
 - ii. Petition for Writ of Certiorari to the S.C. Court of Appeals
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. Certiorari Denied
 - iii. _____
 - (c) the date of each such result:
 - i. 5/28/1991
 - ii. 9/5/1991
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. The State v. Ronald S. Tillman. 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991).
 - ii. No citation. Unpublished Order of Supreme Court of South Carolina

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) The Applicant received Ineffective Assistance of Counsel prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) _____

(c) _____

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

(a) Trial Counsel failed to adequately investigate the Applicant's charges, failed to investigate and interview potential witnesses and failed to investigate defenses against the charge prior to the trial. Trial Counsel neglected to adequately review discovery materials with the Applicant and failed to present Applicant's own testimony at trial. Trial Counsel further failed to reveal the nature of a conflict of interest which prevented him from effectively representing the Applicant.

(b) _____

(c) _____

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

(a) any petitions in a State Court under South Carolina law? YES

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? YES

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. First Post-Conviction Relief application
- ii. Petition for Writ of Certiorari to review dismissal of PCR action (above)
- iii. Second Post-Conviction Relief application
- iv. Petition for Habeas Corpus under §2241
- v. Petition for Habeas Corpus under §2254

(b) the name and location of the Court in which each was filed:

- i. Richland County Common Pleas. 1701 Main St. Columbia. SC 29201: 1995-CP-40-2449
- ii. Supreme Court of South Carolina. 1231 Gervais St. Columbia. SC 29201
- iii. Richland County Common Pleas. 1701 Main St., Columbia. SC 29201: 2002-CP-40-0971
- iv. United States District Court-Eastern District of Texas, transferred to United States District Court-District of South Carolina. Charleston Division: 2:06-cv-896
- v. United States District Court-District of South Carolina. Charleston Division: 2:06-cv-1396

(c) the disposition thereof:

- i. Order of Dismissal without Prejudice
- ii. Petition was denied, but the Applicant is permitted to file another PCR action within one year of return to custody of the State of South Carolina pursuant to Order of the Supreme Court of South Carolina dated July 22, 1999 (see Attachment A). The Applicant was returned to custody of the South Carolina Department of Corrections on December 13, 2010 (see Attachment B).
- iii. Order of Dismissal without Prejudice
- iv. Order of Dismissal without Prejudice
- v. Order of Dismissal

(d) the date of each such disposition:

- i. March 24, 1997

- ii. July 22, 1999
- iii. January 28, 2005
- iv. March 15, 2007
- v. August 10, 2007

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

- i. Order of Dismissal in first Post-Conviction Relief action. unpublished. No citation.
- ii. No citation. Unpublished Order of Supreme Court of South Carolina
- iii. Order of Dismissal in second Post-Conviction Relief action. unpublished. No citation.
- iv. No citation. Unpublished Order of United States District Court-District of South Carolina
- v. No citation. Unpublished Order of United States District Court-District of South Carolina

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? YES

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

(a) which grounds have been presented:

- i. Ground One. general allegation of Sixth Amendment violation; ineffective assistance of counsel.
- ii. _____
- iii. _____

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

- i. Post Conviction Relief actions in Richland County Common Pleas. 1995-CP-40-2449. 2002-CP-40-0971
- 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) N/A

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

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

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? YES

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

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

i. Jack Swerling, 1720 Main Street, Columbia, SC 29201

ii. Jennifer Kneece Shealy, 9th Circuit Solicitor's Office, O.T. Wallace Building, 4th Fl., Charleston, SC 29401

iii. Tara Dawn Shurling, 3614 Landmark Drive, Suite A, Columbia, SC 29204

iv. Melody Brown, formerly of SC Office of Appellate Defense, 1330 Lady St., Columbia, SC 29201

v. David Shea, 1916 Henderson St., Columbia, SC 29201

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

i. preliminary hearing, trial, sentencing, appeal from conviction, petition for certiorari

ii. appeal from conviction, petition for certiorari

iii. application for PCR (1995-CP-40-2449)

iv. petition for certiorari to review denial of PCR

v. application for PCR (2002-CP-40-0971)

19. State clearly the relief you seek in filing this application. Vacation of judgment and sentence. Applicant seeks a new trial.

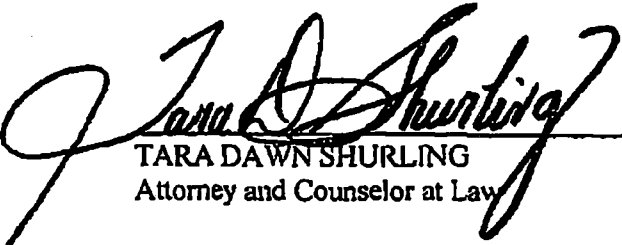
20. Are you now under sentence from any other court that you have not challenged? NO

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF RICHLAND

I, TARA DAWN SHURLING, *retained* counsel for the Applicant, 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.



TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this _____
day of _____, 2011 .

Notary Public for South Carolina

My Commission Expires: _____

ATTACHMENT A

The Supreme Court of South Carolina

Ronald Tillman, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

Petitioner asks this Court for permission to supplement the appendix in his petition for a writ of certiorari from the denial of his post-conviction relief application. The motion to supplement is denied.

After a review of the petition and the return, the petition for a writ of certiorari is denied. However, since petitioner is incarcerated in another jurisdiction, the statute of limitations applicable to post-conviction relief actions, S.C. Code Ann. § 17-27-45 (Supp. 1998), shall not apply to any application for post-conviction relief filed by petitioner within one year after petitioner is returned to this jurisdiction.

IT IS SO ORDERED.

Ernest A. Linney, Jr. C.J.
FOR THE COURT

Columbia, South Carolina

July 22, 1999

1670

FROM SCDC Inmate Records Office

(PRI) SEP 20 2011 10:51:11 AM

~~00000000~~SCDC OFFENDER MANAGEMENT SYSTEM
INMATE TRANSFER AND COUNT
TRANSFER HISTORY

09/23/11

~~00000000~~

SCDC # 00222153

TILLMAN, RONALD -

OFFENDER TYPE: ADULT-STRAIGHT

TOBACCO USER: N

CURR LOC: KIRKLAND

OFF TYPE ENTRY DATE:

CURR DORM: B20059B

VIC/WIT :

ASSNMT: 8035 RECREATION DEPT

CURR CUST/SEC: MI3

PREA DECISION:

STATUS
- INCARCERATED
- AUTH ABSENCE (AWL)

LOCATION
KIRKLAND
FEDERAL INST.

CHG DATE
12/13/10
01/23/90

CHANGE REASON
ADMINISTRATIVE
SERVING SC SENT IN OJ

PAGE.> 0001

SELECT A RECORD AND PRESS <ENTER>...

PF3=> TRANSFER INMATE

PF4/PF5=> MODIFY (HQ ONLY)

PF7/PF8=>BACK/FORWARD

4-@

1 Sess-1

167.7.50.33

SCDC1544

3/9

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Ronald Tillman, #222153,
Applicant,

Case No. 2011-CP-40-7453

v.

CONSENT ORDER OF CONTINUANCE

State of South Carolina,
Respondent.

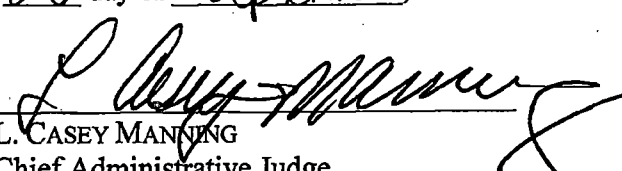
RICHLAND COUNTY
FILED
2013 SEP 27 PM 3:32
JANETTE W. MANNING
C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed November 3, 2011. An evidentiary hearing into the matter is scheduled for September 2013, at the Richland County Courthouse. Respondent and Applicant jointly move to continue this matter beyond this term of court, as a necessary witness will be unavailable during this term. This Court finds that this matter should be continued until the next regularly scheduled term of court for post-conviction relief matters in the Fifth Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled for the next regularly scheduled term of court for post-conviction relief for the Fifth Judicial Circuit; and
2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 20 day of September, 2013.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
TILLMAN Ronald S -	)	2011CP4007453
# 00222153,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 3, 2011, would respectfully show this Court:¹

I.

Applicant was represented at the trial level by Jack Swerling and Jennifer Kneece Shealy, Esquires. From January 15th to 23rd, 1990, Applicant was tried before the Honorable Don S. Rushing and a jury. On January 23rd, 1990, Applicant's jury found him guilty as charged, and Judge Rushing sentenced Applicant to life imprisonment. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the

¹

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4007453&CourtType=G&CaseType=Civil&CourtAgency=40002>

Richland County Clerk of Court. According to SCDC, he is serving the following sentence:

Offender Type Adult-straight Sentence Offense Murder Sentence Start Date 01/23/1990
Sentence Length LIFE SENTENCE Admission Date 01/23/1990 Committing County Richland
Location Kirkland Projected Release Date Not Eligible Projected Parole Eligibility Not Eligible
Supervised Furlough Eligibility Not Eligible Sex Offender Registry No ²

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The direct appeal was subsequently transferred to the South Carolina Court of Appeals. Oral argument took place on March 18th, 1991, and the court of appeals issued an opinion on May 28th, 1991, in which it affirmed the conviction and sentence. State v. Tillman, 405 S.E.2d 607 (S.C. Ct. App. 1991). Applicant through

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00222153>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

counsel filed a Petition for Rehearing on June 12th, 1991, which the state court of appeals denied by order dated June 20th, 1991.

Attorneys Swerling and Shealy then filed with the state supreme court a Petition for Writ of Certiorari, dated July 22nd, 1991. The State filed a Return to the Petition for Writ of Certiorari dated August 23rd, 1991. On September 5th, 1991, the South Carolina Supreme Court issued an Order in which it denied the petition. The Remittitur was sent down on September 9th, 1991.

It appears that this is PCR application number 3, this application for post conviction relief (PCR) was filed November 3, 2011.⁴

Applicant did not file his first Application for Post-Conviction Relief in Richland County Common Pleas Court until July 17th, 1995 (95-CP-40-2449). In his APCR, Applicant raised the following grounds for relief:

(a) Ineffective Assistance of Counsel. Trial counsel failed to interview or subpoena crucial witnesses.

(b) Brady violations. Prosecutor withheld exculpatory evidence that was favor to the defense.

(c) Judge Abuse his Discretion and denied the defendant a fair trial. Trial judge gave the Allen charge-it was deemed coercive.

Respondent filed a Return and Motion to Dismiss on September 22nd, 1995, in which it alleged Applicant's APCR should be dismissed as violative of the state PCR statute of limitations. Applicant, through new counsel Tara Dawn Shurling, filed a

⁴ The first was 95CP402449, the 2nd was 2002CP400971.

Reply dated October 23rd, 1995, and a Supplemental Reply dated November 27th, 1995. The State followed on September 3rd, 1996 with a Supplemental Return and Motion to Dismiss without Prejudice, in which it asserted that dismissal without prejudice was warranted as Applicant was not then within the custody or jurisdiction of the State of South Carolina. Applicant through counsel Shurling filed on September 13rd, 1996, a Reply to the State's supplemental motion.

On March 24th, 1997, the Honorable L. Casey Manning issued an Order in which he dismissed the first APCR without prejudice, based on the fact that Applicant was incarcerated in another jurisdiction and the State of South Carolina had no "right, duty, or authority" to obtain custody of Applicant for his action. Applicant through Attorney Shurling filed a Motion to Alter or Amend Pursuant to Rule 59(e), SCRCF on April 7th, 1997; Judge Manning denied it by Order dated July 13th, 1998.

A timely notice of appeal was filed with the South Carolina Supreme Court. Melody Brown, then of the South Carolina Office of Appellate Defense, was appointed to represent Applicant in his PCR appeal. On January 18th, 1999, Brown filed a Petition for Writ of Certiorari, in which she raised the following issues on behalf of Applicant:

Did the circuit court judge err in dismissing Applicant's application for lack of personal jurisdiction?

The State filed a Return to the certiorari petition on April 5th, 1999. On May 5th, 1999, Brown filed a Motion to Supplement Appendix in which she sought to include a transcript of Applicant's federal sentencing, during which Applicant's murder conviction was considered in determining the federal sentence. On Jul 22nd, 1999, the South Carolina Supreme Court issued an order in which it denied the certiorari petition and denied the motion to supplement the appendix. However, the order noted that the state PCR statute of limitations would not apply to Applicant until he was returned to the jurisdiction.

Applicant subsequently filed a second application for post-conviction relief ("APCR2") on March 1st, 2002 (02-CP-40-0971), in which he raised the following issues:

(a) Ineffective assistance of counsel. The Applicant was the victim of woefully ineffective assistance of counsel in that counsel of record failed to timely object to an or preserve for appellate review the erroneous instructions to the jury by the trial court of murder, and counsel of record failure to object to the State attorney using perjury testimony by Hayes Malloy denied the Applicant the rights to a fair trial. Also, counsel of record had a strong conflict of interest when his law firm represented the state witness Hayes Malloy for a assault and battery when Hayes Malloy shot up the Applicant's father party shop. This representation of Hayes Malloy should have been brought to the attention of the trial court so the Applicant could have received an fair representation my counsel of record.

(b) Actual innocence. The Applicant never received a fair trial and/or sentencing determination when counsel of record, as well the State of South Carolina attorney for the Richland county conspire to deny the Applicant due process rights under the United States Constitution to a fair trial. Both counsels knew or should have known that Hayes Malloy's testimony was false when they knew that Malloy fail the polygraph test given by officer Burnette in regards to the shooting of Donald Sutton. The facts supporting this case if the Applicant was given a fair trial would have shown that the Applicant was actual innocence of the killing of Donald Sutton.

(c) Prosecutorial misconduct. The State Attorney for the Richland county for the district of South Carolina knowingly used false testimony against the Applicant when the State attorney for the Richland county made a deal with Hayes Malloy for his testimony against the Applicant for promises to dismiss Hayes Malloy's pending case before the court, as well as the States Attorney for the Richland county knowingly making a deal not to charge Hayes Malloy with the murder of Donald Sutton if Hayes Malloy testified against the Applicant to save Malloy's own neck. The actions by the State attorney for the Richland county violated the Applicant rights to due process and equal protection under the United States Constitution.

The State filed a Return and Motion to Dismiss dated June 12th, 2002, in which it argued the APCR2 should be dismissed as violative of the state PCR statute of limitations and bar against successive applications. On June 17th, 2002, Applicant filed a Reply, Request for a Petition for Writ of Habeas Corpus Ad Testificandum, and Motion for Appointment of Counsel.

On June 13th, 2002, the Honorable G. Thomas Cooper signed a Rule to Show Cause, giving Applicant twenty days to show why his APCR2 should not be dismissed without prejudice. Applicant filed his "Applicant's Show Cause" on August 14th, 2002.

A hearing was held before the Honorable Alison R. Lee on May 27th, 2004. Applicant was not present, but was represented by D. Christopher Shea, Esquire. On January 28th, 2005, Judge Lee signed an Amended Order of Dismissal, in which she dismissed the action without prejudice for failure to prosecute. Upon information and belief, no appeal was filed from this determination.

The Respondent notes that the ^{application} ~~Applicant~~ ^{BP} is not verified and should be dismissed if not corrected before the SOL expires (12/14/11). The

Respondent also notes that this Return is based on the information in exhibit B of the Application, i.e. that the Applicant was not returned to the custody of SCDC until December 13, 2010. If this date is incorrect, or if he was in SCDC's custody earlier then we reserve the right the amend and move to dismiss.⁵

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

⁵ The concern is because the Applicant referenced his current SCDC number on some of the pleadings in his 2nd PCR application, implying that he was then in SCDC custody.

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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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 cannot be conclusively refuted by the record. **Except for the above explained potential reservations, because of the unique procedural history, it does appear that this application is**

timely despite the fact that the Applicant was convicted almost twenty (20) years ago. 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. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tara D. Shurling, Esquire regarding when the hearing should be set.⁶

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

November 8, 2011

⁶ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

TILLMAN Ronald S -
00222153,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

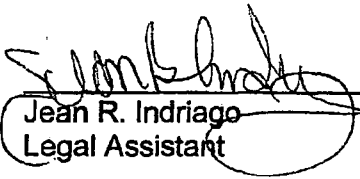
2011CP4007453

CERTIFICATE OF SERVICE

1. I am an employee of the Respondent in the above-captioned action.
1. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
2. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Tara D. Shurling, 3614 Landmark Drive - Suite D , Columbia, SC 29204

DATED November 8, 2011.


 Jean R. Indriago
 Legal Assistant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

RONALD TILLMAN, 222153) 2011-CP-40-7453
 Applicant,)
)
 v.) AMENDED APPLICATION
)
 THE STATE OF SOUTH CAROLINA,) FOR POST-CONVICTION RELIEF
 Respondent.)
)

The Post-Conviction Relief Application previously filed on November 3, 2011 under docket number 2011-CP-40-7453 is hereby amended to include the following additional allegations:

1. Trial Counsel was ineffective for failing to cross-examine Hayes Malloy concerning his understanding of the range of penalties he could have received for murder had that charge not been dismissed.
2. Trial Counsel was ineffective for failing to adequately cross-examine Hayes Malloy concerning the fact that his charge of murder in connection with the death of Donald Sutton was dismissed in exchange for his cooperation in the prosecution of Applicant.
3. Trial Counsel was ineffective for failing to cross-examine Hayes Malloy concerning his understanding of the law of accomplice liability and the fact that he could have been prosecuted for murder even if he was not the trigger man if he was present, aiding and abetting another in the commission of the murder of Donald Sutton.
4. Trial Counsel was ineffective for questioning Hayes Malloy about his sentencing exposure for murder for hire where said line of questioning emphasized the State's theory that the Applicant had been trying to hire him and others to kill Donald Sutton.
5. Trial Counsel was ineffective for failing to cross-examine Hayes Malloy concerning whether his murder charge had been dismissed with prejudice prior to the Applicant's trial.
6. Trial Counsel was ineffective for failing to object to a portion of the State's closing argument wherein the prosecution advised the jury that the State didn't wait until after Hayes Malloy's testimony to drop all charges as they

13. When Trial Counsel's objection to the testimony of witness Bruce Hall concerning what percentage of his stores total tire sales were Goodyear Vector tires was sustained, Trial Counsel was ineffective for failing to request a mistrial and/or a curative charge. *See*, Tr. p. 852, l. 13- p. 853, l. 18 and *State v. Tillman*, 304 S.C. 512, 519, 405 S.E.2d 607, 612 (Ct. App. 1991).
14. Trial Counsel was ineffective for failing to challenge the tire tread evidence in dispute during the Applicant's trial on the ground that the Sheriff's Department lacked probable cause to examine the Applicant's car at the time tire tread impressions were taken from the vehicle. *See*, *State v. Tillman*, 304 S.C. 512, 521, fn 1, 405 S.E.2d 607, 612, fn1 (Ct. App. 1991).
15. Trial Counsel was ineffective for failing to disclose to the Applicant and the Court his potential conflict of interest in representing the Applicant where he had previously represented Hayes Malloy on a serious criminal charge.
16. Trial Counsel was ineffective for failing to renew his request for a jury charge on the law as it relates to the use of prior inconsistent statements at the end of the trial court's jury instructions. *See*, Tr. p. 1067, l. 14-p. 1068, l. 25; Tr. p. 1101, l. 24- p. 1102, l. 13 and Tr. p. 1103, l. 24- p. 1104, l. 11.
17. Trial Counsel was ineffective for failing to request a jury instruction pursuant to *State v. Copeland*, 278 S.C. 572, 581-582, 300 S.E.2d 63, 68-69 (S.Ct. 1982), for the proposition that prior inconsistent statements made by a declarant who testifies and is available for cross-examination may be used as substantive evidence in addition to being considered for their impeachment value.
18. Trial counsel was ineffective for neglecting to object to the trial court's repeated use of the phrase "failure to testify" where that phrase, contrary to the jury instruction in which it was used, implied some shortcoming on the part of the Applicant for exercising his *choice* not to testify in his defense and thereby weakened the language of the "no adverse-inference" instruction given by the trial court. *See*, Tr. p. 1088, l. 21- p. 1089, l. 17.
19. Appellate Counsel was ineffective for failing to brief as an issue on direct appeal the failure of the trial court to grant the Applicant's request for a jury charge on the allowable uses of prior inconsistent statements by the jury.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

RONALD TILLMAN, 222153)
Applicant,)

2011-CP-40-7453

v.)

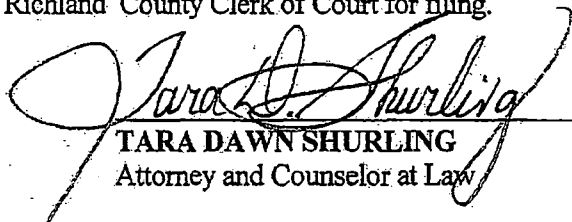
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned attorney hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been emailed on this 18th day of November, 2013 to:

Megan Harrigan, Assistant Attorney General
South Carolina Attorney General's Office
P. O. Box 11549
Columbia, SC 29211
mharrigan@scag.gov

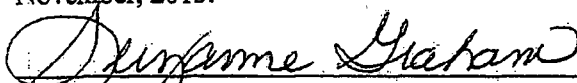
The original having been sent to the Richland County Clerk of Court for filing.


TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 18th day of
November, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

RONALD TILLMAN, 222153)
 Applicant,)

2011-CP-40-7453

v.

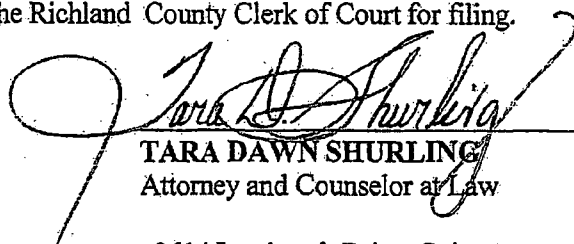
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent,)

The undersigned attorney hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been emailed on this 18th day of November, 2013 to:

Jennifer K. Shealy, Esquire
 Ninth Circuit Solicitor's Office
 O. T. Wallace Bldg., 4th Floor
 101 Meeting Street
 Charleston, SC 29401
shealvj@scsolicitor9.org

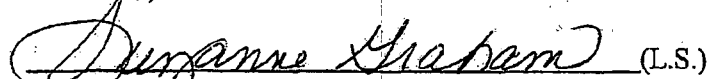
The original having been sent to the Richland County Clerk of Court for filing.


 TARA DAWN SHURLING
 Attorney and Counselor at Law

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No(s) : 2011CP4007453
	)	
Ronald S. Tillman,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

November 19 & 21, 2013
Columbia, South Carolina

B E F O R E:

HONORABLE ROBERT E. HOOD, Judge.

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

MEGAN E. HARRIGAN, Esquire
Attorney for the Respondent

TARA D. SHURLING, Esquire
Attorney for the Applicant

Recorded by: Elizabeth Harris
Circuit Court Reporter

Transcribed by: Teresa B. Johnson, CVR
Circuit Court Reporter

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 19th day of November, 2013.)

THE COURT: All right. We are on the record in the State of South Carolina versus Ronald Tillman, 2011-CP-40-7453. The State is represented by Ms. Harrigan. Mr. Tillman is represented by Ms. Shurling.

Are you ready, Ms. Harrigan?

MS. HARRIGAN: Yes, may it please the Court?

THE COURT: Okay.

MS. HARRIGAN: Mr. Tillman was indicted during the February 1989 term of the Richland County Grand Jury for Murder. He was represented by Jack Swerling who is present in the courtroom today. On January 15th through 23rd of 1990, Mr. Tillman proceeded through the jury trial before the Honorable Don Rushing where he was convicted as indicted. Judge Rushing sentenced applicant to life imprisonment. The applicant was subsequently sentenced to 25-year sentence on an unrelated federal bank robbery charge and was at that time taken into federal custody.

1 Later in 1990, a notice of appeal was
2 filed. The appeal was perfected on applicant's
3 behalf. Following briefing and oral argument,
4 the South Carolina Court of Appeals affirmed
5 applicant's conviction and sentence.
6 Applicant's subsequent petition for rehearing
7 was denied as was his petition for writ of
8 certiorari to the South Carolina Supreme Court.
9 The remittitur was sent down on September 9th,
10 1991.

11 Thereafter, applicant filed his initial
12 application for post-conviction relief on July
13 17th of 1995. The State filed its return
14 motion to dismiss on October 22nd, 1995. He
15 was represented by Tara Shurling in that
16 action. Thereafter, an order of dismissal was
17 issued without prejudice dismissing the
18 application because Mr. Tillman was
19 incarcerated in another jurisdiction with leave
20 for him to refile within a year of release from
21 federal custody. Judge Manning subsequently
22 denied petitioner's motion for reconsideration.

23 Mr. Tillman then appealed this initial
24 order of dismissal without prejudice which was
25 affirmed by the South Carolina Supreme Court on

1 July 22nd of 1999. Mr. Tillman then filed a
2 second application for post-conviction relief
3 on March 1st of 2002 which was dismissed after
4 hearing before the Honorable Allison Lee for
5 failure to prosecute on January 28th of 2005.
6 At that time, Mr. Tillman was still in federal
7 custody and was not present at the hearing.

8 Thereafter, on November 3, 2011, Applicant
9 through his retained counsel, Tara Shurling,
10 filed this current application for post-
11 conviction relief after returning to state
12 custody. This applicant was not pro se. Ms.
13 Shurling alleged ineffective assistance of
14 counsel for failure to adequately investigate
15 the applicant's charges, failure to investigate
16 and interview potential witnesses and failure
17 to investigate defenses prior to trial, as well
18 as trial counsel neglected to adequately review
19 discovery materials with applicant and failed
20 to present applicant's own testimony at trial
21 and that trial counsel further failed to reveal
22 the nature of a conflict of interest which
23 prevented him from effectively representing Mr.
24 Tillman.

25 The State made its return on November 8th,

1 2011. Late yesterday afternoon, the State
2 received amendments to Mr. Tillman's
3 application from Ms. Shurling by e-mail
4 attachment alleging 19 additional allegations
5 which she intends -- he intends to proceed
6 forward on today. The State would object to
7 the amendment -- to her being able to amend his
8 application at this time.

9 **THE COURT:** All right. Here's what we are
10 going to do about the amendments. I'm going to
11 let the hearing go forward today. Instead of a
12 deposition, what I'm going to do is allow, if
13 anything is raised that Mr. Swerling or the
14 State believes they need to respond to them, I
15 will allow Mr. Swerling to file an affidavit as
16 to those issues instead of having to sit
17 through a deposition. Anything that is raised
18 today that the State was just put on notice of
19 recently that believe they need more time to
20 respond to, I will allow an affidavit which I
21 believe is permissible under the rules to be
22 considered by the court.

23 All right, ready, Ms. Shurling?

24 **MS. SHURLING:** I am, Your Honor.

25 **THE COURT:** All right.

1 **MS. SHURLING:** Thank you.

2 **THE COURT:** Let's go.

3 **MS. SHURLING:** I would inquire as to
4 whether Your Honor has a copy of the amended
5 application in your packet.

6 **THE COURT:** I do not. Thank you very much.

7 **MS. SHURLING:** Thank you, Your Honor. Your
8 Honor, at this time, I would call Mr. Jack
9 Swerling to the stand.

10 **THE COURT:** All right.

11 **MS. SHURLING:** I understand, Your Honor
12 that we need to adjourn at approximately 1
13 o'clock to recess for a commitment that Mr.
14 Swerling has. I will try to find a good
15 breaking place if we're not through with him.

16 **THE COURT:** Okay. Mr. Swerling has already
17 been previously sworn this morning. He is
18 still under oath. He does not need to be
19 resworn.

20 **MS. SHURLING:** Your Honor, while Mr.
21 Swerling is coming around, I would note for the
22 benefit Your Honor and your law clerk, I don't
23 know about the copy you were given, but in my
24 copy of the transcript, I don't have an index
25 to testimony or exhibits in Volume 1 or 2. But

1 there is an index at the beginning of Volume 3.

2 **THE COURT:** Okay.

3 **MS. SHURLING:** So if you are looking for an
4 index, it is in the third volume.

5 **THE COURT:** Right. Thank you very much.

6 **JACK SWERLING**

7 having previously been sworn, testified as
8 follows:

9 **BY MS. SHURLING:**

10 **Q** I will give you a minute to get your stuff
11 set up.

12 **A** I am good. It is going to take a while to
13 get through some of this stuff. It's 20-- 25 years.

14 **Q** I am aware. Thank you, Mr. Swerling.

15 Mr. Swerling, uh, this trial was back in
16 1990. Approximately how long had you been practicing
17 law at that time?

18 **A** 17 years.

19 **Q** 17 years? At that time point in your
20 career, had you already tried a good number of murder
21 cases?

22 **A** Many.

23 **Q** You were, in fact, known for trying murder
24 cases in your practice during that time.

25 **A** I guess.

1 **Q** Okay. Do you recall specifically
2 representing Ronald Tillman?

3 **A** I do.

4 **Q** Would it be fair to say that a gentleman by
5 the name of Hayes Malloy was the State's key witness
6 in this case?

7 **A** He was an important witness. I don't know
8 if he was key. Again, it was 25 years ago, but I
9 would definitely say he was a key witness.

10 **Q** Mr. Malloy's testimony which I believe
11 begins at approximately Page 208 of the trial
12 transcript.

13 Again, Your Honor, the index is found
14 beginning of Volume 3.

15 But Mr. Malloy's testimony indicates that
16 he was on the stand for quite a long time. The
17 cross-examination of him was lengthy and thorough.
18 The cross-examination reveals, does it not, that
19 Hayes Malloy had, uh, made five different statements
20 in this case, four or five different statements in
21 this case prior to trial?

22 **A** I don't know exactly how many. Mr. Malloy
23 made several statements.

24 **Q** And --

25 **A** I went over, uh, -- my cross-examination

1 was 550 pages. I pride myself in my duty of my
2 cross-examinations and the way I prepare for them.
3 No document is unturned and no area is not addressed.
4 And so in looking back over that, and I don't often
5 say this about myself, but that is one of the best
6 cross-examination I ever done. I would use it as a
7 model for teaching. It just worked out that way.

8 Q I understand. In fact, Mr. Malloy had
9 given you a lot of ground for cross-examination, did
10 you?

11 A Absolutely. The judge, if you recall,
12 Judge Rushing is -- had no patience with Mr. Malloy
13 and just about every other page, uh, was instructing
14 Mr. Malloy to answer my questions. So I was getting
15 -- we were getting a very good cross-examination, a
16 good trial from Judge Rushing. In fact, Mr. Tillman
17 at the end of the trial told Judge Rushing what a
18 great trial he had given and how pleased he was with
19 the trial.

20 Q During the -- let me back up for just a
21 second. With regard to the multiple statements that
22 have been given by Hayes Malloy, his series of
23 statements were not the usual situations we see where
24 someone's statements progressively reveal a little
25 more detail or a little more detail about a crime.

1 That wasn't the situation with Mr. Malloy, was it?

2 A Could you explain?

3 Q Isn't it true that Mr. Malloy, reading both
4 his direct and cross examination, reveals that Mr.
5 Malloy, in fact, totally changed his story about the
6 circumstances of the victim's death between the
7 various statements that he had given?

8 A Could you be specific?

9 Q Well, isn't it true that during his earlier
10 statements, uh, another gentleman whose first name is
11 Veto -- I'm sorry. His last name escapes me -- was
12 actually thought to be the shooter in this case based
13 on Mr. Malloy's earlier statements?

14 A I remember some reference to him as being
15 possibly one involved in the case. Again, you are
16 going to have to be specific with your questions
17 because this was 25 years ago.

18 Q I understand.

19 A I am not going to just agree with your
20 characterization.

21 Q I understand. Let me move on to some much
22 more specific questions. Mr. Hayes Malloy was
23 himself under charges for assault and battery with
24 intent to kill in an unrelated matter at the time of
25 this trial?

1 **A** Correct. I cross-examined him about it.

2 **Q** And you cross-examined him concerning that.

3 **A** Right.

4 **Q** He also had been under indictment for the
5 death of the victim in this murder case, Mr. Donald
6 Sutton, had he not?

7 **A** Right. He was thoroughly cross-examined
8 about that as well.

9 **Q** Okay. In fact, during your
10 cross-examination of him, as you say, you questioned
11 him about the fact that he had been indicted in this
12 murder and that the murder charge against him had
13 only very recently been dismissed?

14 **A** Dismissed about five days before, as I
15 recall from refreshing my memory late into the
16 evening last night after we got your amendments.

17 **Q** Okay. And the record will reflect that you
18 cross-examined Mr. Malloy concerning the fact that he
19 still was looking at up to 20 years for assault and
20 battery with intent to kill on his other charge?

21 **A** I do recall there were some questions about
22 that.

23 **Q** Okay. The record will also reflect that
24 you even questioned Mr. Malloy concerning the fact
25 that under one interpretation of the facts, if this

1 had been interpreted as a murder-for-hire, he could
2 have been looking at the death penalty in the very
3 murder that Mr. Tillman was charged with?

4 **A** I did bring that out.

5 **Q** Okay. Was there any particular reason why
6 you did not cross-examine Mr. Malloy concerning what
7 the penalty for murder was if the State didn't seek
8 the death penalty?

9 **A** Yeah, I noticed that you did put that in
10 there in your amendments, but you are absolutely
11 wrong about my not asking him about that. Let me
12 refer you to the exact page in the transcript where I
13 brought out the fact that he could be facing life in
14 prison. (Reviewing.)

15 If you look at Page 293 of the transcript.

16 **Q** Give me one second to catch up with you.

17 (Pause.)

18 293. What line, sir?

19 **A** Your allegation was that I was ineffective
20 for neglecting to cross-examine on the fact that he
21 faced a possible life sentence for murder.

22 **Q** Correct. And I see the reference you are
23 referring to. I'll follow up.

24 **A** 293. Uh, can't get much clearer than this,
25 Ms. Shurling. You knew that if you had been charged

1 with murder, you could be sentenced to life in
2 prison, isn't that true? Yes. So I guess your
3 statement in the allegation was wrong.

4 Q Okay. Let's look at the next page. On
5 Page 294.

6 A I mean, you can clarify that as to why you
7 would say I did not ask him about the --

8 Q I will.

9 A Okay. Because I would like to be able to
10 respond to that.

11 Q Be glad to. But if you look at page 294,
12 specifically lines 11 through 12, you say, even if
13 you did not get the electric chair, could serve 30
14 years in prison with no parole.

15 A Right. I had already asked him about life,
16 that he could serve life. This would have been the
17 minimum sentence he could serve for murder.

18 Q At the time of this trial, didn't murder
19 carry a sentence of life?

20 A I don't know. Did it?

21 Q Yes.

22 A I have no idea. It was 25 years ago. You
23 didn't put me on notice of that. But I put down that
24 even if he did not get the electric chair, he could
25 serve 30 years in prison. So I guess I was -- I

1 think that probably covers exactly what you were
2 saying.

3 Q Okay.

4 A Again, you made a misstatement in your
5 allegations that trial counsel was ineffective for
6 cross-examining Hayes Malloy in a manner which
7 advised the jury that Malloy could get the death
8 penalty for murder and maximum sentence exposure for
9 murder would have been 30 years. That's not what I
10 said. That's not what I said.

11 Q My apologies if I misstated a portion of
12 the allegation. However, the test -- the question
13 posed to Mr. Malloy on Page 294 said even if you
14 don't get the electric -- didn't get the electric
15 chair, you could serve 30 years in prison without
16 parole, correct?

17 A No. It says you could serve 30 years, but
18 it also said before life in prison.

19 Q It indicates to the jury, does it not, sir,
20 based on page 11 and -- line 11 and 12 and coupled
21 with line 15 that Mr. Malloy could get a sentence of
22 30 years in -- with no parole?

23 A I said he could serve 30 years, not a
24 sentence of 30 years.

25 Q Serve 30 years with no parole. So if the

1 sentence for murder at the time of this trial was
2 life with a minimum service requirement of 20 years
3 with no aggravating circumstances or 30 years with
4 aggravating circumstances, that statement would not
5 be an accurate statement or potential sentence in the
6 case, would it?

7 **A** According to what you just said, it would
8 be. 30 years would be 30 years with aggravation. So
9 you're agreeing with me.

10 **Q** It would be -- Mr. Swerling, I don't want
11 to argue with you. But if the sentence --

12 **A** 30 years would 30 years with aggravating
13 circumstances.

14 **Q** I'll move on.

15 **A** Ms. Shurling, let me say this because I
16 don't want to argue either. If you've got something
17 for me to look at, please show it to me because I am
18 not going to accept your characterization of what the
19 penalties were because you were wrong here about what
20 I said.

21 **Q** I'll move on. At the time of Mr. Malloy's
22 testimony, I believe you already acknowledged that he
23 also had a pending charge of Assault and Battery with
24 Intent to Kill, correct?

25 **A** That's correct.

1 **Q** Are you aware at the time of this trial
2 that based on South Carolina code section 24-21-640
3 that conviction for a second and subsequent violent
4 offense would render him ineligible for parole on a
5 second violent offense?

6 **A** I don't recall.

7 **Q** Well, --

8 **A** It's 1990.

9 **Q** I understand. If, in 1990, under this code
10 section, a conviction for two violent offenses
11 renders you ineligible for parole, then Mr. Malloy
12 was facing, in fact, the possibility of life without
13 parole after any period of service, was he not?

14 **A** I don't --

15 **Q** Do you have any recollection of considering
16 questioning him concerning the fact that he could
17 potentially have been looking at life with no
18 possibility of parole if the State had not dismissed
19 his murder charge?

20 **A** But they did. So I made a point that he
21 was looking at life -- he was looking at life in
22 prison if they had not dismissed the murder charge
23 and he would have to serve the 30 years. I thought
24 that I had adequately cross-examined Mr. Malloy. I
25 still think that.

1 **MS. SHURLING:** Your Honor, for the court's
2 convenience --

3 You have any objection?

4 **MS. HARRIGAN:** No objection.

5 **MS. SHURLING:** I don't have to introduce
6 it because it's in the books but for your
7 convenient reference.

8 **THE WITNESS:** I just, you know, I can't
9 tell you what is in the balance of pages from
10 1990.

11 **BY MS. SHURLING:**

12 **Q** Going back for a moment to the fact that
13 Hayes Malloy testified that his murder charge had
14 been dismissed, did you consider questioning him as
15 to whether it was his understanding that the charge
16 had been dismissed with or without prejudice?

17 **A** I made a point that it could be
18 resurrected. He had gotten the charge dismissed
19 because he was agreeing to testify.

20 **Q** Correct.

21 **A** Ms. Shurling, I've never had a case in
22 state court dismissed with prejudice. I don't know
23 what you're referring to.

24 **Q** My question is --

25 **A** I'm asking you. I've never had a case

1 dismissed with prejudice in state court in 40 years.
2 It is always nol pros, dismissal and the right to
3 resurrect. That's what I understood. I don't
4 believe. But I can honestly say that I've never had
5 the State say we're going to dismiss it with
6 prejudice. So I don't know what you are referring
7 to.

8 Q I'm in a bit of a situation because you
9 asked me a question. But yes, I have had --

10 A Good. That's great.

11 Q Okay. My question is, based on the direct
12 examination by the State --

13 A Yes,

14 Q -- and your cross-examination, Hayes Malloy
15 was able to testify and this jury to hear that his
16 murder charge was gone, that it had been dismissed
17 and, in fact, it had been dismissed on January 12th,
18 1990, which was a few days before this trial, --

19 A That's correct.

20 Q -- correct?

21 A That's correct.

22 MS. SHURLING: Your Honor, at this time, I
23 would introduce --

24 THE WITNESS: Again, I would say, Ms.
25 Shurling, that I had thoroughly cross-examined

1 him on that.

2 **MS. SHURLING:** I understand, sir.

3 Your Honor, at this time I would move to
4 introduce -- I have a certified true copy of the
5 indictment showing that Hayes Malloy's murder
6 charge was nol prossed at the request of the
7 investigating officer by solicitor, then
8 Solicitor James C. Anders and William D. Bilton
9 on January 12th, 1990. For the convenience of
10 the Court, an extra copy.

11 **MS. HARRIGAN:** No objection from the
12 State.

13 **(WHEREUPON, Applicant's Number 1 is marked for**
14 **identification and admitted into the record.)**

15 **COURT REPORTER:** Applicant's 1.

16 **BY MS. SHURLING:**

17 **Q** You are familiar, I know, with the fact
18 that any information that is relevant to impeachment,
19 uh, is -- pardon me -- any information relevant to
20 possible deals or possible consequences of
21 cooperation is relevant for impeachment under the
22 Giglio decision and Brady, correct? Would you agree
23 with that?

24 **A** (Inaudible.)

25 **Q** How -- based on the direct examination of

1 the State and your cross, what was there in the
2 record that enabled the jury to know that if Mr.
3 Malloy did not testify to the satisfaction of the
4 State, his murder charge could be brought back up?

5 **A** Well, I think we probably -- I think
6 clearly if you look at the cross-examination, I
7 believe that clearly it was pointed out to the jury
8 that the charges were dismissed right before the
9 trial. It was at least raised that -- the defense
10 was raised that it was being done because of his
11 testifying. And probably during closing argument, I
12 made some comments. Unfortunately, those are not
13 transcribed.

14 Ms. Shurling, let me just say this, I think
15 I might have done cross-examination more than anybody
16 I know. You saw the file that I had just on Hayes
17 Malloy, which was that thick. Now I carefully
18 thought about every question I was going to ask Hayes
19 Malloy. Many times we make decisions about what to
20 ask and what not to ask depending upon what's
21 happening during the trial of the case.

22 I tried many, many, many dozens of murder
23 cases. On occasions, I will ask questions. On other
24 occasions, I will not ask that same question. It
25 just depends upon the circumstances. It is strategy.

1 For me to tell you in 1991 my strategy was in the
2 case, I could not possibly do that. This case was
3 much too old to come up for PCR.

4 Q And unfortunately, Mr. Swerling, I didn't
5 have anything to do with that. I mean, there was a
6 -- do you understand there was an order of the court
7 that the application could be refiled after he was
8 discharged from federal custody?

