

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

TOBY EUGENE MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001360

APPENDIX

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S.C. SUPREME COURT

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(a) Behind trial counsel failed to object where the trial court neglected to instruct the jury on a critical element on the charges of attempted murder, indictment numbers 12-GS-42-0064; attempted murder, indictment numbers 12-GS-42-0065 and; attempted murder, indictment numbers 12-GS-42-0066, that clearly precluded the jury from finding of guilty on those offenses. Or, in the alternative, would have compelled the trial court to dismiss the charges pursuant to a motion for a direct verdict.

(b) Behind trial counsel failed to pursue a motion to quash the indictment for attempted murder, numbers 11-GS-42-2968, where such indictment is rendered invalid and void pursuant to the constitutional powers, duties and statutory provisions of the Grand Jury Process.

(c) Behind trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute methamphetamine or cocaine base, No. 11-GS-42-2967, where such indictment lacked sufficient information to place the Applicant on notice of what he must be prepared to meet at trial.

(d) Behind trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute cocaine base within one-half mile of school, No. 11-GS-42-2965, because such indictment lacked sufficient

information to put the Applicant on notice of what he must be prepared to meet at trial.

(e) Behind trial counsel failed to pursue her objection and preserve for appellate review that, the trial court abused its discretion to admit into Applicant's trial evidence which prejudicial effect outweighed any probative value.

(f) Behind trial counsel failed to object to the trial court instructing the jury that they were permitted to consider the "hand of one is the hand of all" theory where such charge was not only burden shifting but, also, highly prejudicial and inapplicable.

(g) Behind trial counsel failed to object where the trial court shifted the burden from the State to the Applicant by giving the jury a bias, prejudicial and erroneous jury charge on actual and constructive possession.

(h) Behind trial counsel failed to object where the trial court defectively and inadequately charged the jury that, they were permitted to consider a lesser included offense of possession of cocaine base but, neglected to instruct the jury that, "such a finding would bar them from convicting the Applicant of 'possession with intent to distribute cocaine base within one-half mile of a park'".

(i) Behind trial counsel failed to object where the trial court deliberately refused to sufficiently or concisely answer the jury's question on the term malice "aforethought".

(j) Behind trial counsel failed to request a post trial motion for a new trial where there was overwhelming facts and evidence of outrageous police conduct and perjured testimony used to procure unlawful convictions and sentences.

(k) Behind trial counsel failed to object to the trial court instructing the jury; "your sole objective is simply to reach the truth in the matter."

(l) Behind appellate counsel allowing the Applicant to be denied and deprived of due process and equal protection of law to a adequate and full appellate process by refusing to honor or respect the Applicant's request before, during and immediately after the Court of Appeals affirmed the convictions and sentences, to submit a timely Petition for Rehearing.

(m) Behind appellate counsel allowing the Applicant to be denied due process and equal protection of law by refusing to honor or respect the Applicant's request to submit before the Court of Appeals the critical issue of the trial court abusing its discretion to deny and deprive him of his due process and

fundamental right to "retained effective assistance of trial counsel of his choice". Especially where, trial counsel vigorously argued as well as preserved the issue for appellate review.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2014-CP-42-2768
Toby Moore, #350242,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 10, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the January 2012 term of the Spartanburg County Grand Jury for possession with intent to distribute cocaine base within one-half mile of school (2011-GS-42-2965), possession with intent to distribute marijuana (2011-GS-42-2966), possession with intent to distribute methamphetamine or cocaine base (2011-GS-42-2967), trafficking in cocaine 28-100 grams and possession of a weapon during the commission of a violent crime (2011-GS-42-2969(A)), and four counts of attempted murder (2011-GS-42-2968, 2012-GS-42-0066, 2012-GS-42-0065, 2012-GS-42-0064). The Applicant was represented by Tanya R. Jones, Esquire. The Applicant proceeded to trial on March 23, 2012, and was convicted by a jury as indicted. The Honorable J. Derham Cole sentenced the Applicant to concurrent terms of twenty-five (25) years for trafficking in cocaine, ten (10) years for possession with intent to distribute cocaine base within one-half mile of school, five (5) years for possession with intent to distribute marijuana, five (5)

years for possession of a weapon during the commission of a violent crime, and thirty (30) years for each count of attempted murder.

A timely notice of appeal and brief was filed on Applicant's behalf by John T. Mobley, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Moore, Op. No. 2014-UP-025 (S.C. Ct. App. filed January 22, 2014). The Remittitur was returned on February 7, 2014.

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

II.

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

1. Ineffective assistance of trial counsel; specifically
 - a. "trial counsel failed to object where the trial court neglected to instruct the jury on a critical element on the charges of attempted murder"
 - b. "trial counsel failed to pursue a motion to quash the indictment for attempted murder . . . where such indictment is rendered invalid and void"
 - c. "trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute methamphetamine or cocaine base . . . where such indictment lacked sufficient information to place the Applicant on notice of what he must be prepared to meet at trial"
 - d. "trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute cocaine base within one-half mile of school"
 - e. "trial counsel failed to pursue her objection and preserve for appellate review that the trial court

abused its discretion to admit into Applicant's trial evidence which prejudicial effect outweighed any probative value"

- f. "trial counsel failed to object to the trial court instructing the jury that they were permitted to consider the 'hand of one is the hand of all' theory where such charge was not only burden shifting but, also highly prejudicial and inapplicable"
- g. "trial counsel failed to object where the trial court shifted the burden from the State to the Applicant by giving the jury a bias, prejudicial and erroneous jury charge on actual and constructive possession"
- h. "trial counsel failed to object where the trial court defectively and inadequately charged the jury that, they were permitted to consider a lesser included offense of possession of cocaine base but, neglected to instruct the jury that, 'such finding would bar them from convicting the Applicant of 'possession with intent to distribute cocaine base within one-half mile of a park'"
- i. "trial counsel failed to object where the trial court deliberately refused to sufficiently or concisely answer the jury's question on the term malice "aforethought."
- j. "trial counsel failed to request a post-trial motion for a new trial where there was overwhelming facts and evidence of outrageous police conduct and perjured testimony"
- k. "trial counsel failed to object to the trial court instructing the jury: 'your sole objective is simply to reach the truth in the matter.'"

2. Ineffective Assistance of Appellate Counsel

- a. "appellate counsel allowing the applicant to be denied and deprived of due process and equal protection . . . by refusing to honor or respect the Applicant's request . . .to submit a timely Petition for Rehearing"
- b. "appellate counsel allowing the Applicant to be denied due process and equal protection of the law by refusing to honor or respect the Applicant's request to submit . . . the issue of the trial court abusing its discretion . . . and depriv[ing] him of his due process and

fundamental right to 'retained effective assistance of counsel of his choice.'"

III.

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

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

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

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

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and ineffective assistance of appellate counsel.

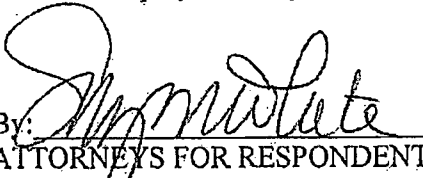
Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

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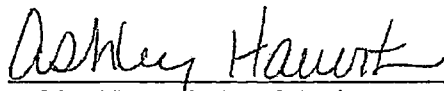
November 18, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-2768
TOBY MOORE, #350242	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 PO Box 1015
 Rock Hill, SC 29730

DATED this 18TH day of November, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

)
) IN THE COMMON PLEAS COURT
)

3 Toby Moore,
4 Applicant,

)
) TRANSCRIPT OF RECORD
) 2014-CP-42-2768
)

5 -vs-

6 The State.

)
) June 16, 2016
) Spartanburg, South Carolina

7
8
9
10
11 B E F O R E:

12 HONORABLE R. FERRELL COTHRAN, JR., JUDGE
13
14

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

16 LEAH B. MOODY, ESQUIRE
17 Attorney for the Applicant

18 ALICIA OLIVE, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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1 MS. OLIVE: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MS. OLIVE: This is Toby Moore, Case

4 No. 2014-CP-42-2768.

5 Mr. Moore was indicted in January of 2012 for
6 possession with intent to distribute cocaine within one
7 half mile of a school, possession with intent to distribute
8 marijuana, possession with intent to distribute
9 methamphetamine or cocaine base, trafficking in cocaine 28
10 to 100 grams and possession of a weapon during the
11 commission of a violent crime and four counts of attempted
12 murder.

13 He was represented by Tanya Jones on these charges.
14 He proceeded to trial on March 23rd of 2012 and was
15 convicted by a jury as indicted.

16 Judge Cole sentenced him to concurrent terms of 25
17 years for trafficking in cocaine, ten years for possession
18 with intent to distribute cocaine base within half mile of
19 a school, five years for possession with intent to
20 distribute marijuana and 30 years for each count of
21 attempted murder.

22 He filed this application -- oh, excuse me. A timely
23 notice of appeal and brief were filed on applicant's behalf
24 by John T. Mobley. South Carolina Court of Appeals
25 affirmed his conviction and sentence, and the remittitur

1 was returned on February 7th of 2014.

2 He filed this application for post conviction relief
3 on July 10th of 2014 alleging ineffective assistance of
4 trial counsel and ineffective assistance of appellate
5 counsel.

6 Your Honor, he's present in the courtroom today and
7 represented by Leah Moody.

8 I do have to -- trial counsel in this case now resides
9 in Oklahoma and practices in Oklahoma. So I -- I will need
10 to present her telephone testimony in this case in lieu of
11 her live in-person testimony. Opposing counsel and I have
12 discussed this previously.

13 With the Court's permission, I'll go ahead and dial
14 her in --

15 THE COURT: Okay.

16 MS. OLIVE: -- unless there's any objection.

17 MS. MOODY: None.

18 (Pause for telephone connection.)

19 TANYA R. JONES: Tanya Jones speaking.

20 MS. OLIVE: Hi, Tanya. This is Alicia Olive with the
21 attorney general's office in South Carolina. How are you?

22 TANYA R. JONES: I'm good. Thank you.

23 MS. OLIVE: Good.

24 Can everyone hear Ms. Jones?

25 THE COURT: I can.

Toby Moore
Direct examination by Ms. Moody

1 MS. OLIVE: You can.

2 Ms. Jones, can you hear me?

3 TANYA R. JONES: I can if you're -- you're a little
4 quiet, but I'll try real hard. And if I can't hear you,
5 I'll just ask you to repeat the question.

6 MS. OLIVE: Okay. Thank you.

7 And Mr. Moore has not yet testified. I believe he is
8 going -- I understand he's going to testify first. So
9 you'll be listening in on his testimony as well.

10 TANYA R. JONES: Okay.

11 MS. MOODY: Thank you.

12 Your Honor, may it please the Court.

13 THE COURT: Yes, ma'am.

14 MS. MOODY: I call Mr. Toby Moore to the stand.

15 THE COURT: All right. Mr. Moore, if you would, come
16 around, please, sir, and place your left hand on that Bible
17 and raise your right.

18 TOBY MOORE, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. MOODY

21 Q Mr. Moore, could you please state your full name for
22 the record?

23 A Toby Eugene Moore.

24 Q And where are you currently incarcerated?

25 A At the McCormick Correctional Institution.

Toby Moore
Direct examination by Ms. Moody

1 Q And how long have you been at McCormick Correctional?

2 A I've been at McCormick Correctional Institution since
3 July of 2012.

4 Q Okay. And you are there. And what are the charges
5 you're there on?

6 A I'm there for four counts of attempted murder, one
7 count of trafficking in cocaine, one count of possession of
8 a firearm during the commission of a violent crime,
9 possession with intent to distribute cocaine, possession
10 with intent to distribute cocaine within half mile of a
11 park, possession with intent to distribute marijuana.

12 Q And as to those charges, who was your attorney for
13 trial?

14 A Tanya Jones.

15 Q Okay. And you had another attorney for an
16 appellate -- an appeal to the Court of Appeals, correct?

17 A Yes, correct.

18 Q And who was your attorney then?

19 A John T. Mobley.

20 Q Okay. Was Mr. Mobley a part of your trial, original
21 trial?

22 A No, ma'am.

23 Q So it was Ms. Jones that tried your case, period.

24 A Ms. Jones tried my case. Mr. Mobley did my
25 preliminary hearing.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. So Mr. Mobley represented you up through your
2 preliminary hearing.

3 A Right.

4 Q Okay. And when -- after that how did Ms. Jones become
5 your attorney?

6 A Well, I was kind of forced into, you know, being stuck
7 with Ms. Jones then.

8 Q What do you mean?

9 A Like when we hired Mr. Mobley, you know, they didn't
10 allow him on the record. Judge Cole didn't allow him on
11 the record, you know.

12 But then there was -- I was told to go to trial, that
13 I was going to have to go to trial with Ms. -- Ms. Jones.
14 And Ms. Jones said that she was ready to go to trial, which
15 I don't believe she was, but we proceeded on to trial.

16 Q So when Mr. Mobley was not allowed on the record, was
17 that the same day that Ms. Jones went to trial on your
18 behalf?

19 A Yes, ma'am.

20 Q Okay. So you were obviously at a point that something
21 had to occur with your case, correct?

22 A Correct.

23 Q Okay. So did you discuss with Mr. Mobley pleaing to
24 the charges?

25 A Mr. Mobley, no.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. So when you got to the trial with Ms. Jones had
2 y'all discussed anything about a plea, or it was just
3 decided you were going to go to trial regardless?

4 A She like the same -- like that Thursday she came by
5 the jail, and she said that she knew that Mr. Mobley was my
6 attorney but she was going to have to come over here and
7 try to get him on the record.

8 She discussed a plea deal. She said something about
9 20 years. And she said she probably could get it down if
10 she tried. But that was basically it concerning the plea
11 deal.

12 Q So as far as the plea did you not want to plea? Or
13 what happened with that plea offer?

14 A That plea offer I didn't -- I didn't understand it. I
15 didn't know why -- what I was pleading to or why was she
16 even offering me a plea.

17 Q Okay. And can you tell the Court what you mean by
18 that?

19 A Because, well, at the time I didn't understand what
20 constitutes attempted murder, what constitutes trafficking,
21 you know, the elements of the crime. I didn't know none of
22 that because at the time I was ignorant of the law, you
23 know, so.

24 Q So prior to going to trial that day you had not
25 discussed the elements in the offenses that you -- well,

Toby Moore
Direct examination by Ms. Moody

1 the offenses and the elements that you were being taken to
2 trial on?

3 A No, no, ma'am. She -- she told me the charges, but
4 she didn't explain the elements of the crime.

5 Q Okay. So did y'all have an opportunity to discuss any
6 defenses you might have had?

7 A No, ma'am.

8 Q Did you have an opportunity to discuss that with
9 Mr. Mobley?

10 A No, ma'am. Well, he -- he discussed one thing about
11 the flashbang defense during the preliminary hearing and
12 the fact that he knew that I didn't attempt to murder
13 anybody, you know. And that was basically what he had
14 related to me about a defense concerning that.

15 Q So you're saying that he -- when you went to the
16 preliminary hearing he made an argument to the Court?

17 A About the flashbangs?

18 Q Any arguments he made.

19 A Yes, yes.

20 Q You heard him say these things to the Court.

21 A Yeah, and he -- yeah. He argued. He argued the
22 majority of that, and he argued against the -- the search
23 warrant too, but, you know, but...

24 Q So you --

25 A What else did he argue? I'm trying to remember. I

Toby Moore
Direct examination by Ms. Moody

1 can't remember it too much it been so long ago, but I --
2 I'm trying to bring it back to mind.

3 Q Well, let me ask you this. What I'm trying to get at
4 is did you specifically talk to Mr. Mobley about defenses,
5 or was that the arguments that he made to the Court that
6 you heard?

7 A The arguments concerning the flashbangs?

8 Q Any arguments trying to get the case dismissed.

9 A Yes. And he made a few motions too to try to get it
10 dismissed. He moved. Because, well, basically, what
11 the -- the -- the alleged search warrant was supposed to
12 have been that I supposed to sold an informant a half ounce
13 of cocaine.

14 But, you know, somehow he moved to dismiss the charge
15 in pursuit of that. And it was something else he moved to
16 dismiss it too as far as the -- yeah. The possession
17 saying that I wasn't really in possession of the drugs they
18 was trying to accuse me of, you know.

19 Q Okay. Well, listen to my question.

20 Did you outside of the Court's presence have a
21 discussion with Mr. Mobley about any defenses?

22 A No.

23 Q Okay.

24 A No.

25 Q And outside of the Court's presence did you and

Toby Moore
Direct examination by Ms. Moody

1 Ms. Jones discuss any defenses?

2 A No.

3 Q Okay. Did you offer her any information to help her
4 come up with a defense?

5 A Well, I really didn't have any conversation with
6 Ms. Jones. I was telling her that I didn't want her as an
7 attorney because my -- I had already had plans of getting a
8 private attorney.

9 Q Okay. So as to the private attorney, was that
10 Mr. Mobley?

11 A Yes, ma'am.

12 Q Okay. Had you hired Mr. Mobley? Had you -- had your
13 family paid Mr. Mobley any money?

14 A Yes.

15 Q Okay. So you had been working with Mr. Mobley?

16 A Yes.

17 Q Okay. And then when you met Ms. Jones and you told
18 her that you didn't want her to be your attorney, had y'all
19 sat down and discussed your case?

20 A Has who?

21 Q Have you and Ms. Jones sat down and discussed your
22 case?

23 A No. We ain't never really discussed -- discussed my
24 case.

25 Q Well, how was she ready to go on your trial?

Toby Moore
Direct examination by Ms. Moody

1 A It was impossible. She didn't even discuss the case
2 with me or give me any of my discovery material.

3 Q Okay. Let me back up on something else.

4 Was Ms. Jones appointed to you in the beginning?

5 A No. I made it clear that I didn't want no public
6 defender.

7 Q Listen to my question.

8 Was Ms. Jones appointed to you? Whether you wanted one
9 or not, was she appointed to you at the beginning when you
10 were first charged?

11 A That's what I was told, yes.

12 Q Okay. So then your family went out and hired
13 Mr. Mobley.

14 A Yes, ma'am.

15 Q Okay. And because you had an appointed attorney the
16 court would not allow that appointed attorney to come off
17 your case?

18 A Yes, ma'am.

19 Q Okay. And so you all were on the docket for the
20 trial.

21 A Yes, ma'am.

22 Q Okay. What, if any, communication did you have after
23 the court ruled that Ms. Jones was going to proceed to
24 trial with you?

25 A Any communication? We spoke maybe twice. She made --

Toby Moore
Direct examination by Ms. Moody

1 she came to the county one time. She said, well, I'm going
2 to -- I'm going to go over your case with you. And I was
3 like, well, my family has hired me --

4 Q No. That's not where -- okay. So y'all went before
5 Judge Cole. Judge Cole wouldn't let Mr. Mobley --

6 A Oh, yeah, yeah, yeah. That's -- excuse me.

7 Q What, if any, communication did you have with
8 Ms. Jones?

9 A None really. She came over there in the little office
10 me and you was just in, and she tried to talk to me then
11 about going to trial. She was saying that the judge wasn't
12 going to allow Mr. Mobley on record. So then we came in
13 here and went on to trial.

14 Q So that same day you went to trial.

15 A Yes, ma'am.

16 Q Okay. Now, in the trial Ms. -- Ms. Jones made motions
17 for you, and you have -- well, I take that back. In your
18 application --

19 A Right.

20 Q -- you vowed that you had issues with your attorney,
21 and we're going to go through those issues.

22 (Pause.)

23 Q The first issue you state that your trial counsel
24 failed to object or the trial court neglected to instruct
25 the jury on critical elements, on a critical element, on

Toby Moore
Direct examination by Ms. Moody

1 the charges of attempted murder.

2 A Yes, ma'am.

3 Q What do you mean with that issue? Can you tell the
4 Court?

5 A Well, Ms. Jones was ineffective for failing to object
6 to the trial court's jury charge, with failing to explain
7 or define the essential element, specific intent to kill,
8 with regards to Indictment Nos. 2012-GS-42-0064 alleging
9 attempted murder, which involved Shane Morrow; Indictment
10 Nos. 2012-GS-42-0065 alleging attempted murder involving
11 Officer Mark Hillers; and Indictment Nos. 2012-GS-42-0066
12 which involved Officer Jeff Cooper.

13 More important, Ms. Jones was ineffective for failing
14 to object where the trial court permitted the jury to
15 consider the lesser included offense, assault and battery
16 in the first degree, which only requires that I offer or
17 attempt to injure another person, but failed to instruct
18 the jury that before they could render a finding of
19 attempted murder under statute Section 16-3-29, Code of
20 Laws, the state would have to prove beyond a reasonable
21 doubt that I did injure Officer Hillers, and Cooper, and
22 the injuries, Morrow, Hillers and Cooper -- excuse me --
23 and the injuries were likely to produce death or great
24 bodily injury.

25 The president -- the presidential [sic] effect of

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1 Ms. Jones' failure to object to the trial court's
2 inadequate and insufficient jury charge resulted in my
3 being convicted and sentenced for allegedly attempting to
4 murder Officers Morrow, Hillers and Cooper, absent
5 sufficient direct or circumstantial evidence.

6 Q So, in essence, you didn't like the jury charge.

7 A Well.

8 Q You didn't like how the judge instructed the jury as
9 to attempted murder.

10 A Well, he didn't explain to or define the essential
11 element, specific intent, to the jury.

12 Q So you wanted a jury instruction on specific intent.
13 Is that what you're saying?

14 A Right. Well, the jury wasn't given a -- a clear
15 definition of what it means to -- of specific intent.

16 Q Do you recall if, at all, Ms. Jones gave any
17 suggestive jury instructions to the judge?

18 A No, ma'am.

19 Q And so you felt -- at the time of the trial did you
20 tell her you had a problem with the jury instruction?

21 A I didn't understand them at the trial.

22 Q Okay. Now, your next issue you have is that your
23 attorney did not -- she failed to pursue a motion to quash
24 the indictment for attempted murder where the indictment is
25 rendered invalid or void. How was the indictment invalid

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Direct examination by Ms. Moody

1 and void?

2 A Okay. My trial counsel, Ms. Jones, was ineffective
3 for failing to object to the trial court's failure to
4 explain to or define for the jury specific intent to kill,
5 again, an essential element with regard to Indictment Nos.
6 2011-GS-42-2968 alleging attempted murder which involved
7 Officer Jason Harris.

8 Q So you're saying that the indictment -- the
9 statements -- the facts that are on the indictment, they
10 were not correct?

11 A Come again?

12 Q You wanted your attorney to move to quash the
13 indictment. That happens at the beginning of the trial.

14 A Right.

15 Q Okay. Why did you want her to quash the indictment
16 for being invalid or void? You didn't like the description
17 on the indictment? What was the problem with the
18 indictment?

19 A Well, this -- this is -- I'm leading up to that.

20 Q Well, can you --

21 A Like I'm going to carry on. Likewise, Ms. Jones was
22 ineffective for failing to object where the trial court
23 permitted the jury to consider the lesser included offense,
24 assault and battery of a high and aggravated nature, but
25 failed to instruct them that the state must prove beyond a

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Direct examination by Ms. Moody

1 reasonable doubt the intrinsic element criminal intent.

2 Also, Ms. Jones was ineffective for failing to object
3 to the trial court charging the jury on the lesser included
4 offense aggravated assault and battery and its elements
5 without allowing them to consider that charge.

