

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Williamsburg County
Steven H. John, Circuit Court Judge

RECEIVED
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SC SUPREME COURT

ANTWINE MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000048

APPENDIX

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¹ The exhibit was filed without pg. 9.

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1 jury did probably with what they had -- now, I can't remember
2 exactly what the question was. Usually when a jury comes with
3 questions, you can generally tell something about the
4 direction that they're deliberating in based on the nature of
5 the question.

6 And if I had thought that -- that it would not have been
7 in our interest, then I'm sure I would have -- I would have
8 objected, but -- and I don't -- as I said, if we don't have
9 the note -- usually they send a note. If we don't have the
10 note for me to look at, I mean I see -- I see things almost
11 all the time.

12 Q: Uh-huh.

13 A: So I can't -- I can't recall exactly what the jury came
14 back in that case and said, but I know that if it was
15 something that -- that in any way contained anything to
16 suggest the direction that they were leaning or the direction
17 that they were deliberating in, then we would have either
18 asked for some additional instructions or something to clarify
19 it, but I just don't remember --

20 Q: And 332 --

21 A: -- that happening.

22 Q: Oh, go ahead. I'm sorry.

23 A: No. I'm through.

24 Q: Okay. 332 through 337 is essentially where these jury
25 questions come in. We have missing gaps in the transcript.

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1 The clerk's office wasn't able to come up with the jury notes;
2 so I don't have those to show you today. But at one point,
3 your response on page 333 is -- the first question is
4 regarding a group and it raises an issue of fact. So did you
5 -- from you saying that, you had concerns that the judge would
6 be commenting on the facts?

7 A: Uh-huh. It could have. I just don't remember.

8 Q: Okay. And then specifically on page 335, the judge
9 recharges them what we all tend to call the hand of one/hand
10 of all charge. So that was given to the jury twice.

11 After you had a question about commenting about -- I
12 think you said then if you answer that, it would be a comment
13 on the facts, but then he goes ahead and gives the hand of one
14 is the hand of all again. So it appears that they had a
15 question of something to do with the hand of one is the hand
16 of all charge?

17 A: I don't -- I don't know. I don't -- I don't remember
18 what ---

19 Q: Okay.

20 A: -- the question was.

21 Q: So you don't have a specific memory of that question?

22 A: I sure don't. No, ma'am.

23 Q: Do you have any reason that you can recall why you did
24 not enter an exception after the judge recharged the jury?

25 A: I can't think of any reason why I should have.

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1 Q: Okay. I'm going to go back to another issue. There's
2 portions of the transcript where it says either the tape
3 wasn't audible or a portion was omitted from the tape. Did
4 you get a copy of the --

5 A: Which -- which tape is that now?

6 Q: Referring to the tapes that the court reporter would have
7 been transcribing from. Did you get a copy of the transcript
8 and read through it after trial?

9 A: No, ma'am.

10 Q: Okay. Was there any reason then why the transcript would
11 have been contained in the file that you turned over to my
12 office?

13 A: Any reason why it would not have been?

14 Q: Would have been. If you didn't get a copy --

15 A: No, ma'am. I -- once -- once the trial was over and I
16 filed the notice of intent to appeal, that was it as far as
17 what I did with that case.

18 Q: Okay. Well, pursuant to the discovery order, I requested
19 a full copy of your file and contained in that was a copy of
20 the trial transcript. So do you know how that got into the
21 file you provided to me?

22 A: If somebody sent it to my office, my secretaries made a
23 copy of it and sent it to you I guess.

24 Q: Okay.

25 A: Because they -- they -- they -- they would put everything

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1 that --

2 Q: Do you ever remember reading through the transcript in
3 this case to make sure it was accurate and complete?

4 A: No, ma'am. I read -- there was some portions of it I
5 read in -- in preparation for this hearing. Some portions,
6 but no, ma'am, I never read -- read through the transcript.

7 Q: Now, Mr. Matthews raised some issues regarding an
8 allegation that the State failed to connect or tie the
9 forensic evidence in this case, for example the bullet, to the
10 actual crime scene. You extensively cross-examined Deputy
11 Scott about that and asked the victim questions, Mr. Dawkins
12 questions about, you know, the bullet and the shot. Why was
13 that not an issue that you raised pre-trial?

14 A: By pre-trial motion?

15 Q: Yes.

16 A: I don't -- I don't -- I don't know that we -- I don't
17 know that a suppression issue there would have -- would have
18 helped us a whole lot. The -- the prosecution -- the
19 prosecution did not -- as far as I'm concerned, they didn't
20 have a handle on the case.

21 And -- and -- and insofar as the issues that -- that --
22 the legal issues that would have to be resolved by the jury --
23 and this issue that you're talking about would really go to,
24 first of all, whether or not somebody fired -- one of the --
25 the defendants fired a weapon and whether or not the bullet

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1 that was retrieved was actually discharged during the
2 attempted robbery.

3 And I don't know that -- well, I still have trouble with
4 a witness -- the man said that he heard it pass by his ear and
5 I -- that's one that I just -- but that's pretty much what --
6 what they hung their hat on I guess insofar as -- as -- as --
7 as accepting the notion that a weapon was used in -- in this
8 attempted -- or so-called attempted armed robbery. But, you
9 know, I just don't know that it would have been necessary.
10 And I suppose depending upon how you look at it and who is
11 doing the shooting, but Mr. Matthews' position was he was just
12 there.

13 So our position was somebody else -- if that occurred
14 during this time, somebody else -- moreover, in terms of
15 really what happened -- and I mean I knew and Mr. Matthews
16 knows he -- he -- he fired point-blank at that man's head and
17 missed him. Now, that's just -- and that came from him and I
18 knew it. Mr. Floyd didn't know it, but his client knew it.
19 So now -- and if it's a lie, it's one that he told me.

20 So, you know, I'm not concerned about digging around with
21 the issue of who shot or whatever, but there's no question
22 from the standpoint of our defense -- or who had the gun or
23 where the gun was. Even -- even the woman that -- Ms. Hanna
24 -- she couldn't put him on the scene with a gun, but Mr.
25 Segars could. And if -- if -- if Mr. -- if Mr. Matthews is

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1 not the one that shot straight at the man's head, then that's
2 what he told me and that's what I took into consideration.