9 A When was that?

10 Q At the time of the original application in
11 1994?

12 A When did he get discharged from federal
13 custody? I'm just curious.

14 Q It was within a year of when the
15 application was refiled.

16 A When was that?

17 Q I will pull the actual application for you.

18 A I'm just wondering how long it's been
19 pending here.

20 THE COURT: All right. Let's move on. It
21 has been about two years.

22 MS. SHURLING: That's before the court.

23 BY MS. SHURLING:

24 Q All right. My question, Mr. Swerling, is
25 there anything in this record that would put this

1 jury on notice that Hayes Malloy could be prosecuted
2 for murder and that murder charge could be brought
3 back up?

4 **A** Ms. Shurling, the record stands for itself.
5 I don't know.

6 **Q** Okay.

7 **A** Since you just raised this yesterday
8 afternoon at four o'clock, I have not had adequate
9 time to answer that question.

10 **Q** Okay. Well, my question is this, based on
11 the assertion of the State in direct and even the
12 information that came out in cross, the jury would
13 have heard that the murder charge was gone, that it
14 was history, right?

15 **A** It was dismissed.

16 **Q** Right. That it had been dismissed.

17 **A** Right.

18 **Q** Would that not lead the jury to believe
19 that the threat of prosecution for murder was no
20 longer hanging over Hayes Malloy's head?

21 **A** It was dismissed. Obviously, I would want
22 the jury to believe that it was dismissed because he
23 was going to be a witness in the case.

24 **Q** When you impeach someone concerning the
25 details of their agreement with the prosecution

1 concerning cooperation, isn't the purpose to make the
2 jury aware that the witness has an incentive, a
3 motive to testify a certain way?

4 **A** Ms. Shurling, if you read the transcript,
5 you'd know that I asked him those questions on
6 multiple occasions and he said there was no deal.
7 The State said there was no deal. I did go down that
8 line. There's just a time when you don't keep going
9 down that line of questioning. He denied that there
10 was any kind of deal and so did the State. Isn't
11 that correct, Ms. Shurling? I mean, tell me if I am
12 wrong.

13 **Q** You questioned him concerning whether or
14 not he'd hoped to get some favorable benefit in
15 exchange -- on his ABWIK charge in exchange for his
16 cooperation, correct?

17 **A** Yes. And I asked him -- I believe I asked
18 him on the murder charge whether or not he was doing
19 that because the charge had been dismissed.

20 **Q** You testified you cross-examined him
21 concerning the fact that his murder charges had
22 conveniently -- his murder charge rather had
23 conveniently gone away ---

24 **A** Correct.

25 **Q** --- five days before the trial --

1 approximately 5 days before the trial as a result his
2 cooperation?

3 **A** Exactly.

4 **Q** Okay. And --

5 **A** That is impeachment.

6 **Q** I understand that, sir. My question is
7 whether or not this jury had any reason to
8 understand, based on the record, that depending on
9 the State's position with regard to his testimony he
10 could have still been prosecuted for murder but we've
11 beaten in that horse to death?

12 **A** I am sure I conveyed that to him.

13 **Q** Okay.

14 **A** In some manner.

15 **Q** Ultimately, in the State's closing
16 argument, didn't the State argue that they didn't
17 wait until after Hayes Malloy's testimony to drop all
18 the charges so that they could make sure he testified
19 the way they wanted him to?

20 **MS. SHURLING:** Your Honor, I am referring
21 to the trial transcript Page 1073, line 20
22 through Page 1074, line 4.

23 Do you have your copy of the transcript
24 with you, Mr. Swerling?

25 **THE WITNESS:** Uh-huh.

1 **MS. HARRIGAN:** Your Honor, the State would
2 just like to note for the record, as Mr.
3 Swerling has already testified, there is no
4 complete copy of the state or defense opening or
5 closing in this case. All that has been
6 transcribed is just objections to a very small
7 portion of the closings.

8 **THE COURT:** Is that right, Mr. Swerling?

9 **THE WITNESS:** Judge, I think the only
10 thing in there is two objections that were made
11 during the closing statement. Those are the
12 only things that are --

13 **THE COURT:** Back then, they didn't
14 transcribed those arguments.

15 **THE WITNESS:** Correct. Unless it was
16 specifically asked. What they did transcribe
17 was what the objections were.

18 **THE COURT:** Got you.

19 **BY MS. SHURLING:**

20 **Q** In that portion of the closing argument by
21 the prosecution which is transcribed, the prosecution
22 states --

23 **A** What page are you on?

24 **Q** Page 1073 starting at line 20. (Pause.)

25 I was just waiting for Mr. Swerling to get

1 a chance to get his readers on, Your Honor.

2 Have you found the portion of the
3 transcript I am referring to?

4 **A** Uh-huh.

5 **Q** Okay. Mr. Morton states Hayes Malloy had
6 no reason whatsoever to come in here and testify to
7 you about Ronald Tillman. Hayes Malloy could be in
8 Canada right now if he wanted to. Nothing that we
9 could do to Hayes Malloy whatsoever is going to force
10 him to come testify. Did you consider objecting to
11 that portion of testimony?

12 **MS. HARRIGAN:** Ms. Swerling -- Ms.
13 Shurling, uh, you said 1073, line 20?

14 **MS. SHURLING:** 1073 line 20, yes.

15 **MS. HARRIGAN:** I believe we have different
16 copies of the transcript. That is a different
17 page than what I have. I don't have that
18 portion in my notes. I don't know if that's the
19 same as Mr. Swerling has. It's different from
20 the numbers in my transcript.

21 **BY MS. SHURLING:**

22 **Q** Do you have -- does the transcript you have
23 refer to the same language I am referring to, Mr.
24 Swerling?

25 **A** Uh-huh.

1 **Q** Did you consider objecting to that portion
2 of the State's closing argument?

3 **A** Are you asking me if I considered objecting
4 to that 25 years ago?

5 **Q** Well, would you --

6 **A** I probably did and I probably determined
7 that it's not -- it wasn't worth objecting to during
8 his closing argument. I did object to other things.
9 But I normally do think those things through when I'm
10 trying the case on what to object to and what not to
11 object to. If I didn't object, there was probably a
12 reason.

13 **Q** Well, sitting here today reading that,
14 would it be an accurate statement to say that Hayes
15 Malloy could be in Canada right now if he wanted to
16 and there was no way the State could compel his
17 testimony?

18 **A** I don't know.

19 **Q** We already agreed that he was facing a
20 charge for assault and battery with intent to kill,
21 correct?

22 **A** That doesn't mean he couldn't have gone to
23 Canada.

24 **Q** Well...

25 **A** And, you know, just to answer your question

1 further, obviously Mr. Morton was concerned about the
2 way I raised that issue because he was talking here
3 about Mr. Swerling has this conspiracy theory that
4 the State would bring all these people were in here
5 and reward them with all these great things from them
6 to lie about what he's saying. Not only that, he
7 rewarded him and dismissed all of these charges
8 against Mr. Malloy so he would come in here and lie
9 and he would have you believe. Obviously, Mr.
10 Morton's concerned was that's what I conveyed to the
11 jury that the State was rewarding him for coming to
12 testify against Mr. Tillman ---

13 Q I understand.

14 A --- or they would not have said that. So
15 thank you for pointing that out.

16 Q I will move on to the relevant portion in a
17 moment.

18 MS. SHURLING: Your Honor, I would move to
19 introduce a copy of arrest warrant 786600 which
20 is the assault and battery with intent to kill
21 warrant for Hayes Malloy on the charge of
22 assault and battery with intent to kill
23 recording Corinthian Hampton.

24 MS. HARRIGAN: No objection from the State
25 as to Applicant's 2.

1 **THE COURT:** All right.

2 **COURT REPORTER:** Applicant's 2.

3 (WHEREUPON, Applicant's Exhibit 2 is marked for
4 identification and admitted into the record.)

5 **BY MS. SHURLING:**

6 **Q** And I believe that during a portion of your
7 cross-examination, you brought out the fact that Hayes
8 Malloy was able to make bond, in fact, a very
9 reasonable bond on that assault and battery with the
10 intent to kill charge, correct?

11 **A** Right. I was trying to raise the inference
12 that he had gotten some assistance.

13 **Q** Have you obtained a copy of his bond
14 agreement on that charge?

15 **A** I think.

16 **Q** Okay. Can I ask you to identify that,
17 please?

18 **A** Did you get this out of my file?

19 **Q** Yes. Actually, I printed this off the
20 microfiche in the Clerk of Court's office. But I
21 will acknowledge there was a copy in your file.

22 **A** Okay.

23 **Q** Okay. Under Section 1 of the bond
24 agreement for Hayes Malloy the charge of assault and
25 battery with intent to kill, does it not say as a

1 requirement of bond that he not depart the state
2 without permission of the court?

3 **A** Hold on a second.

4 **Q** Sure.

5 **MS. SHURLING:** Your Honor, I would move to
6 introduce the bond agreement.

7 **MS. HARRIGAN:** No objection from the
8 State.

9 **MS. SHURLING:** A bond order rather.

10 **(WHEREUPON, Applicant's Exhibit 3 is marked for**
11 **identification and admitted into the record.)**

12 **COURT REPORTER:** Applicant's 3.

13 **MS. SHURLING:** Excuse me, Your Honor. I
14 am sorry. Your Honor, I would also move to
15 introduce a copy of -- certified copy of
16 Indictment Number 89-GS-40-0738 which pertains
17 to the same arrest warrant number and shows that
18 the ABWIK charge against Hayes Malloy was not
19 nol prossed until June of 1991 after this trial.

20 **MS. HARRIGAN:** No objection from the
21 State.

22 **(WHEREUPON, Applicant's Exhibit 4 is marked for**
23 **identification and admitted into the record.)**

24 **MS. SHURLING:** I am sorry. I did not give
25 you the one with the blue ink on it. Does that

1 matter?

2 **BY MS. SHURLING:**

3 **Q** And I assume also, Mr. Swerling, that the
4 prosecution certainly would have had the power of
5 subpoena to compel Hayes Malloy to testify in this
6 case or any case, wouldn't they?

7 **A** I'm sorry. I lost you.

8 **Q** That's okay. I shouldn't have asked you
9 while you were writing. I'm sorry. In this or any
10 case, the State of South Carolina would have the
11 authority to compel Hayes Malloy to testify by
12 subpoena, wouldn't they?

13 **A** Of course. As you and I both know, you
14 don't want uncooperative witnesses subpoenaed. You
15 wouldn't want to put up an uncooperative witness.

16 **Q** If you would go over to Page 1074, actually
17 beginning on Page 1073, line 24, he makes the point
18 that they didn't wait until after he testified to
19 make sure he testified the way they wanted him to
20 before they dismissed all of his charges, do you see
21 that?

22 **A** Yeah.

23 **Q** Okay. Would that not specifically address
24 the point I was making earlier that this jury had
25 been led to believe that the murder charge was gone

1 and was no longer leverage as far as Mr. Hayes Malloy
2 was concerned?

3 **A** I think they knew it was leverage. I think
4 they knew or certainly we conveyed to them as Mr.
5 Morton has pointed out that he was getting something
6 in return for his testimony. That is what I
7 suggested to the jury that through my line of
8 questioning when the charges were dismissed.

9 **Q** I understand.

10 **A** I don't know that I can be any clearer than
11 that.

12 **Q** I understand. And it was conveyed to him
13 that he hoped to get further reward on his ---

14 **A** Correct.

15 **Q** --- ABWIK charge?

16 **A** Correct. As far as I can recall.

17 **Q** In fact, we just seen documentation that
18 that charge was actually dropped in June of 1990?

19 **A** Right.

20 **Q** There was testimony that there was no deal
21 in advance for that consideration?

22 **A** I can't control that, Ms. Shurling.

23 **Q** That's right. Okay. But my question is as
24 far as what this jury knew, the murder charge was
25 gone before Hayes Malloy testified?

1 **A** It was.

2 **Q** Okay. This jury had no way of knowing that
3 that didn't mean it still wasn't a threat to him?

4 **A** I don't know what the jury knew.

5 **MS. SHURLING:** Your Honor, for the court's
6 convenience, I have handed up copies of the
7 documents that we just introduced for convenient
8 reference.

9 **BY MS. SHURLING:**

10 **Q** Also, this portion of the closing argument
11 by the State references them having dismissed all of
12 his charges, does it not?

13 **A** I don't know.

14 **Q** Pardon?

15 **A** I don't know.

16 **Q** Okay. If it does -- if it, in fact, says
17 that, that wouldn't be accurate, would it? Because
18 as you had pointed out to the jury earlier he still
19 had an ABWIK charge?

20 **A** Where are you referring to?

21 **Q** Okay. One moment. (Pause).

22 Page 1074, line 4. Not only have you
23 rewarded them and have we dismissed all these charges
24 against Hayes Malloy so that he can come in here and
25 lie?

1 **A** They knew one of them wasn't dismissed.

2 **Q** Pardon?

3 **A** They knew one of them wasn't dismissed. It
4 was still pending.

5 **Q** Well, if they remembered from earlier in
6 the trial, the solicitor was just telling them in the
7 closing argument they dismissed all the charges in
8 this case.

9 **A** No, that's not what he said. You
10 mischaracterized it. That's not what he said. For
11 these charges. All these charges.

12 **Q** Okay.

13 **A** He's not saying that charge. That's a
14 mischaracterization. I am afraid when I listen to
15 people talking in closing statements, I'm very
16 careful about what they are saying.

17 **Q** Okay.

18 **A** It doesn't say that though.

19 **Q** It says all of these charges?

20 **A** All these charges.

21 **Q** And the --

22 **A** And a lot charges were dismissed. But
23 there was a charge that was not dismissed. That was
24 brought out to the jury and I'm sure they remembered
25 it.

1 Q I'm sorry, Mr. Swerling. I'm not trying to
2 talk over you. I didn't know you were through. The
3 only charge the jury heard about being dismissed was
4 the murder, correct? Isn't that accurate?

5 A I don't remember how many charges were
6 dismissed or not dismissed. What I am telling you is
7 that it was one charge that had not been dismissed.
8 We explored that with Mr. Malloy on
9 cross-examination. Mr. Morton may have made a
10 misstatement or he wasn't referring specifically to
11 that charge. But you don't object to everything in
12 closing argument. I have tried cases with you and
13 you don't object to everything the closing argument.

14 Q Sure. But would you agree that the
15 credibility of Hayes Malloy was one of the most, if
16 not the most important, issue in this trial?

17 A I would say if you read the 150 pages of
18 cross-examination, one would agree that his
19 credibility was attacked.

20 Q With regard to Hayes Malloy, we have just
21 seen that his ABWIK charge was dismissed in June
22 which as you state that's something about which you
23 could not predict based on the testimony. But, uh,
24 were you aware that he was ultimately tried and
25 convicted for killing two people with a shotgun very

1 shortly after his ABWIK charges were dismissed?

2 **A** I don't know what it was, but I know he was
3 convicted of a murder afterwards.

4 **Q** Actually, two murders?

5 **A** Whatever it was. I heard he gotten
6 convicted of murder. And the only reason I remember
7 is because he had an unusual name and he had been a
8 witness in my case.

9 **Q** All right. You requested, uh, a jury
10 charge on prior inconsistent statements at Mr.
11 Tillman's trial. Do you recall that?

12 **A** I remember reading that. I haven't seen --
13 I haven't seen the statements or the instructions.

14 **Q** The record will reflect that you actually
15 submitted two proposed charges and told the judge he
16 could pick either one and you'd be happy with it?

17 **A** Right. He denied it.

18 **Q** Okay.

19 **A** He gave his own charge if I remember
20 correctly.

21 **MS. SHURLING:** Ms. Harrigan, we move to
22 introduce...

23 **MS. HARRIGAN:** No objection from the
24 State, Your Honor.

25 **MS. SHURLING:** Court's Exhibit 5 and 6 are

1 stapled together as one Applicant's exhibit.

2 **(WHEREUPON, Applicant's Exhibit 5 is marked for**
3 **identification and admitted into the record.)**

4 **BY MS. SHURLING:**

5 **Q** Do you have a copy of -- did I just hand
6 you a copy?

7 **A** Yes.

8 **Q** The basic premise covered by either of
9 these jury instructions would be that prior
10 inconsistent statements could be used for the sole
11 purpose of addressing the credibility of a witness?

12 **A** Right, those are federal jury instructions.

13 **Q** Okay. Was that --

14 **A** He denied it. He denied it.

15 **Q** I understand. But was that the rule of law
16 in South Carolina concerning prior inconsistent
17 statements?

18 **A** They could be used as substantive purposes
19 as well.

20 **Q** Was there any reason why you would not have
21 requested a jury instruction on prior inconsistent
22 statements pursuant to Copeland?

23 **A** Well, I got to tell you, it's something
24 that I thought about over the years many times. I'm
25 not sure if the jury understands what that means that

1 the statement was used as substantive evidence.
2 There are cases where I have not asked for that
3 charge. I don't think the jury understands what that
4 means. What I focus on is whether or not it's a
5 prior inconsistent statement and goes to the
6 credibility. That's what Judge Rushing charged. I'm
7 familiar with the Copeland case. I'm not sure that I
8 always ask that as a matter of strategy because I
9 don't believe the juries understand that.

10 Q In the multiple statements given by Hayes
11 Malloy in this case, which you covered at length in
12 your cross-examination, at least in earlier
13 statements, he sufficiently pointed the finger at
14 someone else for that individual to have been thought
15 to be the shooter initially, correct? Veto?

16 A I don't remember which, the sequence when
17 he made those allegations. But there was an
18 allegation about Veto. I was looking at it as prior
19 inconsistent statements.

20 Q I understand.

21 A For impeachment, not as substantive
22 evidence.

23 Q I understand. If you had asked for and
24 gotten a jury instruction pursuant to Copeland and
25 the jury had been instructed that the witness' prior

1 inconsistent statements could be considered for their
2 substantive --

3 **MS. HARRIGAN:** Your Honor, I object. That
4 is calls for speculation.

5 **THE COURT:** What's the question?

6 **BY MS. SHURLING:**

7 **Q** My question is if he had
8 sought and been given a jury charge under Copeland,
9 then Hayes Malloy's prior inconsistent statements
10 could have been considered by the jury as substantive
11 evidence, not just for impeachment purposes, correct?

12 **A** For what purpose? Tell me what you think
13 the purpose of it would have been so I can answer.

14 **Q** Could you not have argued then that there
15 was some evidence in the record based on Hayes
16 Malloy's own statements that someone else was the
17 shooter, someone other than the person he was
18 identifying as the shooter at trial?

19 **A** Well, that was raised in 150 pages of
20 cross-examination and in my argument, I'm sure.
21 That's why I'm telling you I focus on prior
22 inconsistent statements for impeachment purposes.
23 Just like you could not explain it, I don't believe
24 the jury could understand what you were talking about
25 when you say use as substantive evidence. It's

1 impeachment evidence and that's what I was focusing
2 on.

3 Q I understand. The charging conference was
4 held before closing arguments, correct? If you had
5 requested and been told the judge was going to grant
6 a Copeland charge which would inform the jury that
7 prior inconsistent statements could be considered for
8 their substantive value --

9 A Yeah, and I'm asking you. Explain to me
10 what that means.

11 Q If you will allow me to finish, I will.
12 Could -- would that not have afforded you the
13 opportunity in your closing arguments to say as Your
14 Honor will explain to you his prior inconsistent
15 statements are substantive evidence?

16 A Of what?

17 Q There is some evidence therefore that
18 somebody else was the shooter. If that's not
19 reasonable doubt, I don't know what is.

20 A And I didn't convey, I'm sorry. That was
21 conveyed to them through impeachment. Prior
22 inconsistent statements. I'm familiar with Copeland.
23 Obviously, I made a decision not to ask about it. It
24 is obviously because of my experience as a trial
25 lawyer and cross-examination and impeaching many

1 witnesses, I believe that that was the right course
2 of action.

3 **MS. SHURLING:** Thank you. Your Honor this
4 is a fairly good breaking place. It's ten until
5 1:00 now. Before I get into another area, would
6 you?

7 **THE COURT:** Okay. All right. Uh, don't
8 discuss your testimony with anybody. When you
9 come back, you can be seated right there. All
10 right. What time -- those school things can go
11 on pretty long.

12 **THE WITNESS:** I think this is a pretty
13 quick one. It's actually -- just a sanction is
14 the only thing in question.

15 **THE COURT:** Okay.

16 **THE WITNESS:** I'll try to bring somebody
17 else from the office there to cover in case I
18 have to leave.

19 **THE COURT:** You want to say 2:15 or you
20 want to say 2:30?

21 **THE WITNESS:** 2:30. Would that be fine?

22 **THE COURT:** 2:30 is fine.

23 **THE WITNESS:** Okay.

24 **THE COURT:** All right. Court will
25 reconvene at 2:30.

1 **THE WITNESS:** Thank you, Judge.

2 **THE COURT:** Don't discuss your testimony
3 with anybody and be seated there at 2:30.

4 **MS. HARRIGAN:** Thank you, Your Honor.

5 **THE COURT:** Be back at 2:30.

6 **(WHEREUPON, a short recess taken at**
7 **approximately 12:50 p.m.)**

8 **THE COURT:** Did you have time to get done?

9 **THE WITNESS:** I did, Judge. Thank you
10 very much.

11 **THE COURT:** You're very welcome.

12 All right. Ms. Shurling, you may continue.
13 We are back on the record in Markell -- excuse
14 me -- Ronald Tillman versus the State of South
15 Carolina. Ms. Shurling is in direct examination
16 of Mr. Swerling.

17 **MS. SHURLING:** Thank you.

18 **BY MS. SHURLING:**

19 **Q** Mr. Swerling, do you recall raising
20 objections about the introduction of tire tread
21 evidence in this case?

22 **A** There was a discussion about the tire
23 sequence of the car. I think Jennifer Shealy did a
24 lot of that. I did some of it. I don't remember
25 exactly who did what.

1 **Q** And was the introduction of evidence
2 concerning the tire tread evidence eventually part of
3 the direct appeal in this case?

4 **A** I think so. Yes. As far as I can recall.

5 **MS. SHURLING:** Your Honor, I assume you
6 have a copy of the direct appeal decision.

7 **MS. HARRIGAN:** It's included in the
8 package that was sent to Your Honor.

9 **MS. SHURLING:** Thank you.

10 **BY MS. SHURLING:**

11 **Q** In preparing for this hearing, did you get
12 a chance to review the decision of the Court of
13 Appeals and the direct appeal?

14 **A** I looked at it, yeah, briefly.

15 **Q** Do you have a copy handy or would you like
16 me to hand you one?

17 **A** I could use a copy if you have one.

18 **Q** Thank you. If I could turn your attention
19 please, uh, to page 5.

20 **A** Okay.

21 **Q** Near the top of the right-hand column, it
22 says the appellant appears to argue the testimony of
23 the expert witness that, quote, around two percent of
24 the tires just sold out of my location?

25 **A** I'm sorry. Where are you?

1 Q The second paragraph with the --

2 A Oh, yeah. Okay. Head note 7.

3 Q Yes, Head note 7. The Court of Appeals
4 found that the testimony in question initially came
5 in without objection, didn't they?

6 A Uh, yes.

7 Q In fact -- just one moment. (Pause)

8 If I could direct your attention to Page
9 852 of the transcript?

10 A What volume?

11 Q Well, in mine, it's volume 3?

12 A Okay.

13 Q I hope it is in yours.

14 A Okay.

15 Q 852. Specifically line 13. Pardon me,
16 line 9. The figure that I had in my office at that
17 time, it was around two percent of the tires sold
18 just out of my location were Goodyear Vectors. And
19 then again, his testimony on line 20 and 21. That's
20 just for my store. The Court required of you that
21 you gave a figure of two percent, was that just --

22 A Inquired of me?

23 Q Pardon me. No. Not of you. I apologize.
24 The Court inquired of the witness, you gave a figure
25 of two percent, was that just for your store. The

1 witness responded that's just from my store on line
2 20 on the same page?

3 A Correct.

4 Q You see that? Ultimately, on Page 853,
5 line 18, you objected to this line of the testimony
6 once the focus narrowed to what particular year he
7 was talking about the sales. If you look at Page
8 852, line 14, roughly, going over to the next couple
9 of pages, there is discussion about whether or not
10 that testimony would be relevant, whether it would be
11 speculative. Do you see that?

12 A Yeah. I mean, what specifically are you
13 asking me to look at?

14 Q My question is if you had concerns about
15 the relevance of any testimony from this witness
16 concerning what percentage of Goodyear tires he sold
17 were Vectors at his store, why didn't you object the
18 first couple of times that was mentioned on the
19 record?

20 A I see. You're saying couple of times.
21 Could you direct me to where you are talking about.

22 Q Sure. Let's go back to 852.

23 A Uh-huh.

24 Q The question was posited at line 7 of your
25 sales at your store on Gervais, what percentage do

1 Goodyear Vectors make up? He answers without
2 objection?

3 **A** I guess at that point I didn't feel like I
4 needed to object to it. I mean, I have no idea, Ms.
5 Shurling. It was -- 24 years ago -- 25 years ago. I
6 listen to all of the testimony. I object to what I
7 think needed to object to. I don't object to
8 anything that I don't feel I need to object. A
9 matter of trial strategies, trying murder cases --
10 I've tried dozens of them. You've tried many cases
11 -- make those calls as the questions and answers are
12 being given.

13 **Q** I certainly understand. But you are aware,
14 Mr. Swerling, that when it comes to raising an issue
15 on appeal, if you had not objected the first and
16 every time the evidence comes in, you lose the
17 ability to get that issue challenged on appeal,
18 right?

19 **A** Very well.

20 **Q** I know.

21 **A** Very well. Again, what makes the decision
22 about to whether to object or not object is based on
23 what is happening on at the time. For me to tell you
24 what was on my mind in 1990, I just would not be able
25 to do that. This is a well-prepared murder case. I

1 interviewed dozens and dozens of witnesses.

2 You can see -- you've been through the
3 file. You know what was put into it. We had
4 investigators, paralegals. When you're trying a
5 case, you try to listen to the questions and you
6 object to what you think you need to object to and
7 you don't object to what you shouldn't have objected
8 to.

9 **Q** Certainly. But if you look back at the
10 opinion for just a moment, if you would look at -- on
11 Page 6, footnote 1, the Court of Appeals made note of
12 the fact that you did not raise at trial or on appeal
13 the question of whether or not the Sheriff's
14 Department had probable cause to examine your
15 client's automobile at the time they took the tire
16 impressions from this car.

17 **A** I remember there was an awful lot of
18 discussion about whether they had the right to search
19 the car, photograph the car, measure his tires. Mr.
20 Tillman gave consent to the FBI taking the vehicle.
21 The Sheriff's Department, I remember, came over there
22 to examine the car. But I think that, uh, -- you
23 know, I see what you're saying with respect to what
24 the Court of Appeals said but I think we -- there's a
25 number of pages in the transcript that deal with the

1 objections regarding what the Sheriff's Department
2 did. As far as any other custody on that, I just
3 don't know.

4 Q In the statement given by Mr. Malloy, Hayes
5 Malloy, initially concerning the accusatory finger at
6 Veto McKey, if I could get you to take a look at Page
7 309 of the transcript?

8 A May I have the folder? I need to pull
9 something out of one of these folders. (Pause.)

10 Go ahead. I'm sorry. What page?

11 Q That's okay. Page 309. If you look at the
12 testimony from approximately lines 5 through 14, you
13 bring out the fact that on -- in Mr. Malloy's initial
14 statement, on the 26th, he was telling Investigator
15 Austin that Veto McKey was the last person in the car
16 with Donald Sutton. He was pointing the finger at
17 Veto McKey, correct?

18 A Ms. Shurling, all I can do is read what's
19 there. I don't have independent recollection. What
20 is it you want -- what are you trying to direct me
21 to? If you can tell me what -- if you can put it in
22 context, it might help.

23 Q Sure. All I'm trying to establish is that
24 the record establishes that in the December 26th
25 statement, Mr. Malloy was pointing the finger at Veto

1 McKey?

2 **A** Based upon what I'm reading here, that
3 seems to be the case.

4 **Q** If I may approach.

5 Your Defendant's Exhibit Number 2 is Mr.
6 Malloy's statement on December the 28th. Although
7 still referencing Veto McKey, that's the first time
8 he tries to point any suspicion in the direction of
9 Ron Tillman, correct?

10 **A** I don't know.

11 **Q** Well, in the --

12 **A** I don't know that to be true.

13 **Q** The record will --

14 **A** I don't have complete knowledge of every
15 statement at this point 24 years later.

16 **Q** I understand. What is the date -- pardon
17 me. The date on that statement is December 28th,
18 correct?

19 **A** Correct. Yes.

20 **Q** Up at the top, at the right side, what time
21 of day does it indicate that that statement was
22 taken?

23 **A** 11 a.m.

24 **Q** 11 a.m.?

25 **A** That's written at the top, whatever that

1 means.

2 Q Thank you. That was introduced as part of
3 the record as Defendant's Exhibit 2, I believe.

4 A It has a exhibit number 2 on it, yes.

5 Q Thank you. And near the bottom of the
6 statement, Mr. Malloy makes reference to the fact
7 that your client had allegedly said something to the
8 effect of how would you like hit?

9 A What are you talking about?

10 Q Near the bottom. Do you see that?

11 A He didn't say anything to me at that time,
12 but he did tell me later how do you like that hit. I
13 walked out the door and went across the street.

14 Q Thank you. If I can direct your attention
15 to the trial transcript on Page 683, line 24 through
16 684, line 11. And again, Mr. Swerling, that's my
17 Volume 2.

18 A I got it.

19 Q 683, line 24.

20 A moments indulgence, Your Honor. (Pause).

21 Okay. If you look at lines 2 through 11,
22 would you agree that this testimony indicates that
23 the tire impressions from your client's vehicle were
24 taken some time on December 28th?

25 A What date -- what page?

1 Q 684.

2 A 684.

3 Q And lines 2 through 11..

4 A It says, uh, they were made on December
5 28th.

6 Q If there's no indication in the trial
7 record of what time on the 28th the tire impressions
8 were made, did you consider raising the question of
9 whether or not at the time the impressions were taken
10 there was any probable cause to believe your client
11 was involved in the crime?

12 A Did I consider it? I can't tell you now
13 whether I considered it or not. I can tell you that
14 I would have thought about it. I can't tell you
15 whether -- if I did object or didn't object, I can't
16 tell you why. It was something I decided at that
17 time. There certainly is a big discussion here about
18 what would be admissible. I probably thought about
19 it.

20 Q Was there -- would there had been any
21 particular strategic or tactical reason for not
22 establishing what time of day the tire tread
23 impressions were taken from your client's vehicle?

24 A You are asking me about the time of day 24
25 years later? I have no idea.

1 Q No, I wasn't expecting you to remember time
2 of day. Can you think of any particular reason why
3 you wouldn't have explored that line of import?

4 A Absolutely not. I don't remember.

5 Q Let's talk about Hayes Malloy for a few
6 minutes. You previously represented Mr. Malloy? Did
7 you previously represent Hayes Malloy on criminal
8 charges?

9 A I explained the situation to you and you
10 mischaracterized it. What I told you was we have
11 files in our office. He was file Number C, uh, 87-
12 596, which means it was opened in 1987. At that
13 time, Jennifer Shealy, Dick Harpooley, Jim McCollum,
14 Paul Reeves. I don't know if I represented Hayes
15 Malloy or one of them did. I don't know what case it
16 was.

17 I can assure you this, if it was the case
18 was dealing with Mr. Tillman's party shop, Ron
19 Tillman knew about it because he and Hayes Malloy
20 were friends. He would have known and Mr. Tillman
21 would have known as somebody in my office would have
22 represented Hayes Malloy for some brief period of
23 time. That's all I can say.

24 That case -- we looked it up. In fact,
25 when I was preparing the cross-examination for Mr.

1 Malloy, we looked it up. It is the party shop case
2 which happened December 22nd, 1987. It was not
3 proessed by the Solicitor's office on June 9th, 1988
4 which was several months prior to this case. Is that
5 correct?

6 Q Yes. May I see the documents you're using
7 to refresh your memory?

8 A Sure. You took a copy of them last night.
9 That was part of my Hayes Malloy file, which I
10 dedicated to just the cross-examination of him. He
11 was asked about that at trial.

12 Q He was cross-examined concerning the
13 incident where he had shot up the party shop?

14 A I think there also was some reference to
15 the fact that he had an incident at Tillman's party
16 shop too.

17 Q In discuss --

18 A But I don't remember. I don't remember.

19 Q Sure. In discussing that incident with Mr.
20 Malloy --

21 A Which incident?

22 Q The shooting at the party shop. I
23 understand, sir. My question is in questioning him
24 concerning that, you were referencing obviously
25 material you had available from the discovery about a

1 charge that had been dismissed?

2 **A** That charge -- there were two different,
3 uh, shootings. There were two different incidents.
4 One is that he had pending at the time of trial where
5 he shot someone.

6 **Q** Yes, sir.

7 **A** Uh, John Delgado was representing him on
8 that. I talked with John Delgado. My file indicates
9 I asked John whether or not there was any deal for
10 Hayes Malloy in this case about the case he was
11 representing him on. As far as the Tillman party
12 shop case, I didn't any idea who was representing
13 him. But Ronald Tillman would and so would Mr.
14 Tillman because Mr. Tillman agreed to drop the
15 charges. This was six months prior to the second
16 killing.

17 **Q** My question was, in reviewing the
18 documentation and questioning Mr. Malloy about it at
19 trial, that didn't prompt any recollection on your
20 part about you or anyone else in your firm being
21 involved in that circumstance?

22 **A** What I am telling you now in 2013 is I have
23 no recollection of who, if anybody, in my firm
24 represented Mr. Malloy in that case. All I can refer
25 you to is that document and the fact that there was a

1 file. There are paralegals that looked for the file
2 down in the storage, Iron Mountain, in the basement.
3 Again, it was 25 years ago.

4 Let me say this again. Mr. Tillman knew
5 about it. If we represented him, Mr. Tillman would
6 have known who was representing him. They were
7 friends. Mr. Malloy hung around the party shop.
8 Everybody would have known -- if I had represented
9 him or somebody in my office would had represented
10 him, they would have known.

11 Q In the law firm database that you refer to
12 having looked Hayes Malloy up on, what information is
13 contained on that entry?

14 A Right here. That's it.

15 MS. SHURLING: May I approach, Your
16 Honor?

17 THE COURT: Sure.

18 BY MS. SHURLING:

19 Q I assume -- well, better not assume. The
20 C-2672 number refer to a closed file number?

21 A Of course.

22 Q And did you attempt to retrieve that file?

23 A I just told you that. My paralegals
24 attempted to retrieve the file from Iron Mountain,
25 brought back a couple of thousand of files. They

1 went downstairs to sort them.

2 **Q** Is the number of partially obscured by that
3 an open file number before it is assigned a closed
4 file number? I assume, just to make the record, Mr.
5 Swerling, that they attempted to locate it under that
6 file number as well?

7 **A** My paralegals looked for the file and have
8 been looking for it for the last couple of weeks.

9 **Q** There's no information on this card that
10 indicates which attorney in your firm would have had
11 anything to do with this individual?

12 **A** No.

13 **MS. SHURLING:** Your Honor, if I might be
14 allowed to show my client this.

15 **THE WITNESS:** If you can show me something
16 in my cross-examination of Mr. Malloy that would
17 have indicated I did not pursue it vigorously on
18 cross-examination because of that, as you are
19 suggesting, then I would like to see it. I will
20 comment again that Mr. Tillman told me about it
21 two years later. I got a memo in my file here
22 where he said, you know, Hayes Malloy is the
23 person who had an incident in my party shop. I
24 said okay. I have a memo of that conversation
25 with Mr. Tillman.

1 BY MS. SHURLING:

2 Q When you say two years after --

3 A 1990. Right around the time of the trial.
4 1990. (Pause.)

5 I would have to find it, but there is a
6 memo of the conversation I had with Mr. Tillman about
7 Hayes Malloy when he told me Hayes Malloy was the
8 person who had come to the party shop and he
9 dismissed the charges. That indicates to me that I
10 did not represent him.

11 Q Just so that I am clear, the memo that your
12 paralegal is attempting to locate for us indicates
13 that in a conversation you had with Mr. Thomas
14 Tillman, your client and my client's father that he
15 informed you that Hayes Malloy was the individual who
16 shot up his shop?

17 A I don't remember the facts of the case.
18 What I do remember is it was dismissed based upon
19 these documents, June of '88, for the separate
20 killing. Mr. Tillman mentioned it to me -- looks
21 like it must have been around the time of the trial
22 or right before the trial, he mentioned to me that
23 Hayes Malloy was the individual who had done that.

24 Q And that memorandum, to the best of your
25 recollection, did not make any mention of Mr. Thomas

1 Tillman also mentioned who represented Mr. Malloy?

2 A No.

3 Q Okay.

4 A It is nothing that -- let me also say this,
5 we checked the clerk's office and the Solicitor's
6 office. There's no record of me representing him.
7 That's all I can say. I don't know. I cannot sit
8 here and affirmatively tell you I didn't or someone
9 in my firm didn't. I just can tell you I don't
10 remember representing him.

11 Q I understand.

12 A But it wouldn't have made any difference.
13 Mr. Tillman would have known about it. Both Mr.
14 Tillmans, they would have knowledge. You suggest
15 they didn't know. That's nonsense.

16 Q Mr. Swerling, I just represent what my
17 client has represented to me.

18 A You asked yesterday that they did not know
19 it and I may not have revealed a conflict of
20 interest. And that's just absolute nonsense.

21 Q And again, I am as Officer of the Court
22 making the representations that were made to me by
23 client. When a charge is dismissed not as part of a
24 plea bargain but just dismissed, are records of those
25 charges not routinely expunged?

1 **A** They should be.

2 **Q** Okay.

3 **A** I don't know if everybody back in those
4 days was doing that. I know that in my office, we
5 became real aware of that some time in the 90's. We
6 had to go follow up and do the expungements as well.
7 It was pretty cavalier by that time whether the
8 lawyers actually thought their obligation was to go
9 ahead and file expungement orders. I can't remember
10 what that date was or that time frame.

11 **Q** Typically, at least today, if the charge is
12 dismissed, the records are expunged?

13 **A** We always do that.

14 **Q** That could -- could that not explain why
15 there would be no record?

16 **MS. HARRIGAN:** That calls for speculation,
17 Your Honor, and asked and answered at this
18 point.

19 **THE COURT:** I know how the court system
20 works.

21 **MS. SHURLING:** Thank you, Your Honor. A
22 moment indulgence, Your Honor. (Pause.)

23 **BY MS. SHURLING:**

24 **Q** You interviewed a lot of witnesses in this
25 case?

1 **A** Yes.

2 **Q** All three of those big boxes in front of
3 you are from Mr. Tillman's trial?

4 **A** Yeah, I don't know if the file was that big
5 at that time. We kind of organized it for this
6 hearing. Usually, I use notebooks. Those notebooks
7 might have been broken down some time in the past.

8 **Q** Sure.

9 **A** I was surprised to find that we even had
10 the file.

11 **Q** To your knowledge, did you interview all of
12 the witnesses that your client brought to your
13 attention?

14 **A** I don't know. If you have somebody
15 specific --

16 **Q** Okay. Well, let's talk about John Corbett.
17 Did Mr. Corbett in -- let me do it this way,
18 Defendant's Exhibit 3 from trial, the statement of
19 Hayes Malloy, and John Corbett is one of the people
20 who claims my client/your client tried to kill Mr.
21 Sutton.

22 **A** I have no idea. You are stating things but
23 I don't have a recollection.

24 **Q** Do you have a file on Mr. Corbett?

25 **A** If you refer me to something specific, I'll

1 find it.

2 Q Does your file, what notes you have
3 available in your file give you any indication as to
4 why he would not have been called as a witness?

5 A You know, you have to make those decisions
6 at trial. He was subpoenaed.

7 Q He was subpoenaed?

8 A Yes.

9 Q So he was subpoenaed to court but not
10 called as a witness?

11 A Here's the subpoena.

12 Q Okay. How about Mr. -- how about Mr. David
13 Bynum.

14 A Did you say he was not interviewed?

15 Q No, I asked if he was interviewed.

16 A Was.

17 Q And if he was, why he was not called as a
18 witness?

19 A I can't possibly tell you why he was not
20 called. It would have been a decision that was made
21 at the time.

22 Q How about Mr. David Bynum?

23 A There's a subpoena here on Mr. Bynum.

24 Q And if the record indicates that Mr. Bynum
25 was not -- Mr. David Bynum was not called as a

1 witness, do you know why? Do you have any -- I
2 realize it's been 25 years, Mr. Swerling. I'm just
3 asking if you here today have any recollection as to
4 why you would not have called him as a witness since
5 you subpoenaed him?

6 **A** Pardon? What was the question?

7 **Q** Does your file have any indication as to
8 why you did not call him as a witness?

9 **A** No, he was interviewed by my investigator
10 as both of these witnesses were. As to why he would
11 not have been called, I just cannot tell you why at
12 this point. There are all sorts of reasons why.
13 Maybe we did not find him credible, he may have hurt
14 the case, maybe -- all sorts of reasons why you call
15 and don't call witnesses.

16 **Q** But our file does verify that he was
17 interviewed and subpoenaed?

18 **A** There is a subpoena in here for both of
19 those and an interview sheet for both of them.

20 **MS. SHURLING:** A moment indulgence, Your
21 Honor.

22 **THE WITNESS:** Mr. Tillman would have seen
23 those as well because we share those with our
24 clients.

25 **BY MS. SHURLING:**

1 Q Do you remember the testimony concerning
2 your client supposedly offering somebody named Pig,
3 Robert Jenkins, money to kill Mr. Sutton?

4 A No.

5 Q Do you know from your file whether or not
6 you interviewed Mr. Jenkins?

7 A I don't know.

8 Q If I may I approach, Your Honor. It is in
9 alphabetical order, I believe.

10 A I don't see it. You said Jennings?

11 Q Jenkins?

12 A Jenkins? I don't have anything on Mr.
13 Jenkins.

14 Q You have nothing here that references him?

15 A There may be notes in the file about him.
16 I don't know. It is pretty extensive. You're asking
17 me about that is the first time I have heard. It
18 wasn't one of the allegations. I can't possibly --
19 it could be something in there.

20 Q Does your file summary indicate that you
21 interviewed someone by the name of David Whaley?

22 A Yes. We subpoenaed him and he was
23 interviewed according to this.

24 Q When you prepare a case for trial and you
25 subpoena witnesses and you don't end up calling them

1 at trial, do you have trial notes anywhere that would
2 cast light on why you ultimately decided not to call
3 a particular witness?

4 **A** A matter of fact, sometimes I write down,
5 sometimes I don't.