6 Last in connection with this allegation, Ms. Jones was
7 ineffective for failing -- requesting that the trial court
8 instruct the jury that great bodily injury means bodily
9 injury which causes a substantial risk of death or which
10 causes permanent disfigurement or impairment of the
11 function of a bodily member or organ.

12 See Tanner vs. State, 2014, Westlaw, 2737, 987. The
13 presidential [sic] effective of Ms. Jones' failure to
14 object to the trial court's deficient specific intent --
15 intent to kill element of attempted murder, the Court's
16 failure to inform the jury of the requisite criminal intent
17 element of assault and battery of a high and aggravated
18 nature offense and the trial court's instructing the jury
19 on the offense, aggravated assault and battery, without
20 allowing them to consider that offense reduced the state's
21 burden of proof beyond a reasonable doubt on all of the
22 essential elements of attempted murder, shifted the burden
23 of proof between the greater and to lesser included offense
24 from the state upon me and allowed me to be convicted of
25 attempted murder based on elements below those required by

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Direct examination by Ms. Moody

1 due process and equal protection of the Fifth, Sixth and
2 Fourteenth Amendments.

3 Q Okay. Mr. Mobley -- Mr. Moore, let me be clear. I'm
4 asking you about the indictment.

5 A Right.

6 Q You said -- look on your application letter B.

7 A Right.

8 Q You said that your attorney failed to file or motion
9 the Court as to quashing the indictment. The indictment is
10 at the beginning of the trial.

11 A Okay. Well, let's go back to what --

12 Q No, no, no. I need you to answer my question.

13 A Right.

14 Q I need for you to be responsive to my question. Okay?

15 A Right.

16 Q The question is how did your lawyer fail to be
17 effective when they failed to motion to quash the
18 indictment? That's how they begin the trial.

19 A Right.

20 Q How did she -- what was she supposed to quash the
21 indictment for?

22 A Okay. Because the elements don't constitute the crime
23 of attempted murder.

24 The evidence during the trial, the evidence presented
25 at trial and the evidence before trial, don't constitute

Toby Moore
Direct examination by Ms. Moody

1 the crime of attempted murder.

2 Q Okay. So you're saying that the indictment, which are
3 the allegations --

4 A Right.

5 Q -- that you committed attempted murder, you're saying
6 that the way the indictment was drafted or written --

7 A Right.

8 Q -- it was not sufficient?

9 A Right. Well, I ain't challenging the sufficiency.
10 I'm saying that, you know, the evidence didn't constitute
11 attempted murder.

12 Q Okay. Well, you failed to win at the preliminary
13 hearing, right?

14 A Right.

15 Q So that meant that the charge could be indicted, they
16 could proceed to the grand jury.

17 A Right.

18 Q Okay. Did you have a problem with the indictment
19 proceeding to -- well, excuse me -- the -- the charges
20 proceeding to the grand jury in that the document, the
21 charging document, which is the indictment -- did the facts
22 stated on that indictment -- were they insufficient and
23 should your lawyer have at the beginning of the trial moved
24 to quash the indictment?

25 A Yes.

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Direct examination by Ms. Moody

1 Q Okay. Now, we're going to go to the next issue that
2 you have.

3 A Okay.

4 Q You stated that your trial lawyer, your trial counsel,
5 failed to move -- move the general sessions court to quash
6 the indictment for possession with the intent to
7 distribute. Is it safe to say that all of the charges that
8 you were charged with, she failed to move to quash those
9 indictments?

10 A Yes, ma'am.

11 Q Okay. And based on the same grounds that there was --
12 the description of the crimes were insufficient on the
13 indictment?

14 A Yes, ma'am.

15 Q Okay. And that she should have done that at the
16 beginning of the trial before you even got -- the case was
17 handed over to the jury.

18 A Yes, ma'am.

19 Q The next issue that you argued your counsel was
20 ineffective for was she failed to pursue her objection and
21 preserve the objection for appellate review, that the trial
22 court abused its discretion to admit the trial evidence
23 which had a prejudicial effect outweighing -- that
24 outweighed any probative value. Is that what you just
25 recited into the record previously?

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Direct examination by Ms. Moody

- 1 A where you at now?
- 2 Q Your issue, E.
- 3 A Okay.
- 4 Q You said your lawyer failed to object.
- 5 A You passed C and D, ain't it?
- 6 Q Those are all towards your indictment.
- 7 A Well, I would like to get that argument on the record
- 8 if it's all right.
- 9 Q All of the indictments, you said that your lawyer --
- 10 all of them, that's cumulative.
- 11 A Right.
- 12 Q Okay. All of the indictments, you wanted your lawyer
- 13 to move to quash them, correct?
- 14 A Right.
- 15 Q Okay. And you said why you didn't want them -- why
- 16 you wanted her to quash them, correct, was because the
- 17 evidence or the evidence that didn't match the description
- 18 on the back of the -- excuse me -- on the indictment,
- 19 correct?
- 20 A Right.
- 21 Q And that would have to have taken place before the
- 22 case even began, correct?
- 23 A Right.
- 24 Q So that's all of them on the -- that's all of the
- 25 issues. So that's all on the record. Is your statement

Toby Moore
Direct examination by Ms. Moody

1 going to be the same as to each indictment?

2 A No, ma'am.

3 Q So you want to go through and tell us why the meth --
4 the possession with intent to distribute methamphetamine or
5 cocaine base, why that indictment was insufficient?

6 A Yes, ma'am.

7 Q Okay. What is it? Can you tell us in a sentence?

8 A No, I can't tell you in a sentence.

9 Q Go ahead.

10 A All right. "Concisely, arrest warrant No. M-751915,
11 no indictment numbers, 2011-GS-42-2967, never placed me on
12 notice of any specific amount of cocaine base that I would
13 be held to answer for at trial. As such, my trial counsel,
14 Ms. Jones, could not have possibly prepared a defense
15 against the offense possession with intent to distribute
16 methamphetamine or cocaine base when the indictment and
17 information within the indictment never alleged that the
18 state would prove beyond a reasonable doubt that I
19 possessed a certain amount of cocaine base constituting
20 that offense, or in the alternative prove beyond a
21 reasonable doubt that I distributed to someone cocaine
22 base. Trial counsel was ineffective for failing to motion
23 to quash the indictment, or in the alternative motion for a
24 more definite statement from the state on the elements of
25 possession with intent to distribute methamphetamine or

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Direct examination by Ms. Moody

1 cocaine base under federal rules of criminal procedure,
2 Rule 12(e), that they intended to put me on trial for.
3 Also, Ms. Jones was ineffective for failing to object to
4 the imposition of a 15-year sentence because Judge Cole
5 charged the jury that they would be permitted to consider
6 the lesser included offense, simple possession but failed
7 to inform the jury of the amount of cocaine base that
8 constitute, as well as the distinguishes, possession of
9 cocaine base from possession with intent to distribute
10 cocaine base. With the Court's permission I would like to
11 show and prove from my trial transcript that Judge Cole's
12 jury charge on the lesser included offense should have been
13 objected to."

14 Your Honor, with the Court's position -- permission I
15 would like to read from page 471, lines seven through
16 fifteen, page 470, lines seven through fourteen, page 469,
17 and lines fourteen through nineteen.

18 THE COURT: Okay.

19 Q Now, this is as to the motion to quash.

20 A Yes, ma'am.

21 Q Again, are you aware that a motion to quash has to
22 occur at the beginning of the trial?

23 A Yes, ma'am.

24 Q Okay. So this is something different that you're
25 speaking of. You're talking about the jury charge now,

Toby Moore
Direct examination by Ms. Moody

1 that the judge did not instruct the jury as you would have
2 wanted him to.

3 A Could you give me a minute? I'm trying to find those.
4 I'm all bottled up here with these handcuffs.

5 (Pause.)

6 A I had them. There they go -- there they go. I
7 apologize to the Court.

8 From page 471, starting with line seven through
9 fifteen. "Now, with regard to those two indictments,
10 you're also going to be permitted to consider the lesser
11 included offense of possession. In other words, if you
12 find the state has proven that he did possess crack cocaine
13 and/or did -- he did possess marijuana but you're not
14 convinced beyond a reasonable doubt that he intended to
15 distribute that substance, then you may find him guilty of
16 only the lesser included offense of possession of that
17 substance."

18 Now, page 470. "where you are permitted to where the
19 law allows" --

20 Q what line?

21 A Forgive me. Lines seven through fourteen. Forgive
22 me. "where you are permitted to where the law allows you
23 or permits you to make an inference based upon the
24 possession of a certain amount of drugs, it's simply an
25 evidentiary fact to be taken into consideration by you 12

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Direct examination by Ms. Moody

1 jurors with all of the other evidence received during the
2 trial of the case, and you may give such inference whatever
3 weight, if any, you determine it should receive, if any."

4 And I had 469 right here. 469, line 14 through 19.

5 "In determining whether or not the defendant intended to
6 distribute those controlled substances, if you find that he
7 did possess those you should consider all of the evidence
8 in the case, including the circumstances surrounding the
9 defendant's possession of those drugs, the amount of the
10 substances possessed by the defendant. Essentially,
11 Ms. Jones had an obligation under the Sixth Amendment to
12 challenge my indictment, conviction and sentence during
13 trial where the amount of cocaine base was required in the
14 indictment for sentence pursuing -- for sentencing pursuant
15 to Dervin vs. State, 287, S.E.2d., 712, year 2009."

16 Q Okay. The next -- the next issue that you challenge
17 or state your counsel failed to object to was
18 the-hand-of-one-is-the-hand-of-all theory where the charge
19 was not only burden shifting but highly prejudicial and
20 inapplicable. Can you explain to the Court what you mean
21 by that?

22 A Okay. Where you at, Ms. Moody?

23 Q Your next issue that you say your lawyer failed to
24 object to was the-hand-of-one-is-the-hand-of-all theory
25 where such charge was not only the burden shifting but also

Toby Moore
Direct examination by Ms. Moody

1 highly prejudicial and inapplicable. Explain to the Court
2 why you felt that Ms. Jones should have objected to the
3 hand of one is the hand of all.

4 A Okay. Let me find that. Let me find that issue.
5 Please give me a second. My hands are tied here.

6 (Pause.)

7 A You skipped E, didn't you, Ms. Jones, I mean,
8 Ms. Moody? I had this stuff in order here.

9 (Pause.)

10 A Okay. He said the hands of one is hand of all. What
11 letter was that, Ms. Moody?

12 THE COURT: F.

13 THE WITNESS: F. Thank you, sir.

14 (Pause.)

15 Q Mr. Moore --

16 A I got it.

17 Q -- the hand of one is the hand of all deals with you
18 are going to be charged based on your codefendant's
19 actions.

20 A Right.

21 Q Okay. What was your issue with Ms. Moore -- Ms. Jones
22 not objecting to the hand of one, hand of all?

23 A Okay. But okay. During my preliminary hearing
24 Investigator James Sutton testified that I was the sole
25 target for a drug buy.

Toby Moore
Direct examination by Ms. Moody

1 Subsequently, at my trial Investigator Doug Harwell
2 testified that to his understanding I resided at [REDACTED]
3 Owens Street and was the sole suspect of the investigation
4 and search warrant.

5 It's important to note that I was not listed on the
6 deed, rental agreement and utility bill, et cetera.

7 Nevertheless, the trial court instructed the jury you
8 are permitted to consider that where two or more people act
9 together with a common intent and purpose and they combine,
10 conspire, plan or otherwise agree to the commission of a
11 crime, is equally guilty. The law refers to that as being
12 the hand of one is the hand of all or the act of one is the
13 act of all.

14 In addition, Judge Cole charged the jury possession of
15 a substance may be jointly shared by two or more persons.
16 Judge Cole gave the trial jury those instructions
17 irrespective of me having no codefendant. Nor had the
18 state presented any argument or evidence to the effect that
19 I should be held accountable for any act or acts of crimes
20 committed by someone else.

21 In the instant case the-hand-of-one-is-the-hand-of-all
22 jury instruction was not only erroneous but highly
23 prejudicial as well, specifically, because the state never
24 requested a hand-of-one-is-the-hand-of-all jury charge.
25 The state never placed me on notice prior to trial or in an

Toby Moore
Direct examination by Ms. Moody

1 indictment that I would need to prepare a defense against
2 the hands-of-one-is-the-hand-of-all jury instruction.

3 More important, the-hand-of-one-is-the-hand-of-all
4 jury instruction is inapplicable in the present case
5 because the state specifically accused me alone of
6 allegedly committing the crimes that I was being put to
7 trial for.

8 Q Okay. Let me stop you right there.

9 Give the Court some background. On the date of this
10 alleged offense, how many people were in the house with you
11 on that day?

12 A I'm not sure. I believe it was two other people.

13 Q Okay. And in terms of when --

14 A As far as I know.

15 Q When the police came, where were you in the house?

16 A I was in the back asleep.

17 Q Okay. And who was in the front of the house?

18 A I believe it was William Rodgers and Amanda Gentry.

19 Q Who is William Rodgers?

20 A William Rodgers is the young man that was killed by
21 the Spartanburg City Police Department in this incident.

22 Q Okay. So did you know William Rodgers?

23 A Yes.

24 Q Okay. And the other person was --

25 A Amanda Gentry.

Toby Moore
Direct examination by Ms. Moody

1 Q And did you know Amanda?

2 A No.

3 Q Okay. So before you went to sleep were they there in
4 the house?

5 A William was but Amanda wasn't.

6 Q Okay. And they found drugs in the house.

7 A That's what the record shows, yes.

8 Q Okay. So what happened? So you just testified that
9 William was killed.

10 A Right.

11 Q Okay. And from your understanding of what you
12 discussed with your attorney, how many people -- how many
13 people were alleged to be participating in this possession
14 with the intent to distribute methamphetamine or cocaine
15 base drugs?

16 A During my trial, none.

17 Q When you got arrested --

18 A Right.

19 Q -- and they told you what you were under arrest for --

20 A Right.

21 Q -- how many people were they saying participated in
22 this?

23 A None.

24 Q Okay.

25 A They was charging me only.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. So they only charged you.

2 A Right.

3 Q They didn't charge the female. And the gentleman, he
4 was deceased.

5 A I later got information from you that they had charged
6 the female.

7 Q Okay. So at the trial was she -- you -- you went
8 through the trial without her being a codefendant.

9 A Right.

10 Q And so is that the basis of why you think the hand of
11 one, hand of all is inapplicable?

12 A Yes. That's -- that's one part of it, and plus the
13 prejudicial effect of Judge Cole in issuing
14 the-hand-of-one-is-the-hand-of-all instruction to the jury,
15 is that he gave it after I ended my defense.

16 Consequently, Judge Cole shifted an additional new
17 burden upon me to disprove aiding, abetting, assisting,
18 conspiring, planning or otherwise acting together with
19 whomever brought any drugs or weapons inside the apartment,
20 although I was not residing there or listed on a rental
21 agreement.

22 Not only was the unconstitutional burden shifted from
23 the state upon me, but it was done so at a time where I
24 would never have any opportunity to defend myself
25 against -- against it.

Toby Moore
Direct examination by Ms. Moody

1 Q So like when you got towards the end of the trial and
2 it was time for the judge to charge the jury, were you in
3 the courtroom where they discussed what the jury charges
4 were going to be?

5 A Right.

6 Q Were you? I'm asking you were you.

7 A Was I -- was I in the courtroom?

8 Q Yes.

9 A Yes.

10 Q Okay. And when you heard the-hand-of-one-hand-of-all
11 jury charge to the jury, did you tell your lawyer that you
12 had a problem with that instruction or what, if any -- what
13 did you tell your lawyer about that?

14 A At the time I didn't know what it really meant, you
15 know. I didn't have any knowledge of what the law was. I
16 was ignorant to the law at the time.

17 Q Okay. Is there anything else you want to tell the
18 court about the hand of one, hand of all burden shifting?

19 A No, ma'am.

20 Q The next issue that you indicate you have a problem
21 with is that your attorney failed to object to the trial
22 court shifting the burden as to the state to the applicant
23 by giving the jury a biased, prejudicial and erroneous jury
24 charge on actual and constructive possession. Can you tell
25 the court what you mean by that?

Toby Moore
Direct examination by Ms. Moody

1 A Okay. Give me one minute. What letter was that,
2 Ms. Moody? Skipping around. Okay.

3 Q That is G.

4 A G. It's hard with these cuffs on. I apologize.
5 (Pause.)

6 A Okay. Judge Cole purposely issued the jurors a
7 constructive possession jury charge that made it literally
8 impossible for the jury to return a guilty verdict on any
9 of the drug offenses I was accused of committing.

10 That conclusion is substantiated by the fact that the
11 prosecution placed me on notice to their assertion of me
12 being the sole suspect of the state drug investigation, the
13 principal to the drug offenses charged and the only person
14 guilty of the drug offenses made out against me.

15 During my entire trial Prosecutor Bulsa never
16 mentioned that I was or had a codefendant, never alleged
17 that I conspired with, aided, abetted, assisted or
18 participated along with someone else in any drug offense,
19 nor that I am equally guilty of possessing any drugs that
20 someone had been arrested, charged with possessing.

21 Recognizing that Prosecutor Bulsa had failed to prove
22 beyond a reasonable doubt through direct or substantial
23 circumstantial evidence that I possessed any drugs, Judge
24 Cole unconstitutionally shifted an overwhelming burden of
25 proof on possession from the prosecution upon me by

Toby Moore
Direct examination by Ms. Moody

1 requiring the jury to inquire as to whether there was any
2 other explanation other than my guilt for the reason the
3 drugs were located inside Apartment [REDACTED] Owens Street.

4 Specifically, Judge Cole instructed the jurors on the
5 hand-of-one-is-the-hand-of-all theory, the accomplice
6 liability theory, as well as the jointly shared possession
7 culpability instruction during his constructive -- during
8 his constructive possession jury charge.

9 The presidential [sic] effect of Ms. Jones' failure to
10 object to the Judge Cole hand-of-one-is-the-hand-of-all
11 instruction, the accomplice liability and the two jointly
12 shared jury charges is that they coerced me -- coerced --
13 excuse me -- coerced, compelled and forced the jurors to
14 find me guilty of constructive possession of drugs absent
15 the prosecution alleging, proving or even offering any
16 evidence that someone else was guilty of the drug offenses
17 I was charged with and that I am equally guilty.

18 Q Okay. So you had, again, an issue with the jury
19 charge, and you feel like the jury charge caused the --
20 this -- the jury charge caused the jury to find you guilty.

21 A Yes. The presidential [sic] effect of Ms. Jones'
22 failure to object to Judge Cole's jury charge prejudiced
23 me.

24 Q Well, okay. So you wanted her to object to it because
25 you find it to be prejudicial, but you're saying that those

Toby Moore
Direct examination by Ms. Moody

1 jury charges specifically caused the jury to find you
2 guilty.

3 A Right.

4 Q Okay. And so did you tell Ms. Jones that you had a
5 problem with those jury charges on actual and constructive
6 possession?

7 A Again, at the time I didn't understand what all of
8 that meant.

9 Q So your next issue, H, you state that your trial
10 counsel failed to object to the trial court effectively and
11 adequately charging the jury that they permitted to -- they
12 were permitted to consider a lesser included offense of
13 possession of cocaine base but neglected to instruct the
14 jury that such finding would bar them from convicting you
15 of possession with the intent to distribute cocaine base
16 within a half mile of a park. Can you explain to the Court
17 what you mean by that allegation?

18 A Okay. Give me one second.

19 (Pause.)

20 A Okay. In a preceding allegation when we was
21 discussing C, I established that the indictment nor arrest
22 warrant for possession with intent to distribute
23 methamphetamine or cocaine base specified the essential
24 element, that is any specific amount of cocaine base that I
25 was alleged to have possessed.

Toby Moore
Direct examination by Ms. Moody

1 Additionally, I manifested that Judge Cole instructed
2 the jury that they were permitted to consider the lesser
3 included offense of possession of cocaine base.

4 However, Judge Cole failed to charge the jury that a
5 finding of possession of cocaine base would preclude them
6 from a finding of guilty for possession with intent to
7 distribute cocaine base within one half mile of a park.

8 To the contrary, Judge Cole gave the jury a confusing,
9 misleading and inadequate instruction on possession, any
10 amount of cocaine base within one half mile of a park.

11 To prove my burden, again, I ask this Court's
12 permission to read from the trial transcript, page 471,
13 seven through fifteen, page 472, lines two through seven of
14 my trial transcript.

15 THE COURT: I have a copy of that transcript and I've
16 read it.

17 THE WITNESS: Okay. Well, we can proceed. Thank you.

18 Q So you realize you've already read that, lines seven
19 through fifteen into the record already.

20 A Okay.

21 Q And the judge has a copy of the transcript.

22 A Okay, okay. I'm going to proceed on.

23 Judge Cole's jury charge could be construed to allow
24 the jury to find me guilty of possession with intent to
25 distribute cocaine base within one half mile of a park had

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Direct examination by Ms. Moody

1 the state proved only simple possession or whether I only
2 possessed 0.1 grain of cocaine base. Though 0.1 grain is a
3 very small amount of cocaine base, it still constitutes the
4 sum quantity of crack cocaine jury instruction given by
5 Judge Cole. These set of facts made it vital that Ms.
6 Jones compel the state to put me on notice in the
7 indictment for possession with intent to distribute cocaine
8 base within one half mile of a park of the amount of
9 cocaine base that they intended to prove beyond a
10 reasonable doubt.

11 Likewise, the Sixth Amendment requires Ms. Jones to
12 object where the trial court failed to instruct the jury on
13 the amount of cocaine base the state must prove I was in
14 possession of to constitute the offense possession with
15 intent to distribute within one half mile of a park.

16 Finally, Ms. Jones was obligated under the Sixth
17 Amendment to object where Judge Cole failed to instruct the
18 jury that a finding of simple possession would have barred
19 them of a conviction for possession with intent to
20 distribute cocaine base within one half mile of a park
21 because statute Section 44-53-445, South Carolina Code of
22 Law, does not have a lesser included offense of possession
23 within one half mile of a park.

24 Each of the stated constitutional violations and
25 errors prejudiced me to the extent that my conviction and

Toby Moore
Direct examination by Ms. Moody

1 sentence for possession with the intent to distribute
2 cocaine base within one half mile of a park is illegal, and
3 had Ms. Jones objected to them individually, as well as
4 collectively, I would not have been found guilty.

5 Q Okay. On issue I, you state that your trial counsel
6 failed to object where the trial court deliberately refused
7 to sufficiently or concisely answer the jury's question on
8 the term of malice and aforethought.

9 A Right.

10 Q So the jury submitted a question to the judge, and you
11 wanted her to take issue -- Ms. Jones, that is -- with
12 the -- extent that the Court instructed or answered the
13 question for the jury.

14 A Repeat the question.

15 Q You had a problem with the judge's instruction to the
16 jury on malice aforethought, right?

17 A That's one of my issues, yes.

18 Q Okay. So that is the whole issue. You had an issue
19 with that.

20 A Right.

21 Q And you wanted your attorney to object to those
22 instructions.

23 A Right.

24 Q You wanted him to state it another way.

25 A Right.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. And this is after. You were sitting there and
2 you heard it, but you feel after reviewing the record that
3 she didn't object and she needed to object?