3 Q: But Mr. Dawkins was saying it was Segars who did the
4 shooting?

5 A: No. It wasn't -- it wasn't Mr. Segars. It was Mr.
6 Matthews who shot straight at his head and missed him.

7 Q: And that's something that you're saying he told you
8 during --

9 A: Yes, ma'am.

10 Q: -- your questions?

11 A: Absolutely.

12 Q: Now, going back to my questions about the evidence at the
13 scene, on pages 187 through 193, you were cross--examining
14 Lieutenant Scott essentially about his expertise in the area
15 of trajectory and what he did to establish the trajectory in
16 this case and, you know, trying to discredit him in front of
17 the jury. Why didn't you ever object to him offering
18 testimony on trajectory when he hadn't been qualified as an
19 expert in that area?

20 A: I don't know. I just -- maybe I didn't -- I don't -- I
21 don't even remember that.

22 Q: And then on page 208, line 6, you're asking Agent Roberts
23 some questions about trajectory and he let you know he's not
24 an expert in that area. Had you fully reviewed this issue of
25 trajectory and were prepared to make -- do cross-examination.

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1 to make arguments on it for trial?

2 A: Trajectory was really not an issue. I mean it may have
3 been something -- something to confuse people that didn't know
4 the truth of how it happened, but I knew how it happened and I
5 didn't see a need to get into an issue of exploring a theory
6 when -- when the only bad thing that could come about it is it
7 would come back to my client's hands.

8 Q: But there was no one -- if Mr. Segars -- you're just
9 saying that it was your understanding Mr. Segars was going to
10 testify that Mr. Matthews was the shooter; is that correct?

11 A: Well, his -- his -- I'm not saying -- his lawyer told me
12 he was not going to testify and Segars was probably, as I
13 said, the only one that -- I was convinced after -- after --
14 with the -- with the other one -- the gentleman that did
15 testify, he didn't -- he didn't even see it. So he didn't
16 know. So the only other person that could have - could have
17 seen would have been -- would have been Segars because he was
18 -- he was in there. I don't know whether or not he -- he
19 ducked down after Mr. Matthews got shot or what he did. He
20 said he -- they all ran, but --

21 Q: But if Segars didn't take the stand, there was no risk of
22 anyone testifying that Mr. Matthews was the shooter?

23 A: Well, at that time, Sam said that he wasn't going to --
24 he -- that Segars -- that they had not offered Segars I guess
25 what he wanted; so he wasn't going to testify.

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1 Q: So even though that's information you've offered today,
2 that wasn't information that was likely going to get in front
3 of the jury?

4 A: Unless -- unless -- it could not have gotten in front of
5 the jury other than -- I thought we did well with -- with --
6 with the cross-examination of the other witness and he hadn't
7 laid a glove on -- on Mr. Matthews from the standpoint of him
8 just being there. So I don't see where -- where else it could
9 have come from other than if it came -- if it came.

10 Q: So being concerned that someone would say that Mr.
11 Matthews was the shooter wasn't really a factor in your trial
12 strategy though if you knew Segars wasn't going to testify?

13 A: As long as he -- as long as he -- as long as he stayed
14 off the witness stand, it wasn't.

15 Q: Okay. So that was a justification for how you were
16 questioning the State's witnesses, was it?

17 A: No, not necessarily.

18 Q: Okay. Had you prepared ahead of time your directed
19 verdict argument or were you kind of working on that as you
20 were hearing the testimony throughout the trial?

21 A: No, I had -- I had not -- I had not prepared it ahead of
22 time.

23 Q: On -- in the transcript on page 55, Mr. Cooper is being
24 questioned about admitting on cross to you that no demands
25 were made and the State asked him, you know, is that unusual

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1 in a stickup, and you objected and he stops. Why did you not
2 want that testimony to come in about that being unusual?

3 A: If I'm not mistaken, it seems like there was an issue
4 about whether or not they had taken anything or whether they
5 intended to take anything or -- but, you know, I guess that
6 would certainly -- in hindsight, it was probably related to
7 the -- the armed robbery, taking whatever it is that they
8 would have claimed, you know, they are trying to take,
9 whatever it was that the State maintained that they were
10 trying to take.

11 Q: But in Mr. Cooper's statement, he says if he would have
12 known it was a stickup, he would have gone along with it, and
13 it appears that's where the State was trying to go with their
14 questions before you stopped him. Wouldn't that have aided
15 your directed verdict argument?

16 A: He wouldn't have -- he wouldn't have done that. I've
17 known him all my life. He's always -- he'll shoot at you in a
18 minute. He wouldn't have -- he wouldn't have just turned
19 anything over -- turned that stuff over to them.

20 Q: But that --

21 A: He had that little store and he's just as -- he's not
22 going to -- he's not going to just let people come in there
23 and -- he would've been out of business. That's why he's got
24 the little piece of gun in there. He's not -- he's not going
25 to just turn over anything. Now, Kimberly Barr and them may

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1 have told him to say that, but he wasn't going to do that
2 other than --

3 Q: And if he -- if that was what he said in his interview
4 with police -- you were familiar with his interview with law
5 enforcement?

6 A: He had given them a statement, yeah. Uh-huh.

7 Q: Let me ask you a couple questions about closing argument.
8 Mr. Matthews testified first about comments that the solicitor
9 made that we would allege tend to bolster the credibility of
10 Kim Hanna. Do you have any reason why you didn't object to
11 those comments?

12 A: I don't think it was -- Kim Hanna wasn't even there. I
13 mean, you know, she came and went back to Lake City. So I
14 mean as far as -- I don't -- I don't necessarily -- I don't
15 necessarily agree that that was bolstering. I don't -- I
16 don't see it that way.

17 Q: But Kim Hanna would matter as a witness if she was the
18 only one that put a gun in Antwine Matthews' hand; is that
19 correct?

20 A: She didn't put it in his hand. She put it at the house.
21 She said that she saw it. The only time she said anything
22 about seeing anything with Antwine Matthews with a gun was she
23 said that she saw the gun on the -- on the thing at the house.