6 **Q** May I see your summary that you referred
7 to? Thank you. (Pause.)

8 In addition to -- Herman Whaley. Do you
9 have reference to a Herman Whaley?

10 **A** Herman and David.

11 **Q** They were both under subpoena?

12 **A** According to this.

13 **MS. SHURLING:** A moment indulgence, Your
14 Honor while Mr. Swerling helps me locate it.
15 (Pause).

16 **THE WITNESS:** What were their names?

17 **THE COURT:** Whaley.

18 **MS. SHURLING:** Whaley, W-H-A-L-E-Y. There
19 was a Herman and a David.

20 **THE WITNESS:** If I may, is this in one of
21 your allegations? This is the first time I'm
22 hearing about it.

23 **BY MS. SHURLING:**

24 **Q** No, Mr. Swerling. These witnesses my
25 client asked me to question why they were not called?

1 **A** This just come up right now. Is that what
2 you are telling me?

3 **MS. SHURLING:** Your Honor, without going
4 into privileged communication with my client, I
5 apologize, but I was trying to save time.

6 **MS. HARRIGAN:** The State would object if
7 he had not been put on notice any of this.

8 **THE COURT:** I mean, are all of these
9 people here?

10 **MS. SHURLING:** They are not, Your Honor.

11 **THE COURT:** I don't understand where we
12 are going with any of this anyway. I mean, this
13 is a PCR. Number one, he interviewed every
14 single person that we talked about. We are
15 looking for these people that the complaint has
16 not even been amended to. Even if he finds
17 these people that we just now miraculously added
18 and even if he didn't interview them, which I
19 not saying that he did, I'm just saying that for
20 hypothetical purposes, none of that matters if
21 that person ain't coming into this court and
22 testify because you are not going to be able to
23 prove anything. So what are we doing?

24 **MS. SHURLING:** Trying to establish a
25 record for the fact that they were, in fact,

1 interviewed and --

2 **THE COURT:** Under Rule 611 of South
3 Carolina Rules of Evidence, this either speeds
4 up right now or I'm going to speed it up myself.
5 Do you need me to read the Rule 611 out loud? I
6 will.

7 **MS. SHURLING:** Yes, sir. Let me double
8 check our list.

9 **THE WITNESS:** Just so the record reflects,
10 I did find the folder on the Whaleys.

11 **THE COURT:** Thank you.

12 **THE WITNESS:** I can't speak about it. But
13 just so Your Honor knows, these names are
14 something I have not heard before just now.

15 **THE COURT:** I understand.

16 **THE WITNESS:** 24 years later.

17 **MS. SHURLING:** They are addressed in your
18 case summary that has been introduced into
19 evidence and, for the record, it will
20 demonstrate those people were subpoenaed.

21 **THE WITNESS:** My case summary is in
22 evidence?

23 **MS. HARRIGAN:** I don't -- I don't believe
24 --

25 **THE WITNESS:** You are wrong.

1 **MS. SHURLING:** I thought you just asked a
2 while ago if you wanted to introduce that.

3 **MS. HARRIGAN:** I haven't examined Mr.
4 Swerling. This is his case.

5 **MS. SHURLING:** I'm sorry. I thought you
6 said you were introducing it.

7 **MS. HARRIGAN:** No, I have a copy of it.

8 **MS. SHURLING:** Thank you.

9 **BY MS. SHURLING:**

10 **Q** You questioned Hayes Malloy about --

11 **A** Are you leaving the Whaleys?

12 **Q** No, sir. I am going back to the
13 allegations as instructed by the Court.

14 **A** According to my records, they were
15 subpoenaed.

16 **Q** Let me find a specific allegation number
17 for you. Allegation Number four, you questioned
18 Hayes Malloy about his sentencing exposure,
19 potentially a death penalty, for murder-for-hire?

20 **A** I don't remember. I don't remember.

21 **Q** Okay. If the record reflects that you
22 questioned him concerning that matter about whether
23 or not he potentially faced a death sentence under
24 his theory of the case a murder-for-hire case based
25 on his own charge of murder, given the fact that the

1 bulk of the allegations made by Mr. Malloy included
2 his repeated assertion that --

3 **A** Ms. Shurling, I'm going to stop you right
4 there. I've lost you already so you might want to
5 break it down.

6 **Q** All right.

7 **A** I'm getting a little old.

8 **Q** Hayes -- well, and I wasn't being clear. I
9 apologize. Hayes Malloy repeatedly testified that
10 Mr. Tillman tried to hire people to kill Donald
11 Sutton?

12 **A** I don't know that to be true at this time,
13 24 years later.

14 **Q** Okay. Well --

15 **A** If you have some evidence, please show it
16 to me.

17 **Q** Throughout the testimony of Hayes Malloy,
18 there are references to Mr. Tillman supposedly having
19 attempted to hire someone.

20 **A** Please show me if you're going to ask me a
21 question.

22 **Q** I don't have the specific page reference at
23 hand.

24 **A** Then I can't answer it.

25 **Q** You were aware, I assume, in trying this

1 case that there were allegations that your client had
2 tried to pay people to kill Donald Sutton?

3 **A** I don't remember. Point it out to me and
4 then I can comment. Do you know how many cases I
5 have tried since 1990?

6 **Q** In -- I understand. In the statement that
7 we were just referring to made by Mr. Malloy on
8 December 29th, he is referring to Mr. Tillman. It
9 was introduced as Defendant's Exhibit 3. Mr. Tillman
10 attempted to hire numerous people to kill Donald
11 Sutton?

12 **A** This is not the one you showed me before.

13 **Q** That's the one we were just looking at.

14 **A** No, Exhibit 2 is what we were looking at
15 just a moment ago.

16 **Q** In Defendant's Exhibit 3 ---

17 **A** Yes.

18 **Q** --- that we were referring to a moment ago
19 with reference --

20 **A** No, we were not. This, 2, is what we were
21 referring to. Don't confuse me.

22 **Q** I'm not trying to, sir. I'm talking about
23 when we were referring to the Whaley brothers to
24 Donald Corbett.

25 **A** You didn't refer to this. You didn't refer

1 to Exhibit Number 3 when you were asking me about the
2 Whaley brothers. You did not refer to Exhibit Number
3 3.

4 Q Okay. Well, looking at that exhibit
5 now, ---

6 A Yes.

7 Q --- Defendant's Exhibit 3, it refers to Mr.
8 Tillman having allegedly attempted to hire people to
9 kill Donald Sutton, doesn't it?

10 A (Reviewing.)

11 It says Ron had propositioned David Bynum,
12 Pig, to do the job. Ron told Scott English that he
13 wanted Sutton killed. The first time I've seen that
14 statement in 24 years.

15 Q I understand. My question is given the
16 fact that Hayes Malloy had in a statement that you
17 were introducing yourself into evidence, weren't you
18 concerned about talking about the penalties for
19 murder-for-hire when the concept of murder-for-hire
20 had only been introduced into the proceedings through
21 Hayes Malloy's claim that Ron Tillman attempted to
22 hire people to kill Donald Sutton?

23 A Ms. Shurling, with all due respect, I have
24 no idea what you're talking about. Could you explain
25 it?

1 Q I know this is difficult after all these
2 years. To your knowledge -- to the best of your
3 recollection, did anybody talk about anybody hiring
4 someone to kill Donald Sutton other than Ronald
5 Tillman supposedly trying to?

6 A I don't know. If you have something to
7 show me, I'll be glad to look at it. Then I can
8 comment.

9 Q That is fine. The record will speak for
10 itself.

11 A What record? If you're asking me a
12 question, then I would like the opportunity to
13 comment on that. But I don't know what you are
14 referring to, so I can't comment on that. In all
15 fairness to me, I would like you to show me what you
16 are referring to so I can comment on it. I don't
17 think that's unreasonable.

18 Q I cant -- we're talking about three volumes
19 of a trial.

20 A I know. That's what you asking me to go on
21 is three volumes of the trial. You are the lawyer
22 for him now. You should be prepared.

23 Q And I am, sir.

24 A Well then, show me where.

25 Q I can't show you where something isn't Mr.

1 Swerling.

2 **A** You have not show me where anything is.

3 **Q** My point is if there is nothing in this
4 record about anyone else attempting to hire someone
5 to kill Donald Sutton except Mr. Tillman?

6 **A** I don't know that to be true. So far I've
7 found several errors you've made in your allegations
8 of ineffective assistance of counsel.

9 **Q** I understand that, sir. I apologize to the
10 extent I was incorrect. However, I will note the one
11 you keep going back to my mention of the fact that
12 Harold Malloy was not -- Hayes Malloy was not
13 questioned about his exposure to life for murder it
14 was the language on the following page that was of
15 concern to me. However --

16 **A** You said I never questioned him on the
17 sentence for murder and you are wrong.

18 **Q** I'll move on. Did you see any reason why
19 it was dangerous to bring up the subject of murder-
20 for-hire in this trial?

21 **A** At this time, without you referring to
22 something specific, I can't answer that question. It
23 was 24 years ago. I'm sure I would have thought
24 about it. I'm sure that I would have considered it.
25 I'm sure I made a conscious decision not to if that

1 is what you are saying is the record of the case.

2 Q That's all I was asking you, sir.

3 THE COURT: That statement that you have
4 in your hand, Mr. Swerling, does it have an
5 exhibit number on it for this hearing?

6 THE WITNESS: No.

7 THE COURT: Okay. You introduced it in
8 trial when you were cross-examining somebody?

9 THE WITNESS: During the trial. Judge,
10 what I did is I had a number of statements. The
11 State never objected. In fact, I was reading
12 that last night or a couple of days ago. The
13 State never objected to me actually putting in
14 the individual statements to show the
15 inconsistencies.

16 THE COURT: One of the State's witnesses,
17 hypothetically speaking -- and I understand you
18 don't remember it -- but hypothetically speaking
19 if we were today, there was a State's witness on
20 the stand. You're in the middle of
21 cross-examining that witness and the State --
22 you have their -- I assume their statement to
23 the police with you. You are crossing them on
24 inconsistencies or differences or you said this
25 or you didn't say that or wherever you may be

1 going and you actually went ahead and introduced
2 those into evidence?

3 **THE WITNESS:** Several of them.

4 **THE COURT:** Okay. That one mentions
5 something about Mr. Tillman potentially -- of
6 course, I'm not saying that he did this. I'm
7 just going through this. But that one mentioned
8 something about Mr. Tillman was going to hire
9 somebody to kill Mr. Sutton, is that right?

10 **THE WITNESS:** This is an evolution of
11 statements that he kept giving.

12 **THE COURT:** You are talking about --

13 **THE WITNESS:** The witness, Hayes Malloy.

14 **THE COURT:** The witness. Got it. I
15 understand. So Hayes Malloy has given, to the
16 best of your memory, I understand, different
17 versions of the facts. Let's call it that.
18 This is just another thing that you are going
19 through to cross-examine him to try to impeach
20 him and attack his credibility on his stories
21 consistently changing.

22 **THE WITNESS:** Correct. It was, in fact,
23 the State never objected to it. Judge Rushing
24 gave comment to the State that you didn't object
25 to any of this coming in because they were

1 complaining about.

2 **THE COURT:** Even though that statement
3 that you are holding in your hand said something
4 negative about your client, you're using it for
5 impeachment purposes to try to show the jury of
6 the inconsistencies in the statements and how
7 the story's changing with the witness, Mr.
8 Malloy?

9 **THE WITNESS:** Correct. It's a strategic
10 decision one makes. I have, from time to time,
11 gone in and introduced statements like this that
12 have more information than you want. Other
13 times, I ask questions just on specific lines of
14 the statement without offering the statement.

15 **THE COURT:** I understand.

16 **THE WITNESS:** It just depends on the
17 situation.

18 **THE COURT:** Okay.

19 **THE WITNESS:** And I would, uh -- Your
20 Honor, Judge Rushing even made a comment about
21 that if I could refer to it.

22 **THE COURT:** Sure.

23 **MS. SHURLING:** Your Honor, while he is
24 looking for that, I discussed with counsel for
25 the Respondent, Defendant's Exhibits 2 and 3,

1 they were, in fact, exhibits at the trial
2 proceeding. They are technically part of this
3 record for purposes of lateral review. For
4 convenience of the Court and everyone else in
5 reviewing it, I would move to introduce them as
6 Applicant's exhibits.

7 **THE COURT:** Okay.

8 **MS. HARRIGAN:** No objection.

9 **THE COURT:** Let her mark them.

10 **THE WITNESS:** Judge, I think this --
11 excuse me.

12 (WHEREUPON, Applicant's Exhibit 6 and 7 are
13 marked and admitted into the record.)

14 **COURT REPORTER:** Applicant's 6 and 7.

15 **THE WITNESS:** The reason I think that this
16 is important is because it actually shows -- uh,
17 it wasn't one. There were two comments at the
18 bottom that Judge Rushing had that I would like
19 this court to consider. One of them is that I'm
20 certain that your attorney, Mr. Swerling, and
21 you have clearly -- and this is on Page 1119 --
22 have clearly received the highest level of legal
23 representation that this court has observed in
24 some time. The fact of whether or not you had
25 excellent representation in this case is not an

1 issue.

2 MS. SHURLING: Mr. Swerling, I --

3 THE WITNESS: Uh, I've got one more thing.

4 MS. SHURLING: I'm sorry. I thought you
5 were through.

6 THE WITNESS: There is one other one part.
7 (Pause).

8 He also say -- can I have volume 3? What
9 it says, Judge, on Page 1121, Mr. Swerling gave
10 you absolutely excellent representation. The
11 question of fact that the jury may decide is
12 whether or not they are going to believe those
13 witnesses, Hayes Malloy and couple of others. I
14 would have been probably in the same position as
15 they would have been. Why not? Why not? But
16 you did the finest job I have ever seen of
17 trying to convince them that they shouldn't.
18 You are to be commended for your representation.
19 There is one other.

20 MS. SHURLING: Mr. Swerling, it might be
21 consistent.

22 THE WITNESS: I'm sorry. I have one more
23 thing.

24 MS. SHURLING: Pardon?

25 THE WITNESS: I have one more thing that I

1 would ask the Court permission to read.

2 **MS. SHURLING:** Mr. Swerling, I was telling
3 you I have Volume 3 if that's what --

4 **THE WITNESS:** I have Volume 3 as well.
5 (Pause).

6 Just one more. Page 357. This goes to,
7 uh, what we were just talking about as far as
8 trying into impeach him. This is the Court
9 talking to Mr. Morton, who is the State's
10 attorney in the case. Mr. Morton objected to
11 questions being asked and answered. The Court
12 said, Mr. Morton, I wish you would please
13 explain to me how in the world that is. I can't
14 tell what has been asked or answered by this
15 witness. He has given so many answers to so
16 many different questions I don't know how
17 anybody could reach that conclusion. He's under
18 cross-examination of the critical points. That
19 hopefully elaborates a little bit more on the
20 question of what you just asked me about on why
21 we didn't put in statements.

22 That was another thing going on here. I
23 may have mentioned it earlier. Mr. Malloy was a
24 difficult witness. The judge kept admonishing
25 him in front of the jury to answer the questions

1 and not to editorialize. So I thought we were
2 doing pretty well especially when the judge had
3 about had it -- just about had it with Hayes
4 Malloy and kept admonishing him.

5 **BY MS. SHURLING:**

6 **Q** Mr. Swerling?

7 **A** Yes.

8 **Q** Judge Rushing, in fact, threatened Mr.
9 Malloy with sanctions of a contempt of court finding
10 if he didn't start answering the questions?

11 **A** Oh, yeah. As far as that goes, I think we
12 were doing pretty well with Mr. Malloy.

13 **Q** You have mentioned several times of the 50-
14 something-page cross-examination of Mr. Malloy.

15 **A** Yes.

16 **Q** Would you agree that such an extensive
17 cross-examination in and of itself punctuates how
18 important it was to attack Mr. Malloy's credibility?

19 **A** Obviously, I spent a great deal of time on
20 him and had spent a great deal of time preparing and
21 thinking through what I was going to ask him and not
22 ask him which is just the way I prepare my
23 cross-examination.

24 **Q** Sure.

25 **A** I happen to love cross-examination.

1 **Q** One remaining allegation. If you would,
2 turn with me to Page 853 of the transcript.

3 **A** Okay.

4 **Q** Looking at the questioning that continued
5 on line 6 through 15 and then your objection that
6 followed with regard to relevance and the finding of
7 the Court line 17 through 18.

8 **A** What is the question?

9 **Q** The State's witness, Mr. Bruce Hall, was
10 questioned once again about the number of store -- of
11 tires, Goodyear tires sold out of his store and how
12 many of those were Goodyear Vectors. And back on
13 lines 10 and 11, he says in November was around 246.
14 Do you see that?

15 **A** Yes.

16 **Q** Ultimately, you were able to prevail and
17 get Judge Rushing to find that that evidence was
18 irrelevant and he sustained your objection at line 17
19 and 18. Do you see that?

20 **A** Yes.

21 **Q** At that juncture, did -- is there any
22 strategic or tactical reason why you didn't ask the
23 judge to either strike the testimony that had already
24 been given or issue a curative or potentially a
25 mistrial?

1 **A** Well, mistrial, let me just answer that
2 first. Mr. -- actually, we did discuss a mistrial at
3 some point in this case and Mr. Tillman did not want
4 a mistrial. You know that.

5 **Q** I know that.

6 **A** Okay. And so let's be fair to me. We had
7 a situation. Mr. Tillman and I both knew that our
8 best chance in this case was to go forward at this
9 particular time. There were some mistakes made in
10 the trial, some objections to some evidence that I
11 objected to and motions for mistrial could have been
12 made. It's on the record that one of the times I did
13 make a motion for mistrial and withdrew it with Mr.
14 Tillman's consent. I have that page reference if
15 you'd would like.

16 **Q** I am aware of it.

17 **A** So the answer to your question is, would I
18 consider a motion for a mistrial? No, because Mr.
19 Tillman and I discussed we had the best chance ever
20 of going forward at that time, first impression, not
21 re-letting the State retry the case.

22 **Q** I understand that. I anticipated that
23 being your answer that it had already been
24 established that your client wanted this trial to go
25 forward. But was there any reason why you would not

1 have asked that this irrelevant testimony be stricken
2 and the jury be given a curative charge to disregard
3 it?

4 **A** Uh, 19 -- 2014, 13, I can't tell you why.
5 I would think it was something I considered and
6 didn't do. I just can't tell you why. It's
7 obviously something, when I make an objection do I
8 think about how far to take the objection, whether to
9 strike or make a motion for mistrial. I honestly
10 cannot answer that right now.

11 **Q** The tire tread evidence in this case was
12 the only physical evidence, forensic evidence that
13 the State used to arguably put your client at the
14 murder scene, wasn't it?

15 **A** I don't know. I have no idea. If you have
16 something specific to refer me to. You're asking me
17 to think about what these three boxes and three
18 transcripts, whether that was the only evidence at
19 that the time.

20 **Q** Physical evidence?

21 **A** I don't recall. If you have something to
22 refer me to, I'll be glad to look at it and comment
23 on it.

24 **Q** I understand. Mr. Swerling, I'm not trying
25 to be a smart aleck. I can't show you a page

1 reference for something not being in the transcript.

2 **A** Well, you have the transcript. So you can
3 show me or point to what evidence was introduced and
4 then we could look at what was not introduced. I
5 mean, you are taking a very unfair advantage of me in
6 the situation because you yourself don't know the
7 transcript very well. You're asking me to comment
8 about a trial that took place 24 years ago, 23 years
9 ago. I just can't do it. I can't give you
10 speculations as to why I did or did not do something.

11 **Q** Mr. Swerling, I am not trying to reduce
12 this to a personal challenge and I would hope you
13 would not do so with me.

14 **A** It's not a personal challenge.

15 **Q** I said is -- to the best of your
16 recollection, isn't it true that the tire tread
17 evidence was the only physical evidence used by the
18 State to link your client to the crime scene?

19 **A** At this time, I do not recall that.

20 **Q** Okay. If, in fact, the trial transcript
21 reflects no other physical evidence tying Mr. Tillman
22 to the crime scene, then would you agree that any
23 irrelevant evidence designed to make the type of tire
24 impression found at the scene more obscure even --

25 **A** Ms. Shurling, you can stop because I've

1 already lost you. If you want to break it down, I
2 will be glad to try and address it. But you are
3 compounding your questions. I can't follow you.

4 Q If, in fact, the record reveals no other
5 forensic physical evidence typing your client to the
6 scene, would you agree that any evidence that made it
7 more likely than not that the tire impressions were
8 made by his car were highly prejudicial to your case?

9 A I can't speculate on that. I just don't
10 know what you -- I really don't know what you are
11 trying to get it. I mean, there's evidence here.
12 There's evidence in the case about the tire tracks.
13 The record speaks for itself. I don't recall. I
14 can't answer your question the way you are framing it
15 because it is speculative.

16 Q Wouldn't the rarity with which Goodyear
17 Vector tires are sold be an evidentiary factor that
18 the State would be using to try to establish the
19 likelihood that the tire impressions were made by Mr.
20 Tillman's car?

21 A He had evidence in the case. He had Vector
22 tires. They sold Vector tires. Sometimes you have
23 the facts that are not in your favor. But as to why,
24 what was said, how it was said, what I did, what I
25 did not do, I can only tell you that I think through

1 these things and I made the decision at that time to
2 object or not object. Obviously, at one point, I
3 didn't object but, at another point, I did not object
4 so I must have changed my mind.

5 Q And finally, in a situation where you did
6 decide to object, you did decide the evidence wasn't
7 relevant -- in any situation -- I accept that you
8 don't have a firm recollection, but what reason would
9 there be for not asking that the objectionable
10 testimony be stricken?

11 MS. HARRIGAN: Asked and answered at this
12 point. We've been over this several times.

13 THE COURT: Sustained.

14 BY MS. SHURLING:

15 Q You don't recall specifically why you
16 didn't. Can you tell us why a curative charge would
17 have been harmful?

18 A Can I tell you now whether it would have
19 been ---

20 Q Yes.

21 A --- or why I didn't ask for it? I can't
22 tell you now why. It's speculation. I'm not going
23 to speculate about something I did or did not do 24
24 years ago.

25 Q Thank you. No further questions.

1 **A** But I do have -- I found the memo about Mr.
2 Tillman.

3 **MS. SHURLING:** May I approach?

4 **THE COURT:** Yes.

5 **BY MS. SHURLING:**

6 **Q** From reading this memo, do you know whether
7 Jennifer -- I would assume would be Jennifer Shealy,
8 your former associate. Do you know whether she was
9 referencing talking to Mr. Ronald Tillman or his
10 father, Mr. Thomas Tillman?

11 **A** She would not have been addressing --
12 you're asking my opinion? If it was Ronald Tillman,
13 she would have been calling him Ron. Mr. Tillman in
14 our -- with respect to Mr. Tillman, we would refer to
15 him as Mr. Tillman, as I did today.

16 **Q** And --

17 **A** Ronald is Ronald and Mr. Tillman is
18 Mr. Tillman.

19 **Q** In this memorandum, she indicates that
20 Mr. Tillman, whichever one --

21 **A** Mr. Tillman, Sr.

22 **Q** Said that Hayes Malloy, the informant on
23 the murder case, as well as the bank robbery case, is
24 the person who Mr. Tillman and his family had charges
25 against, which I will agree makes it sound more like

1 Mr. Thomas Tillman as well. But it doesn't say
2 anything, does it, about there being disclosure of
3 the fact that someone in your firm was representing
4 Hayes Malloy?

5 A Why would he be telling me that if he knew
6 that somebody in my firm had represented Hayes
7 Malloy?

8 Q It doesn't indicate that he confronted you
9 with the fact.

10 A There was information about it. I'm saying
11 if Mr. Tillman knew that our firm was representing
12 him, it seems like that statement wouldn't have been
13 made that way. He would have said let me remind you.
14 Ms. Shurling, there is no evidence that I represented
15 Hayes Malloy in that case. Even if I did and even if
16 anybody else in my firm did, you can't show anything
17 in this record that would indicate that there was a
18 conflict of interest or that Mr. Tillman or Mr.
19 Tillman, Sr. did not know about the fact that
20 somebody in our firm was representing him. I'm not
21 going to make a statement that somebody did not
22 represent him because I don't know. The records are
23 not there.

24 But Mr. Tillman would have known it and so
25 would his son, Ronald, would have known it. The case

1 was over with by the time of the murder. There was
2 no indication in that 150 pages of cross-examination
3 that Mr. Malloy had the benefit of somebody in my
4 firm representing him or me representing him.

5 Q Mr. Swerling, again, I am not trying to be
6 disrespectful. My simple question was --

7 A Simple? You don't answer ask --

8 Q This memorandum that's been discussed
9 extensively ---

10 A Correct.

11 Q --- doesn't say anything about who was
12 representing him.

13 A Let me just say this to you, the way I read
14 that --

15 THE COURT: Now, you need to answer the
16 question first, Mr. Swerling. Then you will be
17 allowed to explain your answer.

18 THE WITNESS: It does not say that, Ms.
19 Shurling. But what it means to me is that we
20 were not representing Mr. Malloy if Mr. Tillman
21 was telling us that that was Mr. Malloy who he
22 had charges against. Mr. Tillman initiated
23 dropping those charges because Mr. Malloy paid
24 him some money. Why would he be telling us it
25 was Hayes Malloy in that party shop if we were

1 representing him?

2 **BY MS. SHURLING:**

3 **Q** How is it that you know the circumstances
4 under which the charges were dropped?

5 **A** Because it says so. It's in the
6 transcript. It's in these documents here that he
7 dismissed them.

8 **Q** That's -- you don't have any independent
9 recollection of that. You just know it from those
10 documents?

11 **A** No. In this file when I reviewed -- when I
12 was reviewing this file, it's in there that he
13 dismissed the case. The case was dismissed in June
14 of 1988 by Mr. Tillman. Somewhere in there in this
15 file, there is a note or a memo that it was -- what
16 happened was Mr. Malloy wanted -- Mr. Tillman wanted
17 some money. In return for that, he agreed to dismiss
18 the charges. That's somewhere in here.

19 **Q** I understand.

20 **A** You are welcome to look through it.

21 **Q** And I have. My simple, although maybe not
22 eloquently worded, question was do you have any
23 recollection of how you came to know these
24 circumstances under which that charge was dropped?

25 **A** I had a paralegal working on the case. I

1 worked on the case. I have no idea. It is in here.
2 It's all in here. Nothing is being hidden. You can
3 look through it. Look through it. I found that out
4 in the investigation of this case.

5 Q Mr. Swerling, I have never challenged your
6 word and would not --

7 A Well, it came out in the investigation of
8 the case. It's in Hayes Malloy -- you saw Hayes
9 Malloy's folder is that big, my preparation for his
10 cross-examination. So it's in there.

11 Q Do you have the documents you are referring
12 to a moment ago?

13 A What documents?

14 Q The documents concerning the dismissal of
15 the party shop charge.

16 A Right here.

17 MS. SHURLING: Your Honor, if I could have
18 one moment to look at this, I'm through.

19 (Pause.)

20 Your Honor, I would move to introduce as an
21 Applicant's exhibit.

22 THE COURT: All right.

23 MS. SHURLING: I have no further questions.

24 (WHEREUPON, Applicant's Exhibit 8 is marked for
25 identification and admitted into the record.)

1 **THE COURT:** Not at this time. I mean, as
2 much as I hate to do this, I have --

3 **MS. HARRIGAN:** I was going to ask for a
4 brief break anyways.

5 **THE COURT:** I have a commitment to teach
6 an ethics class at the law school, uh, that I've
7 had for some extended period of time. So ya'll
8 want to do Thursday or Friday? You want to look
9 at your calendar?

10 **THE WITNESS:** Thursday, I'm supposed to be
11 in Rock Hill in the morning.

12 **THE COURT:** What is it for?

13 **THE WITNESS:** It is a plea, but I wouldn't
14 have any problem in the afternoon.

15 **THE COURT:** I can get you out of it.

16 **THE WITNESS:** That's the only thing.
17 Friday, I have a meeting with the commission on
18 profession with the Supreme Court so that would
19 be a problem.

20 **THE COURT:** You would prefer Thursday?

21 **THE WITNESS:** Yes.

22 **THE COURT:** Okay. Who is your plea with?

23 **THE WITNESS:** I can call and see if there
24 is any question about it. Jessica Holland is
25 the Assistant Solicitor.

1 **THE COURT:** If there is an issue, please
2 let my law clerk know. I will call over there
3 and talk to Judge Hayes and Judge Alford.

4 **MS. HARRIGAN:** Your Honor, this might
5 simplify things.

6 I don't believe that you have any
7 additional witnesses to call, do you?

8 **MS. SHURLING:** I do not. Well, the
9 applicant.

10 **MS. HARRIGAN:** Never mind. I thought you
11 said the applicant's case. I apologize.

12 **MS. SHURLING:** I said nothing further from
13 Mr. Swerling.

14 **THE COURT:** So we're going to put him on
15 Thursday?

16 **MS. HARRIGAN:** Yes.

17 **THE COURT:** Look at your docket.

18 **MS. HARRIGAN:** Thursday, there's only one
19 matter.

20 **THE COURT:** Yeah. That's why I said
21 Thursday or Friday.

22 **MS. HARRIGAN:** It shouldn't be that long.
23 It's a guilty plea.

24 **THE COURT:** The one that is on Thursday is
25 Metts?

1 **MS. HARRIGAN:** Yes, Your Honor. There's
2 also only one remaining, I believe, on Friday as
3 well now.

4 **THE COURT:** What about Danover?

5 **MS. HARRIGAN:** Danover has been moved to
6 Wednesday.

7 **THE COURT:** Okay. We only have one
8 docketed for Thursday?

9 **MS. HARRIGAN:** As well as Friday, Your
10 Honor.

11 **THE COURT:** Okay. So let's do this one on
12 Thursday. What do I need to do to make sure Mr.
13 Tillman is back over here on Thursday?

14 **MS. HARRIGAN:** I can call SCDC right now
15 and ask that he be transported. They don't go
16 to the Richland County Detention Center like
17 they do in a lot of counties. So I will ask
18 SCDC to bring him over again on Thursday. That
19 shouldn't be any problem. If I do need an
20 order, I will let Your Honor know.

21 **THE COURT:** If you need an order, let me
22 know. Okay. All right. See y'all Thursday. I
23 don't know anything about this one. Metts, is
24 that a plea or trial?

25 **MS. HARRIGAN:** It's a plea.

1 **THE COURT:** Okay. All right. So why
2 don't -- want to say 10:30? 10:00?

3 **MS. HARRIGAN:** 10:30 is fine, Your Honor.

4 **THE WITNESS:** I'm free all day.

5 **THE COURT:** Okay. Oh, and I have a plea
6 first thing Thursday morning. It's just not a
7 plea. It's a sentencing. It's not a PCR case.
8 It's just something I need to do because I'm not
9 holding court here for the rest of the year.
10 That shouldn't take but 5 or 10 minutes. So
11 10:30 is fine. Okay. All right. See everybody
12 then.

13 See you tomorrow, Ms. Harrigan.

14 **(WHEREUPON, the Court recesses for the day.)**

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 21st day of November, 2013.)

THE COURT: Come on around, Mr. Tillman.

MS. SHURLING: Your Honor, I apologize for not having my stuff out. My time was consumed with speaking with my client and his family.

THE COURT: Okay.

MS. SHURLING: Ready to proceed, Your Honor?

THE COURT: Yeah, whenever you're ready.

MS. SHURLING: Thank you. Your Honor, for the record, I'm Tara Shurling. As the Court is aware, we did the first part of this post-conviction relief hearing the day before yesterday. We were instructed by the Court to reconvene this morning.

This morning, I was advised by Mr. Tillman, my client, that he no longer wishes me to represent him. He has asked me to make a motion to be relieved as counsel in this case. I've tried to explain to him that I'm not making a motion to be relieved as counsel, but I am making the Court aware that he wishes the Court to relieve me as counsel and afford him the

1 opportunity to hire another lawyer and complete
2 his PCR at a later date with new counsel.

3 I would like the record to reflect a couple
4 of things that I advised Mr. Tillman and advised
5 his family. When I met with Mr. Tillman, there
6 were certain issues that we discussed, certain
7 potential witnesses that he felt he wanted me to
8 present. I had reasons why I thought that was
9 not the best avenue to take in his case. I
10 thought other issues were better and better to
11 focus on. Ultimately, after discussing it with
12 him at length, he said that I was the expert and
13 he would go with what I felt was best.

14 From the time I arrived in court the day
15 before yesterday, he was angry with me because I
16 was not presenting the very witnesses that he
17 indicated to me that he would rely on my
18 judgment to decide what is best in terms of
19 what issues to raise and what avenues to pursue
20 on collateral review. I have explained to Mr.
21 Tillman that I have done the very best I know
22 how in this case to develop a record on several
23 of what I believe are good issues in this case
24 despite the fact -- I told him from the
25 beginning that one of the problems you have when

1 you hire a career defense attorney in the case,
2 you hire a good lawyer for a good reason. But
3 then if you end up pursuing the post-conviction
4 relief action, it obviously makes it harder to
5 be raising allegations of ineffective assistance
6 of counsel when you are raising those
7 allegations against an attorney with a well
8 recognized stature in the legal community.

9 I have also told him, however, that I,
10 despite a long-standing professional
11 relationship with Mr. Swerling, that, in my
12 experience, Mr. Swerling, uh, would answer
13 questions fairly and honestly and that I took my
14 job seriously in collateral cases and I would
15 raise the issues that I felt would stood a
16 chance of winning.

17 I believe as Mr. Swerling has said he
18 believes the record speaks for itself with
19 regard to his cross-examination of Hayes Malloy.
20 I would have to say that I believe a record of
21 my examination of Mr. Swerling reflects that,
22 although difficult at times, that I was
23 persistent enough and thorough enough to
24 continue and try to and did ultimately
25 thoroughly address a number of issues which I

1 believe had merit in this case.

2 I told him from the beginning that all of
3 God's children make mistakes. And the best
4 lawyers in the world sometimes make a mistake
5 and sometimes those mistakes can be a foundation
6 for relief been granted. The fact that he was
7 represented by such a generally highly regarded
8 attorney didn't necessarily mean he wouldn't
9 have any good issues and I would do my best to
10 preserve those issues. I believe I have done
11 that thus far in this proceeding.

12 I've made it clear to him that if Your
13 Honor allows him to have me relieved that I
14 would not be a lawyer to make the legal
15 arguments on those issues that I've developed.
16 What we have done thus far with the testimony of
17 Mr. Swerling is to lay the factual groundwork
18 for a number of what I believe to be pertinent
19 issues on the collateral review that have merit.

20 What is yet to be done is to make the legal
21 arguments on those matters and to prepare for
22 Your Honor either through a proposed order or a
23 bench brief articulating those arguments
24 further. I have also explained to him that if
25 he were allowed to get another lawyer and that

1 lawyer does not do as good a job as I would have
2 done on arguing the merits of the issues on the
3 law and the legal analysis of the issues that
4 have been developed factually that I cannot be
5 responsible for the fact that that issue or
6 those issues might not prevail ultimately if
7 argued and presented on the law by someone else.

8 I also advised him that even if he wins in
9 a post-conviction relief action, the State has
10 the right to appeal an order granting him a new
11 trial and that in my experience, particularly in
12 serious cases, the post-conviction relief
13 division of the Attorney General's office
14 virtually always does appeal the grant of a new
15 trial in serious cases particularly murders. I
16 can think of a couple in my career that they
17 have not appealed. But that is not the general
18 rule, they generally do.

19 I explained to them that one of the things
20 that I pride myself on as someone with -- and I
21 don't mean to sound immodest -- but something of
22 a reputation in this particular of the law is
23 drafting orders that are detailed enough and
24 cover the arguments from, with sufficient detail
25 and sufficient supporting authority that the

1 orders are strong enough to withstand attack on
2 appeal if the State elect to appeal a favorable
3 order and that, once again, should he elect to
4 have me relieved and the Court grant that
5 request that I can't be responsible for the
6 quality of order that someone else might present
7 to Your Honor even on the issues that I have
8 already factually developed.

9 Having said that, it is my policy across
10 the board that if a client asks for me to be
11 relieved, I don't oppose that motion. I take
12 pride in the work I do and take pride in
13 representing people to the best of my ability.
14 But I don't -- if he doesn't want me to be his
15 lawyer, I certainly would not object to his
16 request that I be relieved.

17 **THE COURT:** All right. What do you want
18 to tell me? Raise your right hand the best you
19 can.

20 (WHEREUPON, the Applicant is first duly sworn.)

21 **THE COURT:** Why would you like to tell me?

22 **MR. TILLMAN:** Some time in -- I was serving
23 time in the federal prison. After I got
24 finished serving my federal time, I was then
25 transferred to the South Carolina State

1 Department of Corrections. At that time, my
2 father had talked to somebody to hire a lawyer
3 for me with this PCR hearing. The lawyer that
4 he had talked to said he couldn't do it.

5 **THE COURT:** Who was that?

6 **MR. TILLMAN:** Mr. Thomas. I think it was
7 Thomas. It was a gentleman that he knew from
8 the military.

9 **THE COURT:** Okay.

10 **MR. TILLMAN:** This lawyer was trying to get
11 in touch with Ms. Shurling. I told him Ms.
12 Shurling had represented in my PCR application,
13 my first PCR application.

14 **THE COURT:** Right.

15 **MR. TILLMAN:** He said why did you get Ms.
16 Shurling. I said because my father talked with
17 you. In that process, my father went to talk to
18 Ms. Shurling and he ended up hiring Ms. Shurling
19 some time in 2011, if I am not mistaken.

20 **THE COURT:** Okay.

21 **MR. TILLMAN:** At that time, Ms. Shurling
22 came down to Kirkland Correctional Institution
23 to see me and we talked about the case. When
24 she first came to see me, she came down thinking
25 it was a parole issue because when I went to

1 trial, I got sentenced for a life sentence with
2 the possibility of parole in 20 years. 16 years
3 into my incarceration I got a letter in the mail
4 saying, oh, you don't have a 20-year life
5 sentence. You have a life without parole. So
6 that is what we talked about. She said she
7 thought it was just a parole issue. I said, no,
8 ma'am. It's just not a parole issue, I actually
9 didn't kill Donald Sutton. So she said she
10 would come down and see me. So we talked.

11 Since 2011, Your Honor, I've only seen Ms.
12 Shurling twice. Two times. I never had a
13 complete transcript. She was working on getting
14 me a complete transcript of the Solicitor's
15 Office or the Attorney General. When she first
16 came to see me, she -- excuse me, sir. (Pause.)

17 When she first came to see me, Your Honor,
18 she -- we -- she gave me this piece of paper
19 here. What it was, what she told me was when I
20 got my transcripts for me to go over them and
21 for me to put down anything that I thought
22 should be raised, any errors I thought Jack
23 should have did and didn't do, discovery,
24 witnesses, subpoena of witnesses and all of
25 this.

1 So when I did get the transcript, that is
2 exactly what I did. I went over all this
3 information with Ms. Shurling and I wrote all
4 the issues down that I felt -- that I asked her
5 to bring up, that I wanted her to bring up in
6 this hearing. Okay. She told me, she said
7 whatever you do -- I'm going to go to the
8 letter.

9 I received a letter from her. I got all of
10 her letters. In her -- let's see. Your Honor,
11 in this letter that is dated July -- I mean,
12 January 7th, 2013, Dear Mr. Tillman, your case
13 was on the docket for the upcoming PCR hearing
14 in Richland County. Unfortunately, I had been
15 notified by Jack Swerling. He will not be able
16 to be a witness during this term. The next term
17 for PCR relief hearings in the, uh, Richland
18 County will be the week of March 4th, 2013.
19 Judge Allison Lee is scheduled to preside over
20 PCR court. Hopefully, your case will be
21 scheduled for a hearing during that term since
22 Judge Lee was not your trial -- he wasn't my
23 trial attorney -- judge.

24 The Attorney General's office is also still
25 trying to locate a clean copy of your

1 transcript. They should be letting me know
2 about the transcript shortly. Remember, I will
3 be -- I will be -- it will be very helpful for
4 me if you can sit down and write out any issues
5 that you want me to consider raising in addition
6 to those that are in your original PCR
7 application. You want me to be well prepared on
8 all issues.

9 Do not -- and I quote. This is what she
10 said -- do not hand me any issues at the last
11 minute and expect me to present them to the
12 court. She said this to me and she did the
13 exact same thing in this courtroom Tuesday that
14 she told me not to do. The issues that she
15 brought before this court, you seen them, this
16 court seen them, the solicitor seen them, and
17 Jack seen them before I did. I was surprised
18 just as well as this court was. The issues that
19 she brought before this court was not the issues
20 that I asked her.

21 When she was cross-examining Mr. Jack
22 Swerling, they got into -- they got into a --
23 you know, they got into it. She told me that I
24 have ruined her repu-- her friendship with Jack
25 Swerling. He may never talk to me again. What

1 her and Jack got going has nothing to do with
2 me. I hired her to do a job. The only reason
3 why she got into a discussion with Mr. Swerling
4 was because she came in here unprepared and Mr.
5 Jack Swerling called her on it.

6 This court, you, Your Honor -- she was
7 calling out the names of the witnesses that I
8 asked her to call and you stopped her and you
9 asked her are these witnesses here. The same
10 witnesses that I asked her to bring to this
11 court for me but she chose not to. Because
12 those witnesses are not here, I'm not going to
13 be able to -- if I continue with this PCR
14 hearing, I'm -- I'm -- I'm -- I'm dead.

15 I was telling her that I'm fighting life
16 without the possibility of parole. I must get
17 everything that I -- this is what I am here for.
18 I am here to have this case heard. But how can
19 I have this case heard if I don't have any of
20 them? I asked her.

21 I wrote her a letter. I sent her these
22 names, Hayes Malloy, Cleveland Malloy, John
23 Corbett, Herman Whaley, Robert Jenkins a.k.a.
24 Pig, Lieutenant Sultan, Gabby Wells and Mark
25 Austin. I sent her these. When I got the

1 transcripts and I read through them, I sent her
2 these names. She has not talked to any one of
3 these witnesses.

4 I gave these names to my father and had my
5 father locate these witnesses. She asked me did
6 I know. I said my father, talk to my father. I
7 have been locked up for 25 years, sir. I don't
8 know where anybody is at. My father has access
9 to get each and every one of these persons that
10 I asked Ms. Shurling to call as my witness for
11 this case.