4 A Right.

5 Q Okay. Can you tell the Court what about those
6 instructions -- what about that definition did you not
7 like?

8 A Okay. At the close of my trial during jury
9 deliberations the jury is presented a note to the trial
10 judge specifically requesting the legal definition of the
11 term malice aforethought.

12 Instead of concisely defining malice aforethought
13 Judge Cole issued a supplemental jury charge consisting of
14 seven additional legal inference of malice strategically
15 tailored to exclude any implication of suggestion of
16 premeditation, predeliberation or aforethought.

17 Unequivocally, Judge Cole's biased, inadequate and
18 insufficient supplemental jury charge denied and deprived
19 the jury of the right to make an intelligent, knowledgeable
20 and enlightened determination with regard to aforethought.

21 Secondly, the prosecution's obligation to prove the
22 essential element of aforethought was lessened to know.
23 The presidential [sic] effect of Ms. Jones failure to
24 object to the -- to the Judge Cole's supplemental jury
25 charge that deliberately and intentionally deceived and

Toby Moore
Direct examination by Ms. Moody

1 misled the jurors, as well as shifted the burden of proof
2 on the intricate element of aforethought off the
3 prosecution, allowed the jury to convict me on all four
4 indictments of attempted murder absent the prosecution
5 proving or even offering any evidence of premeditated
6 aforethought or planned malice.

7 Q Anything else?

8 A That's it.

9 Q As to issue J, you feel that your attorney failed to
10 request a posttrial motion for a new trial where there was
11 overwhelming facts in evidence of outrageous police conduct
12 and perjured testimony.

13 A Right.

14 Q You wanted your attorney to ask the judge to set the
15 verdict aside. You wanted your attorney to ask the judge
16 to set the verdict aside?

17 A Yes, ma'am.

18 Q Because you disagreed with the facts of the case.

19 A Right.

20 Q Okay. Tell the court why you disagree with the facts
21 of the case.

22 A Okay. Upon filing my P.C.R. application on
23 July 7th of 2014 I have been very unsuccessful in obtaining
24 a copy of the no-knock search warrant from the clerk of
25 court office.

Toby Moore
Direct examination by Ms. Moody

1 My trial counsel, my appellate counsel or the
2 solicitor's office -- at this present time I still haven't
3 been able to examine that search warrant.

4 My chief issue with the alleged search warrant arises
5 out of my preliminary hearing on May 19th of 2011 where
6 Officer James H. Sutton was asked on direct examination by
7 Solicitor Robin C. File.

8 The question was: "Okay. Could you please tell the
9 Court based on the reports of the investigation why the
10 defendant was charged?"

11 Mr. Sutton cited Spartanburg Public Safety indictment
12 report case number one -- incident report case number --
13 excuse me -- 1204610 by Jeff Kirby.

14 He testified and left on the narrative of Officer
15 Kirby alleging to have successfully employed a C.R.I. known
16 as Loopy to purchase an amount of cocaine from me on
17 December 14th of 2010 at [REDACTED] Owens Street, though I was
18 never arrested or charged for the alleged incident.

19 However, it was said to have been the substantial
20 basis for a no-knock search warrant.

21 However, during my trial Jeff Kirby in-camera
22 testified on cross-examination Loopy indicated that on
23 January 3rd of 2011 he had been over at Toby Moore's house
24 and saw some marijuana and based on that information I went
25 to the magistrate's office to get a search warrant.

Toby Moore
Direct examination by Ms. Moody

1 Because of the two separate and distinct grounds
2 officer Kirby alleged that he obtained a no-knock search
3 warrant, coupled with the fact neither of the search
4 warrants appear in my trial or appellate record.

5 It is my contention that Officer Kirby committed
6 perjury in his incident report and/or during
7 cross-examination for a basis for a no-knock search
8 warrant.

9 In any event, it was illegal, unlawful and outrageous
10 police conduct for the SWAT team to descend on Apartment
11 [REDACTED] Owens Street, guns blazing, killing one person,
12 shooting another and attempting to kill me without a search
13 warrant, a valid, substantial, unperjured basis for a
14 search warrant.

15 Further, Prosecutor Bulsa attempted to whitewash other
16 acts of perjury and outrageous police conduct during
17 closing arguments by stating the stories had some small
18 inconsistencies, because they had different perspectives of
19 what was going on.

20 However, my trial transcript demonstrates that the
21 officers' testimonies, affidavits and incident reports were
22 consumed with lies. In fact, the only fact that was
23 unanimously agreed upon was Officer Harris was the first
24 person to go into the apartment and that he was injured as
25 a result thereof. Significant variances which contributed

Toby Moore
Direct examination by Ms. Moody

1 to my conviction includes such testimony of Officer Harris.

2 THE WITNESS: Your Honor, with this Court's permission
3 I would to read from my trial transcript page 205, lines
4 five through ten, and page 210, lines ten through
5 twenty-five.

6 THE COURT: Okay. 205. And what was the second page?

7 MS. MOODY: 210.

8 THE COURT: Okay.

9 THE WITNESS: Yeah, 210, lines ten through
10 twenty-five.

11 THE COURT: Okay.

12 A Beginning with page 205, line five through ten.

13 "So as I came into the entry I couldn't move to the
14 left to sweep the left of the room, so my weapon and my
15 light went to the left-hand side. So it was kind of
16 catty-cornered from me when I saw both people get, show,
17 both hands. And they were clear. Had no weapons in their
18 hands."

19 Page 210, line ten through twenty-five.

20 "Okay. And you indicated you saw two people on the
21 couch. Yes, ma'am. A male and a female. Yes, ma'am.
22 Okay. And you said that they put their hands up. Yes,
23 ma'am. And they said okay, okay. Yes, ma'am. Okay. So
24 in your -- in your belief they were surrendering. Yes,
25 ma'am. And you didn't feel that they were a threat. No,

Toby Moore
Direct examination by Ms. Moody

1 ma'am. Okay. So then you went to the back of the house to
2 try and secure that. I tried to. Yes, ma'am."

3 officer Harris testified that he was -- Officer
4 Hillers -- excuse me -- testified that he was the second
5 person to go inside the apartment and he observed.

6 THE WITNESS: With this Court's permission I would
7 like to read from page 125, lines eight through
8 twenty-five, and page 126 through line one through three.

9 THE COURT: Okay.

10 A Okay. Starting with page 125, line eight through
11 twenty-five.

12 "I still have a team in there. We had -- you know, I
13 had to make sure that nobody else was hit, nobody else was
14 hurt and make sure that, you know, I didn't know if the
15 whole house had been -- been cleared at that time because
16 it had only been a couple of seconds. And I knew, so I ran
17 back inside at that point. I was fairly confident that
18 90 percent of the house had been cleared by officers of
19 the -- cleared by officers or by our tactical officer
20 because I could see them in this front room. I provided
21 cover where I believed it was William Rodgers to be
22 handcuffed so he could, you know. That's for safety
23 instead of, you know, we'll have one person to cover, the
24 other one handcuffed. And at that point I provided the
25 cover, which standing there and keeping eyes on him while

Toby Moore
Direct examination by Ms. Moody

1 the other officer can do handcuffing. Once that happened I
2 went to the next room to where I had -- where I had -- knew
3 I had fired rounds, and I knew I was getting rounds shot at
4 me. From at that point I saw Toby Moore who's sitting
5 right there. He was face down in the bathroom."

6 Okay. Hence -- excuse me.

7 "Hence, the second officer who went inside covered the
8 black male on the couch until he was handcuffed. To the
9 contrary, Officer Sam Morrow testified that he was the
10 second officer to go inside, go into the apartment. And
11 what he witnessed...

12 THE WITNESS: Your Honor, with this Court's permission
13 I'd like to read from page 244, lines 23 through 25,
14 through page 245, lines one through eighteen, and page 247,
15 lines four through six, and page 255, lines two through
16 twelve.

17 THE COURT: Okay. Tell me what -- you're reading all
18 of this -- you're trying to prove. Tell me. What does all
19 of this mean?

20 THE WITNESS: It's showing the perjured testimony from
21 the police officers.

22 THE COURT: Okay.

23 THE WITNESS: All right. Ready when you are.

24 THE COURT: I'm ready.

25 THE WITNESS: Okay.

Toby Moore
Direct examination by Ms. Moody

1 A Page 244, line -- lines 23 through 25.

2 "Okay. If that didn't occur that way, which officer
3 were you in the door? I was the second officer in the
4 door. And what did you encounter when you went inside?"

5 Let me see. Through page 118.

6 "As I was approaching the door I observed a black male
7 and while [sic] female sitting on the couch together. They
8 were sitting side by side. I observed Officer Harris look
9 to his left. I seen hands go up. He looked straight and
10 he looked at fire at that moment. I stepped in to the left
11 and observed the subject had a handgun. He was curly into
12 a ball. His feet were pulled up to his chest right next to
13 the female. I fired two shots. The threat was over. I
14 moved on to the back with Officer Cooper. And where was
15 Cooper while -- while you were -- Officer Cooper was to my
16 right. Okay. Were both of you basically in the doorway?
17 Yes, sir. I was a step inside the doorway. You were a
18 step inside? Yes, sir."

19 THE WITNESS: Now I'm going to page 247.

20 THE COURT: Okay.

21 THE WITNESS: Four through six.

22 A "And after you fired your rounds what did you do? The
23 threat was over with. He had -- we had no more threat.
24 The subject's gun fell out of his hands."

25 Page 255, lines two through twelve.

Toby Moore
Direct examination by Ms. Moody

1 "You didn't hear Officer Copper shots. No. I seen
2 his pistol recoiling. Okay. Where was he in relation to
3 where you were seated? He's on the right-hand side of me.
4 To his right. Was he hairlined with you? Was he a little
5 further up, do you remember? I was a little further up
6 than him. He was to my right, maybe a foot behind me. I
7 know he was inside the doorway, maybe a foot inside the
8 doorway. One foot inside the doorway."

9 On cross-examination Officer Morrow admitted on
10 January 6th of 2011 he failed to mention in his incident
11 report such vital details, the black male on the couch had
12 his hands up, reached down for his waistband and pointed a
13 gun at me.

14 Now, Officer Jeff Cooper testified to a totally
15 different event than Harris, Morrow, Hillers. In his
16 incident report dated January 6th of 2011, mainly that he
17 was the third officer to go into the door.

18 THE WITNESS: And, Your Honor, I'd like to read page
19 218, lines 21 through 25, page 219, lines one through
20 thirteen, page 221, lines three through twenty-two, and
21 page 222, lines four through thirteen.

22 THE COURT: Okay.

23 THE WITNESS: Starting with line 21 on page 218 of my
24 trial transcript.

25 A "As Sergeant Hillers was progressing on in the -- and

Toby Moore
Direct examination by Ms. Moody

1 the male that was on the couch presented a firearm and
2 pointed it at the -- my team members. And so at that time
3 I fired upon him. When you heard the first shots were you
4 located -- where were you located? Again, I was at the --
5 I was on the porch when the first one started, and then as
6 we was progressing in, at that time I stopped at the
7 doorway. Sergeant Hillers had already made it into the
8 house a couple of steps, but he was blocking my view. You
9 were basically in the doorway. I was in the doorway, yes,
10 sir. Okay. And where was -- let's see. Hillers was in
11 front of you. Harris was in front of him. Where was
12 Morrow? Morrow was to my left. We were pretty much taking
13 up the doorway coming in."

14 Page 221, line three through twenty-two.

15 "And then you try to get him to put it down. We were
16 hollering police, search warrant, get on the ground,
17 police, search warrant. So the words he dropped the -- so
18 the words he dropped a weapon. I can't say I did say that,
19 but I know I was announcing police, search warrant, with
20 everybody else. But unless you definitely heard shots
21 fired in your direction before you saw that other man with
22 the gun. Yes, sir. And because of the circumstances and
23 the gun and what y'all were yelling is that -- that's what
24 led you to shoot him. Yes, sir. And what happened when
25 you fired? When I -- the first couple of times I fired he

Toby Moore
Direct examination by Ms. Moody

1 sat back. He drew his legs up into his chest. I think
2 he was trying to cover his midsection. And he still had
3 the gun pointed between his legs, right towards the rest of
4 the SWAT officers and myself. I'm sorry. That was there
5 at the doorway. So I continued to shoot until he dropped
6 the weapon."

7 Page 222, line four through thirteen.

8 "Do you know how many times you would have fired on
9 him? I'm thinking six to eight times. I don't know a
10 hundred percent. Did he eventually drop the weapon? Yes,
11 sir. Once he dropped the weapon, I ceased firing. Then
12 what did he do? I progressed. And then what did you do?
13 Excuse me. I progressed on forward into the house. I,
14 like I said earlier, I knew that them two on the couch was
15 not the immediate threat. According to the on-trial
16 testimony, Officer Morrow admitted Officer Copper was
17 slightly behind me, that while he was coming into the
18 doorway he saw the male on the couch point a gun at him.
19 Consequently, he shot and killed him because he would not
20 drop the gun. Yet officer Cooper testified that, as I
21 progressed on forward into the house, the two on the couch
22 were not the immediate threat. Additionally, Officer
23 Adrian Patton testified."

24 THE WITNESS: Your Honor, I would like to read from
25 page 266, lines four through twenty-one.

Toby Moore
Direct examination by Ms. Moody

1 THE COURT: Okay.

2 A "Okay. Well, tell us from your perspective what you
3 saw and what you did. Okay. Once the door was breached
4 and the door opened I saw Officer Harris make entry. And
5 we were yelling police, search warrant. I heard these
6 shots from inside of the house. I watched Officer Harris
7 fall and yell when he hit the ground. At that time as we
8 normally would flow, Officer Morrow and Sergeant Hillers
9 was already inside the door. I could after -- after I saw
10 Officer Harris fall, they were in front of me. So I -- I
11 couldn't go any further. I slid over behind Officer Morrow
12 like I normally would to be able to enter in right after
13 him and be his defense. Where was Officer Cooper? Officer
14 Cooper was at the beginning, was behind me. But, like I
15 said, as they, as they closed in and we heard the shots, I
16 stepped. I stepped to the left. Officer Cooper stepped to
17 the right. That testimony helps us appreciate that Officer
18 Cooper was shooting into the apartment from the porch,
19 which explains why SLED Agent Melissa Skipper Wallace
20 testified that she found some casings, some of his shell
21 casings, on the porch."

22 Q Mr. Moore, are you saying that because they had
23 inconsistent testimony that they should have been charged
24 with perjury?

25 A Excuse me?

Toby Moore
Direct examination by Ms. Moody

1 Q Are you saying that all of these officers -- Harris,
2 Hiller, Mower -- Morrow, Cooper, Patton -- that they all
3 had inconsistent testimony so they should have been charged
4 with perjury?

5 A I'm not understanding what you're asking me, Ms.
6 Moody.

7 Q The allegation is that your attorney did not move for
8 posttrial -- motion for new trial where there was
9 overwhelming facts of evidence of outrageous police conduct
10 and perjured testimony.

11 A Say that again.

12 Q This is your issue.

13 A You talk fast.

14 Q Your issue is that your attorney should have filed or
15 moved for a new trial.

16 A Uh-huh.

17 Q And you're saying the reason why she should have moved
18 for a new trial is the overwhelming facts and evidence of
19 outrage police conduct and perjured testimony. You're
20 saying basically -- if I'm not correct, tell me. You're
21 saying that they had different testimony and they were
22 perjuring themselves.

23 A Right. That shouldn't even been allowed into the
24 record. And trial counsel should have objected to that
25 perjured testimony.

Toby Moore
Direct examination by Ms. Moody

1 Q But they were testifying as to the facts as they saw
2 it, correct?

3 A Well, that's what they claim, but, as you can see --
4 and that's on presenting this evidence into the record now
5 that it was strictly perjured testimony.

6 Q Okay. And you're saying they intentionally lied to
7 the Court?

8 A Committed perjury, yes.

9 Q Okay. By their testimony.

10 A Yes.

11 Q Okay.

12 A Yes.

13 Q For brevity sake, you understand the Court has a copy
14 of the transcript, the same as that transcript you have.

15 A Right.

16 Q Are there any pages you want to have him look at?

17 THE COURT: I've got all of these others. Anything
18 else you --

19 THE WITNESS: I could. I can give it to you. Yes.
20 I'll give you the pages.

21 THE COURT: Just give it to me and I can read it.

22 THE WITNESS: Okay.

23 THE COURT: I can read. Just tell me what pages you
24 want me to read.

25 THE WITNESS: Okay.

Toby Moore
Direct examination by Ms. Moody

- 1 Q You left off with Patton.
2 A Thank you.
3 Q And you -- you left off with Patton with 266, lines
4 four through twenty-one.
5 A Okay. We get --
6 Q Getting ready to go to somebody else's.
7 A Yeah. We're getting close to it.
8 Q You don't --
9 A Can you hand that to the judge for me?
10 Q Just state it into the record, what the page
11 numbers --
12 THE COURT: Just state it. Just give me the pages.
13 Just name them off.
14 THE WITNESS: Page 266.
15 THE COURT: Okay.
16 THE WITNESS: Lines four through twenty-one.
17 THE COURT: Okay.
18 THE WITNESS: Page 287, lines 17 through 25, through
19 page 28, lines one through five.
20 And the last one will be probably -- well, no. That
21 won't be the last one.
22 Page 161, lines three and four, and lines 15 and 16.
23 Then page 319, lines 19 through 25, through page 320.
24 THE COURT: Okay. 319 what?
25 THE WITNESS: 19 through 25.

Toby Moore
Direct examination by Ms. Moody

1 THE COURT: Okay.

2 THE WITNESS: Page 320, lines one through eleven.

3 THE COURT: Okay.

4 THE WITNESS: And last, page 441, lines 22 through 25,
5 through page 442, lines one through three.

6 Q That all goes to the perjured testimony?

7 A Yes.

8 Q All right.

9 A All right. And we left, stopped off, at Patton,
10 right?

11 Q No. We're not going to read all that into the record.
12 The judge is going to read that. The judge -- you
13 understand that the judge has the same transcript you have.

14 A Right. Well, I'm not going to -- yeah. I'm not going
15 to read the lines. I'm going to finish reading the -- my
16 issue, my allegations, my supporting facts if you don't
17 mind, Ms. Moody.

18 Q What are the supporting facts?

19 A Okay. Where was we at? Officer Patton, right?

20 Q Well, who else perjured? If you gave him all the
21 pages for Officer Patton, what other officers perjured,
22 gave perjured testimony? Just list their names.

23 A Officer Adrian Patton. Well, that's it. That would
24 be the last one.

25 Q Okay. So the judge has the pages, and he's going to

Toby Moore
Direct examination by Ms. Moody

1 read those pages as to Officer Patton where you said that
2 he perjured himself.

3 A Right.

4 Q Okay. Are there any other officers that you feel
5 perjured themselves? I'm understanding there are not.

6 A Right, right.

7 Q Okay. Your next issue?

8 A But can I -- can I finish reading this in the record,
9 please?

10 Q Are you quoting case law?

11 A No, I'm not quoting case law.

12 Q Go ahead.

13 A All right.

14 Okay. "From Adrian Patton's testimony, that testimony
15 helps us appreciate that Officer Cooper was shooting into
16 the apartment from the porch, which explains why SLED Agent
17 Melissa Skipper Wallace testified that she found some of
18 his shell casings on the -- on the porch. At the beginning
19 of this allegation I stated that the officers came into the
20 apartment with guns blazing. If this Court has an issue
21 with my credibility, please accept the credibility of
22 Officer Jeremy Hensley who testified from page 287, lines
23 17 through 25, through page 288, lines one through five.
24 Other evidence of outrageous police conduct includes
25 Officer Mary Elizabeth Stewart, an expert in the area of

Toby Moore
Direct examination by Ms. Moody

1 narcotic and drug analysis. She testified on direct
2 examination from page 161, lines three through four, and
3 lines 15 and 16. It's ironic that after all of those
4 officers put their lives at risk, killed one man, shot a
5 female and tried to kill me to get drugs off the streets
6 only to have Ms. Stewart not test them so that I could be
7 held accountable. More important, where did that zip-lock
8 bag of drugs go? Officer Doug Harwell testified on direct
9 examination that Duncan Park, the park specified in my
10 indictment, is 0.4 miles from [REDACTED] Owens Street. That is
11 simply false and deliberate perjury. I have a witness
12 present today who is willing to testify that the shortest
13 route without trespassing through homeowners' yards from
14 [REDACTED] Owens Street to Duncan Park is 0.7 miles. Just to
15 wrap this allegation up, SLED Agent Melissa Wallace
16 testified at page 319, lines 19 through 25, through page
17 320, lines one through eleven. But just like the no-knock
18 search warrant, the officer-involved shooting search
19 warrant's nowhere to be found in my criminal record or upon
20 filing this P.C.R. application. I have been denied and
21 deprived of the right to view, confront and challenge the
22 legality of the alleged search warrant. This Honorable
23 Court can and should agree with the statements Prosecutor
24 Bulsa made during his closing arguments on transcript page
25 441, 22 through 25, through 442, lines one through three.

Toby Moore
Direct examination by Ms. Moody

1 Ever more so, the officers involved in the incident on
2 January 6th of 2011 did a worse job of covering up the fact
3 that there is no evidence whatsoever in my criminal record
4 of a C.R.I. named Loopy alleged that he had been to [REDACTED]
5 Owens Street on January 3rd of 2011. Likewise, I was never
6 arrested or indicted for the alleged cocaine purchase by
7 any C.R.I. named Loopy in connection with the
8 December 14th of 2010 date.

9 Q Okay. So that ends that issue.

10 A Yes, ma'am.

11 Q Your next issue, K, you state that the trial counsel
12 failed to object to the trial court instructing the jury
13 that they -- your sole objective is simply to reach the
14 truth in the matter. So you took issue with the judge
15 telling the Court -- telling the jury that they are to find
16 the truth in the case.

17 A It was -- I got that here somewhere. Give me one
18 minute.

19 (Pause.)

20 A Okay. During my trial on two occasions Judge Cole
21 instructed the jury during his jury charge your sole
22 objective is to seek the truth in the matter and by doing
23 that you will have fulfilled your obligations as jurors.
24 Under State vs. Sneed, 508, S.E. 2nd at 857, 1998, the high
25 court exclaimed we take this opportunity to strongly urge

Toby Moore
Direct examination by Ms. Moody

1 the trial courts to avoid using any seek language when
2 charging jurors on reasonable doubt or circumstantial
3 evidence. Such language is unnecessary and
4 unconstitutional. It shifts the burden of proof to a
5 defendant. During her closing arguments Ms. Jones
6 successfully pointed out for the jury not less than 12
7 contradictory statements the investigators made in their
8 incident reports during my preliminary hearing and/or
9 during my trial, my jury trial. In his closing arguments
10 Derrick Bulsa conceded that the investigators lied umpteen
11 times throughout my criminal trial process or sought out to
12 minimize its effect by stating their stories had some small
13 inconsistencies because they had different perspectives
14 about what was going on.

15 Q Mr. Moore, I need to stop you right there.

16 You're stating that your lawyer didn't object to the
17 statement from the judge. Let's keep it on the statement
18 for the judge. You're saying that you had an issue with the
19 judge saying sole objective is simply to reach the truth in
20 the matter.