24 Q: And do you recall her saying he also had it in the car or
25 could have had it in the car?

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1 A: I don't remember her saying Mr. Matthews and when -- and
2 when she was -- and even if -- even if -- even if she had a
3 gun, I mean, you know, taken as a whole, you know, you -- from
4 the standpoint of circumstantial evidence, if he had possessed
5 a gun at some point, it certainly -- maybe it would have been
6 probative on the issue from a circumstantial standpoint, but
7 as far as direct evidence, there was no direct evidence that
8 -- that Mr. Matthews had a gun in the store.

9 Q: Now, also in closing, Kimberly Barr starts off with some
10 comments about how good looking Mr. Matthews is and don't be
11 confused by his looks and what an awesome God we serve and
12 about the grace of God. Did you find any of those comments to
13 be objectionable that they were trying to appeal to the
14 passions or prejudices of the jury?

15 A: No, ma'am. I don't -- he is a good-looking young man and
16 I don't know how he got mixed up in -- I mean that's just the
17 truth of it. He is a good-looking young fellow and I don't
18 see how in the world he -- that was -- there's nothing -- as
19 far as I'm concerned, that's -- I was hoping maybe that would
20 keep the jury from -- ready to go over there and look at him
21 and, depending upon who's on the jury, I've had cases where we
22 put people on the jury that -- especially young women that --
23 that are impressed with good-looking young men. They'd rather
24 slap their mama than to find him guilty. So when you get some
25 of them, you want to use that. That's -- that's good

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1 material.

2 Q: And what about the religious comments?

3 A: You know, I use that so much myself, I'd feel like a
4 hypocrite if I -- if I -- if I jump on Kimberly for something
5 like that. You know, in Williamsburg County -- and I'm not
6 saying Williamsburg County is any different from anybody else,
7 but you -- you -- you -- you -- you've got people that -- most
8 -- most times, Williamsburg County juries are white and black.
9 They -- even though they don't always -- you don't always see
10 it in their conduct, they're church people.

11 Q: Now -- and please, I don't want to mis-summarize what
12 you're saying, but it appears that you're saying that you
13 didn't want to appear like you're a hypocrite because of your
14 interactions with Kimberly Barr --

15 A: No. Not my attraction, but --

16 Q: Interaction. I'm sorry.

17 A: No, no, no, no. It's just that from time to time I'm not
18 -- I find myself quite often relying on a biblical basis for
19 arguments that -- that -- that -- that we make in --
20 especially in closing arguments because you -- depending upon
21 who you've got on the jury, that's just -- that's -- that's a
22 custom or a tradition.

23 Now, you know, I wouldn't go to Horry County -- well, I'm
24 just picking at the judge, but I don't think that would fly
25 quite the same in Horry County as -- as -- as in Williamsburg

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1 County. But in Williamsburg County, you can -- you can get
2 away with that easy.

3 Q: You can pick on my home County of Richland if you'd like.

4 A: Well, Richland? I wouldn't try it in Richland either.
5 They are oblivious to that.

6 Q: Well, I guess my question is this, Mr. Barr.

7 A: Yes, ma'am.

8 Q: Playing fair with the solicitor and what's commonly done
9 in a courtroom, does that automatically mean it's fair to Mr.
10 Matthews that she's making those comments?

11 A: I think that if it was something that would rise to the
12 level of creating prejudice against a substantial right that
13 Mr. Matthews would have, then I would certainly take it as my
14 responsibility as his defense lawyer to interpose an
15 objection, but unless it's -- unless it rises to that level --
16 and, of course, I can't remember -- I can't remember whether
17 or not I had closed or whether or not we were going to get to
18 close last, but certainly to the extent that -- that -- that
19 it -- it -- it planted a seed, then, you know, it's nothing
20 that you can't come back along and undo. That's the whole --
21 that's the advantage and that's the purpose of the art of
22 persuasion with -- with a closing argument.

23 Q: Let me -- one more question. Jury charges. Did you --
24 you would agree you didn't ask for any lesser included
25 offenses in this case?

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1 A: That what now?

2 Q: You didn't ask for any lesser included offenses?

3 A: No, ma'am.

4 Q: And you even said that the State had the testimony that
5 you didn't believe of the victim that he felt a bullet or
6 heard a bullet go by his ear. Is there a reason then that you
7 didn't ask for a strong-armed robbery charge?

8 A: I don't see strong-armed robbery. You know, I don't see
9 the elements. I don't see the evidence presented. I don't
10 think the evidence presented would have supported that strong-
11 armed robbery as a -- as a -- as a lesser included offense. I
12 don't remember -- I don't remember anything taken from his
13 person. I didn't -- I don't see -- I don't see strong-armed
14 robbery in this case.

15 Q: Now, in this case, Mr. Matthews was convicted of the
16 assault with intent to kill -- I'm sorry. He was found not
17 guilty of the assault with intent to kill.

18 A: Uh-huh.

19 Q: Guilty of the attempted armed robbery, not guilty of the
20 firearms possession, and guilty of the criminal conspiracy.
21 I'm going to ask you a couple questions about the jury charges
22 that were given.

23 Beginning on page 326 of the transcript -- and I'll just
24 briefly go over this since I already went over it with Mr.
25 Matthews. I'm sorry, 325. The assault with intent to kill

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1 instruction starts and continues on page 326. On 327, Judge
2 Brown -- unless you can correct me that it was Judge Newman.
3 Judge Brown was giving an attempted armed robbery charge and
4 then on 328 he picks back up with an assault with intent to
5 kill charge. Do you remember the jury instructions being at
6 all confusing?

7 A: No, ma'am. I sure don't.

8 Q: Do you have any reason why you wouldn't have objected to
9 that jury charge as it reads now?

10 A: Well, depending upon -- you know, you -- you -- I know
11 that the inclination a lot of times is -- say for instance,
12 whenever you see something technical that's maybe not -- not
13 correct to oppose it, but it swings two ways and sometimes you
14 never know -- you never know whether you're talking yourself
15 into trouble or talking yourself out of trouble. And I just
16 don't see -- I don't see that rising to such an egregious
17 level where it cuts against my client's interest such that I
18 need to make an issue out of it.