12 She went to the very thing as far as the
13 cross-examination of Hayes Malloy. I want put
14 on the record, for the record, that I think Mr.
15 Swerling did an excellent job in cross-examining
16 Hayes Malloy. Okay. That was not my issue his
17 cross-examining Hayes Malloy. My issue was the
18 fact that I didn't kill Donald Sutton.

19 The things that were said at trial that I
20 thought Mr. Swerling should have did, she did
21 the same thing that I believe I was trying to
22 get Mr. Swerling to do. She basically did the
23 same thing as far as not calling the people that
24 I asked her to call. For those reasons, sir, I
25 would ask that she be removed from my case.

1 Because like I said, I have only seen her two
2 times.

3 She put this memorandum together. Your
4 Honor, I never seen -- I didn't see it until
5 after the solicitor was served, after you were
6 served and after Mr. Swerling was served. That
7 was my first time I laying eyes on that
8 memorandum, that amendment.

9 **THE COURT:** All right. Mr. Tillman, the
10 legal issue is not whether or not she pursued
11 the allegations by way of subpoenas or
12 discovery. It has to be that these allegations,
13 not only that she did not pursue them, which I
14 will let her respond to in just a second, but
15 that the allegations had some level of merit.

16 You're going to have to go through and
17 explain to me who you asked her to contact and
18 why you believe that person has any merit or any
19 relation to or any potential of merit in this
20 hearing as to the issues in this trial which are
21 the ineffective assistance of counsel by Mr.
22 Swerling.

23 **MR. TILLMAN:** Your Honor, if I may.

24 Mr. Swerling, do you have the list that I
25 gave -- I gave you a list of names of people

1 that I wanted subpoenaed to court. You took it
2 from me.

3 **MS. SHURLING:** You just said you had it.

4 **MR. TILLMAN:** The list that I gave you
5 were the things that I added on to it. This is
6 the first one I sent you.

7 **MS. SHURLING:** I will look for that list.
8 May I briefly respond to a couple of things that
9 he said ---

10 **THE COURT:** Yes.

11 **MS. SHURLING:** --- before we go any
12 further? I was originally court-appointed to
13 this case in '94. As Your Honor knows, I did a
14 lot of volunteer court-appointed PCR work back
15 in those days. I even went so far as to fly all
16 the way to Atlanta and back in a day to visit
17 him at a federal correctional institution in
18 Atlanta.

19 When it was ultimately decided that his
20 application had to be dismissed because he was
21 in federal custody, I succeeded in getting an
22 order that said that it would be without
23 prejudice and he could move forward at a later
24 time. I have no record of having ever been
25 given a trial transcript at the time of the

1 original post-conviction relief action because
2 the State was aware that he was in federal
3 custody. My best recollection is that early on,
4 it was the State's position that the case had to
5 be dismissed because he was in federal custody.

6 At that point, they were handling cases
7 like that in two different ways. Some of them,
8 they would stay pending determination of federal
9 incarceration and others they would actually
10 dismiss the current action and grant leave to
11 file another at a later date. My files are in
12 storage, the seven or eight years that we are
13 required to keep them. My files are -- after so
14 many years, the file was purged. By the time I
15 was contacted by Mr. Tillman, Sr., Mr. Thomas
16 Tillman, I no longer had a file in this case.

17 When I was first given a transcript by the
18 Attorney General's office, I believe, in March
19 of this year, it was missing pages and was not
20 complete. I contacted Mr. Swerling's office. I
21 can look through my file, Your Honor, to my
22 phone log. But my best was recollection is that
23 I did call Mr. Swerling's office and initially
24 was told that they didn't have a transcript. I
25 reminded whoever I'd spoken with -- and again, I

1 keep phone logs on things like that. I can look
2 for that -- that they knew they had done the
3 appeal but that they couldn't locate the
4 transcript. Eventually, however, I believe that
5 Jack was able to find his transcript. It was
6 through that transcript that we were able to put
7 together the missing pieces.

8 When I met with Mr. Tillman, I went over
9 with him what I thought that best issues in his
10 case were. We talked about these witnesses that
11 he wanted to raise and there were various
12 reasons why -- Lieutenant Sultan, for example,
13 he wanted me to raise the fact that some female
14 -- and I don't believe he even gave me her name.
15 If I did, it doesn't matter -- had come out of
16 the courtroom and told someone in his family
17 that they knew -- that the solicitor was in
18 there trying to get Lieutenant Sultan to say
19 something about the crime scene that he didn't
20 want to say and that then ultimately Lieutenant
21 Sultan wasn't called as a witness.

22 I expressed the view that since Lieutenant
23 Christie was also at the crime scene and that
24 his testimony reflected that everything that
25 Lieutenant Sultan had done with regard to

1 processing the crime scene had been done in
2 tandem with Christie and Christie was there.
3 For example, photographs were taken by
4 Lieutenant Sultan, Lieutenant Christie testified
5 he was there and witnessed the photographs being
6 taken and could identify them as being an
7 accurate depiction at some point. So that's
8 just one example.

9 We went over the various witnesses, I told
10 him in my opinion why I didn't think that was
11 the best tactic to take but that I would do it
12 ultimately. You know, if he wanted to call the
13 shots, I would do what he told me to do but that
14 I thought it was not the best avenue to take and
15 he ultimately said to me -- and I'm not
16 referring to myself as an expert -- but he
17 basically said you are the expert, I'll go with
18 what you think is best.

19 That is why when Tuesday morning arrived
20 and he began badgering me because certain of
21 these witnesses were not here for court, I
22 reminded him that he told me to do what I
23 thought was best in the case. He kept angrily
24 challenging me about those witnesses. It was
25 out of, frankly, some degree of exasperation

1 that I ultimately elected to ask Mr. Swerling
2 about a couple of the witnesses that he had
3 referred to. I can tell you as an Officer of
4 the Court that with one of the files that I
5 pulled, uh, right in the file, the
6 investigator's note that this guy thinks Ronald
7 had something to do with it. It was pretty
8 obvious of why he didn't call that guy.

9 The other one -- another one that I
10 questioned Mr. Swerling about was subpoenaed.
11 Mr. Swerling said simply, after 25 years, he
12 didn't know why at that point in the trial he
13 decided not to call him. That is something --
14 the passage of time is something I can't do
15 anything about.

16 I can tell you that when I was originally
17 hired by Mr. Tillman, Sr., the only reason I
18 agreed to be hired in this case was because I
19 had originally been court-appointed. I was told
20 that the client wanted, not Mr. Tillman, Sr. but
21 the client, Mr. Ronald Tillman, wanted me back
22 with his case. He wanted me. I had to tell
23 them that this would be a whole new case and
24 there was no way to guarantee that I would be
25 the court-appointed lawyer again. At which

1 point, they then wanted to hire me. I, frankly,
2 probably would not have even taken the case had
3 it not been -- in fact, I am sure -- had it not
4 been for the fact that I had originally been his
5 court-appointed lawyer.

6 The high regard with which I hold Mr.
7 Swerling has never been kept secret from either
8 Mr. Tillman or his family. I told them all from
9 the beginning that one of the problems with
10 hiring a high profile, talented, well-known
11 lawyer, you want such a lawyer for trial because
12 you want them to help you beat the charges. But
13 if you are convicted and you are eventually in
14 the position of trying to attack the job that
15 lawyer did on collateral review, you are sort of
16 between a rock and a hard place because you are
17 attacking the competency of a lawyer whose
18 competency and skill is well-known and regarded
19 by the court. I made that clear from the
20 beginning.

21 I also made it clear -- I can even remember
22 specifically telling them that, at one point, I
23 had talked with Jack Swerling about working for
24 him, with him and his firm when I left Appellate
25 Defense. We didn't ultimately do that but he

1 was certainly someone that I held in high enough
2 regard that I was honored to even consider the
3 possibility of having the chance to work with
4 him. I've made it very clear that I had a good
5 working relationship with Mr. Swerling and that
6 I held him in high regard.

7 But I also told him that I done hundreds of
8 PCRs and that I take my sworn duties very
9 seriously and I've been in a position of
10 questioning many trial lawyers with whom I have
11 lots of respect. Amy Savage is one -- probably
12 other than Jack -- one of the best known trial
13 lawyers in the state and someone who sends me
14 referrals on a regular basis.

15 **THE COURT:** Okay. Okay. Okay. Let's get
16 to the merits.

17 **MS. SHURLING:** My point being, Your Honor,
18 that he wasn't -- the fact that I have a good
19 working relationship with Jack Swerling has
20 never been hidden from him. He also
21 specifically told me that he wanted me to do
22 what I thought was best with regard to the
23 issues and that is what I have done..

24 **THE COURT:** All right.

25 **MR. TILLMAN:** Your Honor, you asked me to

1 tell you about why I feel that the issues as far
2 as -- can you repeat that again?

3 **THE COURT:** Yeah. I'm going to try to say
4 this succinctly. I really don't like it when
5 everyone says everything three times so just
6 listen to me. She's the lawyer.

7 **MR. TILLMAN:** Yes.

8 **THE COURT:** Somebody paid her. She does a
9 lot of PCRs. All that together.

10 **MR. TILLMAN:** Yes.

11 **THE COURT:** Now, the issue is -- and it
12 happens often. I'm not saying you specifically,
13 I'm going to say people who file PCR
14 applications. They want to go down road A for
15 whatever reason. The lawyer wants to go down
16 road B for whatever reason. I have done more
17 PCRs than I care to remember. That's always an
18 issue. Okay. So the issue becomes which
19 allegations do we really bring before the court.

20 **MR. TILLMAN:** Yes.

21 **THE COURT:** Okay. You follow me so far?

22 **MR. TILLMAN:** Yes, sir.

23 **THE COURT:** Sometimes it's what the client
24 wants. Sometimes it's what the lawyer wants.
25 Sometimes I call it almost like a hybrid. You

1 know, you give me an issue and I take that issue
2 and I form it into a legal issue.

3 MR. TILLMAN: Yes.

4 THE COURT: You see it. You spotted it.
5 But for whatever reason -- I'm not talking about
6 you. I'm talking about clients in the general.
7 You've seen it, but you don't really know how to
8 -- I'll use word -- massage it into a legal
9 issue so that it is properly before the court.

10 MR. TILLMAN: I understand.

11 THE COURT: Okay. You follow me?

12 MR. TILLMAN: Yes.

13 THE COURT: That's usually that's the tone
14 in the way these things go. You say -- and I
15 don't mean you. This is not a personal attack
16 in any way, shape or form -- but the client says
17 this is an issue. It may be an issue. You may
18 just not be saying it right.

19 MR. TILLMAN: Right.

20 THE COURT: That's not an attack on
21 anybody. That's just a lack of coming into the
22 courtroom and doing these things.

23 MR. TILLMAN: Right.

24 THE COURT: So what happens is the client
25 ultimately believes, as you have told me -- now

1 I am talking about you -- that the lawyer did
2 not pursue allegations, by way of a subpoena or
3 -- I'm going to use the word discovery in the
4 broad sense meaning going out and talking to
5 these people, finding these people, interviewing
6 these people, things of that nature.

7 **MR. TILLMAN:** I understand.

8 **THE COURT:** Okay. And the issue -- I
9 don't know that she is going to dispute not
10 doing it but more than likely she's going to say
11 as she did with Lieutenant Sultan based on what
12 he provided me about that and I determined that
13 that was not, I'm going to use the word viable
14 -- I don't know if that's a good word -- for
15 whatever reason in her professional opinion as a
16 practicing attorney with her level of
17 experience, she does not believe that's the
18 road, back to road A and road B, that you should
19 be going down.

20 You can't just stand up and say she didn't
21 pursue my allegations. Okay. You've got to
22 convince me that the things that she did not
23 pursue have some level of merit. Because if
24 they are meritless, then it doesn't really --
25 I'm not going to say it doesn't matter -- but it

1 is a different process in my mind if I believe
2 that you told her to go find person A and person
3 A being here or not being here or what happened
4 with person A or what Mr. Swerling did with
5 person A or didn't do with person A has some
6 merit.

7 MR. TILLMAN: Yes, sir.

8 THE COURT: That is what I'm saying.

9 MR. TILLMAN: Okay.

10 THE COURT: So these people that you
11 believe she did not, again I'm going to say the
12 word pursue ---

13 THE COURT: Right.

14 THE COURT: --- tell me why those people
15 have merit.

16 MR. TILLMAN: Okay. I'm going to take the
17 first one.

18 THE COURT: You can go to the restroom.
19 You don't have to sit there if you don't want
20 to, Mr. Swerling. You can if you want to.
21 Okay.

22 MR. TILLMAN: Your Honor, I was at
23 Kirkland. I got to Kirkland in 2010. I was
24 transferred from Kirkland this past June to
25 McCormick Correctional Institution. When I get

1 to McCormick -- like I said, I've been down a
2 long time. People started talking about me.
3 They called my name. This individual heard my
4 name. They said there is a guy named Ronald
5 Tillman. He said -- Jeremy Williams, this guy,
6 said he's dead. They said no, he's not, he's
7 down in F4. He had just got out of lockup.

8 I was in the canteen one day and he came
9 and knocked on the window. I didn't know him on
10 sight. He said I need to talk to you. I said
11 okay. So this individual after I go to the
12 canteen, I come outside the canteen. He said,
13 man, you wouldn't believe who my cell mate was.
14 I said who are you? He said you don't remember
15 me? I said, man, I been locked up 25 years. I
16 don't know you are. He said I'm Tommy Lee's
17 nephew. Tommy Lee, Your Honor, was a co-
18 defendant of mine in the bank robbery.

19 I looked at him and said, the little boy?
20 He said yes. I said, okay, I remember you. I
21 remember you. He said guess who my cell mate
22 was. I said I don't know. He said Hayes
23 Malloy. Hayes Malloy, Your Honor, was the guy
24 that --

25 **THE COURT:** I know who Hayes Malloy is.

1 **MR. TILLMAN:** He said I know you didn't do
2 it. I said how do you know that. He said
3 everybody thought I was dead. People had a
4 rumor out that I was dead. He told this guy
5 that I killed him. He admitted to this guy that
6 he killed Donald Sutton and put it on me. Okay.
7 That was one of the names that I gave her. It
8 wasn't one of the original names.

9 **THE COURT:** What was one of the names that
10 you gave her?

11 **MR. TILLMAN:** Jeremy Bynum. This is the
12 last name that I gave her.

13 **THE COURT:** Okay.

14 **MR. TILLMAN:** I asked her to subpoena him
15 to court. He had got transferred. They
16 transferred him to another institution about two
17 weeks after I was on the yard. I wanted her to
18 talk to him and see -- like I said, I didn't
19 know, like I said, nothing about this guy. I
20 didn't know anything about him.

21 **THE COURT:** Okay.

22 **MR. TILLMAN:** Okay. Now, uh --

23 **THE COURT:** Who's next?

24 **MR. TILLMAN:** Lieutenant Sultan.

25 **THE COURT:** Okay.

1 **MR. TILLMAN:** He was the officer that
2 processed the crime scene. Okay. Uh, and --

3 **THE COURT:** The original crime scene.

4 **MR. TILLMAN:** Yes.

5 **THE COURT:** In the murder case?

6 **MR. TILLMAN:** In the murder case.

7 **THE COURT:** Okay.

8 **MR. TILLMAN:** He was the original person
9 that processed the crime scene. And when we --
10 we was going to trial. I don't know
11 particularly about it, but this young lady was
12 either in the room or --

13 **THE COURT:** This is back to somebody
14 trying to influence Lieutenant Sultan?

15 **MR. TILLMAN:** Right.

16 **THE COURT:** Okay.

17 **MR. TILLMAN:** I guess something didn't
18 match the crime scene or whatever it was.

19 **THE COURT:** Okay.

20 **MR. TILLMAN:** She was there. She came out.
21 She wrote a note to my mother. She was telling
22 my mother that, hey, you need to call this guy.
23 I talked to my mother and I said, well, I'm
24 going to have to talk to Jack. I talked to Jack
25 and I asked him if this guy was going to be

1 called. He said he's on the witness list. He's
2 going to be called. He's on the list to be
3 called as a witness. Because they had him down.
4 He was the one that --

5 **THE COURT:** You talking about Lieutenant
6 Sultan?

7 **MR. TILLMAN:** Yes, sir.

8 **THE COURT:** Got it.

9 **MR. TILLMAN:** Lieutenant Sultan was at the
10 trial. I seen him on several occasions. He was
11 there. But when it came time for him to come to
12 court, they got Christie. Christie was a guy
13 that was with him. He was -- I guess he was an
14 investigator. When Mr. Christie came in to
15 testify, Mr. Christie never testified to
16 anything but one specific thing. The only thing
17 Mr. Christie said was that the tires, the tire
18 tracks at the scene of the crime stopped in view
19 of the body. Okay. That was basically his
20 testimony.

21 What I wanted was -- why I wanted Mr.
22 Sultan to come is because in this trial, when we
23 were going to trial, Your Honor, Mr. Swerling,
24 although with Hayes Malloy, did a reenactment of
25 the way Donald Sutton got shot.

1 **THE COURT:** You mean, like, in the
2 courtroom.

3 **MR. TILLMAN:** Yes, sir. They got up. I
4 guess -- I think Mr. Swerling played Donald
5 Sutton. Mr. Malloy played me. They got the
6 Statement. They had the statement where he said
7 how the murder took place, how it happened.
8 This is what he said.

9 **THE COURT:** Who is he?

10 **MR. TILLMAN:** Hayes Malloy.

11 **THE COURT:** Okay.

12 **MR. TILLMAN:** Hayes Malloy testified to
13 the fact when we left the party shop, as soon as
14 we came out of the party shop, Donald Sutton
15 came up behind us. When Donald Sutton came up
16 behind us, he flicked his high beam/low beam
17 lights. He said I slowed down and motioned for
18 Donald to follow me. He said we drove down and
19 went down the road. He explained how we got to
20 the crime scene.

21 He said we pulled in and I pulled in to the
22 cemetery. And Donald parked over by the church
23 or behind the church. He said I got out of my
24 car. I walked over and I put my arm around
25 Donald and we was talking. We got over behind

1 the church.

2 He said Donald backed -- excuse me. He
3 says Tillman drove to the church where Sutton
4 was found and got out motioning for Sutton to
5 follow him. Tillman put his arms around Sutton
6 and they walked to the back of the church.
7 Malloy was sitting in the passenger side
8 directly -- looking directly at them. They
9 turned around so that Donald's back was towards
10 the church. Tillman was in front of him.

11 When we was -- when we were at court, they
12 did this. They did this reenactment. Malloy
13 got up and he showed how I shot Mr. Sutton. He
14 said I shot him in the side of the head first.
15 He took the gun and he shot him in the side of
16 the head. He said when I shot him in the side
17 of the head, he said Donald fell to the ground.
18 He said I leaned over and I shot him again. He
19 said then I walked off. I walked and got back
20 in my car. He said when I got in the car to get
21 in the car, he got out of the car. Okay.

22 Now, some years -- like I said, I never
23 realized what side of the head Donald Sutton got
24 shot in. I didn't know. I don't know what
25 happened. If I'm facing you, your back is up

1 against the wall and I am facing you, he said I
2 went on my right pocket and pulled the gun out
3 of my right pocket and I shot him. My car is
4 back here. Mind you, Your Honor, he's saying
5 that Donald was looking at him.

6 This, being the church. That's the church.
7 My car is supposed to be right here where you
8 can see he is looking. I am right here. Donald
9 is right there. My back is to him. I go in my
10 right pocket and I pull a gun out and I shoot
11 him in the side of the head. I was looking.
12 Donald was shot in the right side of the head,
13 Your Honor. He wasn't shot in the left side of
14 the head. He was shot in the right side of the
15 head.

16 My mother -- I had a picture. I had a
17 picture of that but like I said I didn't know
18 what -- I didn't know what side of the head he
19 was shot on. Mr. Swerling did that analysis in
20 court. We went away from it. We did that, but
21 went away from it. That was one of the things
22 that Mr. Sultan, I asked that Mr. Sultan be
23 called as a witness because he was the main
24 person that processed -- that processed the
25 crime scene.

1 The reason why I wanted him there, Your
2 Honor, is because when we went to preliminary
3 hearing, Lieutenant, uh, not Lieutenant, but
4 Mark Austin was the lead investigator in this
5 case, Your Honor. And Mark Austin testified at
6 the preliminary hearing that -- excuse me, Your
7 Honor.

8 **THE COURT:** Do you want Mark Austin to
9 testify?

10 **MR. TILLMAN:** I wanted Mark Austin. Not
11 Mark -- I wanted Mark Austin to be here. He's
12 one of the witnesses that I asked to be here as
13 well. He's one of the ones that I wanted. He
14 was one of the ones I wanted.

15 **THE COURT:** I -- I mean, me and -- Whoa,
16 whoa, whoa, whoa.

17 **MR. TILLMAN:** Not Mark --

18 **THE COURT:** Whoa. Do you want Mark
19 Austin here or not?

20 **MR. TILLMAN:** Oh, yes. I wanted Mark
21 Austin.

22 **THE COURT:** Okay. Do y'all understand how
23 close me and Mark Austin are?

24 **MR. TILLMAN:** I'm sorry. I wanted Mark
25 Austin.

1 **THE COURT:** Me and Mark Austin are
2 extremely close ---

3 **MR. TILLMAN:** Yes.

4 **THE COURT:** --- and have been for since
5 1999.

6 **MS. SHURLING:** Your Honor, just that I
7 don't get into further trouble here. For the
8 record, I wasn't aware of that friendship.

9 **THE COURT:** That isn't -- that's why I'm
10 telling you. That's why I'm putting it on the
11 record. I don't -- I didn't assume that anybody
12 was aware of it. Mr. Swerling is probably not
13 even aware of that. I mean, Mark Austin and I
14 are -- I don't know how you want to define
15 close.

16 **MR. TILLMAN:** Right.

17 **THE COURT:** I mean, Mr. Swerling and I are
18 professionals and have practiced together and
19 tried cases together. But Mr. Swerling and I,
20 you know, we don't routinely eat dinner together
21 and we've never been to each other's home.
22 We're professional associates of each other and
23 have tried cases against each other and have
24 represented people together and all of that kind
25 of stuff. I don't mean this in any way. But

1 honestly, we don't hang out really much out of
2 the courthouse unless we are at some bar-related
3 function or event for lawyers. Mark Austin and
4 I are extremely close personal friends.

5 **MR. TILLMAN:** I understand. But, uh,
6 getting back to -- now, at the preliminary
7 hearing, Mark Austin testified. He testified to
8 -- in fact, on page 16 of the transcript of the
9 preliminary hearing, uh, Investigator Sultan of
10 the lab unit handled the searching of the
11 vehicle of -- you know, of my vehicle. They
12 said that -- let me go back. They said that Mr.
13 Sultan -- they said that Mr. Sultan matched my
14 tire tracks. The tire tracks at the scene of
15 the crime, at the preliminary hearing, they said
16 that the tire tracks -- the lab team matched
17 those tire tracks to my car. That's what they
18 said at the preliminary hearing.

19 But when we got to the trial, Your Honor,
20 they didn't say that the tire tracks at the
21 scene of the crime were the tire tracks from my
22 car. They said that the tire tracks at the
23 scene of the crime was similar to the tire
24 tracks on my car. At the preliminary hearing,
25 he was stating the fact that Mr. Sultan matched

1 those tire tracks that was at the scene of the
2 crime to my car. They were saying that they
3 were, in fact, my tire tracks. That was the
4 reason that I wanted Mr. Sultan to be one of the
5 people that I wanted at that trial -- at the
6 preliminary hearing -- at this PCR hearing.

7 **MS. SHURLING:** Your Honor, I just want to
8 know. At some point, do you want me to respond
9 to each of these as he's bringing them up?

10 **THE COURT:** Yes.

11 **MS. SHURLING:** I'm afraid if I wait til
12 the end, I'll get too confused.

13 **THE COURT:** That's fine.

14 **MS. SHURLING:** With regard to Mr. Sultan,
15 the reason that it was given to me by the client
16 when we were talking about Mr. Sultan as a
17 potential witness was the incident with the
18 young lady having come out and said that she
19 overheard the --

20 **THE COURT:** I remember it.

21 **MS. SHURLING:** That was what I was told.
22 Then when he mentioned to me the issue about the
23 preliminary hearing, I pointed out to him that
24 through the skill and expertise of Mr. Swerling,
25 Mr. Swerling had been able to stop the State

1 dead in their tracks on trying to introduce
2 evidence that these tracks found at the scene
3 and the tire impressions for Mr. Tillman's car
4 were a match, quote, unquote, in the sense that
5 we think of fingerprint matches and had limited
6 the State's testimony to testify that the tire
7 tracks could be -- well, the Court limited it,
8 Your Honor.

9 But Mr. Swerling was able to get the
10 evidence limited to the fact that the tire tread
11 on -- that the tires on Mr. Tillman's car were
12 Vector -- Firestone Vector tires and that the
13 tire impressions found at the scene matched a --
14 the tread type for a Firestone Vector. But there
15 was no attempt by the State to try to say that
16 there was some unusual cut or plug or anything
17 in Mr. Tillman's tires that had left a way for
18 them to positively match his tires to the tread
19 at the scene. Mr. Swerling was able to hold
20 that testimony to that level.

21 What I explained to Mr. Tillman was that,
22 number one, with regard to what he was saying
23 the young lady overheard with Sultan, I do
24 dozens and dozens of debriefings of witnesses in
25 preparation for trial with the Solicitor's

1 office all the time. I told them that it would
2 be highly incredible in my view to the Court
3 that some young woman who was there would have
4 overheard such conversation between the
5 prosecution and a law enforcement officer. But
6 even so, that, A, it was hearsay and, B, it
7 could mean any number of things. The fact that
8 -- I hear witnesses every day say I can testify
9 to A. I can testify to B. But no, you can't
10 get me to go to C. I can't go that far. I
11 can't say that. I can only say A and B.

12 There's such a colloquy between the lawyer,
13 whether it was defense or prosecution and a
14 witness that happens all the time and it isn't
15 evidence of anything improper. It's simply the
16 lawyer who's going to be questioning the witness
17 getting the clear understanding of the
18 parameters of what the witness will and won't
19 testify to, number one. Number two, it's
20 hearsay.

21 And number three, I felt that since Mr.
22 Swerling was able to limit the tire tread
23 evidence to the fact that the tires on Mr.
24 Tillman's car were the same type of tires as
25 made the impressions at the scene. The last

1 thing you would want to do is bring in some
2 witness that, according to Mark Austin at the
3 preliminary hearing, had matched the tire tread
4 on Mr. Tillman's tires to the impressions found
5 at the scene and run the risk that that witness
6 might say something that could be interpreted by
7 the jury that there was a match, if you will,
8 more closely akin to fingerprint evidence than
9 the more generalized type of testimony that was
10 allowed.

11 What I did point out was that in the
12 opinion of the Court of Appeals when they were
13 talking about the issues raised by Mr. Swerling
14 and his office on appeal with regard to the tire
15 tread evidence that the Court of Appeals very
16 specifically noted that trial counsel had not
17 objected the first time evidence concerning the
18 frequency with which Vector -- Firestone Vector
19 tires were sold and that that was an issue as
20 opposed to calling Sultan as a witness that that
21 was an issue that could be raised because,
22 notably, the Court of Appeals had noted that the
23 evidence had not been objected to the first
24 time.

25 I would note, Your Honor, with regard to

1 this business about the victim being shot on the
2 left side of the head, if you look at page 156
3 of the pathologist's testimony, he said, and
4 this jury heard that Mr. Sutton sustained -- had
5 two bullet wounds in his head. One was in the
6 left eyebrow. The other, uh, -- pardon me, the
7 other one was in the right side of the head.
8 Then he went on to say that the entry wound from
9 the bullet was in the left eyebrow region
10 leading one to conclude, I presume, that the
11 wound on the right side was the exit wound.
12 So the jury heard in the record testimony that
13 the entry wound on this bullet was on the left
14 side of the man's head.

15 **THE COURT:** All right.

16 **MR. TILLMAN:** Your Honor, he was shot
17 twice, not once.

18 **THE COURT:** Okay.

19 **MR. TILLMAN:** Not only that, Your Honor.
20 That's not the only reason why I wanted
21 Lieutenant Sultan called. I wanted Lieutenant
22 Sultan called because Your Honor, he was the one
23 that processed the crime scene. He processed
24 the crime scene. My understanding of him
25 processing the crime scene, I wanted him to be

1 there because the one that were working with him
2 never said anything at all concerning the crime
3 scene except for the tire tracks.

4 There was blood on the air vent. There was
5 all kinds -- I wanted to hear, you know, what --
6 the stuff that was at the crime scene, I didn't
7 know anything about it. All I know is there was
8 something that was at the crime scene that --
9 they took my shoes and tried to trace me at the
10 crime scene to my shoes. You never heard
11 anything from the shoes or anything. I think
12 Jack brought that up, well, what about the
13 shoes. You know? We're in dirt. This supposed
14 to be dirt that we supposed to had been in.
15 We're in dirt. They said, well, the car is
16 heavier than you. I understand that.

17 But if I supposedly left out of my car,
18 left, went and killed Donald, came back and then
19 when I got in my car, Mr. Malloy left out of my
20 car, there's supposed to be -- there should have
21 three sets of footprints. One leading to my
22 car, one coming back and one leaving and never
23 coming back. I wouldn't know because Lieutenant
24 Sultan was not there to testify to that.

25 They didn't ask Mr. Christie anything

1 concerning that. The only thing they asked them
2 and the only thing he testified to was that Mr.
3 Tillman's car -- or not my car -- is that the
4 tire tracks at the scene of the crime stopped in
5 view of the body. That's the only thing, Your
6 Honor, that he testified to.

7 **THE COURT:** All right. So what have you
8 done to find Lieutenant Sultan?

9 **MR. TILLMAN:** All right. My father --

10 **THE COURT:** I'm talking to Ms. Shurling.

11 **MS. SHURLING:** I'm sorry, sir. What?

12 **THE COURT:** Have you done anything to try
13 to find Lieutenant Sultan?

14 **MS. SHURLING:** No, sir, Your Honor.
15 After reviewing the bases that he had given me
16 for calling Lieutenant Sultan, in my judgement,
17 calling him as a witness in this PCR was not in
18 his best interest.

19 **THE COURT:** All right. What about Tom
20 Lee's nephew? Have you done anything to find
21 him?

22 **MS. SHURLING:** I did not because of the
23 fact that after this lengthy discussion about
24 what this fellow said that he supposedly heard
25 Hayes Malloy say, then it comes out with this

1 fellow that's telling him that is the nephew of
2 Mr. Tillman's RAP partner in his federal armed
3 robbery charge, which led me to believe that it
4 would cause us credibility problems concerning
5 our case. We're trying to put a witness that's
6 that close a familial relative to someone who is
7 a co-defendant in his federal armed robbery
8 case.

9 **THE COURT:** All right. And why did you
10 want Mark Austin to come?

11 **MR. TILLMAN:** Mark Austin is the one that
12 testified at the preliminary hearing.

13 **THE COURT:** Yeah, I know.

14 **MR. TILLMAN:** And he was -- Hayes Malloy
15 -- when I went to federal trial, Mark Austin
16 testified to the fact that they didn't have any
17 evidence to convict Mr. Malloy of having
18 anything to do with the murder. Mr. Gabby
19 Wells, Gabby Wells was a witness that testified
20 against me. He said that he overheard me tell
21 Hayes Malloy to -- he said I asked Mr. Malloy's
22 the feds have me by the gonads. He didn't say
23 that -- he said another term. I just changed it.

24 **THE COURT:** I got it.

25 **MR. TILLMAN:** And he said I need you to

1 take the murder wrap for me and I'll take the
2 bank robbery. Okay. But while Hayes Malloy was
3 in the cell with Gabby Wells -- she has my
4 statement -- he said, quote, Hayes Malloy said
5 that I am not going to take the wrap by myself.
6 He said, I was the guy that tricked Donald out
7 of the car and Tillman was the one that pulled
8 the trigger. Even though it was a lie, Your
9 Honor, I wanted that to be brought out because
10 this guy he said changed his stories.

11 **THE COURT:** You talking about Gabby or
12 Hayes?

13 **MR. TILLMAN:** Hayes Malloy.

14 **THE COURT:** Okay.

15 **MR. TILLMAN:** Hayes Malloy has changed
16 his story. But when I went to trial, Your
17 Honor, they said because -- when Gabby told them
18 he overheard me tell Hayes Malloy to take the
19 murder wrap for me, they said that they used it
20 against me because of the fact that I said it --
21 if I may. Could you help me?

22 **THE COURT:** Just summarize it.

23 **MR. TILLMAN:** He said that -- they said
24 that I said it -- if I said it out my mouth, it
25 was something against my interest.

1 **THE COURT:** A statement against your
2 interest.

3 **MR. TILLMAN:** Right. And my
4 understanding, I said, well -- Jack argued that.
5 He tried to get it out. But they said, no, it's
6 not to show another crime. It showed the state
7 of my mind at the time.

8 **THE COURT:** Okay.

9 **MR. TILLMAN:** When I read -- when I read
10 this statement here, I asked, well, if they are
11 saying that about me, what about Hayes Malloy?
12 He made that statement to one of the same state
13 witnesses that testified against me. They used
14 what he said I said to -- as saying that I said
15 it and they entered that into evidence in court.
16 But this was never entered into court. They
17 never said anything about it. It was never
18 mentioned.

19 **THE COURT:** All right. You want to
20 respond briefly to that?

21 **MS. SHURLING:** Thank you. Your Honor,
22 the statement of Clarence Gabby Wells I have in
23 my hand. Mr. Tillman did indeed raise this
24 issue with me. However, as I explained to him,
25 the quote that he has given to Your Honor

1 paraphrased in a way that makes it sound a bit
2 more innocuous than it was was that Mr. Gabby
3 Wells said -- and I quote, since I've been in
4 jail, Hayes Malloy came up to cell block 22 and
5 told me that he was not going to take all the
6 weight by himself. He said that he was the pull
7 man to get Donald out of the car and Ronald was
8 the one who pulled the trigger.

9 After I read that, I discussed with the
10 client the fact that Hayes Malloy had given
11 multiple statements. They weren't statements,
12 as I said, I believe, Tuesday, it wasn't like
13 you see sometimes where the statements evolve
14 and somebody reveals a little bit in one and a
15 little more on another one and then a little
16 more. Hayes Malloy was like completely changing
17 his stories.

18 As Mr. Swerling pointed out in about 150
19 pages of cross-examination, he hallmarked each
20 of those ways that Hayes Malloy had kept
21 changing his stories and admitted lying over and
22 over again. So this would be one more time that
23 you could throw into the mix that, okay, in
24 addition to these previous statements he's made.
25 He's told Gabby Wells supposedly that he was the

1 pull man and Ronald was the one that pulled the
2 trigger.

3 A, I didn't want to use it because it would
4 arguably be used against me to say that this
5 means that Hayes Malloy, not in the courtroom,
6 not testifying for the State, but just in the
7 jail shooting the breeze with buddies is
8 consistently saying that Ronald Tillman pulled
9 the trigger that killed Donald Sutton. I didn't
10 want it for that reason. Number two, I didn't
11 want it because it created this mental image of
12 a man being pulled out of a car arguably knowing
13 he's about to be shot and Ronald allegedly then
14 shooting the man.

15 **THE COURT:** All right. Who's next?

16 **MS. SHURLING:** And because of that, I
17 told him I thought it was more prejudicial than
18 helpful and that, in my judgement, it should not
19 be used. He said to do what I thought was best.

20 **THE COURT:** Who's next?

21 **MR. TILLMAN:** Okay. Let's go to Robert
22 Jenkins a.k.a. Pig. May I see the statement?

23 **MS. SHURLING:** This is everything you
24 handed me. Let's see. You gave me Malloy's.

25 **THE COURT:** Ronald Jenkins. Robert

1 Jenkins.

2 MR. TILLMAN: Robert Jenkins, Your Honor.
3 Uh, Mr. Malloy wrote a statement concerning Mr.
4 Robert Jenkins. He said in the statement that
5 Robert Jenkins gave a statement on 12/29/1989.
6 He wrote a statement. He said, today, Pig told
7 me that Ronald offered him some money to kill
8 the guy. Okay.

9 I didn't know who Pig was. So what I did,
10 I called my father. I was in the fed. I was
11 working on this thing so I called my father. I
12 said pop. I said let me ask you a question. I
13 said do you know a guy named Pig? I described
14 him and he said, yeah, I know him. I said what
15 is his name. He said, wait a minute. His
16 brother is right here right now. So he put his
17 brother on the phone.

18 I talked to him and I said, hey, your
19 brother named Pig? He said yeah. I said can
20 you -- can you tell Pig I want to get in touch
21 with him? I need to talk to him. And so -- he
22 said I'll talk to your father. I misunderstood
23 him. I think my father talked with him or he
24 talked with his brother. I think my father
25 mentioned the fact of, hey, did you tell Hayes

1 Malloy this or did Hayes Malloy say this -- did
2 you say this to Hayes Malloy? And he didn't
3 have a clue to what was going on. He said, man,
4 I didn't say anything. I never told that. I
5 wanted Robert Jenkins here to testify to the
6 fact that when Hayes Malloy said he said this,
7 he didn't say it.

8 **THE COURT:** Okay.

9 **MR. TILLMAN:** That was my reason for
10 wanting the Robert Jenkins' statement.

11 **THE COURT:** All right. You want to jump
12 in on that?

13 **MS. SHURLING:** Only to say, Your Honor,
14 that at trial, Hayes Malloy testified that Mr.
15 Tillman had tried to hire him to kill Donald
16 Sutton. I believe he said he originally offered
17 him 5000 and eventually upped it to 10.
18 Although he made some vague reference at some
19 point to other people being talked to about that
20 or something.

21 There was no specific reference to these
22 three individuals referred to by Mr. Tillman.
23 Hold on. I'm sorry. Robert Jenkins, David
24 Bynum and John Corbett, there was no specific
25 testimony about Mr. Tillman having specifically

1 tried to hire those people that killed Donald
2 Sutton.

3 What my position was is that as it was, you
4 had Hayes Malloy making multiple statements,
5 admitting most of what was in most of them was a
6 lie. Being extensively cross-examined by Mr.
7 Swerling. One of the things that Hayes Malloy,
8 one of the themes in Hayes Malloy's testimony
9 was that Mr. Tillman had tried to hire him to
10 kill David Sutton.

11 I was concerned, Your Honor, that even if
12 these other people would say now all these many
13 years later that he never offered me anything.
14 If at trial they had been offered, what you
15 would have to be saying is you, the jury, have
16 not heard anything about this, but Hayes Malloy
17 has, in a context that you haven't heard about,
18 claimed that each one of these people relayed to
19 him that Ronald Tillman had tried to hire them
20 to kill Donald Sutton.

21 Then even if those people came to court and
22 said, no, that's not true, you've got the
23 problem that the jury may or may not believe
24 that they were being truthful when they said
25 that they had never made those statements to

1 Hayes Malloy and that they might would consider
2 that there could be other reasons for them
3 coming to court and denying it and that the
4 underlying problem that I saw is it would set
5 the backdrop for the jury hearing even some
6 evidence that they were now denying that there
7 was this pattern of people that Mr. Tillman was
8 allegedly trying to get to kill Donald Sutton.
9 And I believe that that was a dangerous route to
10 take and not as strong as many of the other
11 issues that we had available to present. And I
12 told my client that.

13 **THE COURT:** All right.

14 **MR. TILLMAN:** Your Honor, the reason why
15 I wanted these people is because Mr. Malloy --
16 these gentlemen didn't say that. Mr. Malloy
17 testified at trial that if these individuals
18 were called, they would testify to the fact that
19 I asked each and every one of them, and it was
20 John Corbett, David Bynum ---

21 **THE COURT:** And Robert Jenkins.

22 **MR. TILLMAN:** --- and Robert King -- I
23 mean, Robert Jenkins. He said that they would
24 testify to that. But that was back then. I was
25 trying get them then. We're talking now. They

1 would have said different then and they would
2 have said the same thing they would have said
3 back then. I never propositioned anyone to do
4 anything. So that's why I asked her to call
5 them.

6 Like I tell you, Jenkins, I didn't even
7 know. What she was saying about she didn't want
8 me to get Bynum because Bynum was my co-
9 defendant, Your Honor, Bynum's brother testified
10 against me in trial. So because they were all
11 close -- we're in a tightknit neighborhood, Your
12 Honor. Everybody know everybody. Everybody is
13 kin to everybody. Everybody down there knows
14 everybody. So because those guys were akin, and
15 Hayes -- she said Hayes Malloy testified against
16 me. So they had a motive to come and lie on me.
17 Your Honor, Bynum's brother testified against
18 me.

19 **THE COURT:** Who's next?

20 **MR. TILLMAN:** Did we bring up Gabby Wells?
21 We talked about Gabby Wells?

22 **THE COURT:** We did.

23 **MS. SHURLING:** We did. Oh, I'm sorry.

24 **MR. TILLMAN:** Okay. Herman Whaley --

25 **THE COURT:** Stop.

1 **MS. SHURLING:** I'm sorry, Your Honor.

2 I'll hand that...

3 **(WHEREUPON, there is a pause.)**

4 **THE COURT:** Okay. Herman somebody.

5 **MR. TILLMAN:** Herman Whaley. Herman
6 Whaley was, uh, -- he came and he testified at
7 my trial. But in the proceeding, before he
8 testified at my trial, Your Honor, Mark Austin
9 interviewed Mr. Whaley. And Mr. Whaley, you
10 know, testified to the fact, you know, that
11 Hayes Malloy said he said this or he did this
12 and he testified that he didn't do that. But
13 years later, I was looking at a police report
14 that Mark Austin had wrote up concerning Herman
15 Whaley and David Whaley.

16 I called my father. I said, pops, do you
17 know -- have you seen Herman Whaley lately? He
18 said no, but his brother's here just about
19 everyday. I said could you talk to him and ask
20 him can I get Herman's telephone number and
21 address. I need to talk with him. He said
22 yeah. So I called back the next day not knowing
23 that he was going to have it. I called back and
24 he said I got that number for you.

25 So I called Herman Whaley. I said, Herman,

1 I was going over your statement, man. I got a
2 statement that I was going over from when you
3 talked to Mark Austin. He said, yeah. I said,
4 well, let me ask you a question. He said, no, I
5 gave him two statements. I said I got one
6 statement. He said I gave him two.