21 A Right, right.

22 Q So what else did the judge say how -- how is that
23 ineffective assistance for your counsel to say -- for your
24 counsel to allow the judge to say your sole objective is
25 simply to reach the truth of the matter?

Toby Moore
Direct examination by Ms. Moody

- 1 A Okay. The prejudicial effect of Ms. Jones' failure to
2 object to Judge Cole's jury charge instructing the jury
3 that their sole objective was to seek the truth is that
4 there is a reasonable and strong likelihood that the jurors
5 applied the challenge instruction in a way that violates
6 the constitution. Simultaneously, the jury interpreted the
7 seek instruction to outweigh and disregard --
- 8 Q The what instruction?
- 9 A The seek.
- 10 Q The seek, S-E-E-K?
- 11 A Yes. Seek instruction to outweigh and disregard the
12 state's obligation to prove every element of the crimes
13 charged.
- 14 Q Now, are you saying that -- you're saying that the
15 jury did not -- or excuse me -- you're saying the jury --
16 you know that the jury decided to go by that standard, seek
17 the sole objection? Is what you're saying?
- 18 A I'm saying this is a strong likelihood.
- 19 Q Oh, a strong likelihood.
- 20 A Yeah.
- 21 Q Okay. Is there anything else as to that sole
22 objective, is simply to -- as simply to reach the truth of
23 the matter?
- 24 A That's all I have for that.
- 25 Q Okay. Now, you had appellate counsel, and I would

Toby Moore
Direct examination by Ms. Moody

1 I like to go through these. If there are any pages you want
2 the Court to look at in the transcript, I need you to tell
3 us the page. But your allegation against your appellate
4 counsel -- which was Mr. Mobley, correct?

5 A Right.

6 Q Okay. You spoke with Mr. Mobley about appealing your
7 case to the Court of Appeals, correct?

8 A Yes, ma'am.

9 Q Okay. And you allege that Mr. Mobley allowed you to
10 be denied and deprived of your due process and equal
11 protection by refusing to honor or respect your request to
12 submit a timely petition for rehearing. So you -- he got
13 the appeal filed, correct?

14 A Right.

15 Q And apparently the appeal -- your conviction was
16 upheld by the Court of Appeals, correct?

17 A Right.

18 Q And so you wanted him to appeal that further?

19 A Yes, to file a rehearing.

20 Q Oh, file a rehearing with the -- excuse me. File a
21 rehearing with the Court of Appeals.

22 A Yes, ma'am.

23 Q So did Mr. Mobley tell you why he would not do -- file
24 a rehearing motion?

25 A Afterwards, after the fact.

Toby Moore
Direct examination by Ms. Moody

1 Q Well, what did he tell you?

2 A Okay. Let me go into this.

3 "Prior to and throughout my entire appeal process I
4 pacificially -- specifically and concisely emphasized to
5 John Terrence Mobley, my appellate defender, that I needed
6 for him to file a petition for rehearing before the South
7 Carolina Court of Appeals in the event my direct appeal was
8 unsuccessful. So on March 1st -- 4th of 2014 when I
9 received an order from the Court of Appeals -- hand it up
10 to the judge" --

11 Q They have it.

12 THE WITNESS: Y'all got all of this? Okay.

13 A "So on March 4th when I received an order from the
14 Court of Appeals informing me that my conviction and
15 sentence had been affirmed by opinion dated January the
16 22nd of 2014, on March 5th of 2014 I sent Mr. Mobley a
17 letter reiterating my intent to fully exhaust the issue he
18 raised on direct appeal by way of the petition for
19 rehearing. Subsequently, knowing I had only ten days to
20 file the petition and because Mr. Mobley did not respond to
21 my March 5th letter, on March 10th of 2014 I submitted what
22 I believed to be a timely petition for rehearing. However,
23 I received a letter from Deputy Clerk V. Clair Allen of the
24 Court of appeals stating no action would be taken on my pro
25 se petition because I was being represented by Mr. Mobley.

Toby Moore
Direct examination by Ms. Moody

1 That was on March 24th of 2014. Following on March 27,
2 2014 -- 2014 I sent a motion before the South Carolina
3 Supreme Court seeking to have my pro se petition for
4 rehearing reinstated in the lower court. Unfortunately,
5 April 14th of 2014 I received an order from the Supreme
6 Court declaring, because Mr. Mobley refused to submit a
7 petition for rehearing or withdraw his intent to fully
8 represent me, the Court of Appeals sent the remiture [sic]
9 to the circuit court on February 7th of 2014.

10 Q Now, let me. My question was what did Mr. Mobley tell
11 you why he would not file a motion for a rehearing. What
12 did Mr. Mobley tell you?

13 A Say what -- what -- that was like -- I can't remember
14 when he came to the institution, but it was way after all
15 of this. And he said -- he said that he didn't see no --
16 no merit to it, to filing it.

17 Q So you -- did you talk to him physically? You
18 actually saw him.

19 A Yes.

20 Q And he told you that's why he didn't file a motion for
21 rehearing.

22 A Right.

23 Q Okay. Did he send you a letter before then telling
24 you that he wasn't going to file a motion?

25 A No.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. So you had no communication as far as a motion
2 to rehear until after it was sent back to the lower court.

3 A Right, until I wrote them to find out.

4 Q Okay. And so you feel like Mr. Mobley prejudiced you
5 by not filing for a rehearing.

6 A Right.

7 Q Okay. The other issue you allege against Mr. Mobley
8 is that he allowed you to be denied due process and equal
9 protection under the law by refusing to honor or respect
10 your wish to request to submit on the issue of the trial
11 court abusing its discretion and depriving you of your due
12 process rights and fundamental right to retain effective
13 assistance of counsel of your choice.

14 A Right.

15 Q What do you mean by that?

16 A Okay. "Initially, I retained Mr. Mobley to represent
17 me during my trial. For reasons unknown, Mr. Mobley never
18 established himself as counsel of record with the clerk of
19 court. I can only assume it was for such reason an
20 attorney from the public defender's office would attempt to
21 consult with me about my case. On each occasion someone
22 from the public defender's office tried to visit me at the
23 detention center I would not cooperate in any manner,
24 explicitly expressed that I did not desire any assistance
25 from their office and unequivocally made it clear that I

Toby Moore
Direct examination by Ms. Moody

1 had retained Mr. Mobley as trial counsel. After a
2 significant amount of time passed Ms. Jones notified me
3 that I would have to appear before a judge in order to get
4 Mr. Mobley appointed as substitute counsel. So on
5 March 21st of 2012 it was my understanding that that was
6 the reason we were appearing before the circuit court.
7 Ms. Jones notified Judge Cole that Mr. Mobley had
8 represented me during a preliminary hearing and cited
9 authorities and relevant -- legitimate cause for a
10 continuance. However, Judge Cole was unyielding. As such,
11 Ms. Jones provided Judge Cole with additional relevant,
12 substantial basis for a continuance, mainly that I had
13 already paid Mr. Mobley to handle my legal -- legal case
14 and that Mr. Mobley had obtained my discovery materials and
15 was perfecting and preparing my defense and that there was
16 other cases scheduled on the docket which were readily
17 available to be heard. Ms. Jones even reminded Judge Cole
18 of other cases exactly like mine for the identical grounds
19 had been shown favor by the same court within the past
20 week. Ms. Jones did everything within her authority
21 outside of walking out of the courtroom, abandoning me in
22 front of the judge to persuade Judge Cole to grant Mr.
23 Mobley an opportunity to represent on trial. Accepting the
24 fact that her request was falling on deaf ears, Ms. Jones
25 vigorously objected to and preserved for appellate review a

Toby Moore
Direct examination by Ms. Moody

1 conclusion of Judge Cole's abuse of discretion to deny me
2 the right to retain and have counsel that I could afford
3 representing me during trial. After my conviction and
4 sentence Mr. Mobley and I negotiated that instead of giving
5 me a refund Mr. Mobley would prepare and perfect my direct
6 appeal. Subsequently, I provided Mr. Mobley federal and
7 state constitutional law, state case laws and a letter
8 specifically affirming my strong desire to pursue the issue
9 of Judge Cole denying and depriving me of my due process
10 equal protection to not only retain but also have the right
11 to counsel of my choice represented me in my legal matters
12 brought against me by the state. For reasons unknown
13 Mr. Mobley desisted any further communication by telephone
14 and writing or otherwise. I received an initial brief
15 excluding the issues for appellate review we discussed.
16 And subsequently an untimely order from the Court of
17 Appeals affirming my conviction and sentence, I mention,
18 untimely to mean the issue on appeal Mr. Mobley powerful
19 review is barred from review by the Supreme Court due to
20 Mr. Mobley refusing on one hand to file a timely petition
21 for rehearing or in the alternative submit his resignation
22 before the Court of Appeals and such court would then
23 accept and take actions on my pro se petition for
24 rehearing.
25 Q Okay. And so you feel that that prejudiced you

Toby Moore
Direct examination by Ms. Moody

1 because you did not get a rehearing.

2 A Right. And -- and the preserve my issue as far as the
3 counsel of my choice.

4 Q Okay. And that's at the initial time that he filed
5 the initial brief.

6 A Right.

7 Q Okay. And so all of these things, all of these issues
8 that we've gone through, A through K, on ineffective
9 assistance of trial counsel, and A through B as to
10 ineffective assistance of appellate counsel, are the
11 reasons why you filed your P.C.R. application, correct?

12 A Yes, ma'am.

13 Q Okay. And what relief are you seeking from the Court
14 as to your post conviction relief?

15 A To have my sentence and convictions reversed or in the
16 alternative vacated if it pleases the Court.

17 Q So you're asking them to re -- you're asking the Court
18 to reverse it and start over because that's the relief you
19 would get.

20 A Right.

21 Q Okay. You realize that this Court, this judge, cannot
22 dismiss your charges, right?

23 A Right.

24 Q Okay. So you want to have another trial.

25 A Yes, ma'am.

Toby Moore
Direct examination by Ms. Moody

1 Q Okay. And you -- the -- the prejudice from your trial
2 counsel would be that you were found guilty.

3 A Right.

4 Q Okay. And the prejudice as far as your appellate
5 counsel would be that you were prevented from having your
6 case overturned by the Court of Appeals.

7 A That's correct.

8 Q And reheard.

9 A That's correct.

10 Q Is there anything else that you want to tell the Court
11 as it relates to the ineffective assistance of your
12 counsels?

13 A No. Thank you.

14 Q Are you sure?

15 A Yes, ma'am.

16 Q Okay.

17 MS. MOODY: No further questions for this witness.

18 THE COURT: Okay.

19 MS. OLIVE: I have no questions, Your Honor.

20 THE COURT: Okay. You can step down.

21 We're going to take a quick break.

22 (Whereupon, a recess was taken.)

23 MS. MOODY: Your Honor, if we may, we'd like to call
24 Ms. Janie Moore to the stand.

25 THE COURT: Okay.

Janie Moore
Direct examination by Ms. Moody

1 JANIE MOORE, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. MOODY

4 Q Ms. Moore, could you please state your full name for
5 the record?

6 A Janie Viola Moore.

7 (Pause for microphone.)

8 Q Can you please state your name for the record?

9 A Janie Viola Moore.

10 Q Okay. And how do you know Toby Moore?

11 A Toby is my son.

12 Q Okay. And are you familiar with where [REDACTED]...

13 MS. MOODY: Beg the Court's indulgence.

14 (Pause.)

15 Q I'm sorry. I forgot the name of the street. [REDACTED],
16 Apartment [REDACTED], Owens Street is?

17 A Yes. I know.

18 Q Okay. And are you aware of any parks or schools near
19 that apartment?

20 A Duncan Park.

21 Q Okay. And have you ever had the occasion to drive
22 that from [REDACTED] Owens Street to Duncan Park?

23 A Yes.

24 Q Okay. And how far is that? Did you pay attention to
25 the mileage? I'm sorry.

Janie Moore
Cross-examination by Ms. Olive

1 A Yes. Toby had asked me to check, and I think it was
2 like 1.8 miles, like zero, eight, like .8 miles, eight --

3 Q And is that by car?

4 A Yes.

5 Q Okay.

6 MS. MOODY: No further questions for this witness.

7 CROSS-EXAMINATION

8 BY MS. OLIVE

9 Q And you stated that was by car?

10 A Yes, ma'am.

11 Q Driving. So you can't testify as to how far it is on
12 a map as the crow flies.

13 A No. I can't.

14 Q Okay. Thank you.

15 A You're welcome.

16 MS. MOODY: No further questions.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: You're welcome.

19 THE COURT: Counsel, as far as that issue is
20 concerned, y'all's contention is that the state didn't
21 offer any testimony about distances?

22 MS. MOODY: Well, it's my contention that -- well, Mr.
23 Moore's contention is that the information that they said
24 in terms of the half mile, that it was incorrect.

25 THE COURT: But was there testimony in the record that

1 it was, what, you know, a half mile? And they put in
2 exhibits, maps or tax maps or aerial photographs showing
3 that?

4 MS. MOODY: They put in a map as State's Exhibits 2
5 and 3, Your Honor. And that would have been -- I'm
6 looking.

7 (Pause.)

8 MS. MOODY: On page 63 of the court transcript they
9 put in that on line 23 Duncan Park is .4 miles away from
10 the location. And there's another park that is within the
11 distance, that it -- I think it's the Mary H. Wright
12 Greenway Park and the Hudson Barksdale Boulevard at Caulder
13 Avenue. So they submitted into evidence the maps, and then
14 there was the testimony about it.

15 THE COURT: Okay. Thank you.

16 MS. MOODY: No further witnesses.

17 MS. OLIVE: Your Honor, I'm going to call Tanya Moore
18 [sic] and get her back on the phone.

19 THE COURT: Okay.

20 (Pause for Tanya R. Jones to be connected via cell
21 phone.)

22 TANYA R. JONES: Tanya Jones speaking.

23 MS. OLIVE: Good afternoon, Tanya. This is Alicia
24 Olive from the attorney general's office again.

25 TANYA R. JONES: Yes.

Tanya R. Jones
Direct examination by Ms. Olive

1 MS. OLIVE: Hey. We are -- we are back.

2 I've got some speakers. I'm going to see if they
3 work. If not, I'm just going to unplug them and we'll
4 continue on as we have. But we'll -- I'm going to plug
5 them in real quick and see what happens.

6 Can you hear me?

7 TANYA R. JONES: I can.

8 MS. OLIVE: Okay. Great. Sounds like that's working.
9 Your Honor, the state calls Tanya Jones.

10 THE COURT: Okay. Ms. Jones, if you will, raise your
11 right hand.

12 TANYA R. JONES, having been
13 first duly sworn, testified as follows:

14 THE COURT: Thank you.

15 DIRECT EXAMINATION BY MR. OLIVE

16 Q Ms. Jones, where are you currently residing?

17 A Oklahoma City, Oklahoma.

18 Q And are you practicing there as well?

19 A I am.

20 Q Okay. Do you recall whether you were appointed or
21 retained on Mr. Moore's case?

22 A I was appointed to his case.

23 Q Was that through the public defender's office?

24 A Yes.

25 Q And, Ms. Jones, how long have you been practicing law?

Tanya R. Jones
Direct examination by Ms. Olive

1 A Close to 15 years.

2 Q And what portion of that has been criminal?

3 A I started doing public defender work in probably '06.
4 I think I started in Georgia.

5 Q Do you recall how many times you met with Mr. Moore in
6 preparing this case?

7 A I'm sorry. Can you say that again?

8 Q I'm sorry. Do you recall how many times you met with
9 Mr. Moore?

10 A I have a printout, and it looks like approximately
11 five times. I tried to put in when I would go to the jail
12 in a -- the program at the -- at our office. And sometimes
13 I would miss some, and sometimes I wouldn't, but I would
14 say I probably met with him at least a good five times.

15 Q Did you file a motion for discovery in this case?

16 A I think we would have. I know we file them here, and
17 I just don't remember the practice and procedure there.
18 But I worked closely with Mr. Bulsa, and I was able to get
19 all of the discovery and go through the file and make sure
20 I had everything. That was never an issue with the D.A.'s
21 office there.

22 Q Did you review that discovery material with Mr. Moore?

23 A I believe I tried to. He was not very cooperative,
24 but certainly we would have gone over the police reports
25 and different things.

Tanya R. Jones
Direct examination by Ms. Olive

1 He was mainly focused on the fact that his friend,
2 Mr. Rodgers, was killed, in his terms, cold blood.

3 Q Did you discuss with Mr. Moore the charges he was
4 facing, including the elements that the state would have to
5 prove?

6 A I don't have a specific recollection of that, but I
7 generally -- I would go over with people what they're
8 charged with, their punishment range and if they have any
9 questions regarding, you know, what's going on in the case,
10 the status, you know. And if they want a more detailed
11 discussion of the elements, certainly I will do that.

12 A lot of times people are very confused about
13 constructive versus actual possession. So if he would have
14 asked me those questions, I certainly would have answered
15 them. I just don't have an independent recollection of
16 that.

17 Q Mr. Moore testified regarding the indictments and the
18 fact that not all of them contained a specific quantity.
19 Is that a basis that you could have challenged those
20 indictments on at the trial stage?

21 A I didn't see any issues with the indictments. I
22 believe the law in South Carolina at the time was the only
23 charge that had to have a specific weight were the
24 trafficking. And that trafficking one was proper because
25 it was 28 grams or over.

Tanya R. Jones
Direct examination by Ms. Olive

1 Q Do you recall whether evidence was introduced at the
2 trial regarding the weights of those drugs that were
3 entered?

4 A Yes. They had two chemists come in and testify
5 regarding the cocaine, the crack, as well as the marijuana
6 that was found inside the house.

7 There were also pills that I objected to, but it came
8 in. He wasn't charged with the pills. And I believe it
9 was Ecstasy.

10 Q But he wasn't charged with those.

11 A No.

12 Q Mr. Moore also took issue with the -- and I apologize.
13 I might jump around a little bit here. He also took issue
14 with the jury charges, specifically with regard -- I
15 believe he felt it was -- he testified that he felt it was
16 inconsistent to charge the jury on the lesser included
17 offense of possession but to still charge them on the
18 possession with intent to distribute as to the
19 half-mile-of-school-or-park charge.

20 A Right. What I think he was getting at was the fact
21 that I requested the lesser included charge of just
22 straight possession and I didn't request the charge of
23 straight possession with the possession with intent within
24 half mile of a school.

25 I probably should have done that. That was a neglect

Tanya R. Jones
Direct examination by Ms. Olive

1 on my part. But, again, the jury didn't even come back
2 with possession. They came back with possession with
3 intent.

4 I will say that the -- the -- I think that was either
5 crack or cocaine. I can look. But the crack cocaine he
6 had was 7.17 grams and the cocaine was 36.95 grams. The
7 marijuana was 111.15 grams. So there was certainly enough
8 information there that this was more than a user amount.

9 Q Ms. Jones, I am going to jump back for a second.

10 A Uh-huh.

11 Q Did Mr. Moore discuss with you his version of what
12 happened?

13 A He -- he did. He basically indicated that this was --
14 he didn't live there. This was not his residence. These
15 drugs weren't his. He was not a drug dealer. And, you
16 know, this was all just one big lie.

17 And he also really wanted to focus on the fact that
18 Mr. Rodgers was in his mind killed. He wanted to go to
19 trial to show that. He wanted me to focus on that aspect
20 of the trial. And I tried to remind him that the trial was
21 really going to be about his conduct and what the state is
22 alleging against him and not necessarily what happened to
23 Mr. Rodgers.

24 Q Did you discuss any possible defenses with Mr. Moore?

25 A We did. We had very limited defenses because it was a

Tanya R. Jones
Direct examination by Ms. Olive

1 search warrant case. I looked at the search warrant. It
2 was valid on its face. We did challenge that search
3 warrant in front of Judge Cole prior to trial, and he found
4 it valid as well.

5 So the police had a legitimate reason for being there.
6 So we just kind of threw up a defense of they were lying
7 about what happened to Mr. Rodgers, because their stories
8 were all over the place in regard to that. If they're
9 lying about that, what else are they lying about, what else
10 did they plant. That was really the only defense that we
11 had.

12 Q How would you characterize the state's evidence
13 against Mr. Moore?

14 A Very strong.

15 Q Did Mr. Moore ever provide you with any potential
16 witnesses or leads for investigative purposes?

17 A No.

18 Q What kind of investigation did you do in this case?

19 A Well, let me think about that. We -- I believe there
20 was another codefendant Amanda Gentry. I believe we either
21 talked with her or we attempted to talk with her.

22 We went over all of the pictures. And I spoke with
23 Mr. Bulsa regarding all of the evidence.

24 We drove by the scene of the house and really focused
25 on a lot of the photos and different things.

Tanya R. Jones
Direct examination by Ms. Olive

1 I know I spoke with a touch D.N.A. person, because
2 Mr. Rodgers' touch D.N.A. wasn't on this weapon that they
3 say, you know, he, Mr. Rodgers, branded, blood all over it
4 and all kind of things like that.

5 So there wasn't a lot really to investigate here
6 because was a search warrant and everything in that house
7 was -- you know, it was found. But we did try to lay out
8 the -- you know, go to the scene, talk with Ms. Gentry who
9 I don't believe was real helpful. And I think the state
10 was actually going to call her at one point and then just
11 decided not to.

12 Q And this touch D.N.A. person that you spoke with, did
13 you call her at trial?

14 A I did.

15 Q Do you feel you had ample time to prepare for trial?

16 A I did, but I was really -- what's the word I'm looking
17 for -- met much resistance because of the fact that Mr.
18 Moore really wanted a private attorney, and he wanted
19 Mr. Mobley. And I can tell you Mr. Mobley made a special
20 appearance just at the preliminary hearing. I sat through
21 it, but then I think Mr. Mobley -- if memory serves me
22 correctly -- wanted more money to enter for the trial, and
23 Mr. Moore's family couldn't afford that.

24 But it was kind of opinion. You know, he wouldn't
25 cooperate with me a lot, didn't really want to talk with me

Tanya R. Jones
Direct examination by Ms. Olive

1 about a lot of things to help build his defense simply
2 because he wanted Mr. Mobley. And, you know,
3 unfortunately, whether or not -- having an uncooperative
4 person to defend doesn't mean it doesn't go to trial. You
5 can't just put your head in the sand and hope it goes away.

6 Q Do you recall at what point you were appointed in Mr.
7 Moore's case?

8 A I don't have that information, but I do know from
9 these notes on 5/17/2011 I visited him at the jail.

10 Q So at least as of 5/27/11?

11 A Yes, yes. And I know I -- I didn't make his
12 preliminary hearing appearance, but I did make his initial
13 and second appearance. And Mr. Moore is correct. He did
14 have a 20-year offer on the table that he flat out
15 rejected, didn't even want to talk about it.

16 Q Okay. And that was on all charges?

17 A Yes, 20. Everything running C.C.

18 Q And you did ask Judge Cole for a continuance so that
19 Mr. Mobley could take over the case and get up to speed, is
20 that right?

21 A I did -- no. I did not ask for a continuance. It
22 turned out a little bit differently than that.

23 I believe what happened was Mr. Mobley showed up on
24 the call docket. I was also at the call docket. I think
25 we were going to be first up on Monday morning, or at least

Tanya R. Jones
Direct examination by Ms. Olive

1 the state put it in one of their tops to go. And
2 Mr. Mobley indicated that he wanted to enter. Mr. -- or
3 Judge Cole asked me whether -- oops. Let me back up.