19 Q: But you -- here you have the jury asking questions,
20 asking to be re-instructed, finding him not guilty on half of
21 the charges even though they been charged under the hand of
22 one/hand of all, and then to kind of put the cherry on the top
23 of it, the judge doesn't give the proper instruction.

24 A: Well --

25 Q: How would that --

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1 A: I think -- I think he gave the proper instructions on --
2 on the hands of one is the hands of all. I think -- I think
3 -- I think he -- the hands of one is the hands of all is bad.
4 I mean it's just -- it's always a terrible issue because you
5 can get convicted so easily.

6 But there were a lot of things that -- that sometimes you
7 don't want to emphasize, especially when you're dealing with
8 party crimes when you've got multiple defendants. You don't
9 necessarily want to remind the jury that this young man is
10 kind of with these other bad people and, as I said, our
11 defense was that he was -- he was just there.

12 So I mean I don't -- I don't know that I would want to
13 draw the jury's attention to that such that they would take
14 another look at it because I don't know whether or not they --
15 you know, I don't know whether or not they're thinking about
16 exonerating or convicting.

17 Q: And when I asked you --

18 A: And you just don't know that until after they come back.
19 Now when they come back, you know, you say, well, maybe that
20 was an issue, but you can second-guess yourself all day long.

21 Q: And my actual question -- I didn't want to cut you off
22 because you started an answer before I got into the question.
23 It was my fault because I was asking a long question. When I
24 was saying the cherry on top of it was that the instruction
25 isn't correct, the instruction that's not correct is the

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1 assault with intent to kill which he was convicted of. So
2 isn't that an important instruction?

3 A: Well, you're saying that the instruction for --

4 Q: During the assault with intent to kill instruction, the
5 judge starts giving the attempted armed robbery instruction
6 pursuant to the transcript and then he goes back to the
7 assault with intent to kill instruction. When instructions
8 are reviewed, they're supposed to be reviewed as a whole. And
9 as a whole, I would submit to you that that is very confusing.
10 And they find him guilty of this charge. Wouldn't it have
11 been important --

12 A: Of what charge?

13 Q: -- to make sure that instruction was correct?

14 A: They didn't find him guilty of assault with intent to
15 kill.

16 Q: I'm sorry. The armed robbery. I misspoke those two.

17 A: Uh-huh.

18 Q: But the armed robbery is wedged in the middle of the
19 assault with intent to kill. Wouldn't that be confusing?
20 Because if you read it, it's hard --

21 A: Well -- but listen --

22 Q: -- to tell what the elements are of armed robbery --

23 A: But -- but --

24 Q: -- and assault with intent to kill.

25 A: But based on the presentation of the case, it would be

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1 hard not to find somebody guilty of attempted armed robbery in
2 this scenario. I mean I -- I mean I -- you know, how can you
3 not find -- now -- and, of course, the jury did not find him
4 -- the jury found him guilty of criminal conspiracy. The jury
5 didn't even find him guilty of possession of a weapon during a
6 violent crime.

7 It's six of one, half a dozen of the other. I don't know
8 -- I don't know that that's -- at the end of the day that
9 that's indicative of what was going on in the jury's mind. I
10 have -- I don't know that. And certainly I'm not going to --
11 as I said, from where I'm sitting, it wasn't something that I
12 wanted to call to their attention.

13 And quite frankly, to tell you the truth, I don't -- I
14 don't even -- as I -- as I sit here now and think about the
15 jury charge, I usually -- when we're trying a case, you try to
16 listen to the charge to make sure that the charge is an
17 appropriate charge, but I don't remember having any strong
18 disagreement with the charge as a whole and particularly as it
19 relates to my client.

20 Q: And I may have misheard you, but Mr. Matthews was found
21 guilty of the conspiracy and --

22 A: He was found guilty of conspiracy, yes.

23 Q: And Judge Brown ran that concurrent?

24 A: Concurrent.

25 Q: Or consecutive.

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1 A: Consecutive. Yes, ma'am.

2 Q: Consecutive. And he --

3 A: Which I didn't expect he would do.

4 Q: And based upon the standard instructions, a portion is
5 not included and it's this portion.

6 A conspiracy may be shown by circumstantial evidence and
7 the conduct of the parties. In order to convict the defendant
8 of conspiracy, the State must prove beyond a reasonable doubt
9 not only that the defendant knew of the unlawful conduct, but
10 the defendant agreed to combine with the other persons for the
11 purposes of accomplishing the unlawful conduct.

12 Wouldn't that have been an important part of the
13 instruction in this case?

14 A: Would you -- would you repeat what you just said, please?
15 I'm thinking about it.

16 Q: Okay. On page 330, it actually says a portion off tape.
17 So to be fair, it could be there, but we don't have a record
18 of where he says a conspiracy may be shown by circumstantial
19 evidence and the conduct of the parties. In order to convict
20 the defendant of conspiracy, the State must prove beyond a
21 reasonable doubt not only that the defendant knew of the
22 unlawful conduct, but that the defendant agreed to combine
23 with the other persons for the purposes of accomplishing the
24 unlawful conduct.

25 Wasn't that essentially the gist of your case was that he

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1 had not planned this?

2 A: I think that's a good -- I don't think there's anything
3 wrong with that.

4 Q: But if that wasn't given, that would have been an issue;
5 is that correct?

6 A: Well, that's a -- that's -- that's a good charge. I
7 suppose you can -- you can charge conspiracy another way or
8 use other language that would be appropriate that would
9 certainly embrace the elements of the offense, but I don't see
10 that -- you know, I don't -- I wouldn't object to that. You
11 know, I think that's --

12 Q: And based upon your knowledge, this very well could have
13 been the first time that Judge Brown was charging a jury?

14 A: It could have been.

15 Q: Now, let me turn to the -- just some issues that Mr.
16 Matthews has raised that his appellate defender failed to
17 raise. Were you aware that an Anders brief had been filed in
18 this case?