7 I proceeded to read what he said. He said,
8 man, that ain't what I said. I said, well, that
9 is what is on the paper. You and your brother
10 -- he said check this out, they came and got me
11 twice. The first time they came and got me,
12 they asked me what happened that night. I told
13 them what happened. He told me that -- he said
14 I told them that I saw Hayes Malloy riding in
15 the car with Donald Sutton. He said I was still
16 at work. Okay.

17 Then he told me that they came back and got
18 him on a Saturday and threatened to lock him up
19 for perjury. He said, well, why are you going
20 to lock me up for perjury. They said you didn't
21 tell us everything you did Saturday -- I mean,
22 Friday. He said, yes, I did. He said you did
23 not tell me everything. He said, yes, I did.
24 He said you did not tell me what you did that
25 day. What I did that day is none of your

1 business. He said it didn't have anything to do
2 with what you asked me. You asked me what did I
3 do that night.

4 Earlier that day, they were getting high.
5 He left that out. He said they did not ask him
6 about the daytime. They asked him about that
7 night. That is what he told him. So I wanted
8 Herman Whaley to be here to testify to the fact
9 that what he had told Mark Austen at his
10 interview.

11 In the statement that I read -- I don't
12 know if it was a police report or a statement
13 but I read it. At the bottom of it, they said
14 he changed his story, but they don't have what
15 he said.

16 Not only on top of that, Your Honor, there
17 was a gentleman by the name of Hot Dog. His
18 real name is Gordon English. I didn't even know
19 that they talked to Gordon English. I don't
20 know if Jack knew they talked to Gordon English.
21 I never seen any paperwork on Gordon English.
22 But in the process of me talking to Hayes Malloy
23 -- I mean, to, uh, Herman Whaley, I found out
24 that they talked to Gordon English.

25 Richland County Sheriff's Department

1 interviewed Gordon English. I don't know where
2 Gordon English stay. I didn't even know they
3 talked with him. I asked them to let me get in
4 touch with Gordon English. Come to find out,
5 two weeks -- when I called, he had died two
6 weeks previous. I was unable to find out what
7 was, you know, the conversation that he had with
8 these investigators. If I was saying if it had
9 been something bad, they would have had him at
10 trial. I don't know the conversation that he
11 had.

12 **THE COURT:** Who is next?

13 **MR. TILLMAN:** Cleveland Malloy, which
14 is --

15 **THE COURT:** How many more do we have?

16 **MR. TILLMAN:** Uh, two. Well, Hayes
17 Malloy and Cleveland Malloy.

18 **THE COURT:** Okay.

19 **MR. TILLMAN:** Cleveland Malloy is Hayes
20 Malloy's brother.

21 **THE COURT:** Okay.

22 **MR. TILLMAN:** Hayes Malloy testified to
23 the fact that when I shot Donald Sutton I left
24 him at the scene of the crime and he never came
25 back to the party shop. He never came back to

1 the party shop.

2 **THE COURT:** Hayes?

3 **MR. TILLMAN:** Yes, Hayes Malloy. But
4 when I left the party shop that night, I came
5 with Veto McKey and I left with Veto McKey.
6 When I left the party shop, I left John Corbett
7 there and I left Cleveland Malloy there. That's
8 why I wanted -- that's why I wanted Cleveland
9 Malloy there.

10 The argument that I got from Ms. Shurling
11 is do you actually think he is going to testify
12 against his brother? I'm not asking him to
13 testify against his brother. Not only that,
14 Your Honor, at trial, Mr. Swerling asked Hayes
15 Malloy about John Corbett and, uh, -- John
16 Corbett and his brother. He said yes, they were
17 there. I wanted to get them to come to court
18 because Hayes said that I left him at the scene
19 of the crime, Your Honor. I never seen him
20 again that night. If I left him at the scene of
21 the crime, how could I leave him at the party
22 shop?

23 **THE COURT:** Okay.

24 **MR. TILLMAN:** Okay. Hayes Malloy. Hayes
25 Malloy, I wanted him here because, Your Honor,

1 he's been telling people that his conscience was
2 bothering him. He has been going through some
3 stuff. Okay. I don't know -- I talked to my
4 father about this. I guess somebody was telling
5 my father that he was having a change of heart.
6 He wanted to -- you know, I guess he wanted to
7 admit or, you know -- you know -- you know, tell
8 the -- you know, tell the people that it wasn't
9 true. He lied on me. That's why I wanted him
10 here because he's been making statements to
11 people.

12 **THE COURT:** Where is Hayes?

13 **MR. TILLMAN:** Hayes Malloy is locked up
14 at Lee County Correctional Institution, Your
15 Honor, for killing two more people in 1994.

16 **THE COURT:** All right. So what's going
17 on with Hayes? You tried to talk to Hayes, Ms.
18 Shurling?

19 **MS. SHURLING:** I did not, Your Honor.

20 **THE COURT:** Why not?

21 **MS. SHURLING:** Well, for starters, Your
22 Honor, I had, early on, told Mr. Tillman to send
23 me the names of the people he wanted me to talk
24 to but with regard to each of them to tell me
25 who they were, I don't mean names, but who they

1 were in relation to the case and tell me what he
2 believed they would testify to and to give me
3 last known contact information.

4 **THE COURT:** Sure.

5 **MS. SHURLING:** The list that Mr. Tillman
6 handed me the other day when I visited him had
7 Hayes Malloy on it. But I don't recall him
8 previously having asked me to interview Hayes
9 Malloy, Number one. Number two, Hayes Malloy
10 had murder charges that were dismissed against
11 him prior to Mr. Tillman's trial but they were
12 not dismissed with prejudice. It was dismissed.
13 He was convicted of two additional murders in
14 1994.

15 It was my opinion, Your Honor, having been
16 involved in hundreds of cases like this where
17 witnesses -- as Your Honor knows, the case law
18 says that the law presumes the correctness of
19 the testimony given at the original procedure
20 under oath. Where he has subsequently been
21 convicted of killing two other people and
22 received life sentences may obviously be --
23 there was even testimony at trial that Mr.
24 Tillman was allegedly trying to get Hayes Malloy
25 to take the murder wrap for him.

1 Clearly, the inference in my mind would be
2 that if Hayes Malloy at this point, when he is
3 under two life sentences for unrelated crimes
4 and has absolutely nothing to lose, that any
5 change, another change in his story would be
6 viewed with such -- scrutiny is not even though
7 proper word. The right one won't pop into my
8 brain. That where at that time of the trial, he
9 testified to one thing and only now that he is
10 serving two life sentences for other crimes
11 would purportedly change his story. I did not
12 believe that his testimony, even if he would
13 come to court and testify to that, would be
14 viewed as having any credibility.

15 **THE COURT:** Okay. You want to respond to
16 anything?

17 **MS. HARRIGAN:** Yes, I would like to.
18 Your Honor, the State would first --

19 **THE COURT:** The issue before the court is
20 whether or not I believe Ms. Shurling to call
21 him. A reminder of what the issue.

22 **MS. HARRIGAN:** I would first argue that
23 this motion is untimely made. I believe the
24 testimony both from Ms. Shurling and from her
25 client, Mr. Tillman, is that this discussion was

1 ongoing before the first hearing and that Mr.
2 Tillman was aware that she wasn't calling these
3 witnesses on the first hearing we had two days
4 ago, on Tuesday, the 19th, before Your Honor.
5 If this motion was going to be made, it should
6 have been made that time. At this point, we
7 have had extensive testimony from Mr. Swerling
8 and the State argues this motion is untimely.

9 Additionally, it's prejudicial. This is a
10 nearly 25-year-old case. Mr. Swerling had been
11 preparing this case for quite a while. It is
12 prejudicial to now allow him to bring up new
13 unrelated issues that the State is not prepared
14 to proceed forward today and a continuance would
15 also be prejudicial to the State and to our
16 witness, Mr. Swerling. Again, it is a nearly
17 25-year-old case.

18 We are here today to adjudicate the issue
19 that's set forth in the allegation. Any delay
20 would be prejudicial to the State. Also, we are
21 not here to relitigate the case. This isn't
22 another shot at a murder trial. This is
23 exclusively dealing with post-conviction relief
24 issues. Most if these witnesses that are being
25 brought up, this is the first time, obviously,

1 we're hearing about these issues. But this is
2 more of a relitigation of the murder trial which
3 we're not here to do.

4 Additionally, such claims had to be
5 appropriately addressed through a federal habeas
6 petition pursuant to Martinez versus Ryan.
7 There's no prejudice in going forward today. If
8 he feels -- and the State is not at all in any
9 way asserting that Ms. Shurling has been
10 ineffective in her duties, but should Mr.
11 Tillman feel that is the case, there is an
12 appropriate avenue he can take regarding the
13 federal habeas corpus pursuant to Martinez
14 versus Ryan.

15 **THE COURT:** You want to say anything
16 else?

17 **MS. SHURLING:** This may be met with such
18 opposition from my client that wouldn't matter,
19 but I would offer as a compromise position -- I
20 stand by the reasons that I didn't call these
21 witnesses. However, we have taken extensive
22 testimony obviously from Mr. Swerling already.
23 If the Court would be inclined to allow us to
24 recess this proceeding, I will commit to the
25 court, within the next just few weeks, to

1 interview each of these people that he thinks
2 would have been of value. And I would bring
3 them to court for a subsequent hearing or
4 provide the client a report of what they have
5 said they would be willing to say. I think
6 given his position that these people would be
7 helpful, I don't think he is ever to be
8 satisfied unless they come to court.

9 Now, whether or not they're going to say
10 what he thinks they are going to say and whether
11 or not my judgment is helpful to this case is a
12 different issue. But I am willing to put in the
13 time to interview each of these people and to
14 subpoena them if we could recess today and
15 reconvene when Your Honor has time on your
16 schedule and put up each of these people as
17 witnesses if that's what Mr. Tillman wants.

18 **MS. HARRIGAN:** The State would like to be
19 heard on that. We are adamantly opposed to
20 that. Ms. Shurling has had this case for over
21 two years. This was a petition that she filed.
22 This is not a pro se petition. This all could
23 have been done before. It is highly
24 prejudicial. The State would oppose any further
25 recesses. All should have been done before.

1 The State has a docket to move. We've
2 already put in the time and are ready to go
3 forward together. Mr. Swerling is ready to go
4 forward today. The State thinks it would be
5 burdensome and highly prejudicial to recess this
6 case for an issue that we are hearing about just
7 for the first time. Ms. Shurling was retained
8 on this case. It was over two years ago. All
9 of this stuff should have been investigated so
10 we could litigate here today.

11 **MS. SHURLING:** Your Honor, for what it's
12 worth, I can document that I didn't get this
13 case until April of this year. I realize it is
14 still April of this year, but isn't as though
15 I've had the record for that long. I can
16 document some reasons both professional and
17 personal life why during that particular time I
18 was not as far ahead of the game as I wanted to
19 be in preparing this case.

20 Your Honor, the Court is aware, uh,
21 certainly Supreme Court is, that I have handled
22 -- since I have been in private practice in
23 1994, I have handled hundreds, if not thousands,
24 by this point, of post-conviction relief cases.
25 There was a point in time back when I was

1 originally appointed to represent Mr. Tillman
2 that I cleared over 100 PCRs a year in Richland
3 County at a point in time when the money I got
4 before those court-appointed cases were
5 presented, less than 15 percent of my revenue
6 accounted for more than 55 percent of my time.
7 I have always done a very thorough job on behalf
8 of all of these clients.

9 I would cite that the fact that I flew to
10 Atlanta to see him when he was in the federal
11 penitentiary to at least highlight the fact that
12 I don't take my client's interest lightly. At
13 this point, the majority of -- everything I had
14 to raise, Mr. Swirling has already addressed
15 with regard to these witnesses.

16 If, in fact, there is any chance that I was
17 in error in not interviewing them, I would ask
18 the Court to give us a very brief opportunity
19 for me to interview these witnesses. Bring them
20 to court. Let them put it on the record. I
21 don't think Mr. Tillman is going to be satisfied
22 otherwise. Even though I stick to my position
23 that some of these witnesses would frankly have,
24 in my judgment, not have been in his best
25 interest, it's his case. If we could be granted

1 that privilege, Your Honor, rather than face
2 some inevitable litigation down the road over
3 this, I would appreciate it. That in and of
4 itself, of course, would require Mr. Tillman to
5 being willing to interview these people. I
6 don't know at this point where everyone is.

7 **MR. TILLMAN:** Your Honor, if I may. Sir,
8 the reason why I gave Ms. Shurling these names
9 is because I wanted her to talk to them. She
10 never -- that's the problem that I'm having,
11 Your Honor. She never interviewed any of them.

12 **THE COURT:** Well, the problem I'm having
13 is this is the second day of hearings. The
14 problem I'm having is the case has been pending
15 as a PCR for two years. You've just figured out
16 today that she wasn't doing what you told her to
17 do?

18 **MR. TILLMAN:** Tuesday, I asked --
19 everything that I saw Monday was for the first
20 time. I asked this officer right here to ask to
21 speak with you. I was trying to cancel it right
22 then. I was trying to get you to stop this.
23 And --

24 **THE COURT:** You should have tried to
25 stop it three months ago.

1 **MR. TILLMAN:** I didn't know she -- I
2 didn't know she -- I didn't know that --

3 **THE COURT:** When is the last time she
4 met with you?

5 **MR. TILLMAN:** She met with me, sir, --
6 she met with me, uh, the 15th of this month.

7 **THE COURT:** When was that? Last week?

8 **MR. TILLMAN:** Last Friday. That was
9 last Friday.

10 **THE COURT:** Did you know at that time
11 all of your issues were not going forward?

12 **MR. TILLMAN:** She never told me that
13 she wasn't going to -- she took -- she took the
14 -- I gave her telephone numbers to call Herman
15 Whaley. She hasn't even called Herman Whaley
16 that I am aware of. I don't even know if she
17 called him.

18 **THE COURT:** When did she meet with you
19 before that?

20 **MR. TILLMAN:** In 19 -- in 2011.

21 **THE COURT:** So you saw her in 2011 and
22 then on Friday?

23 **MR. TILLMAN:** And last Friday. Yes.

24 **THE COURT:** That's it?

25 **MR. TILLMAN:** That's it.

1 **MS. SHURLING:** We have spoken on the
2 phone many, many times, Your Honor, and
3 communicated by mail. But he's correct about --

4 **THE COURT:** When is the last time you
5 talked to her prior to Friday?

6 **MR. TILLMAN:** About two weeks prior.
7 But I hadn't seen anything. She didn't tell me
8 she was not going to call these witnesses. She
9 had my father. Not only did I give her these
10 names, my father gave these names to Suzanne. He
11 gave them to somebody in the office. I talked
12 to Suzanne over the telephone a few weeks ago.
13 She said that she would put those names in the
14 file. So she had those names. I gave those
15 names to Ms. Shurling in June. When she sent me
16 these transcripts, she asked me to go through
17 the transcripts and get the people that I wanted
18 -- as a matter of fact, I will tell you.

19 **MS. SHURLING:** Your Honor, I also
20 specifically instructed him to tell me what he
21 believed each of these witnesses would be
22 willing to testify to and to give me last known
23 contact information concerning those witnesses.
24 All he sent me was just a list, which included
25 people like Lieutenant Sultan that I knew.

1 **MR. TILLMAN:** Some of the people, Your
2 Honor, I didn't know where they were. My father
3 knew and knows how to get in contact with every
4 person that I had on that list.

5 **MS. SHURLING:** Well, did you tell your
6 father that I had asked you to give me specific
7 contact information for these people?

8 **MR. TILLMAN:** I told you to get with my
9 father. Your Honor, I talked to Ms. Shurling
10 and I gave her those names back in June. I
11 didn't know until Tuesday that she was not
12 calling these witnesses because you brought it
13 up, Your Honor, when she was questioning Mr.
14 Swerling. Why are you bringing those names up
15 when you do not have these individuals in court?
16 She never even talked to them, let alone try to
17 get them in court. She never even talked to
18 them to find out what they would testify to.

19 **MS. SHURLING:** Your Honor, I don't want
20 to be redundant. I've already addressed that.
21 We met and went over at great length each of
22 these people and discussed some specific reasons
23 and others not so specific of why I thought it
24 was better not to muddy the water and to focus
25 our attention on what I believed his winning

1 issues were. He told me to do what I thought
2 was in his best interest. He called me an
3 expert. He said you are the expert. I will
4 rely on what you think is best. The reason I
5 even bought up a couple of those people in
6 talking to Mr. Swerling is because Mr. Tillman
7 was harping on me about --

8 **THE COURT:** I know. You said that.
9 Please, God, everybody stop repeating
10 yourselves.

11 **MS. SHURLING:** I'm sorry, Your Honor.

12 **THE COURT:** I mean, I got it the first
13 time.

14 **MS. SHURLING:** I apologize.

15 **THE COURT:** We will come back at two
16 o'clock. Everybody be here.

17 (WHEREUPON, there is a recess.)

18 **THE COURT:** Ms. Shurling.

19 **MS. SHURLING:** Your Honor, over -- I have
20 taken time to go through a couple of things.
21 There is one very important point that I need to
22 disclose to the court. I have told you
23 truthfully that I have no recollection of having
24 been advised of Hayes Malloy's condition. And
25 that ---

1 **THE COURT:** His what?

2 **MS. SHURLING:** Condition. His illness.

3 **THE COURT:** Okay.

4 **MS. SHURLING:** I wasn't aware until I got
5 this witness list and that even then my
6 recollection was that Mr. Tillman said he heard
7 that he had a change of heart or something to
8 that effect. I went through every sheet of
9 paper in my file over the lunch break. Paper
10 clipped to something else totally unrelated, I
11 did find a phone message from Thomas Tillman,
12 Sr. from September 2012 telling me that he had
13 heard that Hayes Malloy was in the infirmary at
14 Lee Correctional and that he was gravely ill and
15 that they wanted me to talk to him. I don't
16 know how this got put in the file with unrelated
17 documents in the file and I didn't see it.

18 I am never dishonest with the court. I
19 wanted to make the court aware that that was in
20 fact in my file. I had not seen it but that
21 does not excuse the fact that evidently the
22 message was taken for me and was put in my file
23 and was paper clipped to something that I was
24 not aware of.

25 Also in trying to figure out a couple of

1 these things over the lunch hour, I did discover
2 one other quick thing. Mr. Tillman had asked me
3 about the fact that Herman Whaley was not cross-
4 examined or not questioned about a statement
5 that he had given to the effect that he had seen
6 the victim get in the car with Hayes Malloy that
7 night. In looking at that over the lunch break,
8 I discovered that Herman Whaley was called as a
9 witness for the defense and was questioned about
10 whether or not he had told Hayes Malloy that he
11 saw Tillman picking the victim up on the street
12 that night.

13 Looking back at the statements, I see that
14 it was -- Hayes Malloy claimed to have been told
15 that not by Herman Whaley, but by David Whaley.
16 Apparently, there was confusion because of the
17 names that were brothers. David Whaley was
18 called -- was not called and Herman Whaley was.
19 He was questioned about something that was
20 actually related to David not Herman. Herman
21 was not questioned about something related to
22 David's statement. Those are the two that, had
23 I been more perceptive, I would have talked to
24 Mr. Herman Whaley and would have gone to see
25 Hayes Malloy.

1 Your Honor, I don't want to take up a lot
2 of the court's time. You have already pointed
3 out appropriately that I resorted to talking in
4 circles a little bit this morning. I'm sorry.
5 But the court, this court, certainly other
6 courts, are familiar with the fact that I'm
7 known for leaving no stone unturned in these
8 cases. In fact, I get criticized for going on
9 and on ad nauseam with every lead in the cases
10 because I feel so strongly about them.

11 Knowing now that I got a phone message that
12 Hayes Malloy was ill and supposedly wanting to
13 talk, I feel terrible about the fact that I did
14 not interview him. Your Honor, regardless of
15 what you think of me and I could go on and on
16 about some extenuating reasons between April and
17 now why I had not done what I would normally do
18 in regards to some of these things, but the
19 bottom line is this is this man's one shot at
20 post-conviction relief. If anybody is to blame
21 for these witnesses not being interviewed, the
22 blame is on me.

23 I would ask that before we completely
24 adjourn and close the door to this collateral
25 proceeding that Your Honor allow me the

1 opportunity -- there were a couple -- I would
2 say Hayes Malloy and Herman Whaley specifically
3 need to be interviewed and should have been
4 interviewed with regards to the other witnesses.
5 I am perfectly willing to track them all down
6 and interview them, if the court will allow me
7 to do so. It is an unusual prayer. I know that
8 it is an unusual circumstance. But if we could
9 reschedule for some other time when Your Honor
10 has Common Pleas nonjury simply for the purpose
11 of addressing those witnesses before you make a
12 decision in this case, I will be much grateful.

13 **THE COURT:** You have the same position as
14 before?

15 **MS. HARRIGAN:** The State would
16 respectfully request a ruling on Mr. Tillman's
17 motion to relieve Ms. Shurling. We would like a
18 moment to confer before any additional comments
19 regarding the reset.

20 **THE COURT:** Do what?

21 **MS. HARRIGAN:** Regarding to reset this
22 case for another time to reconvene, a
23 continuance or I believe Ms. Shurling couched it
24 as a reset for court. If we could reserve
25 comment on that until after Your Honor's ruling

1 on the motion to recuse or relieve.

2 **MS. SHURLING:** I apologize. I didn't
3 mean to be mixing.

4 **MS. HARRIGAN:** Not at all.

5 **THE COURT:** All right. I'm going to deny
6 your motion to relieve Ms. Shurling as counsel.
7 Ms. Shurling has a vast amount of experience in
8 the area of handling PCR cases. I find that
9 just because some of the allegations that you
10 want to pursue by way of subpoenas or
11 discoveries were not pursued were not pursued by
12 her based on the information that was before the
13 court now. I am not even sure that some of
14 those are even appropriate for PCR or have any
15 significant merit in this case to the extent of
16 which replacing her should be necessary. What I
17 am going to do is, this hearing is going to go
18 forward. Ms. Shurling is staying on as counsel.

19 You want to jump in now?

20 **MS. HARRIGAN:** If we may have a brief
21 moment, if I can confer with co-counsel for the
22 State regarding that.

23 **THE COURT:** Okay.

24 **MS. HARRIGAN:** Thank you, Your Honor.

25 (WHEREUPON, there is a pause.)

1 **MS. HARRIGAN:** Your Honor, the State has
2 no problem with going forward today.

3 **THE COURT:** Okay. I know that. You said
4 you wanted to talk about whether or not I will
5 allow her to go and interview those people.

6 **MS. HARRIGAN:** If Your Honor is inclined
7 to allow that, we would ask for a straight time
8 line of when that needs to occur by and a
9 deadline where we will reconvene before Your
10 Honor as well as some sort of outline as to what
11 witnesses are going to be contacted and what --

12 **THE COURT:** Assuming I do that, why is
13 the cleanest way not to do it for me to take all
14 of the testimony today, okay, Ms. Shurling can
15 get out of here, Mr. Tillman can get up and tell
16 me all of his issues and everything he wants to
17 put on the record and all of that good stuff and
18 then I allow X -- I don't know how long it will
19 be -- so many days for specific witnesses to be
20 deposed if Ms. Shurling believes they need to be
21 deposed? Then you can submit the deposition
22 transcripts along with the proposed orders.

23 **MS. HARRIGAN:** Your Honor, the State
24 would request the opportunity after the
25 depositions are taken to still take testimony

1 from Mr. Swerling.

2 **THE COURT:** I would probably allow you to
3 submit an affidavit by Mr. Swerling as to any
4 issues raised in the deposition. You want to
5 talk to --

6 **MS. HARRIGAN:** Moment's indulgence, Your
7 Honor.

8 **THE COURT:** You want to talk to Mr.
9 Zelinka?

10 **MS. HARRIGAN:** Yes, Your Honor. (Pause.)
11 No objection from the State regarding what
12 Your Honor is proposing.

13 **THE COURT:** All right. Tell me who you
14 really want to talk to.

15 **MS. SHURLING:** Your Honor, I was just
16 consulting with Mr. Tillman concerning that. My
17 belief based on talking to him, though I wasn't
18 quite through, is Hayes Malloy, his brother
19 Cleveland Malloy, John Corbett, Herman Whaley
20 who I was able to contact over the lunch break.
21 I tried the number previously and had not been
22 able to get through but I did at lunch today.
23 Robert Jenkins, Lieutenant Sultan, Gabby Wells.
24 We are going to leave Mark Austin alone, Your
25 Honor. Jeremy Bynum.

1 **THE COURT:** Who is that?

2 **MS. SHURLING:** The nephew of David Bynum.

3 **THE COURT:** Tom Lee's nephew?

4 **THE DEFENDANT:** Tom Lee's nephew.

5 **THE COURT:** Okay.

6 **MS. SHURLING:** Yes. David Bynum. Your
7 Honor, there is one I need to talk to. Just a
8 second. (Pause.)

9 That would be the list, Your Honor.

10 **THE COURT:** All right. I am going to let
11 you talk to the Malloy brothers, Herman Whaley
12 and Lieutenant Sultan.

13 **MS. HARRIGAN:** And Your Honor, just so
14 the record is clear, Ms. Shurling will be taking
15 a deposition of these people?

16 **THE COURT:** Here is the deal. Ms.
17 Shurling can go talk to whoever Ms. Shurling
18 wants to talk to. Okay? That is between her
19 and her client. The only people that I am going
20 to allow be deposed are the Hayes' brothers,
21 Herman Whaley and Lieutenant Sultan. Okay. So
22 she contacts you and she says, hypothetically, I
23 found the Hayes Malloy, he is at Lee prison and
24 I want to depose him, then we need to depose
25 him. If she wants to talk to these other

1 people, she can. But I am not going to allow
2 them to be deposed.

3 Based on the information that is been
4 presented to me this morning, those are the only
5 potential people that have any information that
6 could potentially have an affect. I am not
7 saying that it does or it doesn't. I'm just not
8 able to say that right now. Based on the
9 information that Mr. Tillman provided me this
10 morning, taking everything that he said at its
11 face value, giving him the benefit of the doubt
12 on that, in my opinion, those are the people
13 that really need to be talked to, looked at,
14 interviewed, let's see what they have to say.

15 Ms. Shurling may go interview Hayes Malloy.
16 I don't know this. This is an example. He may
17 say Tillman killed him. I don't know what he is
18 going to say. But if you said something and she
19 wants to depose him, I'm going to allow him to
20 be deposed. The deposition can be submitted
21 along with proposed orders on the case.

22 Likewise, if there is something raised in those
23 allegations that the State needs to respond to
24 via Mr. Swerling, Mr. Swerling can do an
25 affidavit responding to those issues. They can

1 be submitted along with the depositions and
2 along with the proposed orders.

3 MS. HARRIGAN: Your Honor, the State
4 would request Ms. Shurling also submit along
5 with the depositions if they are needed, what
6 any new allegations are. At this point, the
7 State only has the 19 allegations raised.

8 MS. SHURLING: Believe me, Your Honor,
9 that is going to clear up.

10 THE COURT: Okay. I need everybody to be
11 honest with me on time.

12 MS. SHURLING: May I ask one question?

13 THE COURT: Uh-huh.

14 MS. SHURLING: Okay. As I understand it,
15 I may do depositions potentially of the Malloy
16 brothers, Herman Whaley ---

17 THE COURT: Right.

18 MS. SHURLING: --- and is that the only --

19 THE COURT: And Lieutenant Sultan.

20 MS. SHURLING: Pardon?

21 THE COURT: And Lieutenant Sultan.

22 MS. SHURLING: Lieutenant Sultan. Your
23 Honor, could I ask that you consider adding to
24 that list Jeremy Bynum?

25 THE COURT: Jeremy Bynum's testimony is

1 purely hearsay. There is no way Jeremy Bynum's
2 testimony, even taken in the light most
3 favorable to what Mr. Tillman said this morning
4 is coming into evidence. It is hearsay.

5 **MS. SHURLING:** Thank you.

6 **THE COURT:** It is hearsay and I am giving
7 you the opportunity to go talk to Hayes Malloy
8 who allegedly made the statement to Mr. Bynum in
9 the cell. I am sending you to the mouth of the
10 horse as opposed to some potential hearsay
11 statement, you know, made how many ever umpteen
12 years later.

13 **MS. SHURLING:** Yes, sir. That was
14 originally my reason for not interviewing him.

15 **THE COURT:** I know. I understand that.

16 **MS. SHURLING:** Your Honor, I will find
17 out where these people are.

18 **THE COURT:** You have a million other
19 cases. So does she. Listen, 120 days, 150
20 days. Be real with me on your work schedules
21 and where you are so we don't have to play this
22 "we need a 30-day extension" stuff with me. I
23 am not saying that anybody be less than candid.
24 Don't say 90 days just to make me feel good. I
25 would rather not have to deal with asking for

1 the 30-day extension. What do you think?

2 **MS. HARRIGAN:** This will be an
3 investigation done by Ms. Shurling. If she can
4 let us know, if she can do the investigation
5 within 90 days and let us know if depositions
6 will need to be taken at that time or 60 days.
7 The State prefers 60 days.

8 **MS. SHURLING:** I think given the fact
9 that we are approaching the holiday season, 90
10 is realistic. I can interview people in 90 days
11 and get her notice as to what the exact issues
12 are, if any, and whether or not depositions will
13 be necessary.

14 **THE COURT:** All right. Then once that
15 goes out, you have got 90 days from that point
16 to take depositions.

17 **MS. SHURLING:** Yes, sir.

18 **THE COURT:** Depositions need to be done
19 pursuant to the South Carolina Rules of Civil
20 Procedure.

21 **MS. HARRIGAN:** Yes, Your Honor.

22 **MS. SHURLING:** Yes.

23 **THE COURT:** All right. Anything else on
24 those issues?

25 **MS. SHURLING:** My client has asked me to

1 beseech the court to allow him to interview John
2 Corbett.

3 **THE COURT:** Why?

4 **MS. SHURLING:** John Corbett is someone
5 that Hayes Malloy claimed told him that my
6 client tried to hire him to kill the victim.

7 **THE COURT:** Okay. No.

8 **MS. SHURLING:** Thank you.

9 **MR. SWERLING:** Judge, can I get some
10 clarification? Just from this respect, I can do
11 an affidavit when they finish that. But on
12 Tuesday, you said I could do an affidavit if I
13 felt like I needed to respond to any of the
14 allegations. I assume that that would be --

15 **THE COURT:** Here is the deal. Once they
16 finish whatever it is that they are doing, okay,
17 and once Ms. Harrigan knows what they are doing
18 and they work it all out, anything that you want
19 to reply to that has happened in this hearing
20 this week or based upon those depositions, I
21 will allow you to reply in affidavit form.
22 Earlier in this week, I said by deposition. I
23 don't think a deposition is necessary. I think
24 an affidavit is sufficient. That encompasses
25 this week or anything that is newly discovered

1 or whatever the new allegations are that come
2 forward. I want you to have a very reasonable
3 opportunity to reply to that. I think the
4 affidavit is the form that is least cumbersome
5 of your time. Okay.

6 **MS. HARRIGAN:** Thank you, Your Honor.

7 **THE COURT:** Okay. You're a witness.

8 **MS. HARRIGAN:** Your Honor, at this time,
9 the State has no cross-examination of Mr.
10 Swerling. However, if Ms. Shurling does intend
11 to call her client, we would like Mr. Swelling
12 to remain so we can call him on our case
13 indirect if necessary.

14 **MR. SWERLING:** Well, I don't have any
15 problem with that. I did have an opportunity to
16 think about a couple of questions that were
17 asked by Ms. Shurling since Tuesday. A lot of
18 them were thrown on me Monday afternoon and
19 Tuesday. I can respond to a couple of those
20 things or we can just wait.

21 **MS. HARRIGAN:** I prefer --

22 **MR. SWERLING:** I would just like the
23 opportunity to respond. I have given some
24 thought to those.

25 **MS. HARRIGAN:** Certainly in the interest

1 of time for everyone that the State intended to
2 ask, my understanding from talking to Ms.
3 Shurling on Tuesday that she intends to call her
4 client. We would like to call Mr. Swerling back
5 to the stand after that. We will reserve any
6 cross-examination for during our direct that we
7 will call following the applicant's.

8 THE COURT: Okay. All right.

9 MR. SWERLING: I just didn't want to
10 leave the record as it is. I do have some
11 recollection that I did not have on Tuesday.

12 THE COURT: Okay.

13 MS. SHURLING: And I certainly would
14 welcome any further information.

15 THE COURT: Great. Thank you, sir. You
16 may step down.

17 All right, Ms. Shurling.

18 MS. SHURLING: 30 seconds, Your Honor.

19 THE COURT: Sure.

20 (WHEREUPON, there is a pause.)

21 THE COURT: Okay.

22 MS. SHURLING: Ready when the court is,
23 Your Honor.

24 THE COURT: I'm ready.

25 MS. SHURLING: Ronald Tillman.

1 **THE COURT:** Come on up, Mr. Tillman.

2 **THE CLERK:** Swear him in?

3 **THE COURT:** No, I swore him in earlier.
4 Did I swear you in earlier?

5 **MR. TILLMAN:** Yes, sir.

6 **THE COURT:** All right. You're still
7 under oath, Mr. Tillman.

8 **RONALD TILLMAN**

9 having previously been duly sworn, testifies as
10 follows:

11 **DIRECT EXAMINATION**

12 **BY MS. SHURLING:**

13 **Q** Mr. Tillman, would you state your full name
14 for the record please.

15 **A** Ronald S. Tillman, R-O-N-A-L-D, T-I-L-L-M-
16 A-N.

17 **Q** Mr. Tillman, You and I discussed the fact
18 that the majority of the issues that I've raised in
19 your behalf and addressed during the examination of
20 Mr. Swerling are legal issues. So I'm just going to
21 skip over those. I don't want you to think that I'm
22 not asking for your input but they really are legal
23 issues that I don't need your testimony concerning.
24 You understand that?

25 **A** Yes.

1 **Q** Okay. The one issue that you had raised
2 originally in your pro se pleadings way back and that
3 I carried forward for that reason was that a
4 potential conflict of interest had not been disclosed
5 to you by trial counsel, specifically that you have
6 alleged that Mr. Swerling never advised you or the
7 Court that he had or someone in his firm had on a
8 previous occasion represented Hayes Malloy, who was
9 the key witness against you at trial, correct?

10 **A** Yes.

11 **Q** You and Hayes Malloy were fairly close
12 friends at one time, weren't you?

13 **A** No, we were not.

14 **Q** You were not?

15 **A** We were not friends.

16 **Q** Okay. So any representations by witnesses
17 to the effect that y'all had been close friends were
18 not accurate?

19 **A** It's not accurate. We were not.

20 **Q** Was there a time prior to this killing when
21 Mr. Malloy, in fact, shot up your father's package
22 store?

23 **A** Party shop. Yes.

24 **Q** I'm sorry. I'm showing my age.

25 **THE COURT:** Where was that party shop?

1 **THE WITNESS:** It's on Shop Road.

2 **THE COURT:** Shop?

3 **THE WITNESS:** Shop Road. S-H-O-P.

4 **THE COURT:** Before 77?

5 **THE WITNESS:** It's been a while. I
6 don't remember 77. By the Highway Department.

7 **THE COURT:** I got it. Okay. Across from
8 the park?

9 **THE WITNESS:** Yes.

10 **BY MS. SHURLING:**

11 **Q** At that time, were you working at your
12 dad's party shop?

13 **A** Yes, I was.

14 **Q** And what were the circumstances of what
15 happened? Hayes Malloy just came in with a gun and
16 shot the place up? What happened?

17 **A** No, he had an altercation with an
18 individual. The individual that he had an
19 altercation with ran into the party shop.

20 **THE COURT:** Hayes had an altercation?

21 **THE WITNESS:** Yes, Hayes Malloy had an
22 altercation with this guy. In the process, he
23 tried to shoot him. The guy ran through the
24 door. He shot through the door, through the
25 hole in the door and blow a hole through the

1 store cash register.

2 **BY MS. SHURLING:**

3 Q And was Hayes Malloy charged with a crime
4 in connection with that?

5 A My father pressed charges against him.

6 Q Okay. And subsequently to your knowledge,
7 were those charges dismissed?

8 A I think they were dismissed, yes.

9 Q Okay. And why were they dismissed?

10 A Well, me and my father discussed it. Based
11 on his being having a small business, evidently my
12 father discussed that we were trying to get
13 reimbursed for the door, the damaged door and pay for
14 the cash register and he would dismiss the charges
15 against him.

16 Q Okay. During that time period, did you
17 take part in any meetings with lawyers or prosecutors
18 concerning the charges against Hayes Malloy?

19 A No, I did not.

20 Q Did you have any direct involvement in
21 negotiating the agreement for Hayes Malloy to pay
22 damages and to get his charges dismissed by your
23 father?

24 A No, the only thing I had to do is that
25 Hayes Malloy came down and asked me would I ask my

1 father. That's what I did.

2 Q Asked your father to --

3 A Asked my father if he would --

4 Q To work out a deal?

5 A To work out -- right. To work out
6 something where he would compensate him for the
7 damages to the party shop.

8 Q So your involvement was to mediate, to try
9 to approach your father about the possibility of
10 dropping the criminal charges if he made good on the
11 damages?

12 A That's what my father did. Like I said, he
13 just asked me. I asked him whatever happened, they
14 came to an agreement among themselves. I had nothing
15 to do with the agreement. I just posed the question.

16 Q I'm sorry, sir. My question is Hayes
17 Malloy asked you to approach your father about
18 whether or not they could work something out.

19 A Right. Yes. Yes.

20 Q Beyond that, you didn't have any
21 involvement?

22 A No.

23 Q Who initially hired Mr. Swerling to
24 represent you?

25 A I hired Mr. Swerling to represent me on

1 other charges. I hired Mr. Swerling's office to
2 represent me in a different matter.

3 Q Okay. And at that point, did you ask him
4 to add to his representation representing you on this
5 homicide charge?

6 A On the bond date -- the day that I went to
7 the bond, Mr. Swerling came in on the bond hearing.
8 I asked if I could talk with him cause I didn't get
9 to talk with him. That's when we decided to hire Mr.
10 Swerling to represent me.

11 Q Okay. At any point in that process, did
12 Mr. Swerling reveal to you that either he or anyone
13 in his firm had represented Hayes Malloy previously?

14 A No.

15 Q The other matters we are referring to, how
16 long had Mr. Swerling been representing you on that
17 charge before he took up representation on the murder
18 charge?

19 A I think -- I think he was representing me
20 before he represented Hayes Malloy. I'm not sure. I
21 had some -- I had pending charges so he was
22 representing me on a pending charge. I'm not sure
23 what date it was that he was representing me.

24 Q Just so we're clear. At no time, either
25 during your representation on the other matter or on

1 the representation in the murder case, did Mr.
2 Swerling advise you that his firm or someone -- he or
3 someone in his firm represented Hayes Malloy
4 concerning some kind of matter?

5 **A** No.

6 **Q** How did you find out?

7 **A** I was -- I was in -- I think I was in
8 Atlanta. I don't know where I was. I was in one of
9 the federal institutions. I had gotten a letter from
10 my son's mother. She had asked me about why did I
11 hire Jack when Jack represented Hayes Malloy. I
12 didn't think she knew what she was talking about. I
13 called my father and asked my father. My father told
14 me. What I did, I called my father and I said, Pops,
15 I said, uh, who represented Hayes Malloy when he shot
16 in the party shop. He said Jack Swerling.

17 **Q** Let's back up for a minute. Your child's
18 mother's name is Sophie?

19 **A** Sophia Pringle.

20 **Q** Sophia Pringle. May I approach?

21 **THE COURT:** Yes.

22 **BY MS. SHURLING:**

23 **Q** Can you identify this for me?

24 **A** This is a letter that I received from my
25 son's mother, Sophia Pringle.

1 Q Mailed to you?

2 A Mailed to me June the 5th, 1995.

3 Q At the federal correctional institution?

4 A Yes, ma'am.

5 Q Okay. And it was this letter that prompted
6 you to question your father for the first time ---

7 A Yes.

8 Q --- about this matter?

9 A Yes, ma'am.

10 MS. SHURLING: Your Honor, I've lost
11 track of what Exhibit we are on, but Applicant's
12 ---

13 COURT REPORTER: 9.

14 MS. SHURLING: --- 9 please.

15 MS. HARRIGAN: No objection.

16 COURT REPORTER: Applicant's 9...

17 (WHEREUPON, Applicant's 9 is marked for
18 identification and admitted into the record.)

19 BY MS. SHURLING:

20 Q At the time you were charged with murder
21 and Mr. Swerling was already representing you on the
22 armed robbery charges -- the armed robbery charge --
23 not charges, just one -- you were, at that point,
24 content -- satisfied enough with him with his
25 representation on that charge that you did ask him to

1 represent you on the murder charge, right?

2 **A** Yes. I had not been to court yet on the
3 pending charge.

4 **Q** I understand. I'm just trying to get the
5 chronology.

6 **A** Right.

7 **Q** Had you known that Mr. Swerling had
8 represented Hayes Malloy in the past, would you had
9 wanted him to represent you in this murder case?

10 **A** No, I would not.

11 **Q** Now, you and I discussed the standard that
12 we have to show errors and omissions but then you
13 have to show prejudice. Okay?

14 **A** Yes.

15 **Q** Do -- how is it that you feel Mr.
16 Swerling's previous relationship with Hayes Malloy
17 affected his representation of you?

18 **A** Well, things that were going on in the
19 trial that I thought that should have been done and
20 didn't happened. People that I asked him to talk to.
21 Some of the people that I heard here the other day,
22 evidentially, he did talk to them but I didn't know
23 that he talked to them. And people that I asked him
24 to call, he didn't call nor did they come to trial
25 and testify for the state or for me.

1 Q And you have, of course, heard the issues
2 we raised in the proceeding concerning other ways
3 that Hayes Malloy could have been impeached on his
4 credibility during your trial?

5 A Yes.

6 Q And those would be the matters that you
7 would point to as evidence of the fact that you may
8 have been prejudiced by this conflict?

9 A Yes.

10 Q Okay. You understand that the remaining
11 issues that we've already talked about are legal
12 issues that I will address with the Court by
13 memorandum or proposed order. The issues with
14 regards to the witnesses that you wanted to interview
15 the judge graciously allowed me to interview them and
16 potentially take depositions. I really don't need to
17 ask you about those except to establish on the record
18 with regard to each of these witnesses that we talked
19 about, other than Hayes Malloy, obviously, did you
20 advise Mr. Swerling that you wanted each of those
21 witnesses called on your behalf at trial?