4 Mr. Mobley asked if he could enter, and then he wanted
5 a continuance to enter to prepare for trial.

6 Judge Cole then asked me if I was ready for trial to
7 which I indicated I was. He therefore wouldn't let
8 Mr. Mobley enter because he didn't want the case continued
9 if I was ready to go forward.

10 I then pointed out that he left some other people in,
11 and like Doug Brannon on another case. He was just -- he
12 didn't care. This case was going on Monday. And if Mr.
13 Mobley could have been ready on Monday, I think he would
14 have allowed him, I think if memory serves me correctly.
15 But Judge Cole was -- was set on this case going on Monday.
16 And I do know the state had a lot of witnesses, a lot of
17 things to coordinate. And that might have been driving him
18 a little bit. But Judge Cole wanted to try it.

19 Q But were you ready to go on it?

20 A Uh-huh. There wasn't really a lot in this case to
21 prep in terms of -- well, I shouldn't say that. But there
22 wasn't a lot. We weren't going to really have any
23 witnesses. We weren't presenting a lot of evidence.

24 It was just sheer memorization of the police report
25 and poring over the photos in terms of picking out what was

Tanya R. Jones
Direct examination by Ms. Olive

1 important and what wasn't and being able to produce that to
2 the jury. And I think the transcript speaks for itself in
3 terms of me being able to highlight a lot of the
4 inconsistencies in the officers' version of what happened
5 to Mr. Rodgers on that couch.

6 Q Did you cross-examine the state's witnesses in that
7 respect?

8 A Yes, I did. I -- I -- I went at them pretty hard in
9 terms of the inconsistencies between the officers and the
10 fact that they left things out of their police report that
11 they were now saying and the fact that that gun that they
12 say was all bloody had absolutely no blood on it.

13 And there was a picture of a big blood pool in front
14 of Mr. Rodgers that wasn't even touched. So if the gun
15 fell like they say it did, why isn't that area smeared?

16 You know, the physical evidence didn't really support
17 the story that the police were giving. But, again, I --
18 even though we did this to say, well, if they're lying
19 about this, what else are they lying about, the focus
20 ultimately in the end was going to be about my client's
21 conduct. And he didn't want to hear anything about that.
22 That was not what he thought. I couldn't convince him
23 otherwise.

24 Q Did you make a directed-verdict motion in this trial?

25 A I did. I think they were just the standard general

Tanya R. Jones
Direct examination by Ms. Olive

1 ones that there was just insufficient evidence, because,
2 again, the state's evidence in terms of, you know, what
3 they allege Mr. Moore did was really quite strong.

4 Q Did you point out those inconsistencies in your
5 closing argument?

6 A I did, as many as I could. You know, maybe I missed a
7 few, but I really tried hard, again, to go after the fact
8 that if they're lying about this, what else are they lying
9 about.

10 Q And with regards to the jury charges, did you feel
11 there was anything objectionable with respect to the
12 judge's charge?

13 A I didn't, no. And I do know sometimes people do try
14 to object to, you know, getting to the truth of the matter,
15 because it's really a reasonable doubt standard and not
16 truth. I've never gotten any traction on that.

17 So I might have just missed it. But that would be the
18 only maybe questionable -- and I agree it probably
19 shouldn't be in there -- but I can't think of one case in
20 terms of that ever, you know, getting changed. And they
21 were all standard instructions from my memory --

22 Q Including --

23 A -- in perusing the transcript. It didn't look -- it
24 looked like they're all the standard weeded instructions
25 that we do. That's -- we do here, but South Carolina jury

Tanya R. Jones
Direct examination by Ms. Olive

1 instructions.

2 Q Do you recall whether the -- when the -- as Mr. Moore
3 testified earlier, that the judge recharged the malice
4 aforethought at the request of the jury? Was there -- was
5 that the same charge that he gave in his instructions?

6 A It appears to me that it was when I read the
7 transcript. And certainly sitting live in the courtroom
8 had I noticed a difference, I -- I would have objected or
9 brought it to the Court's attention.

10 Q Were you expecting the judge to charge the hand of
11 one, hand of all?

12 A I was not, and I still can't find that in the
13 transcript, and I couldn't follow along when Mr. Moore was
14 testifying. But I can see where they were getting that
15 from in a way because Mr. Rodgers also had drugs and money,
16 I believe, in his pocket. And I believe Ms. Gentry was
17 charged as well. I don't have her information in terms of
18 exactly what she was charged with. I know she pled.

19 And, again, that is a doctrine in South Carolina that,
20 you know, the hand of one is the hand of all. If, you
21 know, you're -- if you're all dealing -- dealing drugs, you
22 know, you all get punished.

23 Q Did you request a mere presence charge in this case?

24 A I do believe I did.

25 Q Was part of your theory in this case that Mr. Moore

Tanya R. Jones
Direct examination by Ms. Olive

1 had been the victim of a home invasion? Do you recall?

2 A No. That -- no. He had been a victim of a home
3 invasion previously.

4 Q That's what I meant.

5 A And where I was going with that theory -- and perhaps
6 it didn't come out in closing the way I wanted it to -- but
7 is the fact that there was no -- they knew potentially that
8 Mr. Moore had drugs, and potentially guns, which is why
9 they went to get the no-knock search warrant.

10 However, they all knew he had been a victim of a home
11 invasion. So why are we going into a potentially dangerous
12 situation when we can just get a search warrant, wait for
13 him to go to the store and do it that way?

14 I mean, if their whole thing is about safety and
15 concern, well, that was a much safer route than this whole
16 complete chaotic execution of a search warrant. That's
17 probably one of the biggest botched executions I've ever
18 seen.

19 Q And I apologize. I -- I -- that's what I meant, that
20 he had been a prior -- victim of a prior home invasion.

21 And did you address the issue with regards to the
22 difference between actual and constructive possession at
23 trial?

24 A I believe I did in my closing and talked about they
25 didn't introduce any evidence in terms of tying him to this

Tanya Jones
Cross-examination by Ms. Moody

1 specific house.

2 Q Ms. Moore [sic], that's all the questions that I have.

3 Please answer questions of Ms. Moody. Excuse me. Ms.

4 Jones, please answer questions of Ms. Moody.

5 CROSS-EXAMINATION

6 BY MS. MOODY

7 Q Good afternoon, Ms. Jones.

8 A Yes.

9 Q You can hear me?

10 A Yes.

11 Q So, basically, to summarize, you had difficulty in
12 representing Mr. Moore, correct?

13 A I did.

14 Q Okay. And you had a theory going into this case as to
15 what your defense was?

16 A Yes, in terms of what Mr. Moore would share with me.
17 And he just indicated these weren't his, this wasn't his
18 home.

19 I don't remember if he just said he was staying there
20 or not, because his complete focus was the fact that the
21 police just burst into -- and then he would concede it was
22 his house -- conceding broke into his house without a
23 authority because he wasn't doing anything wrong and shot
24 his cousin in cold blood. That was a narrative. It was
25 very hard to get him away from that.

Tanya Jones
Cross-examination by Ms. Moody

1 And so, ultimately, that's what I chose to ride -- you
2 know, ride that horse because nothing else -- there was
3 nothing else for me to use because he wouldn't tell me
4 anything else.

5 Q Okay. So he acknowledged to you that it was his
6 house.

7 A He did.

8 Q Okay. And then in terms of the representation with
9 the preliminary hearing, do you recall? You weren't
10 appointed as his attorney for the preliminary hearing or --

11 A I was, but/and I don't know if it's still a practice
12 in Spartanburg, but at the time sometimes judges would
13 allow attorneys just to make special appearances in just
14 specific things.

15 It was more common for bond hearings. You know, they
16 just come in for a bond hearing and then they get out right
17 away.

18 I don't like that practice. I think it interferes
19 with a lot with the client-attorney privilege. But I can't
20 control what a judge does.

21 And in that particular case Mr. Mobley -- if memory
22 serves me correctly -- was allowed just to enter for the
23 preliminary hearing, which, again, I sat through. And the
24 practice in Spartanburg for preliminary hearings is that
25 they have an officer.

Tanya Jones
Cross-examination by Ms. Moody

1 My notes referenced Officer Tinker did it, but I heard
2 that Mr. Moore was saying Sutton did it. And I know both
3 of them did. So I could have had a scrivener's error.

4 But they just read the reports. They have no
5 independent knowledge of the crime other than those
6 reports.

7 So I find that prelims can be -- are usually useless
8 to do in Spartanburg. But it is a good way to talk with
9 your client and go over the facts and some of the police
10 reports because they have them there. So if you don't have
11 them, you could borrow them from Tinker and go back and
12 talk with your client. So it's advantageous that way. But
13 in terms of actually getting anything dismissed, that was
14 few and far between.

15 Q Okay. So I'm just trying to be clear. So up to the
16 prelim you were his attorney and then --

17 A Yes.

18 Q -- Mr. Mobley came in and --

19 A Uh-huh.

20 Q -- you were -- you were there at the table for the
21 preliminary hearing too.

22 A I -- I wasn't even at the table. I think I just sat
23 to the side. I mean, it is -- it's a weird, uncomfortable
24 feeling when you're still the attorney of record but they
25 get to make these special appearances. It kinda leaves you

Tanya Jones
Cross-examination by Ms. Moody

1 in a I'm-not-sure-what-we're-doing-here, because,
2 obviously, public defenders aren't co-counsels with private
3 attorneys if that makes any sense.

4 But I did go to it, and then I -- Mr. Mobley wanted
5 more money, and the family didn't have it. So I was back
6 on it. I never left, but I then took over again if that
7 makes sense.

8 Q Okay. So as -- yes, it does. As to the more-money
9 part, when Mr. Mobley came in the family had paid
10 Mr. Mobley by then, is that --

11 A To -- to my knowledge, I had spoken with his -- well,
12 I had spoken with Mr. Moore's mom. It looks like on March
13 16th she indicated she hired John Mobley. And I guess roll
14 call there was on Monday. It's here Fridays. But I guess
15 it was Monday.

16 I spoke with Mr. Mobley's secretary. She indicated
17 he's hired, and to my knowledge he showed up because he
18 wanted to step in but continue the case.

19 Q Okay. All right. As to the jury instructions, you
20 indicated they were the standard jury instructions. Did
21 you submit any instructions to Judge Cole?

22 A I didn't physically. We did a lot of things just
23 orally in Spartanburg, both the D.A. as well as the public
24 defender's office. And that was certainly allowed. We did
25 a lot of oral motions, and we submitted those orally.

Tanya Jones
Cross-examination by Ms. Moody

1 Usually we would just request them. I know I asked
2 for a few that I felt were relevant. And to my knowledge
3 they were all granted.

4 Q Okay. Give me one second, please.

5 (Pause.)

6 Q Oh, now, as to -- you indicated that Mr. Moore wanted
7 to focus on Mr. Rodgers as to what was done to him.
8 Outside of what was done to Mr. Rodgers, if that wasn't a
9 part of the case, what was your feeling as far as the case
10 was concerned against Mr. Moore?

11 A It was very strong. I would have highly suspected he
12 would have been convicted on all counts.

13 Q And was he a target of invest -- he was the target?

14 A He was, yes. I don't have a copy of the search
15 warrant, but I think Mr. Moore testified that somebody had
16 seen marijuana in his house. And usually that's how a
17 search warrant starts. So that sounds pretty accurate.

18 Q And did you explain to Mr. Moore how that that
19 particular incident -- I think you said he was not charged
20 with the marijuana, correct?

21 A No. He wasn't charged with the Ecstasy. He was
22 charged with marijuana.

23 Q No. I'm talking about the -- the -- what initiated
24 the search warrant was a marijuana charge, would have been
25 a marijuana charge, right?

Tanya Jones
Cross-examination by Ms. Moody

1 A Yes. And I think he wasn't charged. In fact, I don't
2 think it was a controlled buy. I think they have -- I
3 think a C.I. had seen drugs, specifically marijuana, at Mr.
4 Moore's house. It was something along those lines.

5 Q Okay.

6 A But I don't have that search warrant in front of me.

7 Q So the search warrant that you charged, I mean, that
8 you challenged was the search warrant as to the drugs
9 that -- well, as to the drugs that were found inside the
10 house, which was the cocaine.

11 A Right.

12 Q All of that. You challenged that.

13 A Yeah. And now that I'm thinking about it too it might
14 not have even been a C.I. because then we would have gone
15 through all of that rigmarole to get the C.I.'s
16 information. I think the person was actually named if
17 memory serves me correctly.

18 Q Loopy?

19 A I don't remember all of that. And for some reason I
20 don't have the transcript of that suppression hearing. But
21 I know we -- we had a suppression hearing. Judge Cole was
22 irritated because he thought it was a waste of time.

23 Q Suppression hearing --

24 A I just don't remember the specifics.

25 Q When you say the suppression hearing, the suppression

Tanya Jones
Cross-examination by Ms. Moody

1 hearing as to Loopy or the suppression hearing as to the
2 search warrant?

3 A We had -- if memory serves me correctly, again -- and
4 I don't a transcript of it -- but we had a suppression
5 hearing.

6 Q Right.

7 A And I remember Judge Cole being kind of irritated
8 about it.

9 Q Okay.

10 A It was very short. It wasn't very long at all.

11 Q Okay. So outside of the five times that you met with
12 Mr. Moore -- was that before the preliminary hearing or was
13 that all right before the trial that you met?

14 A It looks like I went to -- I found him initially, and
15 then I put prelim yesterday, and then he was left to get on
16 the docket for an initial appearance. I would see him
17 second appearance, and then I went again to see him
18 regarding a second appearance. And usually that's where we
19 have a plea. And then I went again prior to trial.

20 Q Okay.

21 A And there might be times that I just didn't get it in
22 the notes because sometimes we get busy. This is just a --
23 you know, real rough estimate.

24 Q Okay. No -- thank you for answering the questions.

25 MS. MOODY: I have no further questions, Your Honor.

John T. Mobley
Direct examination by Ms. Olive

1 THE COURT: Any further from the state?

2 MS. OLIVE: Nothing further from the state, Your
3 Honor.

4 THE COURT: Okay. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Anything further from the state on this
7 case?

8 MS. OLIVE: No, Your Honor.

9 THE COURT: Anything further from the applicant?

10 MS. MOODY: Your Honor, I would since this P.C.R. is
11 against Mr. Mobley --

12 MS. OLIVE: Oh, I'm so sorry. I forgot myself. Yes.
13 We're calling Mr. Mobley.

14 THE COURT: Okay.

15 JOHN T. MOBLEY, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. OLIVE

18 Q Good afternoon, Mr. Mobley.

19 A Good afternoon.

20 Q Am I pronouncing that correctly?

21 A Yes.

22 Q Did you handle Mr. Moore's appeal in this case?

23 A Yes, I did.

24 Q And he testified that you -- I believe he testified
25 that you took it over in lieu of returning his fees that he

John T. Mobley
Direct examination by Ms. Olive

1 had paid to retain you for trial, is that right?

2 A Yeah. And actually his -- his mother is the one that
3 I dealt with regarding any payment of fees. I never
4 discussed money or dealt with Mr. Moore himself over money.
5 It was always his mother.

6 Q Okay. Mr. Mobley, do you recall what issues you
7 raised on appeal?

8 A I do not. Quite frankly, I mean, I do not.

9 Q Would it refresh your memory if I showed you a final
10 brief of appellant to you?

11 A Sure. I will say that, you know, based on my -- my
12 memory after reviewing the trial transcript that I thought
13 it was -- I mean, it was a clean trial.

14 I mean, just sometimes that's just unfortunate what we
15 have to deal with sometimes. I mean, you're looking for
16 errors and then things like that. And, you know, while
17 it's one thing to -- to -- to raise issues out of things
18 that may be arguable, I mean, sometimes there are just
19 none. I mean, that's just a reality of it, unfortunately,
20 which is why people, you know, of course file Anders briefs
21 a lot of times. But, yes, I raised the issue regarding
22 the -- the drug charge.

23 Q Was that with regard to the directed-verdict motion?

24 A That is correct.

25 Q Was that all drug charges or one drug charge?

John T. Mobley
Direct examination by Ms. Olive

1 A It appears that I raised the issue with regard to all
2 drug charges.

3 Q And was that regarding the failure of the Court to
4 grant the directed-verdict motion?

5 A That is correct.

6 Q Do you recall whether there were any other issues that
7 you felt would have been successful on appeal?

8 A No. Honestly, I mean, even this was a stretch. I
9 mean, this is -- no. I mean, and, once again, I mean,
10 it's -- it's unfortunate, but that can happen sometimes.

11 You can -- you can have a -- a clean trial, whereby
12 you can, you know, disagree with the outcome, but from a
13 legal and an appellate standpoint there appear to be no
14 real errors of law that were committed.

15 You know, the jury can determine credibility. They're
16 the fact-finder, and those, unfortunately, are just things
17 you really don't have the -- the means to -- to appeal.
18 So, but that's the unfortunate situation regarding the lack
19 of additional issues.

20 Q Is there a reason that you didn't raise the -- the
21 issue regarding the Court's failure to allow you to proceed
22 on Mr. Moore's trial?

23 A No. I mean, honestly, I just kind of, you know, based
24 my review of the law and -- and my involvement with the
25 circumstances. That was just something whereby the Court

John T. Mobley
Direct examination by Ms. Olive

1 had discretion.

2 I mean, basically -- and I'm going on memory. But I
3 think it's fairly clear. I mean, I did -- I was retained
4 for the preliminary hearing in this matter initially.

5 You know, my client's mother was a very, very nice
6 woman, and we had an ongoing dialogue, and she was doing
7 the best we can. And/but, obviously, when you have
8 circumstances and charges that are serious you kind of have
9 to -- you can't be as flexible with finances and things
10 like that. And -- and that was in no way disrespectful to
11 her, her attempt to raise money and things like that. And
12 I appreciate her trying to have a dialogue with him. But
13 that was just kind of how things went.

14 When they -- you know, so, obviously, because I was
15 not retained on the underlying charge, the trial
16 representation, I wasn't monitoring the -- the status of
17 where the case was on the docket. I would have no reason
18 to.

19 So whether he had a -- I mean, I'm assuming he had a
20 public defender. But where they were on the trial roster,
21 what state of the case they were in, whether he was in --
22 in or out of jail, I didn't really have any -- any reason
23 to keep track of details, like at one point she did
24 indicate to me that she was able to come up with sufficient
25 funds to either retain me in this matter, at which case,

John T. Mobley
Direct examination by Ms. Olive

1 you know, what I would have done was notified the
2 prosecutor. That's what I would do. And I can't recall
3 specifically, but that's what I do in a case like that.

4 The first thing I do is call the prosecutor and say,
5 hey, they just hired me on this case, where are we on this
6 thing, I'd like to have a dialogue with you about it just
7 to make sure it's not on the trial roster, just to make
8 sure there are no major issues that would make me give the
9 money back or realize something like that, and/or cause
10 issues.

11 So, because that's happened in the past where people
12 have hired me and I find out that the case is on the trial
13 roster for two days from now and they've got 30 witnesses
14 and it's been continued five times and they're not going to
15 continue it again, they'll oppose it, I'm the third lawyer
16 on the case, and in which circumstances I just say, you
17 know, I can't get involved.

18 As best as I can recall when I spoke with the
19 prosecutor in the case, I believe he did indicate to me
20 that the case was on the trial roster for that week or a
21 very short time period after I was -- I made contact with
22 him.

23 And from what I recall, you know, he didn't have
24 any -- any personal opposition to the case being continued.
25 But it would be something we took up in front of the judge,

John T. Mobley
Direct examination by Ms. Olive

1 which is something, times, solicitors say, and I understand
2 that. Hey, if the judge is okay with it, we're okay with
3 it.

4 And, you know, I made contact with -- with the public
5 defender who was a very nice lady. I forgot her -- her
6 name. But I think it was Tanya Jones, I think, very --
7 everybody was very nice in this case.

8 And I believe that we had a -- a -- a conversation
9 with the -- with the trial judge, or there was some
10 dialogue or discussion. But he made it, you know, clear
11 that this case was on the trial roster for that particular
12 week. I think it was second or third or very high up on
13 the trial roster, and that he was not inclined to continue
14 the case, and that if I made my appearance, and he had no
15 problem with that, but it needed to be with the
16 understanding that I'd be trying the case that week or, you
17 know.

18 And obviously there was no way I'd be prepared to do
19 that. That wouldn't be in Mr. Moore's best interest for me
20 to show up and try to try the case on that kind of short
21 notice. Not with charges that serious.

22 So, you know, obviously, I mean, I do recall that --
23 that -- that Tanya, you know, had an issue with the judge
24 not exercising discretion to grant the continuance, because
25 apparently there was another case with another attorney who

John T. Mobley
Direct examination by Ms. Olive

1 was in the house or something and he granted the
2 continuance. And Ms. -- you know, Ms. Jones made an issue
3 with him exercising his discretion in that way and not on
4 Mr. Moore's behalf, but/and I wasn't going to -- you know,
5 I wasn't going to go down that road. I mean, he was going
6 to do it, he was going to do it. If not, I respected his
7 decision on that.

8 And so at that point, you know, there was discussion
9 with everybody involved. And at that point I was not going
10 to make an appearance with making -- with regard to the
11 trial representation in the case, so.

12 Q Did ultimately you determine that was not an issue
13 that would be successful on appeal?

14 A No, it -- it was. I mean, that was -- I mean, you
15 know, Mr. Moore, I mean, you know, without quoting the
16 specific cases, I mean, the defendant doesn't have a right
17 to a lawyer of his choosing. I mean, he had an attorney
18 that had been working on the case that was prepared to go
19 to trial, that was competent, that was qualified.

20 You know, my -- my showing up at the last, you know,
21 with the 11th hour and wanting a continuance so he could
22 have me was not going to be an appealable issue with
23 regards to the Court determining whether or not to grant a
24 continuance for that.

25 I mean, the judges -- all of the opinions I've seen

John T. Mobley
Direct examination by Ms. Olive

1 over the years have indicated very, very clearly that, you
2 know, judges have broad discretion in granting a
3 continuance. So, no. That was not an issue I saw as
4 having any merit.

5 Q And regarding his claim that you refused to honor or
6 respect his request to submit a petition for rehearing, did
7 you file a petition for rehearing in this case? Do you
8 recall?

9 A I mean, I -- I may not have. I mean, if the record
10 says I didn't, I didn't. And, I mean, and I'm not
11 surprised. I mean, once again, this was -- you know, I've
12 done that in cases, whereby there have been close calls on
13 issues where it may be arguable or there may be some cases
14 which I believe the -- the appellate court just ignored or
15 misinterpreted. But that just wasn't the case in this
16 case.

17 Q So did you feel it was necessary to file a petition
18 for rehearing?

19 A No, I did not. I didn't feel like there was any merit
20 to it. I didn't feel like there were any -- any issues or
21 anything that -- that wasn't properly considered that we
22 could raise or was properly -- or was misrepresented or
23 misapplied. I just didn't feel that existed.

24 Q Thank you, Mr. Mobley. That's all the questions I
25 have.

John T. Mobley
Cross-examination by Ms. Moody

1 CROSS-EXAMINATION

2 BY MS. MOODY

3 Q Good afternoon, Mr. Mobley.

4 A Good afternoon.

5 Q So let me be clear. When you came for the trial or to
6 get in to represent Mr. Moore, you were retained by his
7 mom.