19 A: No, ma'am. I think I saw it. Somebody sent it -- sent
20 it to my office I believe.

21 Q: Did you think you had made meritorious objections and
22 preserved issues for appeal in this case?

23 A: I don't -- you know, I've seen cases where judges have
24 ruled on issues such as admissibility of evidence and that
25 kind of thing where -- where you -- you may have something

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1 that's -- that's reversible error, but I don't know that there
2 was anything done as far as the rulings or anything from the
3 standpoint of the law that -- that necessarily constitute
4 reversible error in this case.

5 And usually -- usually that's something that -- that you
6 -- you kind of get a hold to at the time that it occurs and by
7 the end of the trial you may have two or three things that --
8 that when the -- when the appellate -- when the appellate
9 lawyers call you and say, well, look, can you think of
10 anything that we need to be looking for in this case, usually
11 those things will jump out if they call early enough before
12 you have -- before you move on.

13 But I mean otherwise and in this case I can't think of
14 anything that was just -- that would have constituted -- and
15 that's not -- you know, I'm not an appellate lawyer and I'm,
16 not -- I don't make those decisions, but from the standpoint
17 of what was in the record, I don't know that -- that -- and
18 the appellate lawyer is in a much better position because
19 that's what they do. You know, they handle appeals every day
20 and they know what's going -- what's going to be considered
21 meritorious and -- and -- and -- before an appellate tribunal.

22 So the Anders brief -- when I saw it and looked at it, I
23 mean I -- you know, I didn't spend a whole lot of time on it.
24 Moreover, this -- this -- the thing with this case is just
25 Judge Brown sentenced him to the consecutive five years and he

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1 had the discretion to do so, but as far as anything that I
2 thought that was bad about this case, that's it.

3 Q: So do you disagree now with your argument on page 339 for
4 a new trial saying that the not-guilty verdict essentially
5 shows that the overwhelming weight of the evidence didn't
6 establish the elements for the charges on which he was
7 convicted?

8 A: No, ma'am. I don't disagree with it, but that's --
9 you've got to put that in the record I mean. Otherwise, we'd
10 probably be here doing something else instead of doing what
11 we're doing. That's what we do.

12 Q: And just jumping back to the plea offer issue, you don't
13 recall meeting with Mr. Matthews and his mom about a plea
14 offer during the course of the trial? I didn't know if that
15 would jog your memory.

16 A: His mother -- Mr. Matthews was in jail in Marion for a
17 substantial portion of the time that I was representing him.
18 I think he may have gotten out -- let's see. January,
19 February, March, April, May --

20 Q: And, Mr. Barr, I'm just talking about --

21 A: I just can't remember --

22 Q: -- during the trial.

23 A: Pardon me?

24 Q: Do you remember meeting with him and his mom during the
25 trial about a deal?

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1 A: I could have. I just don't remember.

2 MS. BLANCHETTE: If I can beg the Court's indulgence one
3 moment?

4 THE COURT: Yes, ma'am.

5 MS. BLANCHETTE: Your Honor, I have no further questions
6 of this witness.

7 THE COURT: Mr. Attorney General?

8 MR. GOURLEY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GOURLEY:

11 Q: So, Mr. Barr, basically on direct you stated that Mr.
12 Matthews told you that he was the one with the gun and shot at
13 the victim, so on and so forth?

14 A: Yes, sir.

15 Q: Okay. And that certainly impacted the way that you were
16 going to prepare and handle this case at trial?

17 A: Well, I mean I -- we're -- I'm not -- you know, we're at
18 a PCR.

19 Q: Right.

20 A: And I'm his lawyer and I'm not going to -- but that's --
21 that's what -- that's what he told me and I believed him.

22 Q: Yes, sir. And I guess --

23 A: He shot straight at his head.

24 Q: Yes, sir. And that impacted the way that you
25 investigated and prepared this case for trial?

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1 A: Well, sure. Sure it did. I mean I knew what -- if it
2 was -- if that was the truth of the case and that's what he
3 told me, you know, then -- and if he didn't tell me that, I
4 wouldn't -- I wouldn't say that to you now.

5 Q: Yes, sir. Certainly. And regarding -- I'm just going to
6 run through these very briefly. Applicant's first allegation
7 is a failure to have him at the prelim and a failure to make
8 valid arguments during prelim. Do you always have your
9 clients at the preliminary hearings in your experience?

10 A: You know, it's always better in my opinion to have a
11 client at the preliminary hearing.

12 Q: Yes, sir.

13 A: But in some cases, you have to make a judgment call. And
14 in this case, there's no question in my mind that had I not
15 went on and waived Mr. -- Mr. Matthews' presence, then he
16 probably would have indicted -- been indicted and would have
17 never gotten a preliminary hearing. Moreover, you know, I
18 could have just stayed in there and seen what the -- but I
19 recorded the preliminary hearing --

20 Q: Yes, sir.

21 A: -- and immediately notified Mr. Matthews.

22 Q: Yes, sir.

23 A: And -- and -- and -- and -- and had Andrea Kelly make a
24 transcript of it and shared it with Mr. Matthews and they paid
25 for it.

CHARLES BARR - CROSS BY MR. GOURLEY

1 Q: Okay.

2 A: And paid for it promptly.

3 Q: Yes, sir. Is there a benefit in going forward with a
4 preliminary hearing in your -- in your experience?

5 A: I have never in thirty-five years waived one.

6 Q: Yes, sir.

7 A: In a lot of cases -- and a lot of lawyers will routinely
8 waive a preliminary hearing, but you never know what's going
9 to happen.

10 Q: Yes, sir.

11 A: And really, you know, depending upon the kind of case it
12 is, you're not going to get too many judges now that are just
13 going to dismiss cases at a preliminary hearing and they don't
14 get indicted.

15 Q: Yes, sir.

16 A: But, you know, from law school, we've done preliminary
17 hearings for discovery.

18 Q: Yes, sir.

19 A: Because I mean they're the best -- they used to be the
20 best discovery tool available in a criminal process and they
21 still are. There are some rules regarding preliminary
22 hearings that are adhered to. There are others that -- the
23 rules say that is to be scheduled in ten days. That never
24 happens. And nobody never does anything about it, but that's
25 just -- in reality, that's how the practice -- that's how it's

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1 done.