22 A Yes, I did.

23 Q And with regard to each of those witnesses,
24 did you tell him specifically what you thought each
25 of those witnesses could add to your defense, how

1 their testimony could be helpful to you or how their
2 testimony might be used to attack the credibility of
3 Hayes Malloy?

4 **A** Yes, I did.

5 **Q** And after giving him that information, was
6 there ever a time when you were able to sit back down
7 with Mr. Swerling or his paralegal or anyone, an
8 investigator -- I believe there was one hired in this
9 case -- and go over the fruits of their efforts with
10 regards to interviewing those particular witnesses.

11 **A** I know that he talked to some of the
12 witnesses. But the ones that I specifically asked
13 him about, I don't know whether he talked to them or
14 not. To this day, I don't know if he talked to them
15 or not.

16 **Q** When your trial took place and after the
17 State closed their case, your side presented some
18 witnesses?

19 **A** Yes.

20 **Q** At that time, did you ask Mr. Swerling why
21 these other witnesses were not present to testify?

22 **A** We had talked about -- when we were going,
23 you know, through the trial, we had talked about it.
24 I specifically told him two people that I went ahead
25 and talked to. It was John Corbett and Cleveland

1 Malloy. Those two individuals was at the party shop
2 that night when I left. When I left, I left them at
3 the party shop. Hayes was with them. I went in and
4 talked to those two. Hayes said I left him at the
5 scene of the crime and never came back to the party
6 shop. In fact, when I left the party shop, I left
7 all three of them at the party shop.

8 Q Okay. Again, did Mr. Swerling or anyone on
9 his staff working on your case ever give you
10 explanations for why those people were not called as
11 witnesses?

12 A No, ma'am.

13 Q All right. With regard to the issues that
14 we're already before the Court on, can you think of
15 anything else that I neglected to cover with you?

16 A Well, like I said, the only thing I had an
17 issue with is the fact that -- the time as far as
18 going over this case. Like I said, I know you had
19 health issues and you had a ton of things you had to
20 do.

21 Q Mr. Tillman, we're not going back over that
22 issue again.

23 A Right.

24 Q I'm talking about with regard to the issues
25 that we've raised, was there anything else that you

1 feel you need to add concerning those issues that His
2 Honor needs to hear in deciding the merit on those
3 issues?

4 A The issues on what you raised before the
5 court?

6 Q Correct.

7 A I felt that, uh, the allegations should
8 have been added with that other than what you put in
9 the application, yes.

10 Q I understand. His Honor is allowing us to
11 interview those people and augment those issues
12 later. I'm talking about the issues that we're
13 already here on. Lastly, let me ask you this. Uh,
14 you said that when you received the letter from your
15 child's mother, it prompted a conversation with your
16 father?

17 A Yes.

18 Q And your father, at that time, confirmed
19 that Mr. Swerling had represented Hayes Malloy?

20 A Yes.

21 Q Is that the first time you ever had a
22 conversation with your father concerning that?

23 A Yes, it was.

24 Q Did your father ever mention anything about
25 the Swerling firm in connection with the incident

1 with Mr. Malloy shooting up his store?

2 **A** No.

3 **Q** No further questions.

4 **CROSS-EXAMINATION**

5 **BY MS. HARRIGAN:**

6 **Q** Good afternoon, Mr. Swerling. Do you
7 recall when you first retained Mr. Swerling for that
8 -- I believe you said the first charge you retained
9 him for was your federal bank robbery charge?

10 **A** No.

11 **Q** What was the first charge you retained him
12 for?

13 **A** I think I retained him on the armed robbery
14 charge. I think it was the armed robbery charge.

15 **Q** And you were facing two armed robbery
16 charges, correct?

17 **A** One in Columbia and one in Dillon, South
18 Carolina. He wasn't representing me on that one.

19 **Q** He was only representing you on the
20 Columbia armed robbery?

21 **A** Yes.

22 **Q** When did that occur?

23 **A** I can't tell you when it occurred.

24 **Q** A year?

25 **A** It was either 1987 or 1988.

1 Q So either 1987 or 1988 is when you first
2 retained Mr. Swerling for that charge?

3 A Yes. It had to be. It had to be '87. I
4 got -- because I got in trouble on this charge in
5 '88. So it had to happen in '87.

6 Q So to the best of your recollection, you
7 retained him in 1987?

8 A Yeah, '87.

9 Q And you testified that after you spoke to
10 your father in 1995, he told you your father knew at
11 the time you retained Mr. Swerling in 1987 that he
12 had previously represented Hayes Malloy?

13 A I don't know when -- I don't know if the
14 shooting happened at the party shop before I retained
15 Mr. Swerling or after. It might have been close. I
16 don't know if it happened afterwards or before. My
17 father, when he pressed the charges against Mr.
18 Malloy for that, I don't know what year it was,
19 whether it was before my charge or after. I could
20 not answer that.

21 Q This incident at the party shop with Hayes
22 Malloy shooting it up, that occurred in 1987,
23 correct?

24 A Yes.

25 Q Did your father know that you retained Mr.

1 Swerling in 1987?

2 A No.

3 Q When did your father first learn that Mr.
4 Swerling was representing you?

5 A When I got charged with murder.

6 Q So he didn't know anything about the
7 Columbia bank rob -- excuse me -- armed robbery that
8 occurred in 1987.

9 A I retained Mr. Swerling myself. My father
10 had nothing to do with that.

11 Q But you didn't tell your father I'm being
12 represented by Mr. Swerling?

13 A No.

14 Q So the first time your father knew Mr.
15 Swerling was your attorney was when? What year?

16 A '88.

17 Q '88?

18 A Yes, when I retained him.

19 Q And your trial was in 1990, correct?

20 A Yes.

21 Q So your father knew for approximately two
22 years that you were being represented by the same
23 attorney who had represented Hayes Malloy, correct?

24 A Yes.

25 Q And the charges that your father had

1 pressed for an incident occurring in his party shop,
2 correct?

3 **A** Yes.

4 **Q** And he never told you in those two years
5 before trial of this conflict?

6 **A** Well, back in 1988, my father was running
7 three businesses. Every time -- when I talked to my
8 father, I talked to my father to call and say how you
9 doing. Most of the time that this was going on and I
10 was locked up. Everything I talked to -- I talked to
11 my father -- I never talked to my father except for
12 calling and telling him how you doing, are you okay.
13 Other than that, everything I -- who I talked to,
14 where I talked to, I went to my mother. My mother --
15 if I wanted my mother to give Mr. Swerling some
16 money, I'd call my mother and tell my mother to give
17 Mr. Swerling some money. My mother was the go-
18 between between me and Mr. Swerling, not my father.

19 **Q** The allegations rising -- that give rise to
20 Mr. Malloy's assault and battery for shooting up the
21 party shop, that occurred before the murder, correct?

22 **A** Yes.

23 **Q** Okay. So you were at least out on bond.
24 You may have had pending charges, but you were --

25 **A** I was out on bond.

1 Q Out on bond at that time. Correct.

2 A Yes.

3 Q And at the time, you were working at your
4 father's party shop, correct?

5 A Yes.

6 Q You were a manager there, right?

7 A Yes.

8 Q And those charges, I believe you testified
9 on direct, they were dismissed pursuant to an
10 agreement with your father that you had helped work
11 out, correct?

12 A Yes.

13 Q Do you have any documentation today showing
14 that Mr. Swerling represented Mr. Malloy on that
15 charge?

16 A No.

17 Q Just the letter from your child's mother?

18 A Well, I have documentation of that. I
19 don't have it with me but in my -- I filed my federal
20 application with Mr. Swerling, I submitted the
21 documentation from his firm where he had, uh, his
22 heading on there concerning the incident that
23 happened at the party shop. I filed for discovery.
24 They sent me that discovery. That discovery was in
25 my federal file.

1 **Q** And you don't have that here today with
2 you?

3 **A** No, I do not.

4 **Q** You testified earlier today that you
5 thought Mr. Swerling did a good job cross-examining
6 Hayes Malloy, correct?

7 **A** Yes, I did.

8 **Q** And Mr. Swerling impeached Hayes Malloy
9 over his prior statements, correct?

10 **A** Yes, he did.

11 **Q** Do you remember the testimony from Tuesday
12 of Mr. Swerling?

13 **A** Yes.

14 **Q** Okay. He was actually to get some of those
15 statements in for their substantive evidence,
16 correct, the inconsistencies of Hayes Malloy, his
17 various statements to police?

18 **A** On cross-examination. I think he was
19 allowed to cross-examine on prior inconsistent
20 statements.

21 **Q** Do you recall that he was actually able to
22 introduce those different statements into evidence?

23 **A** I don't think they allowed -- I don't know
24 if they allowed the statements or not. Some of those
25 statements had other crimes so they would not allow

1 them to go into evidence. He was only allowed to
2 impeach him on them. The statements were never
3 admitted into evidence for -- the jury never saw the
4 statements.

5 **Q** Okay. You don't recall any testimony about
6 that on Tuesday about them going in for their
7 substantive value, the statements coming in for the
8 jury to see for Hayes Malloy, his various statements?

9 **A** I think his testimony -- those statements
10 that Hayes Malloy wrote, they had the bank robbery
11 and all the other crimes. And Mr. Swerling was about
12 to get them to keep that out and other bad acts.

13 **Q** And you testified a moment ago on direct
14 that because of this alleged conflict between Mr.
15 Swerling and Hayes Malloy, you think things should
16 have happened in the trial that didn't, including
17 calling certain witnesses, correct?

18 **A** Yes.

19 **Q** And I believe the two witnesses that you
20 named were John Corbett and Cleveland Malloy,
21 correct?

22 **A** Yes.

23 **Q** Are there any others?

24 **A** Uh, Lieutenant Sultan.

25 **Q** Just those three?

1 **A** At the time, I didn't know that -- that
2 another interview that Richland County Sheriff's
3 Department interviewed. That was Hot Dog, Gordon
4 English, but he's dead now. I don't think Mr.
5 Swerling knew anything about that because I don't
6 think that Richland County Sheriff's Department
7 informed him.

8 **Q** Are you aware if Mr. Swerling investigated
9 those four witnesses?

10 **A** I don't know.

11 **Q** Are you aware if his investigator took any
12 statements from these witnesses?

13 **A** If he took any statements from them, he
14 never relayed anything back to me. I never talked to
15 him about -- only time -- matter of fact, I never
16 talked to anybody about those individuals except for
17 Mr. Swerling.

18 **Q** You did talk about these individuals with
19 Mr. Swerling before your trial?

20 **A** No, during -- during the trial.

21 **Q** Do you know if he subpoenaed any of those
22 witnesses to be there for trial?

23 **A** I have never -- if he did, I never -- I
24 asked him -- I asked him to do that. I don't know
25 whether he did or not.

1 Q Did you know that Mr. -- do you know if Mr.
2 Swerling used an investigator in this case?

3 A He did. He used Jim Talbert.

4 Q Do you know if he used any others?

5 A No.

6 Q Do you recall how many times you met with
7 Mr. Swerling regarding the murder charges before
8 trial?

9 A We met -- we met -- we met a few times.
10 Yes. We met, matter of fact, over a few times.

11 Q Can you give the Court a rough estimate?
12 Was it more than 20 times?

13 A I met with Mr. -- I can't say how many
14 times I met with Mr. Swerling. I met with Mr.
15 Swerling and his assistants.

16 Q At your trial, you presented an alibi
17 defense, correct?

18 A Yes, I did.

19 Q Were you involved in the discussion as to
20 whether or not that was the defense you'd like to
21 proceed forward on?

22 A Yes.

23 Q Were you actively involved in deciding to
24 ultimately pursue that alibi defense?

25 A Yes.

1 **THE COURT:** So your defense at trial was
2 you weren't even there?

3 **THE WITNESS:** I wasn't even there when
4 the -- yes, that was my --

5 **THE COURT:** Your defense at trial was "I
6 wasn't even there"?

7 **THE WITNESS:** That's right, sir. I was
8 not there. When Donald Sutton was killed, I was
9 not present.

10 **THE COURT:** Okay.

11 **BY MS. HARRIGAN:**

12 **Q** Do you recall how many witnesses Mr.
13 Swerling called in your defense at trial?

14 **A** I know he called Veto McKey, Darlene Hayes,
15 Herman Whaley, Scottie English and -- that's all I
16 can remember.

17 **Q** Do you recall how many of those were to put
18 for your alibi defense?

19 **A** Veto McKey was the only one he called for
20 my alibi defense.

21 **Q** You don't recall him calling Lisa Brisby or
22 Darlene Hayes?

23 **A** Darlene Hayes, yes, he called Darlene. Who
24 was the other one?

25 **Q** Lisa Brisby.

1 **A** Lisa? I don't even know who that is.

2 **MS. HARRIGAN:** Court's indulgence.

3 **THE WITNESS:** Darlene Hayes wasn't, uh,
4 my alibi witness.

5 **BY MS. HARRIGAN:**

6 **Q** You testified that at the time of Mr. Hayes
7 assault and battery charge for shooting up the party
8 shop, you weren't friends with him, correct?

9 **A** No, we were not friends.

10 **Q** How often did he come by the party shop?

11 **A** He was -- before the incident, he was there
12 -- this is a little community where everybody hangs
13 out at.

14 **THE COURT:** He was there every day.

15 **THE WITNESS:** Every -- yes, he was.

16 **THE COURT:** Everybody comes down there
17 and hangs out, right?

18 **THE WITNESS:** That's what they do. They
19 hang out.

20 **THE COURT:** You get off your shift,
21 whenever it may be and come down there and hang
22 out, right?

23 **THE WITNESS:** That's exactly what they
24 did.

25 **THE COURT:** It's a community hang out,

1 right?

2 **THE WITNESS:** Yes, it is.

3 **BY MS. HARRIGAN:**

4 **Q** Okay. You don't recall ever discussing
5 with Mr. Malloy who his attorney was in that case?

6 **A** It would be no need for me to discuss it.

7 **Q** But he did come to you and ask for you to
8 talk to your father and see if he could help get
9 those charges dismissed, correct?

10 **A** No, he came to and asked me. He said he
11 talked with his attorney and they -- they was trying
12 to work out an agreement. Well, he asked me do you
13 think if I paid for the door, uh, and the cash
14 register, you think your father would dismiss the
15 charges? I said, well, my father wasn't there when
16 you shot into the party shop. Ronald Paul was there,
17 which was one of our business partners. I said I'll
18 ask my father to talk to Mr. Paul. Whatever they
19 agree, that's on them. Had Ronald Paul been standing
20 where he usually stand at, that bullet would have hit
21 him instead of the cash register. So I let my father
22 and Mr. Paul handle that.

23 **THE COURT:** Did you say Mr. Paul was a
24 business partner?

25 **THE WITNESS:** Yes, ma'am -- I mean, yes,

1 sir.

2 **THE COURT:** Okay. Just want to make sure
3 I heard you.

4 **THE WITNESS:** Yes, sir.

5 **MS. HARRIGAN:** No further questions, Your
6 Honor.

7 **THE COURT:** All right. Redirect.

8 **REDIRECT EXAMINATION**

9 **BY MS. SHURLING:**

10 **Q** I asked you whether, prior to the letter
11 from Sophia, your father had ever told you about
12 Hayes Malloy being represented by the Swerling Firm.
13 You've now interjected the name of a business
14 partner, Paul --

15 **A** Ronald Paul.

16 **Q** Ronald Paul. Did Mr. Paul ever tell you
17 about Hayes Malloy being represented by the Swerling
18 Firm?

19 **A** Ronald Paul? I don't know. My father --
20 you would have to ask my father. My father took care
21 of all that. He's the one that pressed the charges.
22 I don't --

23 **Q** You misunder -- obviously, you
24 misunderstood my question.

25 **A** Okay.

1 **Q** You already said your father didn't tell
2 you.

3 **A** Right.

4 **Q** Did you ever have any conversations with
5 Mr. Paul when he told you that Hayes Malloy was being
6 represented by either Jack Swerling or somebody in
7 Jack Swerling's law firm?

8 **A** Ronald Paul never told me anything
9 concerning Hayes Malloy's representation with
10 anybody. No.

11 **MS. SHURLING:** Thank you. No further
12 questions.

13 **THE COURT:** Anything on that?

14 **MS. HARRIGAN:** No, Your Honor.

15 **THE COURT:** All right. Thank you, Mr.
16 Tillman. You may step down.

17 **THE WITNESS:** Thank you.

18 **MS. SHURLING:** Your Honor, I would call
19 Thomas Tillman to the stand for about three
20 questions.

21 **THE COURT:** Okay. Come forward and be
22 sworn.

23 **THOMAS TILLMAN**

24 having first been duly sworn, testifies as
25 follows:

1 **THE COURT:** Thank you, Mr. Tillman. You
2 may have a seat.

3 **DIRECT EXAMINATION**

4 **BY MS. SHURLING:**

5 **Q** Would you state your full name for the
6 record.

7 **A** Thomas Edward Tillman.

8 **Q** And Mr. Tillman, you are the father of
9 Ronald Tillman?

10 **A** Yes, I am.

11 **Q** Okay. And the owner of the community
12 gathering place we've been calling the party shop,
13 right?

14 **A** Well, I want to rephrase that. It's not a
15 community hall. The name of it at that particular
16 time was A&A Enterprise.

17 **Q** A&A Enterprise?

18 **A** Enterprise. I had a partner. Ronald Paul.
19 He was my partner.

20 **Q** Okay. And you remember back the incident
21 when the party shop got shot up by Hayes Malloy?

22 **A** Again, I'm going to rephrase that. The
23 party shop was not shot up. It was an altercation.
24 Cause see, I had three jobs. We had two liquor
25 stores and a party shop.

1 Q Yes, sir.

2 A And I was working at that particular time.
3 When I came to the business, word got to me that a
4 gentleman had shot through the door and hit the cash
5 register. Well, I never met this guy. I didn't even
6 know him. I still don't know him. I don't even know
7 what he look like today.

8 So word came to me. My partner was
9 handling this thing. So he came to me and said the
10 door will be paid for and the cash register. Won't
11 press charges. Didn't call no law firm or anything.
12 I got the check. The check had his law firm on it.

13 Q Okay. Let me stop you for a minute, Mr.
14 Tillman, and just break this down a little bit. So
15 you didn't know Hayes Malloy prior to that incident?

16 A Period.

17 Q Okay. And forgive my mischaracterization.
18 But Hayes Malloy had an altercation with somebody. A
19 shot was fired that went through a door and into your
20 cash register?

21 A Yes, my understanding is they had an
22 altercation behind the shop.

23 Q Okay. Well, what we really need to know is
24 when Hayes Malloy attempted to negotiate a -- an
25 agreement that he could pay for damages and there not

1 be any criminal charges. Who did he negotiate that
2 with? Your partner?

3 A No, it came to me from my partner.

4 Q Came to you from your partner?

5 A Right.

6 Q But your partner engaged in the initial
7 talks and then came to you and said this is what we
8 think ought to work out and you just gave your
9 approval to that. But at that point, you did not
10 know what law firm was representing Hayes Malloy?

11 A We did not. He didn't call no name, no
12 company, no anything.

13 Q I understand. When the check for damages
14 was issued and it came to you, did I understand your
15 testimony correctly that the check was drawn on the
16 law firm, the Swerling Law Firm?

17 A Correct.

18 Q So when you got the money for the damages,
19 it came from the Swerling firm?

20 A Correct.

21 Q Uh, flash forward to when your son was
22 charged in this case. First off, to the best of your
23 recollection, which happened first? Did the charge
24 against your son for murder happen first and then the
25 party shop incident? Or did the party shop incident

1 happen first and then the murder charge?

2 **A** I don't know. The murder charge came after
3 the incident with the door.

4 **Q** That's all I needed to know. So the
5 incident with the door and the cash register happened
6 and some time later is when the murder charge
7 happened?

8 **A** Right.

9 **Q** Okay. Once your son was charged and hired
10 Mr. Swerling to be his lawyer on the murder charge,
11 did you ever tell your son that the lawyer he had
12 chosen to hire, that it was his firm that previously
13 represented Hayes Malloy in the incident involving
14 your property at the party shop?

15 **A** I didn't think it was...

16 **Q** Sir?

17 **A** I didn't think it was anything. To me --
18 you know, I don't know nothing about no law. But I
19 didn't think it made any difference.

20 **Q** Yes, sir.

21 **A** I never discussed anything about telling
22 him Mr. Swerling's law firm represented Hayes Malloy.

23 **Q** I understand, Mr. Tillman. Do you recall
24 a time when your son asked you about whether or not
25 you had any knowledge of Hayes Malloy being

1 represented by the Swerling firm?

2 **A** During the course of the trial, I talked
3 with Mr. Swerling. I told him that he had
4 represented Hayes Malloy. I found out later down the
5 line that he did. His law firm did. I left it
6 alone.

7 **Q** Okay. Eventually, do you recall the
8 conversation you heard your son testify that after
9 his child's mother, Sophia, told him about that?

10 **A** Yeah.

11 **Q** Do you recall your son asking you about
12 that at that time?

13 **A** Yes.

14 **Q** Is that the first time you ever had any
15 discussion with your son about the Swerling firm
16 being involved in the incident at the party shop?

17 **A** Correct.

18 **Q** No further questions, Mr. Tillman.

19 **MS. HARRIGAN:** Very brief.

20 **CROSS-EXAMINATION**

21 **BY MS. HARRIGAN:**

22 **Q** Mr. Tillman, did the check have the
23 Swerling Law Firm name on it or did it say Jack B.
24 Swerling?

25 **A** I couldn't tell you.

1 Q And it didn't say anywhere on there that
2 Mr. Swerling had represented Mr. Malloy?

3 A It was just a plain business check from the
4 law firm. It wasn't a personal check. That's a
5 fact.

6 Q So you don't have any knowledge as to
7 whether or not Mr. Swerling personally represented
8 Mr. Malloy or just his firm?

9 A Just his law firm.

10 Q So you don't know either to this day
11 whether it was Mr. Swerling or perhaps a partner,
12 correct?

13 A No.

14 Q And you testified that during one of the
15 trials, you talked to Mr. Swerling about his prior
16 representation of Hayes Malloy?

17 A I did mention it to him. I said, Jack, did
18 you represent Hayes Malloy.

19 Q Do you recall which trial that would have
20 been during?

21 A (No response.)

22 Q Your son's federal bank robbery or this
23 murder?

24 A It had to be the murder charge if I'm not
25 mistaken. They were really pretty close together.

1 **Q** And the federal bank robbery trial, to the
2 best of your recollection, that was in 1988, correct?
3 I'm sorry. Actually, there were three trials. There
4 was also a trial of the Burger King in Columbia,
5 right? Did your son have three trials when he was
6 represented by Mr. Swerling?

7 **A** I don't know who was representing him for
8 the Burger King trial.

9 **Q** So you don't recall who represented him
10 during the Columbia Burger King trial? What trials
11 do you know that Mr. Swerling represented him?

12 **A** The murder charge and the bank robbery.

13 **MS. HARRIGAN:** No further questions, Your
14 Honor.

15 **MS. SHURLING:** Nothing further, Your
16 Honor.

17 **THE COURT:** Thank you very much. You may
18 step down.

19 All right. Anything else?

20 **MS. SHURLING:** Nothing today, Your Honor.

21 **THE COURT:** Okay.

22 **MS. SHURLING:** I will get with Mr. Tillman
23 immediately and get a clear list of the issues
24 with regards to these witnesses we have been
25 talking about. I will get the witnesses

1 interviewed as quickly as I can.. I will be sure
2 to get Ms. Harrigan status reports along the
3 way.

4 **THE COURT:** Great.

5 **MS. SHURLING:** Thank you.

6 **MS. HARRIGAN:** If we may have a brief
7 five-minute break before the State presents Mr.
8 Swerling.

9 **THE COURT:** You're going to call him
10 back?

11 **MS. HARRIGAN:** Yes, Your Honor.

12 **THE COURT:** Okay. Yeah. Let's take about
13 10 minutes. Everybody needs a little recess.

14 (WHEREUPON, a short recess is taken.)

15 **THE COURT:** You ready?

16 **MS. HARRIGAN:** May it please the court?

17 **THE COURT:** Yes, ma'am.

18 **JACK B. SWERLING**

19 previously having been sworn, testifies as
20 follows:

21 **DIRECT EXAMINATION**

22 **BY MS. HARRIGAN:**

23 **Q** Mr. Swerling, following Tuesday's direct
24 examination, did you have an opportunity to think
25 about your testimony?

1 **A** Uh, yes.

2 **Q** Is there anything you would like to
3 elaborate on at this time?

4 **A** I would, because some of the questions on
5 Tuesday came about as a result of -- well, first of
6 all, some of them were being asked for the first time
7 that I had not been put on notice of. Others, we had
8 gotten notice on Monday afternoon about making
9 further allegations. So I obviously did not have
10 time and still did not have time to go through my
11 entire file to answer all of them. But I have had
12 some other thoughts.

13 Let me -- one of the things, I'd like to
14 first address is the conflict of interest issue. As
15 I said on Tuesday, I have no recollection at this
16 time, 25 years later, as whether I represented Hayes
17 Malloy or not or whether or not anyone in my firm
18 represented Hayes Malloy or not. But I will say
19 this. Back in 1988, had I represented Hayes Malloy
20 or had someone in my firm represented Hayes Malloy,
21 that would have been discussed with Ronald Tillman
22 when he hired me to do the murder case. It would
23 have been a full disclosure of that relationship at
24 that time. Now, at that time, I would have
25 remembered. And if I -- if someone else in my firm

1 did, I would probably had known too.

2 One of the things everybody probably needs
3 to understand is I represented a number of people in
4 that Shop Road area and Bluff Road area. I worked
5 with Mr. O'Leary for 10 years and that was an area
6 that he was very familiar with and people were
7 familiar with him. So a large amount of our
8 clientele came from Shop Road and Bluff Road,
9 Eastover and that area.

10 It would not have been anybody -- it
11 certainly would have been public knowledge about who
12 I represented. If I was representing Hayes Malloy or
13 somebody in my firm was representing Hayes Malloy,
14 that area and all the people that hung around these
15 different places would have know that. That's Number
16 one.

17 Number two, at that time, 25 years ago, it
18 would have been fresh in my mind and a disclosure
19 would have been made. I certainly don't want to
20 disagree with Mr. Tillman about that. Mr. Tillman or
21 Ronald. But there is absolutely no way that I would
22 have represented Mr. Tillman if I had been
23 representing or my firm had been representing Hayes
24 Malloy.

25 One of the other things I would like to

1 clarify is again that whatever that case was, the
2 party shop, the incident took place on December 22,
3 1987. According to the records -- these are records
4 I'm got from the courthouse back in 1991 when we were
5 trying the case. This warrant was dismissed on June
6 9th, 1988, prior to any of activities I was
7 representing Mr. Tillman for. That's one other thing
8 that needs to be addressed.

9 The third thing I would like to address on
10 that issue is this, Mr. Tillman said my cross-
11 examination of Mr. Malloy was excellent. And I
12 believed that it was a really good cross-examination,
13 at that time and reading back over it now. If I'm
14 representing Mr. Malloy or someone in my firm had
15 represented Mr. Malloy at that time, there is
16 absolutely nothing in that record that would indicate
17 that I in any way held back on Mr. Malloy because of
18 prior representation of him. As a matter of fact, I
19 went after him aggressively. I mean really
20 aggressively. Even Judge Rushing commented on the
21 fact that I was very aggressive of Mr. Malloy.

22 The other thing I would point out about
23 this conflict issue is that I would point the Court
24 to Page 243 of the transcript. When I started
25 examining Hayes Malloy, I introduced myself to him,

1 which would indicate to me that maybe he and I had
2 not met. Again, this is 25 years later. I can't say
3 for sure. But I said -- when I started the cross-
4 examination, I said, Mr. Malloy, my name is Jack
5 Swerling. So draw from that what you want.

6 The other thing is I vigorously cross-
7 examined him about the incident at the party shop
8 that took place on December 22nd, 1987 and about him
9 being barred from the party shop. There is an
10 exchange that goes back and forth between he and I
11 about that exact incident that everybody said we were
12 involved with. Page 261 of the transcript, this is
13 where we started going through that incident at the
14 party shop. There's absolutely no reference to the
15 fact in there that Mr. Malloy acknowledged that I was
16 his lawyer during that incident or raised the issue
17 that someone could suggest that I was his lawyer.

18 **THE COURT:** You actually -- in your
19 cross-examination of Hayes Malloy in Ronald
20 Tillman's murder trial, they allowed you to go
21 into the conduct that happened at the party shop
22 where he shot through the door into the register
23 and you were allowed to cross him on that?

24 **THE WITNESS:** Yes, sir. I know it is a
25 little unusual, but --

1 **THE COURT:** But you know, and then he
2 didn't say, well, Mr. Swerling, you represented
3 me on that for Joe McCollum or Paul Reeves or
4 whoever your partners were at that time. There
5 is no type of indication like that, like, why
6 are you asking me about it. You know exactly
7 what happened. They let you get into -- you
8 were allowed to get into the cross-examination
9 of Hayes Malloy's dismissed prior bad conduct at
10 the party shop at A&A Enterprise on Shop Road.

11 **THE WITNESS:** That is correct, Judge.
12 In fact, all -- the entire incident including
13 the fact that Ms. Shurling asked me the other
14 day how I knew about the fact that Mr. Malloy
15 -- I'm sorry -- Mr. Tillman accepted payment and
16 then dismissed the charges, it's in the record.
17 When I was reviewing it Monday or over the
18 weekend, that's when I drew -- it's in our
19 investigation, but that's exactly what happened.
20 They had this agreement. Mr. Malloy paid Mr.
21 Tillman for the damages. Mr. Tillman went ahead
22 and dismissed it.

23 Starting on Page 259 of the transcript,
24 there's about three pages devoted to this
25 incident that people are saying I or someone in

1 my firm represented him on. I cross-examined
2 him on that very thoroughly.

3 Now, actually I jumped ahead. The conflict
4 of interest thing really bothers me because I
5 know what I would have done had I represented
6 him or someone in my firm represented him. I
7 would have disclosed that. I'm not saying we
8 didn't. I just know that we would have
9 disclosed that and we would have discussed it.
10 Again, there's nothing in my cross-examination
11 that would indicate I held back on Mr. Malloy at
12 all.

13 I would like -- I would like to do this. I
14 apologize the other day for being a little
15 testy. This is a 24-year-old case. It took me
16 a lot of time to prepare. Then, on Monday, I
17 got hit with 19 other allegations of ineffective
18 assistance of counsel. Then during the hearing,
19 I was being asked about other allegations about
20 ineffective assistance of counsel.

21 I want Ronald Tillman to have a fair
22 hearing. He is serving a life sentence. I
23 always enjoy my relationship with him and his
24 family. I want them to know there is nothing
25 personal about the way I was reacting the other

1 day to some of the questions. It just had to do
2 with the way things were presented to --
3 presented to me.

4 As for witnesses, -- this is another note I
5 made -- we interviewed or attempted to interview
6 every single person that was listed in discovery
7 or that the discovery led us to other people or
8 that Mr. Tillman led us to wanting to go ahead
9 and interview. We prepared a list here of -- my
10 law clerk now -- who is now a lawyer, fully
11 admitted the bar, Aleksandra Chauhan -- C-H-A-U-
12 H-A-N. But she put together and went through
13 this entire file over the last few weeks. And
14 we have a list here of all the witnesses in the
15 case and whether or not there is a subpoena in
16 their folder for them. I can't represent that
17 every one of them was actually subpoenaed
18 because we don't have the affidavits of service.
19 But there was a subpoena issued for all of these
20 people. It also indicates whether or not we
21 contacted them or not.

22 I believe I was told there were some 90
23 people or some 98 people, something like that,
24 that we actually contacted for interviews. That
25 is either me, Jim Talbert, Jennifer Shealy, who

1 was an associate working with me at that time.
2 Jim Talbert was my full-time investigator. We
3 subpoenaed somewhere or there are subpoenas in
4 the files for some 60 people. So there is no
5 question, and I think that we fully, fully
6 prepared and interviewed or attempted to
7 interview every single person that Mr. Tillman
8 wanted us to or that I felt was relevant in the
9 discovery.

10 This list is available for the court. It
11 addresses who there was a subpoena for, who
12 contacted them and on what date. I think the
13 State wanted to go ahead -- I will go ahead and
14 stop.

15 **MS. HARRIGAN:** Mr. Swerling, is that a
16 copy that --

17 **THE WITNESS:** Yeah.

18 **MS. HARRIGAN:** Ms. Shurling, if you would
19 like to have that copy.

20 The State would move this into evidence at
21 this time.

22 **MS. SHURLING:** Your Honor, I have no
23 objection. I would note that Mr. Swerling said
24 it was prepared by someone else. I'm sorry.
25 I --

1 **THE WITNESS:** Prepared by my law clerk
2 who is now a member of the bar.

3 **MS. SHURLING:** I understand. I was just
4 going to say that I would prefer to get her to
5 authenticate it to introduce it for the record.

6 **MS. HARRIGAN:** That's fine.

7 **THE WITNESS:** So the point is that we
8 did an exhaustive investigation in this case.
9 If we didn't interview somebody, it was because
10 the name was unknown to us or we could not
11 locate the person or the person refused to be
12 interviewed. There are folders here.
13 Aleksandra made a folder for each one of those
14 people with their pertinent documents, whether
15 it was an interview by law enforcement or an
16 interview by us, or any other pertinent
17 documents.

18 For example, Hayes Malloy -- Hayes Malloy
19 folder is somewhat like this. It has got all of
20 his prior record in there. It has about
21 everything you can imagine about Hayes Malloy in
22 that one particular folder.

23 There were witnesses that were put up at
24 the trial. I believe there were 10 witnesses
25 put up at the trial. There were numerous

1 witnesses that were not put up at the trial.
2 Uh, and what we have to do during the trial and
3 any trial, what you have to do is you have to
4 decide which witness is going to help you, which
5 witness is going to detract from your case,
6 which witness is going to help the State,
7 something they did not bring out in their case-
8 in-chief. So even though your intentions are to
9 call a lot of these people and you do have them
10 under subpoena and ready to come in in the
11 interview, in the end, you have to make a
12 decision as to who to call as a witness.

13 **THE COURT:** A game time decision.

14 **THE WITNESS:** Game time. It is game
15 time. You are in the ring at that point. Now,
16 I have been practicing law 40 years and tried
17 dozens, scores of cases. I started to say
18 hundreds. It probably is in that area. But
19 let's say scores of cases. I have never fail to
20 call a witness, not call it witness without
21 consultation with my client. That just does not
22 happen. When I -- if the witness is not called,
23 my client signs off on that with me.

24 Now we may disagree. They may say in the
25 end, uh, you know, I don't agree with you. But

1 as Ms. Shurling said this morning, Mr. Tillman
2 said you are the expert. The bottom line is
3 they are always consulted. Sometimes, over my
4 objection, a defendant will want a witness
5 called. Sometimes as a matter of trial
6 strategy, I think that the lawyer has the
7 ultimate decision-making power as to whether to
8 call a particular witness or not. For example,
9 if that witness has a prior record -- let me
10 back up. If that witness has something negative
11 to say about your client and your client is not
12 understanding it, I think trial strategy is left
13 to the decision of the lawyer. However, I
14 always, always try to get my client's input on
15 it and discuss it with them and generally get my
16 client's approval to even call or not call a
17 particular witness. That's exactly what would
18 have happened in this case.

19 Mr. Tillman and I, we had a great
20 relationship. We absolutely did. We enjoyed
21 our relationship together. Ronald would have
22 been totally involved in this case and in that
23 decision-making process. Our file reflects,
24 again, this is a summary done by Aleksandra that
25 we had 37 contact visits or 37 visits with

1 Ronald. That would include myself, include Mr.
2 Talbert, call -- include Ms. Shealy and maybe
3 one or two other people from my firm who might
4 have assisted in the case at that time.

5 So again, just like I called on Mr. Tillman
6 to decide whether or not to make a mistrial
7 motion or to withdraw it and he agreed to
8 withdraw the mistrial motion because it was our
9 best shot at the time, witnesses that were not
10 called were not called with agreement of Mr.
11 Tillman and myself. There would have been all
12 kinds of reasons as any lawyer knows why you
13 call a witness or why you would not call a
14 witness.

15 I would also point out, I thought about
16 this over the last day or two, I handled this
17 case and my defense of this case was as vigorous
18 as any case as I have ever been involved with.
19 There were hundreds of objections, I mean,
20 literally. Every time they opened their mouth
21 practically, it was an objection. To every
22 piece of evidence, it was an objection. There
23 were long discussions with the court. There
24 were in camera proceedings with the court.
25 Everything was contested in this case.

1 At no time did any of the other crimes that
2 Ronald was charged with or convicted of ever get
3 into evidence. For example, the bank robbery.
4 There was a bank robbery in Dillon. There was a
5 bank robbery in Columbia. The State wanted to
6 get into those as motive. Ronald was acquitted.
7 I tried that case with Ronald. He was acquitted
8 of the Burger King robbery. They wanted to get
9 into the bank robbery. We got that excluded.
10 They wanted to get -- there were drugs discussed
11 that night and there were drug deals going on
12 that night. We kept that out as well. All of
13 this was hard fought during the course of the
14 trial.

15 You can see -- I think we had court on
16 Saturday and we went into the following week
17 too. Judge Rushing wanted -- he needed to
18 finish because he had a term of court going on
19 somewhere else. I do want the record to reflect
20 that this was as hard a fought a case, tooth and
21 nail, as aggressive as a lawyer could be within
22 the bounds of ethics.

23 Every witness was cross-examined
24 thoroughly. Some of the witnesses we referred
25 to here today were challenged. Some, we kept

1 off the stand. Every one of them was impeached
2 with the prior criminal record. Every one of
3 them was impeached with prior inconsistent
4 statements.

5 Which brings me to this Copeland issue Ms.
6 Shurling was talking about the other day. I had
7 just got an hit with that on Monday night.
8 Copeland stands for the proposition a prior
9 inconsistent statement can be used as
10 substantive evidence. As I said on Tuesday, I
11 have never been a particular fan of the Copeland
12 issue because I don't believe the jury quite
13 understand whether something is being used for
14 impeachment purposes or as substantive evidence.

15 In this particular case, my goal was
16 strictly to show prior inconsistent statements
17 for Mr. Malloy and everybody else who testified
18 for impeachment value, for their credibility.

19 Why would Copeland not be an appropriate
20 charge in this case? Well, it is very obvious.
21 If we asked for a Copeland charge that was used
22 for substantive evidence, that doesn't help. It
23 does not help Mr. Malloy at all. Veto, who is
24 the individual that they are referring to, that
25 Mr. Malloy was referring to as possibly the

1 person who accompanied Mr. Tillman or went with
2 Mr. Tillman to go ahead and kill Mr. Sutton.
3 Sutton would have been putting the murder on Mr.
4 Tillman as either the principal or as an
5 accessory. So why would you use that as
6 substantive evidence? Why would you refer to
7 those prior inconsistent statements as
8 substantive evidence when the evidence still
9 points to your client as the principal or an
10 accessory. So it makes no sense at all. If I'm
11 wrong about that, I stand to be corrected.

12 That's exactly -- if you reflect back or I
13 reflect back, there would have been no way I
14 would have been asking for a Copeland charge.
15 That's why I would have asked for the prior
16 inconsistent statement charge. Being used as
17 substantive evidence, nothing to help Mr.
18 Tillman.

19 Another thing that I thought about since
20 then is there was a question about introducing
21 statements. In fact, a couple of those
22 statements were actually -- were introduced into
23 evidence contrary to what Mr. Tillman thinks.
24 He's not a lawyer and so he just doesn't know
25 and that's fine.

1 When I do cross-examination, I go after
2 every single aspect of the case that I can. If
3 there are things in statements -- and Hayes
4 Malloy gave several statements in this case.
5 They were all inconsistent with each other.
6 They were inconsistent about Mr. Tillman. They
7 were inconsistent about the position of the
8 body. They were inconsistent about who was at
9 the party shop. They were inconsistent about
10 whether he was at the party shop afterwards when
11 he said he was afraid of Mr. Tillman. I mean,
12 literally, if you read -- you get a headache
13 reading all the statements and all the possible
14 inconsistencies.

15 In attacking Mr. Malloy, my purpose was to
16 bring out all of those if it was good or bad. I
17 was prepared and would have been prepared to
18 answer anything that was negative. But the
19 purpose of bringing it out was that, on one
20 occasion, he said this person was asked to do
21 something. On another occasion, he said that
22 this person was asked and contradicted himself
23 in between the statements. I went through those
24 statements line by line with him and impeached
25 him on every single issue that I could impeach

1 him on. I think he was impeached so much to the
2 extent that the Court would comment several
3 times about the fact that the Court could not
4 follow what his answers were any longer to what
5 some of the questions were. The solicitor was
6 getting testy about the fact that he was being
7 impeached so much.

8 One of the occasions I asked him -- there
9 were several occasions. I'm sorry. I'm getting
10 a little discombobulated. There were several
11 occasions where I asked him questions about
12 where he told the jury same thing yesterday that
13 he told them today. He said I don't remember.
14 I don't know. I don't remember what I told the
15 jury yesterday. Of course, that means he didn't
16 remember what he told the police two years
17 before.

18 On one occasion, I remember on -- I think
19 this was on Page 329 to 342, when he was talking
20 about all of these different people that Mr.
21 Tillman approached, I asked him a question, you
22 know, if those people are brought into court,
23 they are going to disagree with what you said.
24 He agreed that they would. I was getting
25 whatever I needed out of Mr. Malloy to impeach

1 him and contradict him. It was by, I think,
2 going line by line in those statements and
3 introducing a couple of the statements.

4 Now, some of the statements were not
5 introduced because those statements had in there
6 references to other clients. Judge Rushing,
7 when Mr. Morton tried to put those statements
8 into evidence like I put these statements into
9 evidence, uh, the Court rejected that saying no,
10 referring to other crimes, and also telling Mr.
11 Morgan and Mr. Coleman that he did not object to
12 what Mr. Swerling was doing but he's objecting
13 to you putting -- your putting those statements
14 in. We tried to keep the trial as sanitized as
15 we could in favor of Ronald, while trying to
16 trash whatever the witnesses were that the State
17 was calling.