8 A That is correct, on his behalf.

9 Q And so when the judge informed you that he was not
10 going to allow you to come in because he wasn't granting a
11 continuance, you returned the money back to the mother.

12 A I had a discussion with his mother about whether or
13 not she wanted to retain me in a different capacity after
14 the trial.

15 Q And that capacity being for appeal?

16 A Yes.

17 Q Okay. And so when Mr. Moore asked you to file the
18 notice for, or request a rehearing, are you saying that the
19 issue that you appealed was not strong?

20 A Yeah. I mean, it -- it really wasn't. And, honestly,
21 you know, I kind of looked. I even looked toward even
22 potential, you know, post-conviction-relief claims as well,
23 which I talked to -- to Mr. Moore about.

24 Because even after that expired I wanted to make sure
25 we even -- we looked at the possibility of -- because

John T. Mobley
Cross-examination by Ms. Moody

1 sometimes, obviously, with some cases you -- you get past
2 the appeal just so you can, you know, start the process of
3 looking for potential post-conviction-relief claims.

4 And, of course, you know, he was very unhappy with the
5 outcome. And I indicated we needed to kinda look at all of
6 those issues, and I thought, you know.

7 So and I did -- so I looked -- correct. I did not
8 feel there was any merit to file a petition for rehearing,
9 and I went to reviewing the case from the standpoint of
10 discussing potential post-conviction-relief issues with Mr.
11 Moore and I -- which I wrote him a letter about which kind
12 of summarized our conversations on that.

13 Q So in that letter what, specifically, did you talk
14 about with the post conviction?

15 A Well, what I did, basically, you know, I met Mr. Moore
16 a couple of times.

17 And, generally, you know -- and I understand that
18 there are certain things that a nonlawyer will not
19 recognize or understand, being, you know, from the
20 standpoint of effective assistance of counsel, are -- are
21 their grounds for post conviction relief. But I always
22 like to make sure I ask the client what specific things
23 they had issues and concerns about, things that were done,
24 that were not done so I can, you know, give a comprehensive
25 analysis.

John T. Mobley
Cross-examination by Ms. Moody

1 And I -- and I had a meeting with Mr. Moore, and I
2 wanted to make sure he had the opportunity, because to
3 review with transcripts and things like that.

4 And he had looked at a lot. I gave him the discovery
5 and things like that ahead of time. And -- and I took
6 notes from that meeting.

7 And I have a letter that I wrote him -- I brought a
8 copy of -- in May that states, you know, why I'm giving him
9 a copy of the trial transcripts, the investigator file, the
10 appellate briefs, the order affirming the conviction,
11 remitter, the sentencing sheets and...

12 Q Now, Mr. Mobley --

13 A Yes.

14 Q -- just to be clear. When you say investigative file,
15 is that what you're meaning by discovery?

16 A Yes, yeah.

17 Q Okay. You were going to say that you -- you
18 discussed --

19 A Yeah, and --

20 Q You went through the documents and you provided him
21 the documents as well, right?

22 A Yeah, and I -- and I looked at everything that he
23 discussed with me, that is correct.

24 In -- in my letter I state to him, you know -- during
25 the conversations I always ask him anything he has specific

John T. Mobley
Cross-examination by Ms. Moody

1 problem or issue with or question or -- or problem with his
2 trial counsel or question he might have had about why
3 something was done or why they didn't do something, any
4 specific complaints or issues.

5 But I would always follow it up. Again, it'd just be
6 a generic, just they didn't do this, they didn't do that,
7 because, obviously, it's got to be something that -- that
8 made a difference in the outcome of the trial or had a
9 substantial probability of making a difference in the
10 outcome of the trial.

11 So, or if there are things that -- information he had
12 that she didn't use. I mean, the question would be whether
13 or not he made her aware of this information.

14 So in the letter I have I indicate -- and I'm going to
15 read it verbatim if you don't mind because this would be --

16 Q And, well, first, can you identify the letter to the
17 court?

18 A Yes. The letter was wrote to him on May 7, 2014,
19 while he was in the Department of Corrections at M.C.I. in
20 McCormick.

21 But it's -- but in the context of it I state that the
22 majority of what he said to me when we spoke about the
23 trial was that, you know, when I would ask him specific
24 questions about things, his answer would be, well, that
25 didn't make any sense, well, the cops said that, that don't

John T. Mobley
Cross-examination by Ms. Moody

1 make any sense, well, they testified to that, that don't
2 make any sense. Well, obviously, I can't do anything with
3 that. That's not a legal issue or a ground that I can
4 raise.

5 I also have in here the majority of what he said talks
6 about the cops are lying about things, what things were in
7 the room and about how the shooting started.

8 And, once again, I indicated to him that was not --
9 those are not significant issues about which we could, you
10 know, have a -- a valid or meritorious ground for a post
11 conviction relief or any other kind of relief, quite
12 frankly.

13 Q Well, let me -- let me ask you this. Prior to filing
14 the appeal did you give him a copy of the investigative
15 file?

16 A I cannot recall, quite frankly.

17 Q So prior to filing the appeal did y'all meet to
18 discuss? I mean, I understand you went through this for
19 post conviction relief.

20 A Yeah.

21 Q But prior to filing the appeal did y'all -- did you
22 talk to him or did you just go by the record?

23 A I'm -- I'm -- you know, I'm reasonably certain we
24 discussed it, but, obviously, I mean, I believe so. But,
25 you know, I mean, obviously with the appeal I'm kind of

John T. Mobley
Cross-examination by Ms. Moody

1 limited -- for a direct appeal I'm limited to what's in the
2 record. So a lot of the information the client gives me is
3 not going to be significant if it's not a part of the
4 record, so.

5 Q And when you say part of the record, are you -- you're
6 talking about the trial testimony and the exhibits?

7 A Correct.

8 Q Okay. You're not -- are you talking about any of the
9 discovery?

10 A I'm talking about, yeah, from the standpoint of a
11 direct appeal, I'm going to be limited to errors of law
12 made by the trial judge, things like that.

13 So, once again, the exhibits, the trial transcript.
14 And, obviously, it's got to be something that's preserved
15 for appeal. So it's got to have been objected to or raised
16 by trial counsel.

17 So he may have. Honestly, like any case, he may have
18 had legitimate, specific issues regarding his trial
19 counsel's performance. However, if they were not part of
20 the record, if they were issue -- legal issues that were
21 raised and the trial court ruled on, then from the
22 standpoint of a direct appeal it would -- would not be
23 something we could address.

24 MS. MOODY: No further questions for this witness,
25 Your Honor.

1 THE COURT: okay.

2 MS. OLIVE: No further questions.

3 THE COURT: Thank you, sir.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Anything else from either side?

6 MS. OLIVE: That is all.

7 MS. MOODY: That is all, Your Honor.

8 THE COURT: okay. I'll read this entire record and
9 let y'all know.

10 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 16th day of June 2016.

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

September 5, 2017

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

2014 CP-2768

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT

Toby Moore, #350242,)

Case No.: 2014-CP-42-2768

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

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 M. HOPE BLANCHETT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 10, 2014. Respondent made a Return on November 18, 2014. The Court convened an evidentiary hearing into the matter on June 16, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Tanya Jones, Esquire testified by telephone,¹ and John T. Mobley, Esquire, Applicant's appellate counsel, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections and appellate records, the pleadings, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2011, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute

¹At the time of the hearing, Jones resided outside of South Carolina. The parties consented to allow her to appear by telephone.



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("PWID") cocaine base within one-half mile of school (2011-GS-42-2965), PWID marijuana (2011-GS-42-2966), PWID methamphetamine or cocaine base (2011-GS-42-2967), trafficking in cocaine 28-100 grams and possession of a weapon during the commission of a violent crime (2011-GS-42-2969(A)), and attempted murder (2011-GS-42-2968). Applicant was subsequently indicted in January 2012 for three additional counts of attempted murder (2012-GS-42-0064, -0065, and -0066). Tanya R. Jones, Esquire, represented Applicant. On March 23, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty of all charges as indicted. Judge Cole sentenced Applicant to concurrent terms of 30 years for each count of attempted murder, 25 years for trafficking cocaine, ten years for PWID cocaine base within a half-mile of a school, five years for PWID marijuana, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. John T. Mobley, Esquire represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Moore, Op. No. 2014-UP-025 (S.C. Ct. App. filed January 22, 2014). The Remittitur was returned on February 7, 2014.

II. ALLEGATIONS

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

1. Ineffective assistance of trial counsel; specifically
 - a. "trial counsel failed to object where the trial court neglected to instruct the jury on a critical element on the charges of attempted murder"
 - b. "trial counsel failed to pursue a motion to quash the indictment for attempted murder . . . where such indictment is rendered invalid and void"
 - c. "trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute methamphetamine or cocaine base . . . where such indictment lacked sufficient information to place the Applicant on notice of what he must be

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M. HOPE BLANKLEY

- prepared to meet at trial"
- d. "trial counsel failed to move the General Sessions Court to quash the indictment for possession with intent to distribute cocaine base within one-half mile of school"
 - e. "trial counsel failed to pursue her objection and preserve for appellate review that the trial court abused its discretion to admit into Applicant's trial evidence which prejudicial effect outweighed any probative value"
 - f. "trial counsel failed to object to the trial court instructing the jury that they were permitted to consider the 'hand of one is the hand of all' theory where such charge was not only burden shifting but, also highly prejudicial and inapplicable"
 - g. "trial counsel failed to object where the trial court shifted the burden from the State to the Applicant by giving the jury a bias, prejudicial and erroneous jury charge on actual and constructive possession"
 - h. "trial counsel failed to object where the trial court defectively and inadequately charged the jury that they were permitted to consider a lesser included offense of possession of cocaine base but, neglected to instruct the jury that, 'such finding would bar them from convicting the Applicant of 'possession with intent to distribute cocaine base within one-half mile of a park'"
 - i. "trial counsel failed to object where the trial court deliberately refused to sufficiently or concisely answer the jury's question on the term malice "aforthought."
 - j. "trial counsel failed to request a post-trial motion for a new trial where there was overwhelming facts and evidence of outrageous police conduct and perjured testimony"
 - k. "trial counsel failed to object to the trial court instructing the jury 'your sole objective is simply to reach the truth in the matter.'"
2. Ineffective Assistance of Appellate Counsel
- a. "appellate counsel allowing the applicant to be denied and deprived of due process and equal protection . . . by refusing to honor or respect the Applicant's request . . . to submit a timely Petition for Rehearing"
 - b. "appellate counsel allowing the Applicant to be denied due process and equal protection of the law by refusing to honor or respect the Applicant's request to submit . . . the issue of the trial court abusing its discretion . . . and depriv[ing] him of his due process and fundamental right to 'retained effective assistance of counsel of his choice.'"

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

RJC

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The

Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Evidence Adduced at Trial

The Spartanburg Public Safety Department sent a tactical team to Applicant's residence to execute a no-knock search warrant in connection with a narcotics investigation on January 6, 2011. (Tr. at 58-60; Tr. at 218). When the team arrived, they set up a perimeter around the house. Part of the team went to the front door to prepare to breach the door, and another part of the team deployed a distraction device called a "flashbang" in a different part of the house. (Tr. at 67). The flashbang emits a very bright light and very loud noise for the purpose of distracting the inhabitants from the front door where the breach takes place. (Tr. at 67; Tr. at 87). When the flashbang was deployed, the tactical team began screaming: "Police, search warrant! Police, search warrant!" and continued shouting this as they used a battering ram to breach the door and enter the home. (Tr. at 67; 88). Officer James Bogan testified that the purpose of yelling this is so that the suspects know it is the police and not an intruder. (Tr. at 185). The house was pitch black when Officer Harris—who was the first to enter—walked inside. (Tr. at 116). Seconds after he entered, the inhabitants began firing at the officers. (Tr. at 117-20). Officer Harris was shot first and went down to the ground. (Tr. at 117). Officer Morrow also testified that the shots that hit Harris came from the back bathroom. (Tr. at 261). Officer Hillers returned fire as the inhabitants continued firing at the other officers who had entered behind Harris. (Tr. at 118).

Q3C/ Officer Hillers testified that Amanda Gentry and William Rogers were on the couch in the front room when they entered. (Tr. at 135). Officer Shane Morrow testified he saw a weapon in Rogers' hand. (Tr. at 262). Rogers at first did not present a threat but then pointed a weapon at the officers and Officer Jeff Cooper started firing on him and continued until Rogers dropped the

weapon. (Tr. at 219, lines 21-24; Tr. at 221). Officer Shane Morrow also shot at Rogers. (Tr. at 247-48). Officer Adrian Patton pulled Rogers out of the house and made sure an ambulance was on the way. (Tr. at 269-70). Rogers ultimately died at the hospital. (Tr. at 361).

The officers then proceeded to the back of the house, where Applicant was in the bathroom, holding his hands out of the door in response to the officers' instructions to "Let me see your hands." (Tr. at 248-49). Officer Hillers testified that when he returned inside of the home to check to make sure Applicant was not shot, Applicant "turned, looked at him dead in [the] eye and grinned ear to ear as he was being handcuffed. (Tr. at 127). A black, loaded gun was found near Applicant. (Tr. at 145). A subsequent search of the residence revealed additional weapons, cocaine, crack cocaine, marijuana, and pills. (Tr. at 73-79). A Hi-Point 45 caliber handgun was found in the bathroom. (Tr. at 339, lines 6-17; 348, line 12). The fired bullet collected from Officer Harris matched that weapon. (Tr. at 261; 309-10; 339, lines 6-15; 348, lines 9-14; 368-69, line 12; 370, lines 2-4).

B. Summary of PCR Testimony

Applicant testified that Counsel was not prepared for trial and that he wanted to hire John Mobley instead. Applicant testified he did not know what constituted trafficking and that he did not have an opportunity to speak with Counsel about defenses. Applicant testified he talked to Counsel about the flashbang and the search warrant. Applicant denied he had any discussions with Counsel about defenses.

Applicant testified he spoke with Counsel only twice and that the judge would not allow Mobley to take over. Applicant testified Counsel failed to explain that attempted murder requires a specific intent to kill. Applicant also complained that the indictment was invalid because the elements did not constitute a crime of attempted murder and that the evidence did not constitute

attempted murder. Applicant also testified that the indictment was invalid because it did not contain the amount or weight of the cocaine. Applicant testified that Counsel failed to object to the charge on accomplice liability (hand of one, hand of all) on the basis that he lived there. Applicant testified that Counsel failed to object to a burden shifting jury charge. He also argued she failed to object to the charge to the jury that it could consider the lesser included offense of the proximity charge and that the indictment did not have the weight of the drugs.

Applicant alleged Counsel should have objected to the charge on malice aforethought. Applicant testified Counsel failed to request a post-trial motion to set aside the verdict. Applicant testified that Counsel allowed in perjured testimony by the officers.

Applicant's mother, Viola Moore, testified that the residence where the incident took place was 1.8 miles from a school or park.

Counsel testified she has been practicing law for about 15 years. She testified she recalls that she was appointed to represent Applicant in May 2011. She testified she met with him approximately five times prior to trial. Counsel testified she filed Rule 5 and Brady motions for discovery, that she received that discovery and that she reviewed it with Applicant. She testified that he was not very cooperative because he was focused on the fact that his friend, Rogers, had been shot and killed during the incident. She testified she generally always discusses the charges against her clients and the elements of those charges and provides further explanation if they have any questions. Counsel testified she discussed with Applicant his version of what happened, that he basically indicated this was not his residence and that it was all one big lie. She testified he really wanted to focus on the fact that Rogers was killed. Counsel testified she discussed possible defenses with Applicant but that the defenses were limited because the search warrant was valid on its face and that she challenged this prior to trial. Counsel described the State's

evidence against Applicant as "very strong." Counsel testified that Applicant provided no potential witnesses or leads for investigative purposes. She testified that she spoke with the third individual who was present in the home, Amanda Gentry, but that she was not helpful. Counsel also testified that she drove by the scene, consulted with a touch DNA expert, reviewed all of the photographs taken at the scene, and spoke with the solicitor. Counsel testified that though she met much resistance from Applicant because he wanted a private attorney, she felt that she had ample time to prepare for trial. Counsel testified that her strategy was to bring out the fact that Applicant had previously been the victim of a home invasion and did not know it was officers entering the home. Counsel testified that she reviewed the officers' reports and cross-examined them on inconsistencies. She testified that she saw nothing objectionable about the jury charges that were given.

John Mobley ("Appellate Counsel") also testified. He testified that he represented Applicant on appeal. He testified he spoke with Applicant about his appeal and that he gave him a copy of the investigative file, but that the appeal is limited to what is in the record and that the information a client gives him is not relevant for purposes of briefing the issues on appeal. He testified that an appeal is limited to areas of law and is based on exhibits and trial transcripts. Appellate Counsel testified that he looked at all issues that could have been viable on appeal. He testified he raised the only potentially viable issue and that it was not a strong issue. He stated there were no other issues that would have been successful on appeal. Appellate Counsel testified he would not have been successful in raising an argument on appeal that the Court erred in denying Applicant's request to continue the case so that Appellate Counsel could take over as trial counsel. Appellate Counsel testified this would not have been successful on appeal because there is no right to an attorney of Applicant's choosing where he was represented by competent

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qualified counsel. He further testified there was no merit in filing a petition for rehearing after the Court of Appeals affirmed Applicant's conviction.

C. Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Failure to Object to Jury Charges

Applicant alleges Counsel was ineffective for failing to object to the charge on attempted murder, hand-of-one, hand-of-one, actual versus constructive possession, the charge on lesser included offense of possession of cocaine base, and the trial judge's instruction that jury's objective was to reach the truth in the matter. This Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice with respect to Applicant's allegation that Counsel failed to object to jury instructions.

"In reviewing jury charges for error, [the reviewing court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). "[A] charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). If the charge "is substantially correct and covers the law [it] does not require reversal." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583-84 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)).

Counsel testified the jury charges were all standard charges, that she was anticipating a charge on accomplice liability or "hand-of-one-hand, hand-of-all" and that she did not see anything objectionable about the charges. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d

578, 584 (2010) ("It is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." (quoting State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000))). Counsel also characterized the State's evidence against Applicant as very strong. This Court finds that Applicant has failed to show that the instructions were incorrect, especially when taken as a whole. This Court further finds that given the significance of the evidence against Applicant, Applicant has made no showing that there is a reasonable probability that but for the alleged deficiency, the outcome would have been different. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583-84 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) ("An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion")). Accordingly, Applicant has failed to show Counsel was deficient for not objecting or that had Counsel objected, the outcome would have been different.

Failure to Move to Quash Indictments

This Court finds Applicant's allegations that Counsel was ineffective for failing to move to quash his indictments for PWID cocaine base, PWID cocaine base within a half mile of a school, and attempted murder are wholly without merit.

An indictment is a "notice document." State v. Tumbleston, 376 S.C. 90, 95, 654 S.E.2d 849, 852 (Ct. App. 2007) (citing S.C. Const. art. I, § 11; S.C. Code Ann. § 17-19-18 (2003)). That an "indictment could be more definite or certain is irrelevant." State v. Tumbleston, 376 S.C. 90, 97, 654 S.E.2d 849, 853 (Ct. App. 2007) (citing State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005)). An indictment is sufficient if "it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." State v. Ham, 259 S.C. 118, 129, 191 S.E.2d 13, 17 (1972) (citing State v. McIntire, 221 S.C. 504, 509, 71 S.E.2d 410, 412 (1952) ("The general rule on this question is

that the offense must be so described that the accused may know how to answer the charge, the court what judgment to pronounce, and conviction or acquittal thereon may be pleaded in bar to any subsequent prosecution.").

Applicant has made no showing that the indictments were insufficient on their face or that he was not on notice of what he must be prepared to meet at trial.² Further, Counsel testified that she saw no issues with the indictments. This Court has reviewed the indictments and finds the indictments were sufficient to place Applicant on notice of the charges for which he would have to answer. Therefore, Applicant has made no showing that Counsel was deficient for not objecting to or moving to quash the indictments. In addition, given the discovery provided to Applicant, any lack of specificity in the indictments did not prejudice Applicant because he was on notice concerning the allegations. Accordingly, Applicant has also failed to demonstrate there is a reasonable probability the outcome would have been different but for the alleged deficiency. This allegation is therefore denied and dismissed.

² The indictment for the attempted murder of Officer Harris alleged Applicant "did in Spartanburg County on or about January 6, 2011, with malice aforethought, attempt to kill Officer Jason Harris, by shooting the victim in the right hip, with the intent to kill the said victim, in violation of § 16-3-29 of the Code of Laws of South Carolina." (2011-GS-42-2968). The indictments for each count of attempted murder for the remaining victims alleged that Applicant "did in Spartanburg County on or about January 6, 2011, with malice aforethought attempt to kill [the victim], a Spartanburg City Police Officer, by discharging a firearm in his direction in violation of § 16-3-29 of the Code of Laws of South Carolina" (2012-GS-42-0064, -0065, and -0066). Each individual indictment listed the respective victim for that charge. The indictment for PWID methamphetamine or cocaine base alleged that Applicant "did in Spartanburg County on or about January 6, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of methamphetamine or cocaine base, a schedule II controlled substance under provisions of §44-53-375, of the Code of Laws of South Carolina." (2011-GS-42-2967). Lastly, the indictment for PWID cocaine base within a half-mile of a school alleges Applicant "did in Spartanburg County on or about January 6, 2011, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of cocaine base, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Duncan Park under provisions of § 44-53-145 of the Code of Laws of South Carolina." (2011-GS-42-2965).

Counsel Failed to Move for a New Trial

Applicant alleged Counsel was ineffective for failing to move for a new trial "where there was overwhelming facts and evidence of outrageous police conduct and perjured testimony." This Court finds this allegation is wholly without merit.

Rule 29, SCrimP, governs post-trial motions and motions for new trials based on after-discovered evidence. Applicant has presented no evidence that Counsel was deficient for failing to move for a new trial. Applicant has failed to show Counsel had any basis to do so. He has set forth no evidence of any "outrageous police conduct," nor has he established that any perjured testimony was presented or that Counsel had any reason to believe perjured testimony was presented. Further, this Court notes that Counsel reviewed the officers' reports and cross-examined them on any inconsistencies between their reports and their trial testimony. Lastly, Applicant has failed to show that there is a reasonable probability that such a motion would have resulted in a different outcome, particularly where he has set forth no evidence to substantiate this claim. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to Preserve

Applicant alleges Counsel "failed to pursue her objection and preserve for appellate review that the trial court abused its discretion to admit into Applicant's trial evidence which prejudicial effect outweighed any probative value." This Court finds this allegation is vague and Applicant produced no evidence supporting this allegation at the evidentiary hearing. "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" Strickland v. Washington, 466 U.S. 668, 689 (1984). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Applicant points to no specific evidence that Counsel failed to object to. Therefore, Applicant has

established no deficiency or prejudice with respect to this allegation, and it is without merit and is denied and dismissed.