2 Q: Okay. Regarding Mr. Matthews' second allegation, he said
3 that you failed to properly prepare and investigate prior to
4 trial. Do you feel you were prepared to try this case?

5 A: Yes, sir.

6 Q: Okay. Regarding his -- well, I think we've covered
7 allegation number three regarding the plea offer, but
8 certainly it was Mr. Matthews' decision whether or not to
9 accept a plea offer; correct?

10 A: It was his decision. Now, Mr. Matthews went from -- from
11 Marion Detention Center to Sumter.

12 Q: Yes, sir.

13 A: Sumter Lee County Correctional Facility. And -- and --
14 and I think during a substantial portion of the time I visited
15 him in -- in -- in jail, not -- I just can't remember when he
16 was out and how long he was out.

17 Q: Yes, sir.

18 A: And -- but I know initially he was -- he was down in --
19 he was down in jail in Marion.

20 Q: And were you representing him on those Marion County
21 charges?

22 A: Yes, sir.

23 Q: Okay. So it wasn't just this one set of charges that he
24 had against him? You had other charges?

25 A: I represented him on the General Sessions charge in

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1 Marion County and -- and the four -- and he was exonerated on
2 all of them.

3 Q: Okay. Did you feel there was any basis to object to
4 Judge Brown taking over from Judge Newman during the course of
5 trial?

6 A: No, sir.

7 Q: And Judge Brown sat there the entire course of trial?

8 A: The entire time.

9 Q: Okay. And I believe you kind of hit on it, but
10 allegation five is regarding Investigator Lail's testimony and
11 dealing with Melvin Segars' statement. And again, I think you
12 were trying to point out that Melvin Segars in his first
13 statement originally did not put the gun with Mr. Matthews,
14 but then in the second statement he did. Did you have any
15 kind of strategy with that regarding his -- Melvin Segars'
16 first statement?

17 A: Well, in the second statement he -- he did, but -- but I
18 was pretty sure that he was not going to take the witness
19 stand.

20 Q: Yes, sir.

21 A: So it really would have -- would have kind of not so much
22 complicated things, but I don't know what they eventually did
23 with Melvin Segars. I don't know if they tried him or what
24 they did with them, but I don't think he'd been tried.

25 Q: Yes, sir.

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1 A: And I don't think he had -- I don't think he had any kind
2 of plea -- plea deal or anything.

3 Q: Okay.

4 A: I didn't -- I don't remember following up with Sam to see
5 what was going to --

6 Q: So then --

7 A: -- happen with him.

8 Q: So it was your strategy to try to get as much as you
9 could without opening the door to both of his statements
10 coming in?

11 A: I didn't necessarily want either one of the statements --

12 Q: Okay.

13 A: -- to come in. But, you know, if the jury -- the jury
14 may have thought Melvin Segars was the one that went in there
15 and shot at the man.

16 Q: Okay.

17 A: I don't know what they were going -- but that's just --
18 you know, you don't --

19 Q: Okay. Regarding Kim Hanna, Mr. Matthews alleged that you
20 did not advise him that she could be a potential and
21 essentially was a witness at his trial. Did y'all have
22 discussions about Kim Hanna?

23 A: Well, the only discussions I -- the only discussion I
24 remember is that Kim Hanna -- that they went to pick Kim Hanna
25 up.

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1 Q: Uh--huh.

2 A: They were all smoking reefer and brought over to
3 Kingstree and took them back.

4 Q: Okay.

5 A: When she went -- when they came back over -- when they
6 ran out of money is when they decided to do this armed robbery
7 and couldn't get any more reefer.

8 Q: Yes, sir.

9 A: That's when the whole issue came up about coming over
10 here and sticking somebody up.

11 Q: Yes, sir.

12 A: And Kim Hanna wasn't even -- wasn't even over here then.

13 Q: Were you aware that Ms. Hanna had placed the gun with Mr.
14 Matthews at the house prior to trial?

15 A: Well, I was aware that Kim Hanna had said that she saw a
16 gun.

17 Q: Yes, sir.

18 A: But not -- and she said she saw Mr. Matthews, but I think
19 she said Mr. Matthews was in the bedroom when she saw the gun.

20 Q: Yes, sir.

21 A: He didn't say she saw him with the gun.

22 Q: Okay. All right. But you had talked about all that with
23 Mr. Matthews prior to trial?

24 A: When -- when -- when we -- when we got -- the discovery
25 came in. I immediately the very same day that it came in sent

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1 for Mr. Matthews and we talked about it. And his mother may
2 have been with him. I can't remember.

3 Q: Okay.

4 A: Because I spoke with her probably about as many times as
5 I spoke to him.

6 Q: Okay.

7 A: And like I said, she's the one that -- she's the one that
8 -- she's the one that actually hired me, but -- but that was
9 -- and that was -- that was for -- when I first started
10 representing him as well as -- as well as the -- as on the
11 four charges in Williamsburg County.

12 Q: All right. In your thirty-five -- thirty-five years of
13 experience or with thirty-five years of experience, how do you
14 typically handle directed verdict motions? Do you prepare for
15 them in advance of trial or do you just kind of create them as
16 trial goes along?

17 A: You can't argue -- you can't argue authoritatively. You
18 can't argue a directed verdict motion until you've heard the
19 evidence.

20 Q: Yes, sir.

21 A: And, of course, if there's evidence, that's what a
22 directed verdict motion is all about, to determine whether or
23 not there is evidence. Not so much the weight of it, but
24 you're not going to be able to determine that until you've
25 heard the evidence in every case. And if -- and -- and very

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1 few -- very few cases now -- we used to be able to get a
2 directed verdict every now and then, but solicitors are good
3 now. They don't -- they don't bring a case -- Kimberly Barr
4 is not going to bring one unless she thinks that it's in the
5 win column.

6 So you -- you -- I mean for purposes of what you're
7 supposed to do in preserving the record, you -- you have to
8 always be prepared to move for a directed verdict, but
9 irrespective of how the evidence is presented or what's done
10 routinely, as a defense lawyer, I will make the motion. I
11 mean because if you don't, boom.