18 There was an issue the other day about the
19 tire tracks. Ms. Shurling was talking about the
20 fact that I did not raise probable cause as an
21 issue in the case. The Court of Appeals
22 commented. Well, I was reading the transcript
23 last night. I did raise probable cause as an
24 issue on Page 641. So it wasn't apparently
25 addressed by the court. One of the issues that

1 I raised that the sheriff's department did not
2 have probable cause.

3 The attack was -- here is what the attack
4 was on the tire track evidence. Ronald gave
5 consent to the FBI to look at his car, search
6 his car at his house. He signed a written
7 consent. That consent was put into evidence.
8 The FBI took the car, took it down to their
9 location, their garage. Then there was
10 discussion with the Sheriff's Department. They
11 invited the Sheriff's Department to come over to
12 do whatever they wanted to as far as photograph
13 it, test it or whatever.

14 The Sheriff's Department had the car. They
15 drove the car. They took the hand prints and
16 the photographs of the wheels. We -- I mean,
17 there were pages -- page after page after page
18 after page in the transcript of us attacking
19 that whole process. He gave consent to have the
20 car searched at his premises, but they took it
21 down to their garage. We argued that there was
22 a violation of his Fourth Amendment rights for
23 the Sheriff's -- first of all, for the FBI to
24 take it down there to do their examination and
25 then for the Sheriff's Department to come over

1 and do their search, which we contend it was a
2 search and seizure by them going ahead and doing
3 whatever hand prints or whatever photographs
4 there were.

5 The Fourth Amendment issue -- the Court can
6 read it. It just goes on page after page after
7 page. So probable cause was raised but not the
8 primary issue. The primary issue was whether or
9 not there had been a Fourth Amendment violation
10 of Mr. Tillman's rights about the way the FBI
11 and the Sheriff's Department came about and did
12 the testing on the car, the photographs of the
13 car.

14 We argue the fact that the search --
15 sheriff's department should have had a search
16 warrant when they came over. They had no right
17 to go into the garage and go ahead and examine
18 the car. I just -- I don't know that I could
19 have made more of the record on that situation.
20 I am satisfied we did as much of it as we could
21 on the issue.

22 We attacked the methodology of -- the way
23 this whole thing about, uh, the tire tracks that
24 were taken at the scene that they drove right up
25 -- the tire track ran right up to where the body

1 was. We argued about whether it was sand or
2 dirt. We argued about whether or not there were
3 accurate impressions or they were not accurate
4 impressions. We argued about whether or not
5 they could have done plaster casts. We attacked
6 the methodology. We attacked the conclusions.
7 We attacked the legal issues about whether or
8 not they had a right to do anything with the car
9 at all. I think we did about as good as we
10 could do.

11 One other thing that I would like to just
12 bring out, well, a couple of other things that I
13 thought about since then. This issue about
14 cross-examining him on the murder charge, there
15 was no doubt in my mind that if the Court would
16 read the transcript that the Court would know
17 and be satisfied that the jury knew that Mr.
18 Malloy was looking at life in prison on the
19 murder charge. The jury also would have known
20 that that murder charge was not dismissed
21 against Mr. Malloy until a few days before. It
22 was held over his head until right before the
23 trial. There's no doubt in my mind that they
24 knew what the punishment was for Mr. Malloy or
25 what the consequences were if he failed to

1 testify. They held it over his head. They
2 still could come back.

3 Here's the thing that's not fair. We don't
4 have -- I am an individual who I leave a lot of
5 things unanswered during the course of the
6 testimony. Why do I do that? Because I bring
7 it up during my closing argument. I do it that
8 way so that the State cannot respond to
9 something that I think is going to be very
10 important that I can use in closing argument
11 especially when they had not addressed it. This
12 would have been one of those things that I would
13 have addressed in closing argument and may not
14 have completely covered during the cross-
15 examination because I would not have wanted the
16 State the opportunity to go back into it.

17 The problem here is, 25 years later, you're
18 trying to figure out why you did or did not do
19 something and you don't even have the closing
20 argument which in this case would have been very
21 extensive, would have been very methodical. And
22 I pride myself in delivering good closing
23 arguments. So I believe that he was thoroughly
24 -- the jury would have known that he was, he had
25 a lot to gain in this case and a lot to lose if

1 he didn't continue to testify against Mr.
2 Tillman.

3 Those are the, uh, -- I can give you some
4 other observations or you can just ask me some
5 questions. I've just been running on. I'm
6 sorry.

7 **BY MS. HARRIGAN:**

8 **Q** You were in here previously when Mr.
9 Tillman gave the names of the four witnesses he wants
10 to contact, correct?

11 **A** Right.

12 **Q** Lieutenant Sultan. Do you have any records
13 in your extensive file showing whether or not he was
14 contacted by your office?

15 **A** Yes. This brings up another question too.
16 First of all, Mark Sultan was interviewed by Jim
17 Talbert on January 14, 1990. It was an extensive
18 interview here about what happened at the scene, what
19 he found out at the scene. There is actually a
20 subpoena for Lieutenant Sultan that we have prepared.
21 And if we needed to, we would have called him as a
22 witness because we had a subpoena for him. Here is
23 the subpoena. Here is the memorandum of Jim Talbert
24 that I have.

25 This is something else. I hate to disagree

1 with my friend Ronald again. There was nothing in
2 that file that he would not have been aware of.
3 Nothing. Everything in that file would have been
4 discussed with him, the results of our investigation,
5 the results of our interviews, the failure to be able
6 to do an interview. All of that would have been
7 discussed with my client. It is always discussed
8 with my client.

9 I have been practicing law for 40 years and
10 tried many, many cases. I don't ever go to trial
11 unless my client knows the results -- first of all,
12 have seen all of the discovery and the results of our
13 investigation. That's just period, blanket. That's
14 it. There are no exceptions.

15 Gordon Scott English. Uh, there is a
16 subpoena here prepared for Scott English and Gordon
17 English. Uh, Gordon English, I don't find in here an
18 actual interview. We prepared the subpoena or had
19 subpoenaed him. I suspect that we knew what he would
20 say. But we did interview -- there is an interview
21 in here from Scott English. It's not dated. It's a
22 handwritten interview. It is not my handwriting. I
23 can't tell you who's it was. It might have been
24 Jennifer Shealy's. It actually looks a little bit to
25 me like what her handwriting would have been. I

1 don't remember Jim Talbert's handwriting being that
2 neat. Scott English was interviewed. There is a
3 folder here for Gordon and Scott English and a
4 subpoena for both of them.

5 Q Do you have anything regarding Cleveland
6 Malloy?

7 A Cleveland Malloy. I -- yes, I do.

8 Q Was he interviewed?

9 A Let me check. (Reviewing.)

10 Okay. There is a -- he was interviewed.
11 Here is the interview here. Again, I don't recognize
12 -- at this time, I do not recognize who conducted the
13 interview. My contact list that Aleksandra prepared
14 indicates that he, uh, -- well, I'll tell you what,
15 this could be an law enforcement interview. I don't
16 want -- I don't want to say whether it is or not.

17 Q Do you have a sub file created in your
18 larger file for Cleveland Malloy?

19 A Well, that's -- this is it.

20 Q Yes.

21 A We did subpoena some mug shots from John
22 Corbett and Cleveland Malloy. Who wrote this, uh, --
23 who did this interview -- hold on. These look like
24 questions we were going to ask. That's why I can't
25 say who did it. There's no date on it. Those are

1 handwritten -- some handwritten notes. It doesn't
2 look like it would be a law enforcement interview but
3 I can't say.

4 Q And again, that's for Cleveland Malloy?

5 A This would have been for Cleveland Malloy.

6 Q And does your file reflect a subpoena for
7 Mr. Malloy?

8 A Yes. Oh, wait. The only thing we have in
9 here would be a -- is a subpoena for his mug shots.
10 Actually, Aleksandra wrote down here that there was a
11 subpoena dated January 16, 1990, but I don't see it
12 here now.

13 Q Do you have anything in your overall larger
14 file for a John Corbett?

15 A I'm sorry. I apologize about this. Again,
16 I can't tell. It looks like questions we would have
17 been asking Mr. Malloy, not law enforcement. I'm not
18 sure. It is 25 years later.

19 John Corbett. There is a subpoena in there
20 for Mr. Corbett. There is indication that he was in
21 jail at the time and that he was going to be getting
22 out, uh, -- no. No, it wasn't. This is -- Jim
23 Talbert actually interviewed him. There is no date
24 on it. He interviewed him at the jail in Richland
25 County for nonsupport payments. That is what he was

1 in for. He will be getting out Monday morning.
2 There was an interview conducted with him by Mr.
3 Talbert and a subpoena for him.

4 Actually, what I am seeing and now, these
5 handwritten things must have been Talbert's written
6 question and answers. Then he memorialized it into a
7 memorandum. That is what it appears to be. All of
8 those people.

9 Q Do you recall the first time -- when were
10 you retained by Mr. Tillman for his first case? You
11 represented him on, it looks like, three or four
12 different charges, correct?

13 A I don't --

14 Q What were those charges that you were
15 retained on?

16 A I never actually entered a formal
17 appearance for the Dillon County charge, I don't
18 believe. That charge was eventually dismissed. Then
19 there was a Burger King. I represented to him on the
20 Burger King here in Columbia. He was acquitted in
21 that trial. I represented him on the bank robbery
22 charge. He was found not guilty of that. I
23 represented him on the murder charge.

24 Q Do you recall which incident happened
25 first?

1 **A** The Burger King in Columbia took place on
2 September 10, 1988. He went to trial in May of 1989
3 and was acquitted. The Burger King in Dillon was
4 September 23, 1988. The charges were not pressed in
5 June of '89. Again, I don't think I actually
6 representing him in that case. Aleksandra did this
7 timeline.

8 It appears that I opened a file on Mr.
9 Tillman in October of 1988. That would have been the
10 first time I opened the file on him. That would have
11 been in connection with the Burger King. The bank
12 robbery was on December 12th, 1988. The subsequent
13 murder was on December 26th, 1988. Ronald was
14 arrested for the bank robbery December 28th, 1988.
15 The bank robbery trial was in May of 1989. He was
16 convicted in June of 1989. The murder trial was in
17 January of 1990.

18 In actuality, I think he was not sentenced
19 -- I may be wrong about this but I don't think he was
20 sentenced in federal court until after the murder
21 trial. I may be wrong about that.

22 **Q** Do you recall the first time you spoke with
23 Mr. Tillman's father, Thomas Tillman Senior?

24 **A** Well, actually there probably is a folder
25 there for Mr. Tillman.

1 **MS. HARRIGAN:** If I may approach, Your
2 Honor.

3 **THE WITNESS:** I just -- I remember Mr.
4 Tillman from the beginning. I was known down in
5 that area. It was an area -- Shop Road was not
6 unfamiliar to me. The people down there were
7 not unfamiliar with me. I don't -- Mr. Tillman
8 was interviewed. Unfortunately, whoever
9 interviewed him didn't put the date of the
10 interview. (Pause.)

11 I mean there are several notations here in
12 the file from Mr. Tillman. As to when I first
13 would have met him, I just don't know.

14 **BY MS. HARRIGAN:**

15 **Q** Are those notations from before the murder
16 trial?

17 **A** Uh, yeah, most of them are. I mean, I
18 don't know that any of them would have been after.
19 There are numerous memorandums in here in Mr.
20 Tillman's folder. Mr. Tillman as opposed to Ronald.
21 But anyway, I can't tell you the first time I met
22 him. But they would have been regular. I knew the
23 family. I met the family as a result of having
24 represented him on three different charges. I knew
25 who the family was and they knew who I was.

1 **MS. HARRIGAN:** A moment's indulgence,
2 Your Honor. (Pause)

3 No further questions, Your Honor.

4 **THE COURT:** Yes, ma'am.

5 **MS. SHURLING:** Just a couple of really
6 quick ones.

7 **CROSS-EXAMINATION**

8 **BY MS. SHURLING:**

9 **Q** Jack, on the summary sheet that your
10 associate prepared, where it has subpoenas listed,
11 did you say that indicates the subpoena was prepared
12 but you can't tell whether or not it was served?

13 **A** Yeah, there would be no way that -- the
14 subpoenas, that list was made from the actual
15 subpoenas that was in the file. I don't know what
16 was served or what was not served. I don't know that
17 I would have made my associate prepare them and then
18 not serve them. I can't represent that they were all
19 served.

20 **Q** When a subpoena is served, don't you have a
21 copy of the affidavit of service in the file?

22 **A** Generally, we get it back if, uh, -- at
23 some point. But obviously, they are not in this
24 file. I don't think she found any that were actually
25 in the folder with the subpoena. Or, actually, now,

1 the subpoena we have, that's just a copy. I think
2 the actual service is usually on the back of the
3 subpoena. Mr. Talbert could have had -- sometimes
4 the investigator had his own file where he kept the
5 subpoenas and it just didn't make it to the file.

6 Q I understand. I just want to clarify.

7 A Oh, yeah.

8 Q Referencing this, the fact that the
9 subpoenas were listed does not necessarily mean one
10 was served.

11 A I can't represent that.

12 Q Okay. If there are notes in the file that
13 someone interviewed a witness and that a subpoena was
14 prepared, is there anywhere in your file that you
15 make notes or enter anything on the subpoenas or
16 anything when you decide not to call witnesses or any
17 place that you document why you decided not to call
18 them?

19 A Sometimes there is and sometimes there are
20 not. I don't -- sometimes those decisions are made
21 during the course of the trial. I remember on
22 occasions having written down in the trial notes that
23 I did or did not do something. But there's nothing
24 uniform about it. I wouldn't tell you -- every trial
25 is different. Sometimes I do and sometimes I don't.

1 Now, I constantly do to-do lists.
2 Everybody that's ever worked for me, my to-do lists
3 drive them crazy because they upwards of hundreds of
4 things they need to do. Sometimes on the to-do list,
5 we cross off somebody and decide at that point not
6 to.

7 Q I want to ask you about one in particular,
8 if I might. David Bynum who was -- there is a folder
9 on.

10 A Huh-uh.

11 Q And there is a memorandum in here from Jim,
12 I assume that would be your investigator.

13 A Jim Talbert.

14 Q Actually, there are two.

15 A He actually interviewed Tommy Bynum too. I
16 just noticed that.

17 Q The memorandum -- memoranda in the file
18 indicate that Jim said you need to subpoena David
19 Bynum who can dispute any statement that James Bynum
20 or Hayes Malloy are going to make in reference to
21 James Bynum being offered money. And it says that
22 one was on 1/11. There was another one on 1/13 that
23 says Hayes Malloy states he knows anything about the
24 murder or has taken any money or been offered any
25 money, Hayes Malloy is absolutely lying about that

1 because he knows nothing about it. Then there is a
2 subpoena in the file. Do you have any recollection
3 why given what your investigator's notes say you
4 didn't call David Bynum?

5 **A** (Reviewing.)

6 I would not have called him. Did you read
7 the memo?

8 **Q** Pardon?

9 **A** Did you read the memo?

10 **Q** I've read portions of it.

11 **A** There is no way I would have called this
12 guy as a witness. This is from Jim Talbert. It is
13 dated January 13, 1990. I traveled to Broad River
14 Correctional Institute and spoke with David Bynum.
15 David Bynum states that he did not know anything at
16 all about the murder. He was in the hospital during
17 that time.

18 Is it all right if I just read this, Judge?

19 **THE COURT:** Yeah.

20 **THE WITNESS:** He had just gotten out
21 that day that it happened. He was in the
22 hospital prior to the incident happening during
23 the bank robbery. He had just gotten out of the
24 hospital when the murder occur. However, he
25 states that he was at the party shop the day

1 that Donald Sutton died. He was there for
2 several hours. He states that around 7:00 or
3 7:30, he saw Donald Sutton and Ronald Tillman
4 together at the party shop. Also at the party
5 shop at that time was Arthur Roberts that worked
6 there for Ronald.

7 David Bynum states he left the party shop
8 somewhere around 7:45 or 8 o'clock and that Ron
9 and Donald were still there at the party shop
10 together. He went from there over to a club
11 called Bogie's -- Boogie's. At approximately 8
12 o'clock, Ron and Donald were still together
13 there at the party shop.

14 However, later that night David Bynum left
15 Boogie's club at about 11:30, maybe at 12:00
16 and, at that time, had heard that there was
17 somebody out in the parking lot that told him
18 that they found Donald Sutton dead. And David
19 Bynum could not remember who told him that. He
20 had been drinking and partying and said that he
21 just does not remember who actually told him
22 that but it was somewhere around midnight when
23 he left the club. That is when he heard about
24 it. He had just seen Donald and Ronald together
25 at about 7:30 or 8 o'clock that day. He

1 couldn't believe that he was actually dead. He
2 couldn't believe that Donald was killed by
3 Ronald. Ronald and Donald were close. David
4 Bynum further states that if Hayes Malloy states
5 that he knows anything about the murder or has
6 taken any money or was offered any money that
7 Hayes Malloy is absolutely lying because he
8 knows nothing about that.

9 This would have been a disaster to call a
10 witness like this. First of all, anything he
11 said about Hayes Malloy was all hearsay. Second
12 of all, he has Ronald and Donald together at 8
13 o'clock that night. I don't think this is a
14 witness I would have called in that case.

15 **THE COURT:** Which goes directly against
16 the alibi?

17 **THE WITNESS:** Well, I can't remember --
18 Judge, I can't tell you -- I can't sit here and
19 remember or tell you everything that was
20 presented about the alibi. It's in the record.
21 But it has them together at 8 o'clock. I can't
22 tell you why that's material or not. It is
23 related to the other witnesses.

24 What I can tell you is it would have
25 bothered me, at that time, that he had Ronald

1 and Donald together. And Ronald and Donald --
2 Ronald was the last person he saw with Donald
3 that night. He was just offering an opinion
4 that Hayes Malloy was lying.

5 I'm pretty cautious about who I put up.
6 It's like calling a police officer, like
7 Lieutenant Sultan. You have to be very careful
8 when you call a police officer. He is the one
9 who investigated the case for the State. You
10 might be able to get a few things from him that
11 are favorable to you but you're going to get a
12 whole lot of stuff that is unfavorable.

13 **BY MS. SHURLING:**

14 **Q** You anticipated my next question. You were
15 referencing a rather lengthy set of interview notes
16 with the investigation.

17 **A** Ms. Shurling, as I told you, you can have
18 access to that entire file.

19 **Q** I understand. Was there anything you
20 recall from that overview of the interview with
21 Lieutenant Sultan that would have added to or
22 contradicted the testimony of Investigator Christie
23 concerning being crime scene?

24 **A** I can't tell you that because I have not
25 read it thoroughly. I just know that he was

1 interviewed. I can tell you one of these things that
2 I recall. Dr. Armstrong testified -- this is the
3 kind of things that are subtle in trial but you use
4 them in your closing argument and you don't make a
5 big deal about it. Dr. Armstrong, the pathologist in
6 the case, testified about scrape marks, bruises on,
7 uh, Mr. Sutton who he opined had been dragged
8 postmortem.

9 Hayes Malloy testified that nobody touched
10 Donald Sutton after he was shot. That was Hayes
11 Malloy's position that nobody touched Donald Sutton
12 after he was shot which completely contradicted the
13 findings of the forensic pathologist which to me
14 impeached Hayes Malloy. That would have been
15 something -- it was brought out during the examination
16 but no big deal was made and would have been made
17 during the closing argument about reasons to
18 disbelieve Hayes Malloy. Of course, obviously, in my
19 case, I was arguing that Hayes Malloy was a liar.
20 That would have been something I just recalled that
21 would have been inaccurate. What -- how, what
22 Lieutenant Sultan says, I don't know. I can't
23 remember. But if you show me something, I'll be glad
24 to look at it.

25 Q If I understood what you just said that the

1 pathologist in your opinion expressed a view that the
2 body had been moved and that was inconsistent with
3 the testimony of Hayes Malloy.

4 **A** Right. He said that nobody touched the
5 body. Nobody moved the body.

6 **Q** In the interview notes of your
7 investigator, it states that Lieutenant Sultan states
8 that both he and Christie talked about and agreed
9 that most likely this was not the area that Donald
10 Sutton had been killed in and that he had been
11 apparently been toted to this area with his hands
12 dragging the ground.

13 **A** That's it. Yeah. That's what I'm saying
14 that you have inconsistencies all over the place.
15 But Dr. Armstrong -- I can't tell you why -- I can
16 tell you this. It would be a rare occasion that I
17 would ever call a police officer to the stand in my
18 case. I have been there, done that. It really
19 usually just works against you. I can't say that's
20 the exact reason in that case. What I can say is
21 that Dr. Armstrong established that.

22 **Q** Okay. So given the fact that --

23 **A** Why go ahead and beat a dead horse when you
24 have already got what you want? Again, I can't say
25 that's why I didn't call Sultan. I can probably tell

1 you that it would have been a last resort to call
2 Sultan.

3 Q Okay.

4 A He would have not been there to help Mr.
5 Tillman. You can understand that, I'm sure.

6 Q Certainly. I mean, I understand your
7 position. Mr. Swerling, would it not have been
8 helpful to demonstrate that the lead crime scene
9 investigator expressed an opinion consistent with
10 your expert?

11 A Whose expert?

12 Q Pardon me. With the expert, the
13 pathologist.

14 A Ms. Shurling, again, let me just say this
15 to you. I can't remember why I did not call
16 Lieutenant Sultan but it would have been a last
17 resort. I don't normally call police officers to the
18 stand. You know why. They -- you make a little
19 pearl out of what they testify to but you're going to
20 get a whole lot of other things that you don't want.

21 Jim Morton and Craig Coleman, for whatever
22 reason, I didn't call. They could have added a lot
23 more to this case that would have hurt Mr. Tillman.
24 I'm sure that they were inclined to do that. I don't
25 normally call them. I can't say specifically why I

1 didn't call him in this case. Obviously, I didn't
2 and it was a strategic move on my part not to call
3 him.

4 Q I understand. You are anticipating my next
5 question. If Sultan was the lead scene crime
6 investigator in this case or was a crime scene
7 investigator in this case and he wasn't called by the
8 State as a witness, would that not normally engender
9 some suspicion on your part?

10 A It could or it could not.

11 Q Did you have any information that led you
12 to believe that you knew any reason why they weren't
13 calling him?

14 A 25 years later, I can't tell you. I wish I
15 could. This thing has taken so long to come up. And
16 a lot of those memories are gone. But I can tell you
17 again if I didn't call him, there would have been a
18 reason why I didn't call him or I would have called
19 him.

20 Q I understand.

21 A I'll state my 40 -- at that time, 17 years
22 of experience of trying, at that time, many murder
23 cases, if I thought the lieutenant could help our
24 case, I would have called him. If I thought he was
25 going to hurt our case, I would not have called him.

1 **Q** And you, in fact, try to keep some evidence
2 from coming in through Christie on the ground that
3 the photographs had actually been taken by Sultan?

4 **A** I don't recall.

5 **Q** You don't recall?

6 **A** No.

7 **MS. SHURLING:** A moment's indulgence.

8 (Pause.)

9 Nothing further, Your Honor.

10 **MS. HARRIGAN:** No further questions, Your
11 Honor.

12 **THE COURT:** Thank you, sir. You may step
13 down.

14 **MS. HARRIGAN:** One final witness for the
15 State. It will be very brief, Your Honor.

16 **THE COURT:** Okay.

17 **MS. HARRIGAN:** The State would call
18 Aleksandra Chauhan.

19 **ALEKSANDRA CHAUHAN**

20 having first been duly sworn, testifies as
21 follows:

22 **THE COURT:** You need to spell your whole
23 name.

24 **THE WITNESS:** A-L-E-K-S-A-N-D-R-A,
25 C-H-A-U-H-A-N.

1 **THE COURT:** Thank you.

2 **DIRECT EXAMINATION**

3 **BY MS. HARRIGAN:**

4 **Q** Where are you currently employed?

5 **A** I work part-time with the Public Defender's
6 Office and part-time for Jack Swerling.

7 **Q** While working at Mr. Swerling's office,
8 have you had any involvement in the Tillman case?

9 **A** Yes. I worked on the file for a couple of
10 months.

11 **Q** Was that in preparation for this post-
12 conviction relief hearing today?

13 **A** Yes.

14 **MS. HARRIGAN:** May I approach, Your
15 Honor?

16 **THE COURT:** Yes.

17 **BY MS. HARRIGAN:**

18 **Q** Do you recognize this document?

19 **A** Yes, I do.

20 **Q** Can you describe for the court what that
21 document is?

22 **A** I have put all the files together for what
23 has been done 24 years ago and have listed all the
24 people that have been contacted in preparation for
25 trial and that we had a file on.

1 On the left side, we have the names of
2 people that we had contacted or that had been
3 contacted or come across somehow. Then we have dates
4 for the subpoenas that have been issued. Then we
5 have whether -- information as to whether there had
6 been a contact with the person. We have the
7 information or date that the contact had been
8 initiated.

9 Q Did you prepare that summary?

10 A Yes, I have.

11 **MS. HARRIGAN:** The State would have just
12 moved in as Defendant's or Respondent's 1.

13 **MS. SHURLING:** I have no objection, Your
14 Honor. I do have a couple of questions.

15 **(WHEREUPON, Respondent's Exhibit 1 is marked for**
16 **identification and admitted into the record.)**

17 **MS. HARRIGAN:** No further questions, Your
18 Honor.

19 **THE COURT:** All right.

20 **CROSS-EXAMINATION**

21 **BY MS. SHURLING:**

22 Q Just to verify where the subpoenas were
23 listed by date, that indicates a subpoena was
24 prepared, obtained from the Clerk of Court's office.
25 But it doesn't verify whether or not the subpoena was

1 served, correct?

2 **A** That's my understanding. I came across the
3 files. My job was to file them accordingly.

4 **Q** I understand. In preparing these documents
5 in the folders as you have, did you also run across
6 any affidavits of service, certificates of service
7 with regard to any of these subpoenas that would
8 verify whether they were ever actually served on the
9 individuals?

10 **A** No. Nothing. Anything and everything that
11 has been put together in preparation of the trial is
12 here and is indicated on the list.

13 **Q** Okay. If there is nothing by the
14 individual's name at all, what does that indicate?

15 **A** That the name has come across in other
16 files. Let's say it was mentioned somewhere. There
17 is -- no contact means no contact. You can pull up
18 the file. Maybe it was a witness by the State that
19 has been mentioned. So I made that documentation and
20 it's in the file. There was no subpoena or contact,
21 it's indicated on the side.

22 **Q** I understand. You hit on exactly what I
23 was trying to figure out. If there is no indication
24 that a subpoena was drafted or obtained and there's
25 no contact information, but there is still a name,

1 that just means that's a name you ran into in some
2 other documentation in the case?

3 **A** It could have been mentioned by some other
4 people that -- yes. Somehow it has been indicated
5 that's a party of the trial somehow or witnesses or
6 anybody that has some kind of contact information.

7 **Q** Certainly. And again, if the person's name
8 is listed and there is no contact information, that
9 means that out of all of the file information you
10 went through, there was no documentation of that
11 witness having ever been contacted or interviewed?

12 **A** Absolutely.

13 **MS. SHURLING:** Thank you. No further
14 questions. One moment's indulgence, Your Honor.
15 (Pause.)

16 **BY MS. SHURLING:**

17 **Q** When you were going through the files, were
18 the materials that were directly related to Mr.
19 Tillman's federal charges segregated from those that
20 were on the murder charge?

21 **A** Absolutely.

22 **Q** So all of these names that are listed are
23 people that have some connection with the murder
24 charge?

25 **A** Yes. Those were totally separate boxes. I

1 had not worked on federal charges at all.

2 Q So all of these names were mentioned or
3 brought up in some capacity in some documentation in
4 the murder case. They don't have anything to do with
5 the federal charge?

6 A I believe there might be some overlap. But
7 yes, I only worked on the murder charge.

8 MS. SHURLING: Thank you. No further
9 questions, Your Honor.

10 MS. HARRIGAN: No further questions.

11 MS. SHURLING: Certainly. And no
12 objection to it. I just needed it verified for
13 the record.

14 THE COURT: Thank you very much.

15 THE WITNESS: Thank you.

16 MS. HARRIGAN: No additional witnesses
17 from the State, Your Honor, at this time.

18 THE COURT: Anything?

19 MS. SHURLING: Nothing further.

20 THE COURT: Everybody know what we're
21 doing?

22 MS. SHURLING: Yes, sir.

23 THE COURT: Anybody got any questions
24 about it?

25 MS. SHURLING: No, sir.

1 **MS. HARRIGAN:** No; sir.

2 **THE COURT:** All right. Very good. Thank
3 you very much. Have a good day.

4 **(END OF PROCEEDING)**

5

6

7

8

9

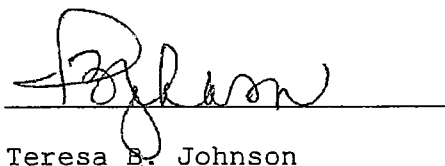
CERTIFICATE

263

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland, South Carolina, on this 6th day of September, 2014.

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

A handwritten signature in cursive script, appearing to read "T. B. Johnson", is written over a horizontal line.

Teresa B. Johnson

Official Court Reporter

Applicant's

11-19-13

WITNESSES

DOCKET NO. 89 GS 40 07 39

THE STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

FEBRUARY

TERM

1989

THE STATE

VS.

HAYES MALLOY

ARREST WARRANT NO. C249258

ACTION OF GRAND JURY

TRUE BILL

James J. Knight

FOREMAN OF GRAND JURY

VERDICT

INDICTMENT FOR
MURDER

S. C. Code 16-3-20

(116)

DK

FOREMAN OF GRAND JURY

DATE

Nolle Prosequi
1/12/90
Nol Pro at
request of
investigating
officer.

James C. Anderson
Solicitor

William D. Bolton
Asst. Solicitor

CERTIFIED TRUE COPY
ORIGINAL FILED

RICHLAND COUNTY
SOUTH CAROLINA

FORM 5 (9/86)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on February 9, 1989
the Grand Jurors of Richland County present upon their oath:

COUNT ONE - MURDER

That HAYES MALLOY
did in Richland County on or about December 26, 1988,
feloniously, wilfully and with malice aforethought, kill one Donald I. Sutton
by means of a pistol
and that the said victim died as a proximate result thereof.

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

James E. Carter
SOLICITOR

8864 8774

COPY
D, J.
C.C.C.P.&G.S. 1
RICHLAND COUNTY
SOUTH CAROLINA 1

1952

Applicant's
2
11-19-13

STATE OF SOUTH CAROLINA
COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, Judge of the Court, one Corinthian A. Hampton,
who being duly sworn, deposes and says that Hayes Malloy (name of defendant) did within this County
and State on December 28, 1988 violate the criminal laws of the State of South Carolina [or ordinance of the municipality
of _____] in the following particulars:

DESCRIPTION OF OFFENSE

ABWIK

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and
that such probable cause is based on the following facts:

That on December 28, 1988, one Hayes Malloy did shoot one Corinthian A.
Hampton with a pistol twice striking him on the left side of the head and
right hand. Hayes Malloy has admitted to investigators at RCSD on shooting
Corinthian A. Hampton at the Choplace Funk Lounge on Atlas Road in Richland
County.

B 786660

Sworn to and Subscribed before me,

This 29th day of December, 19 88

Corinthian A. Hampton
Signature of Judge

Address 4329 McLeod Dr

Phone: 726-6447

Worrell C. H. Co (L.S.)

JUDGE HAROLD G. FOSTER

Address P. O. BOX 125

EASTOVER, S. C. 29041

Phone: 415ME 353-2242

STATE OF SOUTH CAROLINA
COUNTY OF Richland

ARREST WARRANT

MUNICIPALITY OF _____

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Hayes Malloy
(name of defendant) did on December 28, 1988, violate the criminal laws of the State of South Carolina [or ordinance
of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

ABWIK

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Done at Eastover, S.C.
on December 29, 1988, 19 _____

Worrell C. H. Co (L.S.)

FORM CONTINUES ON BACK
ORIGINAL

0055 0798

Applicant's
11-19-13
H91

953

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE
COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court - Copy For The Defendant

Ticket or Warrant No.

BAIL PROCEEDING

FORM 1

IN THE COURT OF GENERAL SESSIONS
MAGISTRATE COURT
MUNICIPAL COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

State.

NAME-MALBY

Name of Defendant

Offense Charged
GENERAL SESSIONS

Trial Court

IT IS HEREBY ORDERED

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and to do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the 29 day of DECEMBER 1988, I, the undersigned, a Magistrate of the State of South Carolina, in the sum of \$5,000.00, have who acknowledged himself indebted to the State of South Carolina in the sum of \$5,000.00, dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of this order.

III

The defendant agrees that he will notify the court promptly if he changes his address from the one contained in this order and that he will comply with the following other conditions of release.

IT IS FURTHER ORDERED

H.M.

That the defendant shall appear at

THE COURT OF GENERAL SESSIONS
MAGISTRATE COURT
MUNICIPAL COURT

Place of Trial
Defendant at the Courtroom

Time as the court may direct.
and remain there throughout the term of court or until some disposition is made of his case at such other place, date and time as the court may direct.

FORM CONTINUES ON BACK

950A (5-10-1984)

1954

ACKNOWLEDGMENT BY DEFENDANT

I understand that if I violate any condition of this order, a warrant for my arrest will be issued.
I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

Attorney Representing Accused
(If Known)

Wayer Malloy (L.S.)
Signature of Defendant

Address

Columbia, S.C. 29201
City and State

Telephone

Social Security Number

Harold C. Hill
Signature of Judge

DEC 29 1988

Date

88-6-8-1888

Applicant's

13-01-11

DOCKET NO. 89CS400738

COURT OF GENERAL SESSIONS

#06

FEBRUARY TERM 1989

THE STATE

vs.

ARREST WARRANT NO. B786600

HAYES MALLOY

ACTION OF GRAND JURY

INDEX

FOREMAN OF GRAND JURY

VERDICT

INDICTMENT FOR
ASSAULT AND BATTERY
WITH INTENT TO KILL
XONEDSTRYING
CSEKTKES MEANAN

S. C. Code C/L 17-25-20

(013)

FOREMAN OF PETIT JURY

DATE:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Donetta W. McBride
D.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

1956

CERTIFIED TRUE COPY
OF ORIGINAL FILED
James C. Padden
S.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

FORM 8 (9/86)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
INDICTMENT FOR ASSAULT AND BATTERY
WITH INTENT TO KILL
~~AND CARRYING CONCEALED WEAPON~~

At a Court of General Sessions, convened on February 9, 1989,
the Grand Jurors of Richland County present upon their oath:

COUNT - ASSAULT AND BATTERY WITH INTENT TO KILL

That HAYES MALLOY
did in Richland County on or about December 28, 1988, with
malice aforethought commit an assault and battery upon one
Corinthian A. Hampton with intent to kill the said victim.

COUNT TWO - CARRYING CONCEALED WEAPON

That _____
did in _____ County on or about _____, carry
concealed about his person a deadly weapon, to wit: _____

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

James C. Padden
SOLICITOR

8865 0784

1957
Applicant's
5
11-19-13
SH

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

VS.)

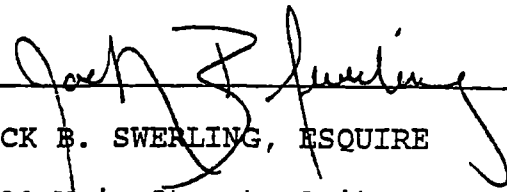
RONALD TILLMAN,)

DEFENDANT.)

8-9-745
Counts 5
1-28-90 MHA

DEFENDANT'S REQUEST TO CHARGE
EFFECT OF PRIOR INCONSISTENT STATEMENTS BY A WITNESS

Evidence that at some other time a witness, other than the accused, has said or done something, or has failed to say or do something, which is inconsistent with the witness' testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness; but may never be considered as evidence or proof of the truth of any such statement.


JACK B. SWERLING, ESQUIRE
1720 Main Street, Suite 301
Columbia, South Carolina 29201

Adapted from Dewitt & Blackmar,
Federal Jury Practice and
Instructions, 3rd Edition,
§§ 17.16

1958

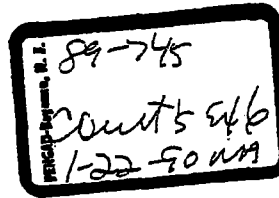
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

VS.)

RONALD TILLMAN,)

DEFENDANT.)



DEFENDANT'S REQUEST TO CHARGE

IMPEACHMENT - INCONSISTENT STATEMENTS OR CONDUCT -
FALSUS IN UNO FALSUS IN OMNIBUS

The testimony of a witness may be discredited or impeached by showing that the previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

STATE OF SOUTH CAROLINA)
) S. S.
COUNTY OF RICHLAND)

DATE 12-28-88

1959

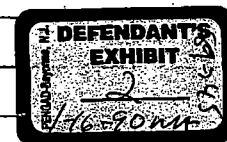
PERSONALLY APPEARED BEFORE ME, THIS DATE, AN OFFICER DULY AND LEGALLY AUTHORIZED TO ADMINISTER OATHS IN THE ABOVE-NAMED COUNTY AND STATE AFORESAID, COMES ONE

HAYES MALLOY 4
WHO MAKES THE FOLLOWING STATEMENT UNDER OATH TO WIT:

Applicant's
6
11-19-18

YESTERDAY, 12-27-88, AROUND 2:00 AFTER THE
DETECTIVES LEFT THE PARTY SHOP. VITO, OR THE GUY I
PICKED OUT IN THE PICTURE LINE-UP, CAME DOWN TO THE
PARTY SHOP AND TALKED TO REN. I WAS STANDING
OUTSIDE ACROSS THE STREET WHEN VITO CAME DOWN.
HE WAS DRIVING A BIEGE TOYOTA CAMRY LOOKING CAR. HE
PULLED UP, GOT OUT AND WENT INSIDE. I WALKED ACROSS
THE STREET AND INSIDE THE PARTY SHOP AND I SAW
VITO AND REN STANDING OVER BY THE JUK-BOX.
I SAW REN GIVE VITO A ROLL OF MONEY.
I DON'T KNOW HOW MUCH IT WAS BUT IT LOOKED
LIKE \$200.00 - \$300.00. IT COULD HAVE BEEN
MORE. I WAS BUYING A PINK OF CHIPS WHEN THIS
HAPPENED. I HAD TOLD REN TO GET ME THE 1800
OF CHIPS WHILE HE AND VITO WERE PASSING AWAY.
I WALKED AT THE REGISTER UNTIL REN CAME UP THERE.
HE DIDN'T SAY ANYTHING TO ME AT THIS TIME. BUT
HE DID TELL ME LATER "HOW YOU LIKE THAT
SHIT". I WALKED OUT THE DOOR AND WENT
DOWN ACROSS THE STREET. WHEN VITO CAME OUT
THE DOOR HE STARED AT ME REAL HARD.
HE GOT IN HIS CAR AND LEFT.

[END]



THIS STATEMENT WAS MADE IN THE PRESENCE OF INV. MARK AUSTIN, RCSD

I MAKE THIS STATEMENT OF MY OWN FREE WIL AND ACCORD, WITHOUT REWARD OR INTIMI-
DATION. ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO
HELP ME GOD.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28 DAY OF Dec. 1988

Ralph Kennedy
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 7-6-91

SIGNED

WITNESS

WITNESS

Hayer Malloy
Mark Austin

1960

STATE OF SOUTH CAROLINA)

) S. S.

COUNTY OF RICHLAND)



Applicant's

7

11-19-13

Page

12-29-88

PERSONALLY APPEARED BEFORE ME, THIS DATE, AN OFFICER DULY AND LEGALLY AUTHORIZED TO ADMINISTER OATHS IN THE ABOVE-NAMED COUNTY AND STATE AFORESAID, COMES ONE

HAYES Malloy
WHO MAKES THE FOLLOWING STATEMENT UNDER OATH TO WIT:

Coln., St. 29201

TODAY AT AROUND 2:00 pm. John Corbett and David Whaley told me that they saw Ron pick up a boy on Walcott Street Monday Night Around 8:30 or 8:40. After Ron picked him up, they drove off.

I want to correct something in my statement that I gave you on 12-26-88. I told you that Vito met Ron at the Shop, but he didn't.

After Vito drove off with Sutton, Ron came over to me at the Shop and told me how to find the body behind the church. THEN Ron got into his car and drove off. About 30 mins. later I saw Vito walking straight down Shop towards Walcott.

I didn't see him get in the car with Ron, but David Whaley, Herman Whaley, John Corbett, and Scott English DID SEE him get into the car with Ron. They probably couldn't tell if it was Vito or not, I don't know, but they told me that they saw someone get into the car.

Scott English, David Bynum, and "Pig" know that Ron wanted that guy dead. Ron has propositioned David Bynum and "Pig" to do the job, but they didn't do it. Ron has told Scott English that he wanted Sutton killed. Scott told me this on Tuesday while grill were down there at the store. Scott said "Ron did that cause he's been propositioning ^{the} people with money to do it."

THIS STATEMENT WAS MADE IN THE PRESENCE OF INV. Mark Austin, RCSD

I MAKE THIS STATEMENT OF MY OWN FREE WILL AND ACCORD, WITHOUT REWARD OR INTIMIDATION. ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP ME GOD.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 27 DAY OF 12

SIGNED

WITNESS

WITNESS

Notary Public
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 5/88

1961

STATE OF SOUTH CAROLINA)

) S. S.

COUNTY OF RICHLAND)

DATE

12-29-60

PERSONALLY APPEARED BEFORE ME, THIS DATE, AN OFFICER DULY AND LEGALLY AUTHORIZED TO ADMINISTER OATHS IN THE ABOVE-NAMED COUNTY AND STATE AFORESAID, COMES ONE

Hayer Mulloy
WHO MAKES THE FOLLOWING STATEMENT UNDER OATH TO WIT:

John Corbett told me that David Byrum
has told him that Ron wanted to pay him some
money to kill the boy.

Today "Pig" told me that Ron offered him
some money to kill that guy. "Pig" lives
in Bluff Estates somewhere.

The reason I had to change my statement
is because I was a little high that night
but what I'm telling you now is the truth.

[END]

THIS STATEMENT WAS MADE IN THE PRESENCE OF Inv. Mark Austin, RCSD

I MAKE THIS STATEMENT OF MY OWN FREE WIL AND ACCORD, WITHOUT REWARD OR INTIMI-
DATION. ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO
HELP ME GOD.