Failed to Object to Court's Recharging Law of Malice Aforethought

Applicant alleged Counsel failed to object "where the trial court deliberately refused to sufficiently or concisely answer the jury's question on the term malice 'aforethought.'" A charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)). At trial, the jury requested that the trial judge "reinstruct . . . on the term malice aforethought as well as the crimes of assault and battery of a high and aggravated nature and assault and battery in the first degree." (Tr. at 479, lines 17-21). The judge re-charged the jury as requested and Counsel did not object. (Tr. at 479-82). The charge was the same as that the judge gave prior to the start of deliberations, (Tr. at 458-62), and covered the applicable law. Counsel testified she saw no reason to object to the charges. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). In addition, Applicant has failed to set forth any evidence that there is a reasonable probability the outcome would have been different had Counsel objected. See State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016). ("An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion.") (quoting State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)).

Accordingly, this Court finds Applicant has failed to show that Counsel was deficient for not objecting to the judge's recharge on the law of malice aforethought, assault and battery of a

high and aggravated nature and assault and battery in the first degree. In addition, this Court finds Applicant has failed to show there is a reasonable probability that had Counsel objected, the outcome would have been different. Therefore, this allegation is denied and dismissed.

Ineffective Assistance of Appellate Counsel

Applicant alleges Appellate Counsel was ineffective for failing to submit a timely Petition for Rehearing, and for failure to argue that the trial judge erred in refusing to allow Applicant to have retained effective assistance of counsel of his choice.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Generally, in analyzing allegations of ineffective assistance of appellate counsel, this court applies the same test set forth in Strickland. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Therefore, this Court must assess whether appellate counsel's performance was deficient, and whether Respondent was prejudiced by appellate counsel's alleged deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thiift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will

be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id. Appellate counsel is not ineffective for failing to raise on appeal an issue that was not preserved for review. Gilchrist v. State, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) (citing Legge v. State, 349 S.C. 222, 562 S.E.2d 618 (2002)). To prove prejudice, an applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Here, Appellate Counsel testified he reviewed the record and raised the issue he thought had the most merit on appeal. He testified he did not file a Petition for Rehearing because such a petition would have had no merit. This Court finds that Applicant has failed to satisfy his burden of showing that Appellate Counsel's performance fell below an objective standard of reasonableness. Furthermore, Applicant has made no showing that there is a reasonable probability the outcome would have been different had Appellate Counsel raised these issues. Appellate Counsel testified that based on his review of the record, the issue of whether the trial judge erred in refusing to allow Applicant a continuance in order to proceed with different Counsel was without merit. Appellate Counsel also testified the Petition for Rehearing would have had no merit. Therefore, this Court finds Applicant has failed to demonstrate any prejudice resulting from the alleged deficiency of Appellate Counsel. Accordingly, this allegation is denied and dismissed.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

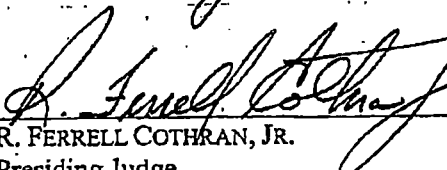
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of May


 R. FERRELL COTHAN, JR.
 Presiding Judge
 Seventh Judicial Circuit

 , South Carolina

RECEIVED

JUN 20 2017

S.C. SUPREME COURT

H. HOPE BLACKLEY
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**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Ferrell Cothran, Jr., Presiding in Spartanburg County

Case No. 2014-CP-42-02768

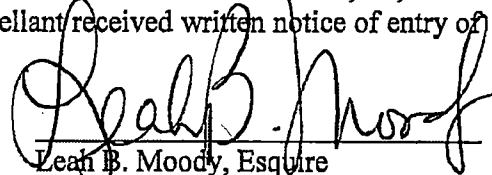
Toby Moore, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Toby Moore appeals the order of the Honorable R. Ferrell Cothran, Jr., dated May 23, 2017 and mailed on May 30, 2017. Appellant received written notice of entry of the final order on June 15, 2017.



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RECEIVED

JUN 20 2017

S.C. SUPREME COURT

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Ferrell Cothran, Jr., Presiding in Spartanburg County

Case No. 2014-CP-42-02768

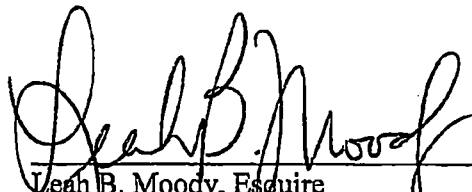
Toby Moore, ... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Valerie G. Giovanoli by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 2017 addressed to its attorney of record, Valerie G. Giovanoli, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


Leah B. Moody, Esquire
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June 16, 2017

cc Toby Moore
Sharon A. Graham, SCCID
Daniel E. Shearouse, Clerk of Court, SC Supreme Court
Hope Blackley, Spartanburg County Clerk of Court

RECEIVED

JUN 20 2017

S.C. SUPREME COURT

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Ferrell Cothran, Jr., Presiding in Spartanburg County

Case No. 2014-CP-42-02768

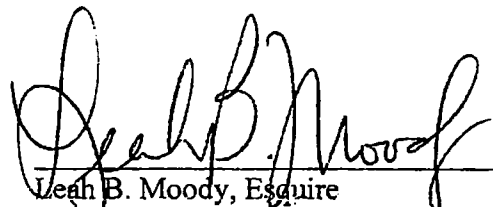
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June 16, 2017

cc Toby Moore
 Sharon A. Graham, SCCID
 Daniel E. Shearouse, Clerk of Court, SC Supreme Court
 Hope Blackley, Spartanburg County Clerk of Court

STATE OF SOUTH)
 CAROLINA)
 COUNTY OF)
 SPARTANBURG)
 TOBY MOORE, 350242)
 APPLICANT,)
 V.)
 STATE OF SOUTH)
 CAROLINA)
 RESPONDENT,)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-2768

MOTION TO RECONSIDER
 59(e)
 ALTER/AMEND JUDGEMENT

M. HOPE BLACKLEY

2017 JUN 27 AM 10:27

CLERK OF COURT
 SPARTANBURG COUNTY

IN THE COURT OF COMMON PLEAS

On June 19, 2017, The McCormick Mailroom received a copy of and Order of Dismissal from Applicant's Attorney Leah B. Moody Esq., Applicant Toby Moore received the Order on June 20, 2017. Applicant requests that this Honorable Court please take notice that the Applicant will move before this Honorable Court at such time and place as counsel may be heard requesting that the court Alter/Amend its Dismissal Order. (see exhibits)

This Motion is further based upon SCRCF 59(e) and 26 and supported by the pleadings filed in this case, affidavits filed or to be filed, a brief to be filed, testimony, evidence, and the common statutory law of the State of South Carolina, and any other matter(s) which will be brought to the attention of the Court.

APPLICANT'S MEMORANDUM IN SUPPORT
 OF HIS MOTION TO
 ALTER/AMEND JUDGEMENT

SUMMARY OF EVIDENCEI.

- a) objection to: "inhabitants began firing."
- b) objection to: "inhabitants continued firing at other officers."
- c) objection to: "he saw a weapon in Roger's hand."
- d) objection to: Applicant "turned, looked at him dead in the eye and grinned ear to ear as he was being handcuffed."
- e) objection to: A high point 45 caliber handgun was found in the bathroom.

SUMMARY OF PCR TESTIMONYII

- a) objection to: he wanted to hire John Mobley.
- b) objection to: elements did not constitute a crime of att. murder.
- c) objection to: on the basis that he lived there.
- d) objection to: consulted with a touch DNA expert.
- e) objection to: he wanted private attorney
- f) objection to: there is no right to an attorney of applicant's choosing.

FAILURE TO OBJECT CHARGESIII

Court failed to rule on Due Process and Equal Protection of Law under the 5th, 6th and 14th Amendments of the United States Constitution, Article One Section Three of the South Carolina Constitution, As well as all other Federal and State Constitutions, Statutes, Laws and applicable citings:

- a) behind trial counsel failed to object where the trial court neglected to instruct the jury on a critical element on the charges of attempted murder, indictment No. 12-GS-42-0064; NO. 12-GS-42-0065; No. 12-GS-42-0066, that clearly precluded the jury from finding of guilty on those offenses. Or, in the alternative, would have compelled the trial court to dismiss the charges pursuant to a motion for a direct verdict.

(see attachment A)

- b) behind trial counsel failed to object to the trial court instructing the jury that they were permitted to consider the "hand of one is the hand of all" theory where such charge was not only burden shifting but, also, highly prejudicial and inapplicable.

(see attachment A)

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AM 10:27
M. HOPE BLACKLEY

- c) behind trial counsel failed to object where the trial court shifted the burden from the State to the Applicant by giving the jury a bias, prejudicial and erroneous jury charge on actual and constructive possession.
- d) behind trial counsel failed to object where the trial court defectively and inadequately charged the jury that, they were permitted to consider a lesser included offense of possession of cocaine base but, neglected to instruct the jury that, "such a finding would bar them from convicting of possession with intent to distribute cocaine base within one-half mile of a park."
- (see attachment A)
- e) behind trial counsel failed to object to the trial court instructing the jury, "Your sole objective is simply to reach the truth in the matter."
- (see attachment B)

FAILURE TO MOVE TO QUASH INDICTMENTS

IIII

- a) behind trial counsel failed to move the General Sessions court to Quash the indictment for possession with intent to distribute methamphetamine or cocaine base; No. 11-GS-42-2967 where such indictment lacked sufficient information to place the applicant on notice of what he must be prepared to meet at trial.
- (see attachment B)
- b) behind trial counsel failed to pursue a motion to quash the indictment for attempted murder, No. 11-GS-42-2969, where such indictment is rendered invalid and void pursuant to the constitutional powers, duties and statutory provisions of the Grand Jury Process.

COUNSEL FAILED TO MOVE FOR A NEW TRIAL

V

- a) behind trial counsel failed to request a post trial motion for a new trial where there was overwhelming facts and evidence of outrageous police conduct and perjured testimony used to procure unlawful convictions and sentences.

(see attachment B)

FAILURE TO PRESERVE

VI

- a) behind trial counsel failed to pursue her objection and preserve for appellate review that, the trial court abused

CLERK OF COURT
SPRINGFIELD, MA
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M. HOEHL ASKLEY

its discretion to admit into Applicant's trial evidence which prejudicial effect outweighed any probative value.

(see attachment B)

FAILED TO OBJECT TO COURT'S RECHARGING LAW OF MALICE AFORETHOUGHT

VII

- a) behind trial counsel failed to object where the trial court deliberately refused to sufficiently or concisely answer the Jury's question on the term malice "aforethought."

(see attachment B)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

VIII

- a) behind appellate counsel allowing the Applicant to be denied and deprived of Due Process and equal protection of law to an adequate and full appellate process by refusing to honor or respect the Applicant's request before, during and immediately after the Court of Appeals affirmed the convictions and sentences, to submit a timely Petition for Rehearing.

(see attachment C)

- b) behind appellate counsel allowing the Applicant to be denied Due Process and Equal Protection of Law by refusing to honor or respect the Applicant's request to submit before the Court of Appeals the critical issue of the trial court abusing its discretion to deny and deprive him of his Due Process and Fundamental right to "retained effective assistance of trial counsel of his choice." Especially where, trial counsel vigorously argued as well as preserved the issue for appellate review.

(see attachment C)

ALL OTHER ALLEGATIONS

VIII

- a) state failed to produce Confidential Informant

(see attachment C)

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H. HOPPE & ASSOCIATES
SPRINGFIELD, ILL.
CLERK OF COURT

ATTACHMENT A:

III.

a) jurors could reasonably have concluded that they were directed to find against defendant on the element of intent. The State was thus not forced to prove "beyond a reasonable doubt... every fact necessary to constitute the crime...charged," 397 U.S. 364, 90 S.Ct. at 1073 and defendant was deprived of his constitutional rights as explained in *Winship*. (*Sandstrom V. Montana* 422 U.S. 510 (1979))

b) mere presence at the scene of the crime is insufficient to convict one as a principal. There must be evidence of aiding and abetting. (*State V. Johnson*, 291 S.C. 127, 352 S.E.2d 480 (1987))

One is not liable for the acts of and accomplice unless the act is a natural or probable consequence of the plan agreed to (*State V. Peterson*, 387 S.C. 244, 335 S.E.2d 800 (1985))

State V. Labarge, 275 S.C. 168, 268 S.E.2d 278 (1980), which held that instructions to the jury based on the quoted language necessitated reversal for dilution of the presumption of innocence. (see also *Sandstrom V. Montana* 422 U.S. 510 (1979))

c) In re *Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed 2d 368 (1970) and *Mullaney V. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed 2d 508 (1975) See, e.g., *Francis V. Franklin*, 471 U.S. 307, 326, 105 S.Ct. 1965, 85 L.Ed 2d 344 (1985) *Sandstrom V. Montana* made clear that the Due Process Clause of the 14th Amendment prohibits the State from making use of jury instructions that have the effect of relieving the State of the burden of proof enunciated in *In re Winship* on the critical question of intent in a criminal prosecution.

d) when , there is conflicting evidence as to whether the amount of marijuana involved is sufficient to invoke the trafficking statute, both charges must be submitted to the jury. where however, the undisputed evidence is that the amount involved exceeds the minimum trafficking amount, then only the trafficking charge should be submitted to the jury. Id. at 241, 387 S.E. 2d at 200 *State V. Grady*, 306 S.C. 224, 411 S.E.2d 207 (1991)

An instruction on a lesser included offense is proper only when the charged greater offense require that the jury find a disputed factual element which is not a requisite for conviction of the lesser included offense. *State v. Cude*, 265 S.C. 313, 316, 218 S.E.2d 240, 242 (1975)

e) *State V. Needs*, 508 S.E.2d 857 (1998) the high Court exclaimed "We take this opportunity to strongly urge the trial courts to avoid using any seek language when charging Jurorors on reasonable doubt or circumstantial evidence. Such language is unnecessary and unconstitutionally shifts the burden of proof to a defendant."

ATTACHMENT BIIII

- a) United States Supreme Court's decisions in *Apprendi V. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and *Blakely V. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) require the amount of drugs to be submitted to the jury to be proven beyond a reasonable doubt.

Due Process requires the State to prove every element of a criminal offense beyond a reasonable doubt. *State v. Brown*, 360 S.C. 581, 602 S.E.2d 392 (2004) (citing *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970))

- b) Great bodily injury means; bodily injury which causes a substantial risk of death or which causes permanent disfigurement or impairment of the function of a bodily member or organ." *State v. Tyner*, 2014 WL 2737987)

Criminal Intent meaning; "An act does not make the doer of it guilty, unless the mind be guilty; that is, unless the intention be criminal." (Black's Law Dictionary 34 (5th ed 1979)). *State v. Ferguson* (1990) 395 S.E.2d 182

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) and *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975). see e.g. *Francis v. Franklin*, 471 U.S. 307, 326, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985) ("Sandstrom v. Montana made clear that the Due Process Clause of the 14th Amendment prohibits the State from making use of jury instructions that have the effect of relieving the state of the burden of proof enunciated in *In re Winship* on the critical question of intent in a criminal prosecution.

M. HOPE BLACKLEY

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COUNSEL FAILED TO MOVE FOR A NEW TRIALV

- a) search warrant affidavit "must contain "sufficient " underlying facts and information upon which magistrate may make determination of probable cause: "mere conclusory statements" which give magistrate no "basis" to make judgement regarding probable cause are "insufficient." Also, failure to attack the veracity of the confidential informant!: The decision includes consideration of the "veracity" of the person supplying the information and the "basis" of his or her knowledge. (*State v. Smith* 392 S.E.2d 182) *State v. Philpot* 317 S.C. 458, 454 S.E.2d 905

the statement in the affidavit regarding the previous seizure of marijuana and the omission of information regarding the seizure, arrest, and cooperation of the confidential informant constitute false statements and omissions made knowingly or with reckless disregard for the truth. Consequently, Peters argues that under the authority of *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the perjured

ATTACHMENT B

testimony cannot be used to establish probable cause, and therefore, the search is invalid. see Nutter v. State, 162 GA. App. 349, 291 S.E.2d 423 (1982) Peters, 445 S.E.2d 290-92

Due Process clause of 14th Amendment embodies 4th Amendment, the Due Process Clause of the 14th Amendment of the United States embodies, and makes enforceable in state courts, the rights, guaranteed by the 4th Amendment to the Constitution of The United States, and further makes evidence obtained by police officers in violation of the 4th Amendment inadmissible. (State v. Easterling (S.C.1971)-275 S.C. 239, 185 S.E.2d 366)

U.S. v Kennedy C.A.4 (M.d.) 1994, 32 F.3d 876)

U.S.C.A. 18 §3109 U.S. v. Bustamante-Gamez. C.A.9 (Cal.) 1973, 488 F.2d 4

"Knock and Announce", statute providing that officer may break open any outer or inner door or window of house to execute search warrant if, after notice of his authority and purpose he is refused admittance encompasses constitutional requirements of 4th Amendment and thus, statute not only governs Federal searches by Federal Agents, but also provides proper Framework for analyzing execution of state search warrants.

see also trial transcript pages entered at PCR Hearing.

Trial Transcript pages:

25

205 lines 5-10, 210 lines 10-25, 125 lines 8-25 and 126 lines 1-3, 244 lines 23-25, 245 lines 1-18, 247 lines 4-6, 255 lines 2-12, 218 lines 21-25, 219 lines 1-13, 221 lines 3-22, 222 lines 4-13, 266 lines 4-21, 288 lines 1-5, 161 lines 3,4 and 15,16, 319 lines 19-25, 320 lines 1-11, 441 lines 22-25, 442 lines 1-3, see also Preliminary Hearing pages: 5 lines 3-25 7 lines 1-7 compared to trial transcript pages: 43 lines 3-25 44 lines 1-3

2017 JUN 27 AM 10:27
MEMORIE BLACKLEY

CLERK OF SUPERIOR COURT

ATTACHMENT CVI

- a) see attachment B: State v. philpot 317 S.C. 458- 454 S.E.2d 905, Peters, 445 S.E.2d 290-92, State v. Bryant 210 Ga. App. 319, 320, 436 S.E.2d 57 (1993), State v. Smith 392 S.E.2d 182, Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), Nutter v. State, 162 Ga. App. 349, 291 S.E.2d 423 (1982), State v. Easterling (S.C.1971)-275 S.C. 239, 185 S.E.2d 366) U.S.C.A. §3109
see also Preliminary Hearing Pages:

5 lines 3-25, 7 lines 1-7 compared to
trial transcript pages: 43 lines 3-25
44 lines 1-3

VII

- a) A jury instruction violates due process if it is reasonable
likely that the jury understood the charge to create a
mandatory presumption requiring it to infer an element of
the offenses if the State proved certain predicate facts,
thereby relieving the State's burden of proof on an element
of an offense. Francis, 471 U.S. at 314; Sandstrom, 442
U.S. at 521, IN fact, these contradictory instructions likely
only exacerbated the error by confusing the jury as to its
finding duties with respect to Petitioner's murder charge.
the fact that the burden shifting charge occurred in a supple-
mental instruction is also relevant. see Bollenbach v. United
States, 326 U.S. 607, 612 (1946)(noting the prominence of
presumption language when it arises in a supplemental
instruction.) Arroyo v. Jones, 685 F.2d 35 (2d Cir. 1982)
(finding constitutional error in presumption language in
a supplemental charge on the element of intent because of
its special prominence and the series of questions from the
jury preceding the supplemental charge.)

Due Process Clauses of the 5th and 14th Amendments, which
protect an accused against conviction unless the State
supplies proof beyond a reasonable doubt each element
necessary to constitute the crime with which the accused
is charged. In re Winship, 397 U.S. 358, 364 (1970). T

VIII

- a) S.C.Code of Laws 1976, Appellate Court Rules Rule 221
b) right to choose counsel violated even if erroneously appointed
counsel is effective because choice and quality of representation
are distinct rights.) U.S. v. Gonzalez-Lopez, 548 U.S. 140,
147-48 (2006)

VIII

- a) See section VI, Procuction of Confidential Informant.

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CLERK OF COURT
SPARTANBURG COUNTY

CONCLUSION

Based on the foregoing, I humbly pray that this Honorable Court Alter/Amend Judgement pursuant to SCRCF 59(e), also Doe V Doe, 324 S.C. 492, 478 S.E.2d 854, Marlar V. State, 653 S.E.2d 266, Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992).

AFFIDAVIT OF SERVICE

I, Toby Moore, certify that on the day of June 23, 2017 that I have served a copy of attached Motion to Alter/Amend Judgement on the below listed individual by delivering a copy of same to the McCormick Correction Institution mailroom, mailed United States Postal Service, prepaid and addressed as follows:

R. Ferrell Cothran, Jr, Presiding Judge
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 20306

CLERK OF COURT
SPARTANBURG COUNTY
2017 JUN 27 AM 10:27
T. MOORE BLACKLEY

Sworn to and subscribed before
me this 23 day of June, 2017

J. Franklin
Notary Public of South Carolina

My Commission Expires: 12/16/2019

Toby Moore
Toby Moore, #350242
f-1-b-120, MCI
386 Redemption Way
McCormick, SC 29899

R. Ferrell Cothran, Jr, Presiding Judge
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, S.C. 29306
June , 2017

Re: Motion to Alter/Amend Judgement SCRCF 59(e)

Ca.No.: 2014-CP-42-2768, Toby Moore v. State

"ATTENTION", Judge Cothran, JR.,

On June 20, 2017, I Toby Moore #350242, received a copy of your Order of Dismissal from my Attorney Leah B. Moody, Esq. I humbly pray that this Court will "stop" my Appeal and File this 59(e) Motion to Alter/Amend Judgement. Pursuant to Marlar v. State, 653 S.E.2d 266.

I thank you for your time and Attention in regard to this legal matter.

M. HOPE BLACKLEY

2017 JUN 27 AM 10:27

CLERK OF COURT
SPARTANBURG COUNTY

Respectfully Submitted,

Toby Moore

Ms. M. Hope Blackley, Clerk
 Clerk of Court, Spartanburg County
 180 Magnolia Street
 Spartanburg, SC 29306
 June 23, 2017

Re: Request to file 59(e) Motion to Alter/Amend Judgement
 SCRCP 59(e)

Ca.No.: 2014-CP-42-2768, Toby Moore v. State

Dear Ms. Blackley,

Enclosed please find a copy of a(n) Motion to Alter/Amend
 Judgement Pursuant to SCRCP 59(e). Please file with your office,
 clockstamp and send me a copy at your earliest convenience.
 I've also maile same Motion to my attorney Leah B. Moody, Esq.

I Humbly and respectfully thank you for your service and
 attention in regard to this legal matter.

M. HOPE BLACKLEY

2017 JUN 27 AM 10 27

CLERK OF COURT
 SPARTANBURG COUNTY

Respectfully Submitted,

Toby Moore

Toby Moore #35242

F1-120-B-MC1

386 Redemption Day

McLornick, SC 29999

CLERK OF COURT
SPARTANBURG COUNTY

JUL 27 AM 27

CLERK OF COURT M. HOPE BLACKLEY

M. Hope I

Clerk of

Post office

Spartanburg,

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STATE OF SOUTH	)	IN THE STATE OF SOUTH CAROLINA
CAROLINA	)	IN THE SUPREME COURT
SPARTANBURG COUNTY	)	
TOBY MOORE, #350242	)	CA.NO.: 2014-CP-42-02768
APPELLATE	)	PRO-SE
V.	)	MOTION TO HOLD APPEAL IN
	)	ABEYANCE
STATE OF SOUTH	)	SCACR RULE 240 (a),(c)
CAROLINA	)	
<u>RESPONDENT</u>	)	

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JUL 10 2017

S.C. SUPREME COURT

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JUL 05 2017

SC Court of Appeals

COURT OF COMMON PLEAS
SPARTANBURG COUNTY

On June 19, 2017, The McCormick Mailroom received a copy of an Order of Dismissal from Applicant's Attorney Leah B. Moody, Applicant Toby Moore received Order June 20, 2017. Applicant filed a "Timely" motion to Alter/Amend Judgement pursuant to SCRCF 59(e) under the fact that the Honorable Judge R. Farrell Cothran, Jr., "did not" rule on Applicant was denied and deprived Due Process and Equal Protection of the Law under the 5th, 6th 14th Amendments of the United States Constitution, Article One Section Three of the South Carolina Constitution, As well as all other Federal and State Constitutions, Statutes, Laws and applicable citings.