12 Q: Yes, sir. What is your strategy in objecting during
13 closing arguments? Do you have a particular way that you
14 handle closing arguments?

15 A: You know, you -- when -- closing arguments are -- I think
16 that closing arguments are always an integral part of a trial
17 and you can -- you -- you -- in a -- you can take a
18 magistrate's court and it's almost anything goes. I mean --
19 you know, but -- but with closing arguments in General
20 Sessions, usually -- you know, you've got to -- you -- by the
21 time you get to closing arguments, you've got some sense of
22 what all the twelve people -- twelve people are going to do
23 because you've been -- you know, you've been reading them and
24 talking to them and looking in their eyes and watching their
25 body language and seeing how they react to certain evidence

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1 and react to certain witnesses, and you've been putting all
2 this together during the entire trial and you can develop a
3 sense of what they want to hear versus what they don't want to
4 hear. And a lot of times you don't even want them to hear the
5 evidence. A lot of times you've got -- you've got to take the
6 evidence and make it -- turn it in such a way that they want
7 to hear it.

8 Q: Yes, sir.

9 A: Unless it's something that -- that -- that -- you know,
10 unless it offends a jury or unless it's something that you
11 know that you feel like amounts to a reversible error, I try
12 not to give a jury the impression that -- that I don't want
13 them to hear the other side or -- most times, you know, trial
14 lawyers generally try not to interrupt as a professional
15 courtesy each other, I mean unless you go over the line.

16 Now, if you go over the line, you know you're going to
17 get interrupted, but I mean otherwise you've got to listen.
18 You've got to listen and just -- you know, if it's something
19 that you just want to say just to be saying something, it's
20 better that you just keep your mouth shut sometimes.

21 Q: Yes, sir. Regarding the jury trial or the judge's jury
22 charge, did y'all have a charge conference prior to Judge
23 Brown charging them? If you recall? Is it typical that you
24 have a charge conference?

25 A: Charges. Somebody wrote them out -- typed it out. I

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1 can't remember who did it, but somebody did.

2 Q: Okay.

3 A: They were -- they were typed out.

4 Q: And specifically Ms. Blanchette asked you about a portion
5 of the criminal conspiracy charge and during the judge's
6 charge, it states that the court reporter's tape was
7 inaudible. So it's not to say that the criminal conspiracy
8 charge that Ms. Blanchette read wasn't heard. It's just not
9 recorded in the transcript. Now that being said, if there was
10 something wrong with the jury charge or something off about
11 the jury charge, would you have asked the judge to correct it?
12 Or re-instruct --

13 A: The judge -- the judge -- the judge is going to -- the
14 judge is going to -- the minute he gets through -- and some
15 judges will -- some judge is not going to write -- you know,
16 they're not going to print the charges. Some -- some will.
17 Some will let them go to the jury; some don't. In a lot of
18 cases, you know, we -- we get to see the jury charge before --
19 before it goes to the jury.

20 Q: Yes, sir.

21 A: And then in other cases, we have a charge conference
22 where we sit down and -- and -- and -- and do a request for
23 charge or usually, you know, you're always going to do a
24 request for charge if it's something you want charged. Like
25 in this case, we requested mere evidence.

CHARLES BARR - CROSS BY MR. GOURLEY

1 Q: Yes, sir.

2 A: Or mere presence.

3 Q: Yes, sir.

4 A: The judge charged it. But the charge -- the charge in
5 this case -- I don't -- I don't think there was anything
6 objectionable about it. As I said, it was written out.

7 THE COURT: Anything else, Mr. Attorney General?

8 MR. GOURLEY: No, Your Honor. That's all. Thank you,
9 Judge.

10 THE COURT: Ma'am?

11 MS. BLANCHETTE: I have one question, Your Honor.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q: Mr. Barr, on pages 109 -- 109 through 110, Kim Hanna is
16 testifying and she testifies that after they left the house,
17 Twine -- and she clarifies that's the defendant -- had the
18 gun. He had it in his lap in the car and then she saw him put
19 it in his pants. So she actually testified to Mr. Matthews
20 having a gun; is that correct?

21 A: Is that in her testimony?

22 Q: On pages 109 through 110.

23 Q: All right. Well, I'm sorry I missed that.

24 Q: Okay.

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

1 THE COURT: You may step down, sir. Is there any reason
2 the witness cannot be excused?

3 MR. GOURLEY: I have no objection, Your Honor.

4 MS. BLANCHETTE: I have none, Your Honor. I do have one
5 very brief witness. I don't know if he'll want to be here for
6 that.

7 THE COURT: Well, that will be up to Mr. Barr. If he
8 wants to leave, you're free to do so.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: Before we proceed any further, let me ask you
11 two questions. The written copy of the instructions -- did
12 you ever get those from the Clerk of Court?

13 MS. BLANCHETTE: Unfortunately, the Clerk of Court didn't
14 have a copy of any of the exhibits for me or Mr. Gourley.

15 THE COURT: All right. So the ones that were introduced
16 into evidence, Court's Exhibits 1 and 2 that were introduced
17 into evidence, the Clerk of Court in Williamsburg County had
18 lost them?

19 MS. BLANCHETTE: As of yesterday, they still cannot be
20 located and Kimberly Barr assisted in trying to locate those.

21 THE COURT: So the Clerk of Court's office lost the
22 Court's exhibits?

23 MS. BLANCHETTE: As of yesterday, they weren't able to
24 produce them. Yes, Your Honor.

25 THE COURT: That includes the written instructions that

1 the jury saw?

2 MS. BLANCHETTE: And the jury notes is something also we
3 requested.

4 THE COURT: All right. The jury notes were 1 and 2.

5 MS. BLANCHETTE: Yes.

6 THE COURT: And so the written instructions that the jury
7 saw -- those have been lost too?

8 MS. BLANCHETTE: Yes, Your Honor. That's why I had to
9 refer to the transcripts because I didn't have those to
10 compare it to.

11 THE COURT: All right. Thank you very much. We'll be
12 back in just a little bit. Thank you.

13 (WHEREUPON, there was a break in the proceedings from
14 4:00 p.m. until 4:10 p.m.).