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 27 DAY OF 12

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 9/8

SIGNED

[Signature]

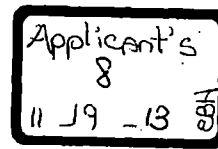
WITNESS

[Signature]

WITNESS

[Signature]

1962



ABIK ON 12/22/87

SHOOTING AT PARTY STOP

COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, judge of the Court, one Bogan for Bell, RCSD
 who being duly sworn, deposes and says that Hayes Malloy (name of defendant) did within this County
 and State on December 22 19 87, violate the criminal laws of the State of South Carolina [or ordinance of the municipality
 of Columbia] in the following particulars:

DESCRIPTION OF OFFENSE

AssaultWith Intent to Kill

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and
 that such probable cause is based on the following facts: DTM MARKET

That on December 22, 1987 one Hayes Malloy did commit the crime of Assault
 With Intent to Kill in that the defendant did fire rifle into the door at 1744 Shop
 Road in Richland County, after the victim had just entered the room. The defendant
 did then leave the building. The victim identified the defendant at another location
 within an hour of the incident.

Affiant and others are witness to prove the same. RONALD PAUL

Sworn to and Subscribed before me,

This 23 day of December, 19 87.

[Signature] (L.S.)
 Signature of Issuing Judge

Address [Signature]COLUMBIA, S.C. 29201Phone: PHONE 783-2244

[Signature]
 Signature of Affiant

Address RCSD

Phone: _____

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Richland[or MUNICIPALITY OF Columbia]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Hayes Malloy
 (name of defendant) did on December 22 19 87, violate the criminal laws of the State of South Carolina [or ordinance
 of the municipality of Columbia] as set forth below:

DESCRIPTION OF OFFENSE

Assault

With Intent to Kill

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
 dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.

Done at Columbia
 on December 23, 19 87.

[Signature]
 Signature of Judge

FORM CONTINUES ON BACK
 ORIGINAL

1964

88-1877

South Carolina Court Administration
WARRANT AND INDICTMENT STATUS CHANGE FORM
 (One defendant and one warrant/indictment per form)

Defendant Name MALLOY HAYESCounty 40 RichlandAction Date 06/08/88Indictment No. GS

- ☐ Indictment Placed on PTI
☐ Indictment Placed on Contingent Docket
☐ Indictment Nol Pros (See reason below)
☐ Indictment Pros Ended (See reason below)

Warrant Number 8-962762

- ☐ Warrant Reinstated
☐ Warrant Placed on PTI
☐ Warrant Removed from PTI
☐ Warrant Transferred to Summary Court
☒ Warrant Dismissed (See reason below)

New Arrest Date / /
 Warrant: File Date / /

Reason for action (optional) Comp witness drop chargesAuthorized by Creston Coleman
(Solicitor)Received by Barbara A. Holt Date Transmitted To 06/09/88
(Clerk of Court) Court AdministrationSCCA/212
8/84

White Copy - Clerk

Canary Copy - Court Administration

Pink Copy - Solicitor

by payment to the court of 100 (10%) of this bond in cash, this amount being \$ 100. The defendant will be obligated to the State in the full amount of \$ 1,000, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this order.

APPEARANCE RECOGNIZANCE WITH SURETY

- () The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$.

IT IS FURTHER ORDERED:

3. That the defendant shall appear at the call of the case by the solicitor, whether pre-indictment or post-indictment, and written notice is mailed to the defendant at the address listed below.
GENERAL SESSIONS COURT AT
THE CALL OF COURT BY SOLICITOR
 Place of Trial Time Initials of Defendant H.M.
 and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.
Bell, RCSD

4. That those conditions described on the reverse side which are marked are also imposed.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

Columbia, S.C.
697-56-5412
256-1780
 Social Security Number/Telephone No.

Nages Malloy (U.S.)
 Signature of Defendant
 Date

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
 Original Copy for the Trial Court - Copy for the Defendant
 FORM CONTINUES ON BACK

SCCA/511 (9/88)

1965

RICHLAND COUNTY SHERIFFS DEPARTMENT

DATE 05/24/89

INCIDENT REPORT

TIME 114052

CASE NO: 1222873040

INCIDENT TYPE: AGG ASSAULT

PREMISE TYPE:

INCIDENT LOCATION: 1746 SHOP ROAD

AREA: 70 SUBDIVISION:

GEO CODE: E 06

— INCIDENT DATE/TIME: 99/99/99 9999 TO 12/22/87 2055 RELATION:

OFFICER ASSIGNED: GOFF, ALBERT DAVID S

INVESTIGATOR ASSIGNED: NIMMONS, TED S(REG 4/21/89)

	ADDRESS	PHONE
VICTIM:		
PAUL, RONALD	A&A LIQUOR STORE	765-1226
RACE: B SEX: M AGE: 30	SC	

NARRATIVE:

COMPL STATED THAT AT THE ABOVE TIME AND DATE, SUSPECT CAME INTO LOCATION CARRYING A HIGH POWERED RIFLE LOOKING FOR TWO SUBJECT(S). SUSPECT THEN LEFT LOCATION AND COMPL FOLLOWED HIM OUTSIDE TO TRY AND FIND OUT HIS NAME. AS COMPL WAS COMING BACK IN HE SAW SUSPECT COMING AROUND THE BUILDING WITH THE RIFLE. SUSPECT CAME IN AND ASKED WHO WAS LOOKING FOR HIM. SUSPECT THEN LEFT AND A MINUTE LATER FIRED ONE SHOT FROM THE .270 CAL RIFLE THROUGH THE PARTIALLY OPENED DOOR. (REPORTING OFFICER FOUND EMPTY CASING OUTSIDE OF THE DOOR) THE BULLET WENT THROUGH THE DOOR AND STRUCK A CASH REGISTER TOTALLY DESTROYING IT, BARELY MISSING THE COMPL COMPL STATED THAT AFTER A FEW MINUTES, SUSPECT CAME BACK INSIDE STILL HOLDING THE RIFLE. AFTER ASSISTING OWNER ARRIVED HE ASKED SOME OF HIS FRIENDS AND THEY STATED THAT SUSPECT WAS THE ONE WHO DID THE SHOOTING. REPORTING OFFICER OBTAINED THE ADDRESS FROM THE WITNESS AND TURNED OVER INFORMATION TO INVESTIGATOR NIMMONS. REPORTING OFFICER AND INVESTIGATOR NIMMONS WEN TO ADDRESS AND TALKED WITH SUSPECT. SUSPECT PLACED UNDER ARREST AND TURNED OVER TO RCSD.

NO STOLEN PROPERTY FOR: PAUL, RONALD

NO STOLEN VEHICLES

1966

INCIDENT LOCATION: 1746 SHOP ROAD

AREA: 70 SUBDIVISION:

GEO CODE: E 06

INCIDENT DATE/TIME: 99/99/99 9999 TO 12/22/87 2055 RELATION:

OFFICER ASSIGNED: GOFF, ALBERT DAVID S

INVESTIGATOR ASSIGNED: NIMMONS, TED S(REG 4/21/89)

	ADDRESS	PHONE
VICTIM:		
PAUL, RONALD	A&A LIQUOR STORE	765-1226
RACE: B SEX: M AGE: 30	SC	

NARRATIVE:

COMPL STATED THAT AT THE ABOVE TIME AND DATE, SUSPECT CAME INTO LOCATION CARRYING A HIGH POWERED RIFLE LOOKING FOR TWO SUBJECT(S). SUSPECT THEN LEFT LOCATION AND COMPL FOLLOWED HIM OUTSIDE TO TRY AND FIND OUT HIS NAME. AS COMPL WAS COMING BACK IN HE SAW SUSPECT COMING AROUND THE BUILDING WITH THE RIFLE. SUSPECT CAME IN AND ASKED WHO WAS LOOKING FOR HIM. SUSPECT THEN LEFT AND A MINUTE LATER FIRED ONE SHOT FROM THE .270 CAL RIFLE THROUGH THE PARTIALLY OPENED DOOR. (REPORTING OFFICER FOUND EMPTY CASING OUTSIDE OF THE DOOR) THE BULLET WENT THROUGH THE DOOR AND STRUCK A CASH REGISTER TOTALLY DESTROYING IT, BARELY MISSING THE COMPL COMPL STATED THAT AFTER A FEW MINUTES, SUSPECT CAME BACK INSIDE STILL HOLDING THE RIFLE. AFTER ASSISTING OWNER ARRIVED HE ASKED SOME OF HIS FRIENDS AND THEY STATED THAT SUSPECT WAS THE ONE WHO DID THE SHOOTING. REPORTING OFFICER OBTAINED THE ADDRESS FROM THE WITNESS AND TURNED OVER INFORMATION TO INVESTIGATOR NIMMONS. REPORTING OFFICER AND INVESTIGATOR NIMMONS WEN TO ADDRESS AND TALKED WITH SUSPECT. SUSPECT PLACED UNDER ARREST AND TURNED OVER TO RCSD.

NO STOLEN PROPERTY FOR: PAUL, RONALD

NO STOLEN VEHICLES

CASE STATUS:

CLEARED DATE: 12/22/87

HOW CLEARED: ARREST

** END OF REPORT **

Applicant's
9
11-21-13 

10:30 PM

I would like to know two things? "Did you had or taken a polygraph test for these crimes?" Did you know that Jackson Haze Attorney a year before these incidents happened? Well so much for my recent statements. Well haven't you wrote or call me 3 times that busy that you can't communicate with me. I would since my last letter I haven't heard anything from you. Are you still working on a appeal to come back to court. Do you know that those trial date are probably going on now. Now as we speak or as you are reading this letter, Ronald the gun that was used to shoot your father also was used it was the same type of gun that was used to kill Donald also the same type of gun to kill these two people that he is in jail for. Ronald please try hard to get some answer to those questions. Ronald do you remember the judge name that hear your

1968,

case. Please call me on Thursday after you get this letter or whenever you receive it my schedule Sunday 12:00 to leave Mon 6pm to leave; Tues 6pm to leave; Wed 6pm to leave. I am off all day Thursday; Friday Sat and Sun I go from 8:30 to 4:00 so between those hours you can reach me but please call.

Lets change conversation. There is in the first grade now and always talking about you. Do you know your schedule of visiting? Ronald I was thinking about so much lately and your case that it is driving me stupid. Me is in the fifth grade. I am still working hard, I will be so glad when you come home so that I can rest from working (sweat)

Ronald what are you doing? Did you get my card and letter. Thank you for responding so fast (hat hel).

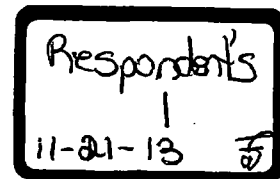
Ronald I can't stop thinking about your case and this other case that about to come out in court. wouldn't be something that Kaza get charge with the crime he committed and the one that you are serving time for if we have enough

evidence to present to the prosecutor
to use to indict him for and send
you free what a dream and it will
be a miracle if we could do this
before its to late. I no stop talking
and thinking too hard on this matter
right but your wrong I can't stop thinking
about it for weeks now that all I can think
about really except for your well being.
Remember to call or write me as soon
as possible. Love you always but if
you don't respond to me I will not
write you again for a year or more to
come.

P.S. Enjoy the pictures of me & Shane

Love you
Sophia

1970



<u>WITNESS / ENTITY</u>	<u>SUBPOENA</u>	<u>CONTACT</u>
Molly Abbott		
Bridgett Adams	1/15/90	Yes (no date; no initials)
Carla Adams	6/1/89; 1/9/1990	1/10/90 - Knows nothing about murder
Retina Adams	1/9/90	Jim on 8/29/89
Tina Adams		Jim on 12/18/89; Amy on 1/3/90
Ray Akins		
Tracy Alston		Jim on 1/9/90
David Anderson	6/1/89; 1/9/90	JT (no date)
George Anderson		JT on 5/26/89
Robert Anderson a/k/a Tony Green	1/9/90; 1/15/90	JT on 5/22/89; JT on 5/26/89; 5/29/89 (no initials); 1/15/90 (no initials)
Tracey Archie		1/15/90 (no initials); JT (no date)
Dr. Armstrong		
Mark Austin		12/28/89 (no initials); JT on 8/15/89
Tracy Austin		
Phil Bartlett		JT on 8/15/89
Walter Benefield	6/1/89; 1/9/90	Yes on several occasions (no

date or initials); Sam Frierson
on 5/16/89; JT on 1/6/90

Isiah Bennett

- in cell with HM; HM told him that he
would do anything to cut his time even
though he knew RT did kill DS

1/22/90 (no initials)

Izell Bennett ("Frog")

1/18/90 (no initials)

Buddy Bethea

Lisa on 5/19/89 and 5/25/89

William Bilton

Jennifer on 1/26/89

Jim Bo

Jennifer on 1/14/90

Lisa Brisby ✓

- alibi (8:30-9:00)

1/9/90

JT on 1/2/90

Anthony Brown

JT on 5/26/89

Betty Brown

1/11/89 (no initials)

Capt. Billy Brown

Sydney Brown

Earl Broach ("Dusty")

6/1/89; 1/9/90

JT (no date)

Budget Cars

John Burnett (Polygraph)

1/9/90; 1/15/90 (Note
says Do Not Serve)

David Bynum

1/15/90

JT on 1/13/90

James Bynum

1/9/90; 1/15/90

Tony Bynum a/k/a Tommy Lee

1/9/90

Multiple occasions (no date, no

1972

Bynum		initials); JT on 1/11/90; JT on 1/12/90; Jennifer on 1/6/90
John Christy	1/15/90	1/12/90 (no initials)
John Corbitt	1/9/90; 1/16/90	JT (no date)
Joe Crowns		
Mary Davis		Melissa on 5/12/89
Leviae Dees	6/1/89; 1/9/90; 1/15/90	JT (no date)
John Delgado		JBS on 1/11/90
Detention Center	Subpoenaed records	
Melvin Duncan		JT (no date)
Lloyd Dunham	1/15/90	Notes (no date, no initials)
Dr. Dunlap		Jennifer on 12/18/89, 1/12/90, and 1/13/89
Lt. John Edwards		
Scott English - denies RT saying anything about killing DS - didnt see anybody in a car with RT on the night of the murder	1/9/90	12/29/89; 1/6/89 (no initials)
Gordon English	1/15/90	
Norris Evans	1/15/90	1/13/90 (no initials); JBS on 1/27/90
Rubin Eubanks - had a fight with Gabby Wells	6/1/89; 1/9/90; 1/15/90	JT on 1/6/90

Diane Frady

- works at RCDC and testified that HM
and Gabby Wells were in the same cell

Kenneth Gardner	1/15/90; 1/17/90	JT on 1/14/90
Curtis Geer	1/9/90	JT on 5/26/89; 5/27/89; 1/20/90
Judge Gibson		JT (no date)
Stephen Gilmore		JT (no date)
Larry Goodman		JT (no date)
Yvonne Goodwin		Amy on 1/3/90 and 1/4/90
Curtis Green		
Donnie Green	6/1/89; 1/9/90	Sam Frierson on 5/15/89
George Green	6/1/89; 1/9/90	
Larry Green	6/1/89; 1/9/90; 1/15/90	5/20/89; 1/6/90 (no initials); JT on 3/15/89; 5/15/89
Donny Griffin		
Joe Grooms		
Mr. and Mrs. Hagler		
Bruce Hall		Yes, no date or initials
Howard Hammon		
Dorothy Hardin		JT (no date)

1974

Mr. Harris

Mike Harrison

Mona Harriston

Darlene Hayes

- says RT left for Party Shop for the
Fountain Bleu t 7pm

1/15/90

JT (no date)

Molly Hayes

1/15/90

JT (no date)

Penny Hayes

Hugh Henderson, RCSD

5/31/89; 1/9/90

Yes (no date or initials)

Gene Howe

Yes (no date or initials)

Charles Huitt

6/1/89; 1/9/90; 1/15/90

JT on 5/22/89; 5/27/89 (no
initials)

Jeffrey Isaac

1/15/90

JT (no date)

Lavette Jefferson

JT on 1/5/90; Attempt on 1/6/90

Nathaniel Jamison

6/1/89; 1/9/89

5/20/89 (no initials)

Edward Johnson

1/9/90; 1/15/90

Eric Johnson

Lou Johnson

Eugene Knight

JT (no date)

Terry Laminick

JT on 5/22/89

Charles Lee

William Lewis	1/9/90; 1/15/90	
Sandra Livingston		JT (no date)
Gwendolyn Lovejoy		
Marvin Lovejoy	6/1/89; 1/9/90; 1/15/90	Witness would not talk; Attempt made on 5/30/89
Naim Mahdi	1/15/90	Yes (no date or initials)
Veto Mackey - alibi	1/9/90	Melissa on 5/16/89; 12/26/89 (no initials); JT on 1/2/90; 1/4/90 (no initials); JT on 1/9/90
Cleveland Malloy	1/16/90	
Hayes Malloy	1/9/90; 1/15/90	1/3/90 (no initials)
Off. James McCord	1/15/90	Amy on 1/3/90 and 1/4/90
Inv. McGee		
Angelo Kerry McKie	1/9/90	JT on 1/2/90
Charles McNees	1/9/90	
Michael McQueen	1/9/90	
Rufus McQueen		Yes (no date or initials)
Lisa Misicka		Jim on 1/10/90 and 1/11/90
Martin Mitchell		JT on 5/26/89
Randy Mondor, FBI		

1976

Butch Nuttall		Yes (no date or initials)
Brian O'Connell		
Frank O'Neal		
Sgt. O'Neil		
Woody Poplin		Yes (no date or initials)
Joseph Powell	1/9/90	
Sophia Pringle	6/1/89; 1/9/90	Melissa on 5/9/89 and 5/26/89; attempt made on 1/6/90
Mike Arthus Roberts	6/1/89; 1/9/90; 1/15/90	1/10/89 (no initials)
Albertine Robinson	6/1/89; 1/9/90	5/20/89 (no initials)
Anthony Rogers		1/18/90 (no initials); JBS on 1/22/90
Adrien Scott	6/1/89; 1/9/90; 1/15/90	
Alphonso Shell	1/9/90	JT on 5/26/89
Bridgette Shell	1/9/90	Melissa on 5/16/89; Jim on 1/2/90
Chelsea Shell	1/9/90	Jim on 1/2/90
Park Smalls		Jennifer on 1/4/90
Jerry Smith	1/9/90	
Jametta Span	1/15/90	Amy: attempt made on 1/3/90; Jim: attempt made on 1/5/90 and 1/6/90; 1/20/90 (no initials)

Jimmy Spann

Capt. Stevenson

JT on 5/26/89

Dean Stewart

1/9/90

Inv. Stewart

Lt. Art Sulton

1/15/90

Jim on 1/14/90

Noah Sumter

JT (no date)

Donald Sutton

Maedell Sutton

Jim on 12/5/89 and 12/15/89;
Jennifer on 12/7/89

Delaney Sykes

1/9/90

Willy Taylor

JT (no date)

Arthur Tillman

5/31/89 (no initials)

Ronald Tillman

Thomas Tillman ✓
- alibili

Yes (no date or initials); Jim (no
date); Jim on 1/2/90 and 1/6/90

Jim on 10/16/89 and 12/15/89

Mrs. Tillman

Jim Tolbert

JKS on 6/26/89; Jennifer on
12/18/89

Willie Wages

1978

Francis and Ree Walker
- witnessed RT and Gabby Wells having
a fight at the Party Shop

1/15/90

Jim on 1/6/90

Andre Washington

5/31/89; 1/9/90; 1/15/90

Lori Washington

Gary Watts

Clarence "Gabby" Wells

1/9/90

Chris Wessinger

6/1/89; 1/9/90

Melissa on 5/9/89; 5/26/89

Herman and David Whaley
- didnt see RT pick anybody up on
Wayley St or Walcutt St

1/9/90

1/6/90 (no initials)

Julius "Junior" Whitaker

1/15/90

Mathew Whitaker

1/15/90

Yes (no date or initials)

Henry Williams

1/9/90

1/6/90 (no initials)

Kennedy Williams

1/15/90

Jim on 1/11/90; 1/13/90 and
1/14/90

Terry Williams

Larry Wise

Frank Wright

1/9/90

JT on 5/26/89; 5/27/89 and
5/31/89

We have to confirm that Sam Frierson was our investigator (we have him

1980

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ronald Tillman #222153
Applicant

vs.

The State
Respondent

) IN THE COURT OF COMMON PLEAS
) #2011-CP-40-7453
)

) MOTION TO DISMISS COUNSEL
) AND

) MOTION FOR STAY AND OR
) CONTINUANCE
)

Now comes the above named applicant, who moves before this Honorable Court in the above entitled matter.

Your Honor,

I move again before this Honorable Court to dismiss defense counsel Tara Dawn Shurling and grant a continuance or stay of proceedings until the court is able to appoint counsel for the applicant and or sufficient time for the applicant to retain private counsel. A continuance would also permit selected counsel sufficient time to thoroughly assess and investigate my case and interview witnesses.

Ms. Shurling is continuing to deny me Due Process per the U.S. and S.C. Constitution and the P.C.R act by refusing to interview and subpoena my witnesses as well as her reluctance to address the original sentencing issue.

This Honorable Court has given Ms. Shurling a 90 day deadline to interview and take depositions from the witnesses asked to come before the court.

Furthermore I am being prejudiced by the failure to include all 9 of the witnesses that I originally requested at my P.C.R. hearing. The witnesses names are Hayes Malloy, Cleveland Malloy, Lt. Sulton, Mark Alston, Robert Jenkins aka "Pig", David Bynum, Jeremy Bynum SCDC # 284966, Herman Whalley, John Corbitt and Gabbey Wells. The court has granted deposition on only 4 of the 9 above named witnesses. Counsel's intended deposition will not cover the applicants needed questions and answers. Ms. Shurling knew that I requested of her to take full depositions that will support my claims. Yet she has failed to do so. See (Bannister v the State 509 s.e.2d 807 : Glover v State 458 2nd edition s.e.2D 538) I will not be able to raise all my claims per. 17-27-90 or prove my claims by the preponderance of the evidence see: (Butler v state 334 s.e. 2D 813 : S.C.R. Civil P. Rule 71.7 (e)).

The above named applicant lacks confidence in current counsel Tara Dawn Shurling due to her ineffectiveness and a conflict of interest shown before the court on 11-19-13 thru 11-21-13. The record will show that Ms. Shurling was not sufficiently prepared to cross examine Mr. Swerling on matters pertaining to the above listed witnesses because of her failure to interview these witnesses. Mr. Swerling noted this fact on the record in his response to Ms. Shurlings question. Furthermore Counsel

Ms. Shurling displayed a conflict of interest due to the statement she made " You ruined my relationship with Jack Swerling and he will probably never speak to me again." to the applicant at the P.C.R. hearing. Due to counsels statement and inability to subpoena the witnesses, inspite of the courts order and 90 day deadline to do so, applicant has no confidence in counsel Tara Dawn Shurling's ability to perform her duties effectively and defend this case successfully. Wherefore I pray that this motion be granted in the common interest of fairness and justice.

Date: December 31, 2013

Sincerely and Respectfully
submitted,

s/ Robert S. Tillman

SWORN TO BEFORE ME this 2nd
day of January, 2013

Stephane Marshall (L.S.)

Notary Public for South Carolina

My Commission Expires: May 12, 2021

1982

2011-7453

Date : 2/18/14

Dear Ms. Shurling

Please find enclosed for filing my notice / motion
for leave to conduct discovery / order.

Would you be so kind as to file this matter upon
my behalf. Also serving the Atty : Gen.'s office one and sending
me a filed copy back.

cc. Clerk of Court,

Sincerely,

Ronald S. Tillman

RICHLAND COUNTY
FILED
2014 FEB 24 PM 2:41
JEANETTE W. McBRIDE
C.C.P. & G.S.

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ronald Tillman #222153
Applicant

vs.

The State
Respondent

IN THE COURT OF COMMON PLEAS
#2011-CP-40-7453

NOTICE AND MOTION FOR LEAVE
TO CONDUCT
DISCOVERY AND ORDER

PLEASE TAKE NOTICE that the Applicant, through his undersigned counsel who moves this Honorable Court in the above entitled matter for leave to conduct discovery per. S.C.R. Code Ann. 17-27-150 (A) and S.C.R. civil P. RULE 34

(1) Applicant submits that good cause exists for the authorization of discovery for the following reasons

(A) Use of discovery procedures will expedite Applicants preparation upon Applicants pending P.C.R. issues selected

(B) Discovery will permit Applicant to obtain necessary witnesses to be present at his P.C.R. hearing SEE: Bannister v. State 509 SE 2d 807; Glover v. State 458 SE2d 538. And or, to present evidence through affidavits and depositions of his witnesses in lieu of live testimony, Also see 17.27-80 and Simpson v. Moore 627 SE2d 701

(C) Permitting discovery will substantially reduce the last - minute continuance in this matter.

(D) If discovery is not authorized Applicant will be denied due process thus he will have no option but to pursue the information and materials he seeks through a subpoena to protect his due process rights.

WHEREFORE : for all the foregoing reasons Applicant submits that he has presented good cause for the invocation of discovery and therefore respectfully requests per. 17-27-150 (A) that the court authorize him to conduct discovery of his prior counsel and solicitor files, as prescribed by the S.C.R. Civil P. Rule 34.

I So Move

Date _____ SC.

Sincerely and Respectfully
submitted,

s/ _____
Counsel for Applicant

IT IS SO ORDERED

DATE _____

SC.

s/ _____
Judge

2011 FEB 24 PM 1:00
FILED
RICHLAND COUNTY
CLERK OF COURT
JENNIFER W. MOORE

1984

MH
5

Jeanette W. McBride
Clerk of Court
P. O. Box 2766
Columbia SC. 29202 - 2766

March 4, 2014

Dear Honorable Clerk

Please find enclosed for filing my notice/ motion
for show cause.

Would you be so kind as to forward Judge Hood
and me a filed copy back.

Thanking you in advance I am,
Sincerely,

Ronald L. Tillman

cc: Judge Hood
cc: Tara D. Shurling
cc: Attorney Generals Office
cc: Personal file

PROOF OF SERVICE

I Ronald S. Tillman certify that I have served my notice/ motion to show cause upon the below persons. By placing the above said into the McCormick Correction Institution mailroom on this 3rd day of 2014 to be placed in the U.S. mail with postage prepaid

Clerk of Court
Jeanette W. McBride
P.O. Box 2766
Columbia SC. 29204

The Honorable Judge Robert Hood
P.O. Box 192
1701 Main St. Suite 222
Columbia SC. 29202

Tara Dawn Shurling
3614 Landmark D. Suite D
Columbia SC. 29204

Attorney Generals' Office
A/A General
Megan Harrigan
P.O. Box 11549
Columbia SC. 29211

Sworn to before me this

3rd day of March

Stephane Marshall
Notary Public

s. / Ronald S. Tillman

My Commission Expires: May 12, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ronald Tillman #222153
Applicant

vs.

The State

Respondent

) IN THE COURT OF COMMON PLEAS
) #2011-CP-40-7453
)

) NOTICE AND MOTION TO SHOW
) CAUSE
)
)
)

Now comes the above named applicant, who moves before this Honorable Court in the above entitled matter.

This motion will be based on the following:

On November 21, 2013, the Hon., Judge Hood ordered my counsel, Ms. Shurling to interview witnesses upon my behalf. Although to this day Ms. Shurling has failed to interview any of my witnesses.

AS an officer of the court, Ms. Shurling should be well aware of the consequences of not following a court order. thus she should be required to explain why she should not be held in contempt of court for her non-compliance with the Judge's order.

Moreover, Ms. Shurling has failed to conduct discovery, thus given me all matters from my prior counsel knowing that I have the burden of proving my allegations by the preponderance of the evidence SEE: Butler v. State 334 SE2d 813: S.C.R. civil P. - Rule 71.1 (e). And must have my witnesses at my P.C.R. hearing SEE: Bannister v. State 509 SE2d 807: Glover v. State 458 SE2d 538.

Here, Ms. Shurling does not even have one affidavit to submit to this court from any one of my witnesses upon my behalf SEE: Simpson v. Moore 627 SE2d 701.

If this court deems that I can not submit the above motion because I am represented by counsel SEE: S.C.R. Civil P. - Rule 11: Foster v. Sate 379 SE2d 907: State v. Sanders 237 SE2d 53. Or do not answer this motion within 10 days.

IN THE ALTERNATIVE:

I will submit my INDEPENDENT ACTION a "Writ of Mandamus" which I am entitled to to enforce my other INDEPENDENT ACTION, by sending "motion to dismiss" Ms. Shurling. This action will be taken because Ms. Shurling has refused to protect my DUE PROCESS rights in this P.C.R Act, which is afforded to every person seeking collateral review of a conviction SEE: S.C.R. Civil P. - Rule 17. 1: P.C.R Act and Martinez v. Ryan 132 s ct. 1309.

March 3, 2014

Respectfully submitted

Ronald S. Tillman

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2011-CP-40-7453
	)	
RONALD TILLMAN,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

April 3, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

TARA D. SHURLING, ESQ.
Attorney for the Applicant

SUSANNE WHITE, ESQ.
CLAYTON MITCHELL, ESQ.
Attorneys for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

> > > < < <

CERTIFICATE OF REPORTER 52

PLAINTIFF'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	ODC letter	5	
2	Motion to dismiss	6	
3	filing+letter 2/18/14	9	

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	affidavits	49	

1 THE COURT: All right. We're on the record in
2 2011-CP-40-7453, Ronald Tillman vs. the State of South
3 Carolina.

4 Mr. Tillman is present in the courtroom represented
5 by Ms. Shurling. The State is represented by Ms. White,
6 Susanne White?

7 MS. WHITE: Susanne White, Your Honor.

8 THE COURT: Okay. Of the Attorney General's Office.
9 We had a hearing last fall, November, December of 2013 in
10 which we took testimony over a number of days.

11 At that point in time, I allowed Mr. Tillman through
12 his attorney to have some additional witnesses interviewed
13 and/or deposed and allowed the opportunity of the State to
14 reply to that via affidavit and ask for proposed orders by
15 a certain date and time which all parties agreed to.

16 Ms. Shurling, where are we now?

17 MS. SHURLING: Thank you, Your Honor. Your Honor, I
18 had made arrangements to interview the three witnesses
19 that I was granted leave of court to interview and then
20 potentially do depositions of in the 90 days following the
21 initial interview time.

22 I determined that Hayes Malloy was, in fact, still
23 housed at Lee Correctional Institution and made
24 arrangements to interview him. I was, in fact, planning
25 to interview him on Monday of the week following a

1 Thursday when I received a copy of a grievance that had
2 been filed against me with the Office of the Disciplinary
3 Committee, Your Honor. I have a copy for the Court.

4 THE COURT: Thank you.

5 MS. SHURLING: And, Your Honor, I guess to make a
6 good record, I would go ahead and move this in as an
7 exhibit for ID. I don't think we want it to be a part of
8 the actual PCR record at this stage. I'll leave that to
9 your discretion.

10 THE COURT: What's your position on that, Ms. White?

11 MS. WHITE: No objection, Your Honor.

12 THE COURT: Okay.

13 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
14 identification only.)

15 MS. SHURLING: Your Honor, ironically -- I should
16 backtrack for a moment. Previously in January, apparently
17 Mr. Tillman filed a motion to dismiss me as counsel, and
18 that motion was not initially served on me, but I
19 subsequently obtained a copy.

20 That actually was filed with the Clerk of Court's
21 office in January well before I received the actual
22 grievance. I would move for that to be marked Plaintiff's
23 2 for ID only.

24 MS. WHITE: No objection, Your Honor.

25 THE COURT: Very well.

1 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
2 identification only.)

3 MS. SHURLING: Your Honor, on the date of my receipt
4 for the grievance for the following day, I received a
5 phone call from Mr. Tillman.

6 At that point, he was wanting to know what was going
7 on with me interviewing the witnesses. I told him that I
8 had located Hayes Malloy; that I had a phone number for
9 the other lay witness that was to be interviewed, Herman
10 Whaley; that I had spoken with Mr. Whaley by phone, and he
11 had agreed for me to interview him by phone.

12 I was in the process of making arrangements to be
13 able to digitally record that conversation and planned to
14 interview him the following week. I was planning to go to
15 Lee Correctional on that Monday to interview Mr. Herman --
16 excuse me, Hayes Malloy, as well.

17 Your Honor, I have researched and located Lieutenant
18 Arthur Sultan, S-U-L-T-A-N. He was the third individual
19 that I was told I could interview and potentially take a
20 deposition from. I was able to determine that Lieutenant
21 Sultan had left the employ of the Richland County
22 Sheriff's Department and came back and worked part time
23 for awhile shortly thereafter and now is completely
24 retired from the Richland County Sheriff's Department.

25 However, I was able to determine his current address

1 and phone number, and again, we had plans to interview
2 Lieutenant Sultan concerning his recollection of the
3 events surrounding the investigation of Mr. Tillman's case
4 the week following when I received the grievance in the
5 mail.

6 When I spoke to Mr. Tillman on the phone, I explained
7 to him that I was in the very difficult position of him
8 having filed a grievance against me in which he very
9 plainly states that he didn't want me to be his lawyer
10 anymore.

11 I was ready, willing and able and, in fact, had made
12 arrangements to do the interviews of the three individuals
13 the court had granted me permission to speak to.

14 However, Your Honor, you know, as a -- as a former
15 litigator before taking the bench how crucial an initial
16 interview with a client is and how that interview can
17 impact someone subsequently -- if not the content,
18 certainly the tone and the course of subsequent either
19 in-court testimony or deposition.

20 My reticence, as I explained to Mr. Tillman, was that
21 I didn't want to go forward with those interviews and then
22 later have Mr. Tillman claim that what he might have
23 gotten out of those witnesses had somehow been tainted by
24 my ineffectual interviewing of the three witnesses in
25 question.

1 I told him for that reason that I was not real
2 comfortable going forward with the interviews until we had
3 further discussions with the Court.

4 At that point, I sent Your Honor an email which was,
5 of course, copied to the PCR division of the Attorney
6 General's Office, and then a copy of that email was
7 printed out and all emails, addresses and so forth were
8 blacked out, and a copy of the email was sent to
9 Mr. Tillman, as well, requesting that we have some sort of
10 a hearing to determine a resolution on this matter.

11 Interestingly, after that point in time, I received
12 on February 24th, 2014 correspondence from Mr. Tillman
13 which states, "Please find enclosed for filing my
14 notice/motion for leave to conduct discovery" asking if I
15 would be so kind as to file the document on his behalf.
16 The attached document actually is prepared for my
17 signature. It has a signature line for counsel for the
18 applicant.

19 At that point, I had already informed Mr. Tillman
20 that in my judgment, I could take no further action in
21 this case until such time as Your Honor gave me direction
22 given the fact that he had filed documents with the
23 disciplinary committee, essentially firing me saying that
24 he did not want me to be his lawyer.

25 I would move for this to be introduced as Applicant's

1 or Petitioner's 3 for ID only, any objection?

2 MS. WHITE: Without objection.

3 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
4 identification only.)

5 MS. SHURLING: I can, though, for the record -- even
6 if I had still been Mr. Tillman's counsel of record, I
7 would not have felt it appropriate to file the motion that
8 he asked me to file on his behalf because it is requesting
9 leave of Court to conduct discovery when Your Honor had
10 already granted us permission to do the additional
11 interviews and potentially to do three depositions. So I
12 felt -- and still do -- that until we had conducted those
13 interviews and potentially those depositions, there was no
14 ground for asking Your Honor for leave of court to conduct
15 discovery when you had already made a ruling on the scope
16 of the discovery that was going to be allowed by the
17 Court.

18 I believe fervently that we presented the issues
19 during the PCR hearing which warrant the grant of a new
20 trial for Mr. Tillman.

21 It's my belief -- and I have an awful lot of
22 experience in Post Conviction Relief matters -- that those
23 issues are likely to either result in a new trial in the
24 circuit court.

25 If they don't, there is a substantial probability

1 that they may in a PCR appeal. However, I am between a
2 rock and a hard place at this point. I have developed and
3 presented what I believe to be the strongest issues
4 Mr. Tillman has.

5 I was willing to -- I had good strategic and tactful
6 reasons for believing that it was not necessarily in
7 Mr. Tillman's best interest to pursue the line of
8 discovery he wanted me to pursue in this regard, but I
9 only agreed that I would follow direction from the Court
10 and the desires of the client and interview these
11 witnesses, but before I -- the time period for me to
12 conduct those interviews had run, Mr. Tillman was already
13 writing motions to have me relieved, filing grievances and
14 so forth.

15 There was one additional motion, Your Honor, and I
16 apologize. I thought my paralegal had packed it. I can
17 provide it to the Court, but it is in the Clerk of Court's
18 file, more recently after he filed the grievance -- or
19 after he first filed the motion to have me relieved as
20 counsel, and then after he subsequently filed the
21 grievance and still further after he sent me documents for
22 my signature as his counsel, he filed a Rule to Show Cause
23 with the circuit court demanding that I be required to
24 show why I had not followed through on Your Honor's ruling
25 that I could interview these three witnesses.

1 I had made it very clear to Mr. Tillman that the
2 reason I was not going to interview those witnesses until
3 I got further direction from the Court was the fact that
4 he had filed a grievance indicating that he no longer
5 wished for me to act on his behalf.

6 My concern, again, I'll repeat briefly is that if I
7 conducted the interviews and they did not go the way
8 Mr. Tillman wanted them to, that his next response would
9 be to say that I was without authority to act on his
10 behalf when I interviewed those witnesses.

11 I didn't want to further muddy the waters in this
12 case by taking any action until I got further directives
13 from Your Honor.

14 I would note -- and it's covered before, but it's a
15 point of professional pride for me -- that in the
16 grievance, he once again states that I'm obviously biased
17 against him because I said that he had ruined my
18 relationship with Jack Swerling, and that Jack Swerling
19 would probably never speak to me again.

20 As I said at that previous proceeding, when we came
21 back either after lunch or the following day -- I don't
22 remember which -- and Mr. Tillman jumped on me saying that
23 I had not gone after Mr. Swerling; that I had not acted as
24 a -- hadn't been a good lawyer; that I hadn't aggressively
25 gone after Jack Swerling; that I wasn't looking after him.

1 I was protecting my good buddy Jack Swerling, I reminded
2 Mr. Tillman at that moment that I had told him from that
3 beginning that Jack Swerling was a professional colleague
4 with whom I had worked frequently and had a high regard.

5 I assured him that that relationship would not affect
6 my ability to do my job in a PCR, but that if he thought
7 it would, he didn't need to have me as a lawyer.

8 I believe that I fully and completely acted in his
9 best interest as an advocate in cross-examining -- well,
10 rather in examining Jack Swerling during that PCR hearing,
11 and I'm confident that the record of that portion of the
12 PCR proceeding will reflect that I thoroughly -- and I
13 hate to use the word aggressively, but I thoroughly and
14 competently examined Mr. Swerling about all of the issues
15 that I believed stood a good chance of winning Mr. Tillman
16 a good trial. When I was -- a new trial.

17 When I was verbally attacked by Mr. Tillman claiming
18 that I had not done so with the zeal appropriate for an
19 advocate, my response was that I was shocked and
20 disappointed that he would accuse me of such a thing when
21 in actuality, I had done so with such zeal that who knows,
22 Jack Swerling might not ever speak to me again, and that
23 was the context in which those statements were made and is
24 the only way in which the statement was made.

25 I believe, Your Honor, that gets us up to date on

1 where we are. There has been no hearing, to my knowledge,
2 on his motion to have me relieved as counsel or on the
3 motion, the motion for Rule to Show Cause, asking that the
4 Court demand me to explain why I had not yet interviewed
5 the witnesses.

6 Thank you.

7 THE COURT: So what is -- what is your position
8 today, Ms. Shurling?

9 MS. SHURLING: I'm sorry, sir?

10 THE COURT: In two minutes or less, what is your
11 position today?

12 MS. SHURLING: Your Honor, I serve at the pleasure of
13 the Court. I will continue, if the Court directs me to.
14 If the Court sees fit to relieve me, I will understand.

15 I would suggest this, humbly: That at this point, I
16 believe that if the Court leaves me on the case and I
17 interview these witnesses in a manner that is not on the
18 record, if the conversations with these individuals do not
19 yield what Mr. Tillman believes they will, then it's going
20 to come back to him saying I didn't do it right.

21 I understand your previous ruling. I was
22 interviewing them, and then if I thought appropriate, we
23 would take depositions.

24 I would respectfully suggest to avoid this case being
25 around for years to come that the -- taking the pragmatic

1 approach, I think the way to proceed if the Court wants me
2 to proceed, would be for us to either do depositions on
3 the record of these witnesses or when the Court is able to
4 permit us an hour or two of your time, have a -- reopen
5 the case for the limited purpose of taking actual
6 testimony from these three individuals so that there is no
7 room for Mr. Tillman to allege that I have been
8 ineffective and somehow tainted his ability to get the
9 desired content from those witnesses.

10 Thank you.

11 THE COURT: Do you want to address me on this issue?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now, before you start --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- do you want me to clear the courtroom
16 so that you can discuss attorney/client privilege matters
17 with me, or do you want to do it in open court? However
18 you want to do it. It doesn't bother me. I just need to
19 know ahead of time.

20 THE DEFENDANT: We can do it in open court.

21 THE COURT: Are you sure about that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And I only ask you that -- and I don't
24 mean to put you on the spot with that question, but I ask
25 you that because if there are matters that involve the

1 attorney/client privilege, I don't want to violate any of
2 your rights.

3 THE DEFENDANT: I understand.

4 THE COURT: So if you would like me to clear the
5 courtroom and do that part of the motion under seal, I'll
6 be happy to do that, or I'm happy to have you address me
7 here. It's totally your decision.

8 THE DEFENDANT: I understand.

9 THE COURT: I just want to make sure you
10 understand -- you have -- I am willing to do that and
11 happy to do that, and you have the opportunity to do that,
12 but it's your decision.

13 THE DEFENDANT: Yes, sir. I would agree to not have
14 you clear the courtroom.

15 THE COURT: Okay.

16 MS. SHURLING: Your Honor, if I might before you
17 proceed with Mr. Tillman note for the record that I have
18 not addressed any matter that would be subject to the
19 attorney/client privilege in my response to these motions
20 from Mr. Tillman because until such time as I am relieved
21 as counsel, there are matters that were taken into account
22 by me in terms of making strategic and tactical decisions
23 that I believe would be subject to privilege, and I am not
24 going into those on the record and have not.

25 Thank you.