CONCLUSION

Based on the foregoing, I humbly pray that this Honorable Court Hold my Appeal in Abeyance and Remand my case back to the Lower Court, pending a ruling on Motion to Alter/Amend Judgement pursuant to SCRCF 59(e), also pursuant to Marlar V. State, 653 S.E.2d 266.

here to
drawn
with
fingers

AFFIDAVIT OF SERVICE

I Toby Moore certify that on this 3rd day of July, 2017 that I served a copy of attached Motion to Hold Appeal in Abeyance on the below listed Individual by delivering a copy of same to the McCormick Correction Mailroom, mailed United States Postal Service, prepaid and addressed as follows:

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JUL 10 2017

S.C. SUPREME COURT

The Honorable Jenny Kitchings

Clerk, Court of Appeals

P.O. Box 11629

Columbia, SC 29211

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JUL 05 2017

SC Court of Appeals

Sworn to and subscribed
before me this 03 day of July, 2017

[Signature]
Notary Public of South Carolina

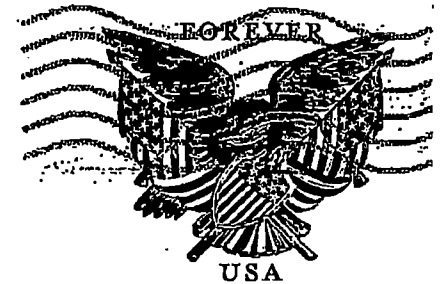
My Commission Expires: 12-16-2019

Toby Moore
Toby Moore, #350242
f1-120-b, MCI
386 Redemption Way
McCormick, SC 29899

Toby Moore H350242
 FI-175-B-MC2
 386 Redemption Way
 McCormick, SC 29899

AUGUSTA GA 309

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Attn: The Honorable Jenny Kitching
 Clerk, Court of Appeals
 P.O. Box 11629
 Columbia, SC 29211

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JUL 05 2017

SC Court of Appeals

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JUL 03 2017
 MC
 MAIL ROOM

THE DEPARTMENT OF CORRECTIONS HAS NOT
 INSPECTED OR APPROVED THIS ITEM THEREFORE
 THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
 FOR ITS CONTENTS.
 MCCORMICK CORRECTIONS, INC.
 DEPARTMENT OF CORRECTIONS

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

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ALAN WILSON
ATTORNEY GENERAL

July 5, 2017

The Honorable Hope Blackley
PO Box 3483
Spartanburg, SC 29304

CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL 10 AM 11:34
M. HOPE BLACKLEY

Re: Toby Moore v. State of South Carolina
2014-CP-42-02768

Dear Mrs. McBee:

I received a copy of the *pro se* documents entitled "Motion to Reconsider 59 (e) Alter/Amend Judgment" in the aforementioned post-conviction relief matter that was sent to your office for filing.

Please be advised that Rule 11, SCRCP, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. See also Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

While Respondent is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings," Respondent interprets the Hiott decision to be narrowly tailored to the issues presented in Hiott and not to negate any and all applicability of Rule 11(a) for post-conviction relief proceedings. Hiott v. State, 381 S.C. 622, 674 S.E.2d 491 (2009). Respondent, respectfully, does not interpret Hiott to implicitly abrogate Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002). See also Foster v. State, 298 S.C. 306, 379 S.E.2d 907, 907 (1989).

Therefore, the State does not consider these *pro se* documents a part of this action. According to our records, Inmate Toby Moore is represented by Leah B. Moody, Esquire, in this matter. By copy of this letter, I am notifying opposing counsel of the State's position.

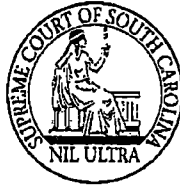
Furthermore, Mrs. Moody has already filed a notice of appeal in this case on June 20, 2017. The appeal is currently pending before the Supreme Court of South Carolina; therefore the Spartanburg County Court of General Sessions is without jurisdiction to entertain the motion.

Sincerely,


Valerie Garcia Giovanoli
Assistant Attorney General

VGG

cc: Leah B. Moody, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

July 10, 2017

Robert Michael Dudek, Esquire
Division of Appellate Defense
PO Box 11589
Columbia SC 29211

Re: Toby Moore v. State
Appellate Case No. 2017-001360
Lower Court Case No. 2014CP4202768

Dear Mr. Dudek:

Enclosed are motions Mr. Moore has sent to this Court. Since your office currently represents him, no action will be taken on these *pro se* motions. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Instead, if a timely and proper Rule 59, SCRCP, motion has been filed with the circuit court, then your office will need to move to have the notice of appeal dismissed without prejudice under *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986).

Very truly yours,

CLERK

Enclosures

cc: Valerie Garcia Giovanoli, Esquire (with copy of *pro se* motions)
Mr. Tody Moore



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 20, 2017

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JUL 20 2017

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: Toby Eugene Moore v. The State -- motions -- Appellate Case No. 2017-001360

Dear Mr. Shearouse:

In response to the Court's letter of July 10, 2017, we contacted the office of PCR Counsel Leah Moody, and obtained copies of the pro se motions filed with the Spartanburg County Court. The notice of intent to appeal was filed with this Court on June 20, 2017 by PCR counsel Moody. The motion to reconsider pursuant to Rule 59 (e), SCRCP, was filed in the Spartanburg County Court of Common Pleas on June 27, 2017. Apparently it was "served" on the trial judge on June 23, 2017. The Rule 59 (e), SCRCP motion was filed after the notice of intent to appeal was served and filed. Therefore, the post hearing Rule 59 (e), SCRCP motion was unfortunately not timely filed, and jurisdiction remains with this Court. If the Court would like copies of these filed documents please do not hesitate to contact me. In addition, please let me know if you have any other questions or concerns.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/mpm

cc: Valerie G. Giovanoli, Esquire
Mr. Toby Moore



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
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Telephone: (803) 734-1330
Facsimile: (803) 734-1387

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 8, 2017

Toby Eugene Moore, #350242
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Your recent letter

Dear Mr. Moore:

Thank you for your letter of July 28th, 2017. Your post-conviction relief (PCR) lawyer filed a notice of intent to appeal in the Supreme Court prior to your motion for reconsideration being filed in the Circuit Court. Therefore, the Circuit Court no longer had jurisdiction to entertain your motion since jurisdiction became vested in the Supreme Court when the notice of intent to appeal was timely filed and served. The Supreme Court had and has jurisdiction over your case.

What you asked your PCR lawyer to do, and when, does not control jurisdiction over your case. I hope this helps you better understand the jurisdictional issue even if it is not what you want to hear.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/mpm

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

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

The State, Respondent,

v.

Toby Eugene Moore, Appellant.

Appellate Case No. 2012-211107

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2014-UP-025
Submitted October 1, 2013 – Filed January 22, 2014

AFFIRMED

John Terrence Mobley, of The Mobley Law Firm, P.A.,
of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006)
("If there is any direct evidence or any substantial circumstantial evidence

reasonably tending to prove the guilt of the accused, [the appellate court] must find the case was properly submitted to the jury."); *id.* at 292, 625 S.E.2d at 648 ("When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate."); *State v. Mollison*, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) ("Constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found."); *State v. Hudson*, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981) ("Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.").

AFFIRMED.¹

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

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINGERPRINTS MADE

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

M751907

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty Attempted Murder

Foreperson of Petit Jury
Date:

DOCKET NO.

12-GS-42-0064

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2012

TERM

THE STATE

VS.

Toby Eugene Moore

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN 18 AM 10:34
M. HOPE BLACKLEY

X

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

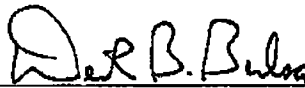
INDICTMENT

At a Court of General Sessions, convened on JAN 03 2012 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011,
with malice aforethought attempt to kill Shane Morrow, a Spartanburg City Police Officer,
by discharging a firearm in his direction, in violation of §16-03-0029, of *THE CODE OF
LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


DEPUTY SOLICITOR

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. CITATION VIOLATION COPY

M751909

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

GUILTY - attempted murder

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-0065

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 9 2012

TERM

THE STATE

vs.

Toby Eugene Moore

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN 18 AM 10:34
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

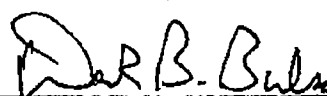
JAN 11 2012

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

ATTEMPTED MURDER

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011,
with malice aforethought attempt to kill Mark Hillers, a Spartanburg City Police Officer, by
discharging a firearm in his direction, in violation of §16-03-0029, of *THE CODE OF
LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


DEPUTY SOLICITOR

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

FEL VIOLATION COPY

M751908

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty - attempted murder

Cecile Bradn 3/23/2017

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-0066

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2012

TERM

THE STATE

VS.

Toby Eugene Moore

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN 18 AM 10:34
M. HOPE BLACKLEY

18

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

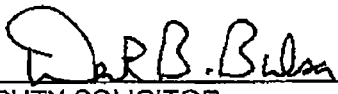
JAN 11 2012

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

ATTEMPTED MURDER

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011,
with malice aforethought attempt to kill Jeff Cooper, a Spartanburg City Police Officer, by
discharging a firearm in his direction, in violation of §16-03-0029, of *THE CODE OF
LAWS OF SOUTH CAROLINA*, (1976, as amended):

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


DEPUTY SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENT TO FILE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

TRAFFIC VIOLATION COPY

M751916

ACTION OF GRAND JURY

JUN 17 2011

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Came Boradof 3/23/2012

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-2965

The State of South Carolina

County of

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

TOBY EUGENE MOORE

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE BASE WITHIN
ONE-HALF MILE OF SCHOOL

SC Code: 44-53-445

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUN 21 PM 4:50
M. HOPE BLACKLEY

Computer

Computer

STATE OF SOUTH CAROLINA)
COUNTY OF)

INDICTMENT

JUN 17 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE WITHIN ONE-HALF MILE

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a quantity of Cocaine Base, a schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle or secondary school; a public playground or park; a public vocational or trade school or a technical educational center; or a public or private college or university, to wit: Duncan Park under provisions of §44-53-445 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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



DEPUTY SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

M751919

ACTION OF GRAND JURY

JUN 27 2011

True Bill

Foreperson of Grand Jury

Date:

VERDICT

GUILTY - Possession Intent to
Distribute

Came Bradford 3/23/2012

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-2966

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 28 2011

TERM

THE STATE

VS.

TOBY EUGENE MOORE

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

SC Code: 44-53-370

CDR Code:

Class MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 JUN 21 PM 4:50

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

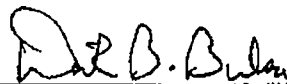
JUN 17 2011

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

POSSESSION WITH INTENT TO DISTRIBUTE

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



DEPUTY SOLICITOR

WITNESSES

SPTG DEPT PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT NUMBER

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY
M751915

Computer

Computer

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Guilty - Possession with intent
to distribute.

Foreperson of Petit Jury
Date:

DOCKET NO.

11-GS-42-2967

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 28 2011

TERM

THE STATE
VS.

TOBY EUGENE MOORE

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE OR COCAINE BASE

SC Code: 44-53-375
CDR Code:
Class MIS/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 JUN 21 PM 4:50

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

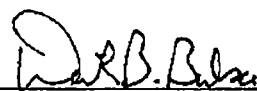
INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine or Cocaine Base, a schedule II controlled substance under provisions of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



DEPUTY SOLICITOR

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANT NUMBER

6. CHECKED SIGNATURE

M751906

7. ARRESTMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer

Computer

ACTION OF GRAND JURY

JUN 17 2011

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Guilty - attempted murder

Cameo A. Bradford 3/23/2012

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-2968

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

VS.

TOBY EUGENE MOORE

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUN 21 PM 4:50
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 17 2011

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

ATTEMPTED MURDER

That Toby Eugene Moore, did in Spartanburg County on or about January 6, 2011,
with malice aforethought attempt to kill Officer Jason Harris, by shooting the victim in the
right hip, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE
OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



DEPUTY SOLICITOR

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED
SPTG DEPT PUBLIC SAFETY

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

ARREST WARRANT NUMBER
VIOLATION COPY

M751911 and DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Guilty - Count One

Guilty - Count Two

Came Bradford 3/23/2012

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-2969 (A)
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

TOBY EUGENE MOORE

Indictment for

TRAFFICKING IN COCAINE;
POSSESSION OF FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: 44-53-370; 16-23-490

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUN 21 PM 4:50
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the
Grand Jurors of Spartanburg County present upon their oath:

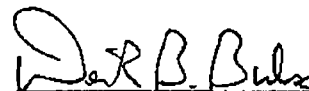
COUNT ONE- TRAFFICKING IN COCAINE

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (28) twenty-eight grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370 , *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Toby Eugene Moore did in Spartanburg County on or about January 6, 2011, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



DEPUTY SOLICITOR

674

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]

City, State, Zip: Jonesville, SC 29353

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder (0-30)

INDICTMENT/CASE#: 2012GS4200064

A/W#: M751907

Date of Offense: 1/6/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar# 15264

Defendant

Attorney for Defendant

SC Bar# 77355

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment

of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ ___ plus 20% fee: \$ ___

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL	\$	\$133.90

PTUP

___ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ___

May serve W/E beginning ___

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ ___ beginning ___

\$ ___ paid to Public Defender Fund

Other: ___

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2012
March 23, 2012

ARREST WARRANT

M-751907

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Computer

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: 350-21-2000
Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Russell D Porter - 1039

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Toby Eugene Moore
on 1-6-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant Russell D Porter who
being duly sworn deposes and says that defendant Toby Eugene Moore
did within this county and state on or about 01/06/2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)
in the following particulars:DESCRIPTION OF OFFENSE Murder / Attempted MurderI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally attempt to murder the
victim, being a Spartanburg City Police Officer, by shooting at the victim if

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street
Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Murder / Attempted MurderHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 01/06/2011Signature of Issuing Judge Dwight Smith (L.S.)

Dwight Smith

Judge Code: 7151Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-Judge's Telephone (864)596-2564Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

675

676

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: SS#

Address: Meadorville Rd

City, State, Zip: Jonesville, SC 29353

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder (0-30)

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

BULSA, DERRICK

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$3.00

TOTAL \$133.00

INDICTMENT/CASE#: 2012GS4200065

A/W#: M751909

Date of Offense: 1/6/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

BULSA, DERRICK

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$3.00

TOTAL \$133.00

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2053

March 23, 2012

ARREST WARRANT

11411

M-751909

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #: DOB: Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Russell D Porter - 1039

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Toby Eugene Moore

1-6-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Personally appeared before me the affiant Russell D Porter

who duly sworn deposes and says that defendant Toby Eugene Moore

did within this county and state on or about 01/06/2011

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

In the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally attempt to murder the victim, being a Spartanburg City Police Officer, by shooting at the victim.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street

Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011

defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge
Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN 14 PM 4:55
M. HOPE BLACKLEY

678

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED] Meansville Rd

City, State, Zip: [REDACTED] Jonesville, SC 29353

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder 10-30

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST: D.B. Belton

15264

Toby Moore

[Signature]

77855

BULSA, DERRICK

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☒ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BU) Breath Test Fee) \$50 \$

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$3.90

TOTAL \$133.90

INDICTMENT/CASE#: 2012GS4200066

A/W#: M751908

Date of Offense: 1/6/2011

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: M. Offutt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2093

Sentence Date: March 23, 2012

ARREST WARRANT

M-751908

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: 250-51-0890

Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Russell D Porter - 1039

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Toby Eugene Mooreon 1-6-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Russell D Porter whobeing duly sworn deposes and says that defendant Toby Eugene Mooreis within this county and state on or about 01/06/2011State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted MurderI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally attempt to murder the
victim, being a Spartanburg City Police Officer, by shooting at the victim.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad StreetSpartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Murder / Attempted MurderHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 01/06/2011

Signature of Justice/Judge

Dwight Smith

Judge Code: 7151Judge's Address Spartanburg County Judicial CenterSpartanburg, SC 29306-Judge's Telephone (864)596-2564Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
U.S. Attorney General
April 21, 2003
SCCA #18

AFFIDAVIT

Computer

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN 14 PM 4:55
M. HOPE BLACKLEY

680

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Computer

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] # [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED] Greenville, SC 29353

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

INDICTMENT/CASE#: 2011GS4202965

A/W#: M751916

Date of Offense: 1/6/2011

S.C. Code §: 44-53-0445(B)

CDR Code #: 0107

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(10-10 4/12 WK)

in violation of § 44-53-0445(B) of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

BULSA, DERRICK

15284 SC Bar#

Defendant

Attorney for Defendant

77355 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 10,000; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$10,000.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$100.00

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$630.90

TOTAL \$2,141.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

March 23, 2012

ARREST WARRANT

M-751916

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #:

JOB: Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Jeffrey M Kirby - 1074

Offense: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Offense Code: 0107

Code/Ordinance Sec: 44-53-045(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

in

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby

being duly sworn deposes and says that defendant Toby Eugene Moore

did within this county and state on or about 01/06/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 6, 2011 in the city/county of Spartanburg, the defendant knowingly and intentionally possess with the intent to distribute a cocaine based substance, a schedule II controlled substance, did within one-half mile of Duncan Park, a park or playground without authorization to so possess said substance

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 143 West Broad Street
Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge

Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

AFFIDAVIT

who

violate the criminal laws of the

FILED COURT
CLERK OF COURT
SPARTANBURG COUNTY
JAN 14 PM 4:55
HOPE BLACKLEY

COUNTY OF SPARTANBURG
STATE VS.

Computer

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

City, State, Zip:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: PWID Marijuana 10-5 + 10K SK ☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0186☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar# 15264

Defendant

Attorney for Defendant

SC Bar# 77355

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or paymentof \$ —; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter: Moffitt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2093Sentence Date: March 23, 2012

SENTENCE SHEET

M-751919

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St
Spartanburg, SC 29306-

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 10 Weight: 190

OL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Jeffrey M Kirby - 1074

Offense: Drugs / Manuf., poss. of other sub. in Sch. I,II,III
or flunitrazepam or analogue, w.i.t.d. - 1st offense

Offense Code: 0186

Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Toby Moore
1/6/2011

Signature of County Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby who

being duly sworn deposes and says that defendant Toby Eugene Moore

did within this county and state on or about 01/06/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam or analogue, w.i.t.d. - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally possess with the intent to distribute marijuana, a schedule I controlled substance, under circumstances indicating an intent to distribute said substance to another dy

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street

Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manuf., poss. of other sub. in Sch. I,II,III or flunitrazepam or analogue, w.i.t.d. - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge
Dwight Smith

Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306

Judge's Telephone (864) 596-2364

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

003

COUNTY OF SPARTANBURG

STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

in violation of § 44-52-375 of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

15264 SC Bar#

Defendant

Attorney for Defendant

77355 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 36-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 288.40

INDICTMENT/CASE#: 2011GS4202967

A/W#: M751915

Date of Offense: 1/6/2011

S.C. Code § 44-53-0375 (

CDR Code #: 3014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(C-15 4/10/25K)

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 36-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 288.40

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

3053

March 23, 2012

ARREST WARRANT

M-751915

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Jeffrey M Kirby - 1074

Offense: Drugs / Manufacture, distribution, etc. of
methamphetamine or cocaine base, 1st

Offense Code: 3014

Code/Ordinance Sec: 44-53-0375 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
 The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant Toby Moore
 on 1/6/2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 180 Magnolia Street
 P O Box 3483
 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby who
 being duly sworn deposes and says that defendant Toby Eugene Moore
 did within this county and state on or about 01/06/2011 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)
 in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally possess with the intent to
 distribute a cocaine based substance, a schedule II controlled substance, without authorization

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address: 145 West Broad Street
 Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 1st

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge

Dwight Smith

Judge Code: 7151

Judge's Address: Spartanburg County Judicial Center
 Spartanburg, SC 29306-

Judge's Telephone: (864) 596-2564

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 DCCA 518

605

COUNTY OF SPARTANBURG
STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: SS#

Address: Memphis RdCity, State, Zip: Jonesville, SC 29353

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Murder (6-30)in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence Recommendation by the State.ATTEST B. B. B. B. 15264 77355
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS Recipient: *Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: M. Offutt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0003Sentence Date: March 23, 2012

ARREST WARRANT

M-751906

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Russell D Porter - 1039

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Toby Eugene Moore

on 1-6-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Russell D Porter

being duly sworn deposes and says that defendant Toby Eugene Moore

did within this county and state on or about 01/06/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally attempt to murder the victim, being a Spartanburg City Police Officer, by shooting the victim on the right hip

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street

Spartanburg, SC 29306

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg as set forth below.

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge

Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306

Judge's Telephone (864)596-2564

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Computer

FILED
CLERK OF COURT
SPARTANBURG, SC
2011 JAN 14 PM 4:54
M. HOPE BLACKLEY

688

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was.

TO: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

INDICTMENT/CASE#: 2011GS4202969

A/W#: M751911

Date of Offense: 1/6/2011

S.C. Code § : 44-53-0370(e)

CDR Code #: 2359

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(7-25 yrs & \$50,000)

in violation of § 44-53-0370(e) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar# 15264

Defendant

Attorney for Defendant

SC Bar# 77355

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 59,000; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$50,000.00

\$53,750.00

\$100.00

\$

\$

\$

\$

\$

\$25.00

\$150.00

\$

\$

\$5.00

\$3120.90

\$10,115.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

March 23, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Toby Eugene Moore

AKA:

Race: BLACK Sex: M Age: 33

DOB: SS#:

City, State, Zip:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

INDICTMENT/CASE#: 2011GS4202969A

A/W#: 2011GS4202969A

Date of Offense: 1/6/2011

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL,	\$	\$133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2053
March 23, 2012

ARREST WARRANT

M-751911

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Toby Eugene Moore

Address: Owens St

Spartanburg, SC 29306-

Phone: SSN: 844-01-0000

Sex: M Race: B Height: 5 10 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Jeffrey M Kirby - 1074

Offense: Drugs / Trafficking in cocaine, 28 g or more, but
less than 100 g - 1st offense

Offense Code: 2359

Code/Ordinance Sec: 44-53-0370(e)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Jeffrey M Kirby

being duly sworn deposes and says that defendant Toby Eugene Moore

did within this county and state on or about 01/06/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on January 6, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally traffick more than 28
grams of cocaine, a Schedule II Controlled Substance, without authority to do so.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street
Spartanburg, SC 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/6/2011 defendant Toby Eugene Moore

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 01/06/2011

Signature of Issuing Judge (L.S.)

Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

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