15 THE COURT: All right. Ms. Blanchette, your next
16 witness, please, ma'am?

17 MS. BLANCHETTE: Your Honor, if I may just to further
18 answer the question you asked before we broke?

19 THE COURT: Sure.

20 MS. BLANCHETTE: I also just in an exercise of due
21 diligence contacted Susan Hackett because in my experience
22 Appellate Defense usually requests a copy of the exhibits.

23 THE COURT: Right.

24 MS. BLANCHETTE: She was able to pull Mr. Matthews'
25 scanned-in file. She did not see where they had requested the

ABIGAIL COOPER - DIRECT BY MS. BLANCHETTE

1 exhibits, had received the exhibits or had scanned those in at
2 Appellate Defense. So I also tried to locate the exhibits
3 with their office.

4 THE COURT: Okay. All right.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 THE COURT: Well, I appreciate you doing that. It just
7 obviously would have helped me had those things been in
8 existence, but they're not. All right. Your next witness,
9 please, ma'am?

10 MS. BLANCHETTE: Your Honor, I would call Abigail Cooper
11 to the stand.

12 THE COURT: Please come around to be sworn, ma'am. If
13 you'll just come around right up here. And before you get
14 seated, could you raise your right hand? There you go. Do
15 you solemnly swear or affirm to tell the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir.

18 THE COURT: Very good. Have a seat and get situated and
19 when you're -- when you're ready, state your name for the
20 record, please, ma'am.

21 THE WITNESS: Abigail Cooper.

22 ABIGAIL COOPER, being first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. BLANCHETTE:

ABIGAIL COOPER - DIRECT BY MS. BLANCHETTE

1 Q: And, Ms. Cooper, how is it that you know Antwine
2 Matthews?
3 A: He is my son.
4 Q: Okay. And with that relationship and him being your son,
5 you're here today to tell only the truth; is that correct?
6 A: Yes.
7 Q: Okay. And you're not going to make up anything just to
8 benefit your son?
9 A: No.
10 Q: Do you -- you've been here the whole day; is that
11 correct? And listened to everything that's been presented?
12 A: That's correct.
13 Q: Okay. And you heard your son testify about a plea offer
14 that was presented to him during the course of the trial.
15 Were you a party to that?
16 A: Yes.
17 Q: Okay. And what happened?
18 A: Mr. Barr -- me and Antwine were sitting -- well, he met
19 with us and he told us that there was a plea offered of ten
20 years, and it was offered to all of the guys. So that's what
21 he discussed with Kimberly Barr.
22 Q: Okay. And that was during the course of the trial it was
23 your understanding it was still a ten-year plea offer on the
24 table?
25 A: Yes.

ABIGAIL COOPER - DIRECT BY MS. BLANCHETTE

1 Q: Did you sit through the trial?

2 A: I did.

3 Q: Okay. And we have talked a lot today about what I will
4 call the judge switch. That there appeared to be two judges
5 presiding. At one point, Judge Newman said essentially that
6 Judge Brown would be taking the lead. Do you recall Judge
7 Brown being present during the entire trial?

8 A: He was not there the entire trial.

9 Q: And what part did you remember him being absent for?

10 A: The beginning of the trial, he was not there. It was
11 just Clifton Newman.

12 Q: Okay. And is there any time when you recall Judge Newman
13 not being present?

14 A: Judge Newman left -- I think it was that Wednesday.

15 Q: Okay. So there were times when there was just a single
16 judge in the courtroom?

17 A: Yes.

18 Q: Okay. Was that confusing to you?

19 A: It was.

20 Q: Okay. And did Mr. Barr ever explain that to you?

21 A: He did not because he led us to believe that Clifton
22 Newman was going to be the judge.

23 Q: Okay.

24 MS. BLANCHETTE: Your Honor, I have no further questions
25 of this witness.

ABIGAIL COOPER - CROSS BY MR. GOURLEY

1 THE COURT: Cross-examination?

2 MR. GOURLEY: Very briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GOURLEY:

5 Q: Ms. Cooper, what -- what was going on when Judge Newman
6 was initially the judge and Judge Brown wasn't there? Do you
7 recall?

8 A: It was the -- the selection of the jury.

9 Q: Okay.

10 A: It was, like, the first --

11 Q: The first phase I guess?

12 A: Right.

13 Q: Okay. So it wasn't the selection of the jury for your
14 son's trial. It was more so the qualification of the whole
15 big jury panel?

16 A: Well, it was for -- when -- it was for his trial.

17 Q: Okay. So they were selecting the jury for his trial and
18 Judge Brown wasn't up there?

19 A: He wasn't there the whole time.

20 Q: Okay. He wasn't there the whole time or --

21 A: The beginning of it.

22 Q: Okay.

23 A: The selection of the jury, Judge Brown was not there.

24 Q: Okay. And you said Judge Newman left on a Wednesday?

25 A: I think it was a Wednesday. It was, like, the middle of

ABIGAIL COOPER - CROSS BY MR. GOURLEY

1 the trial he left.

2 Q: Did he return?

3 A: He did not return.

4 Q: He did not return at all?

5 A: No.

6 Q: You didn't see him? Okay.

7 A: No.

8 MR. GOURLEY: Your Honor, I don't have any other
9 questions. Thank you, Ms. Cooper.

10 THE COURT: All right. Just hold on just one second,
11 please, ma'am. All right. So when Judge Brown was not there
12 and Judge Newman was there at the beginning, had any -- it was
13 the selection of the jury for your son's case; correct?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Did they go into then the opening
16 statements by the solicitor and the opening statement by Mr.
17 Barr? Was Judge Brown there? Do you remember that? At the
18 very beginning of the trial --

19 THE WITNESS: Uh-huh.

20 THE COURT: -- you know, both lawyers get to get up and
21 talk to the jury. Do you remember that at the very beginning?

22 THE WITNESS: I remember him being there -- he wasn't
23 there the whole day.

24 THE COURT: Okay.

25 THE WITNESS: At the beginning of it, it was just Clifton

ABIGAIL COOPER - DIRECT BY THE COURT

1 Newman because when Judge Brown -- is that his name?

2 THE COURT: Yes, ma'am.

3 THE WITNESS: When Judge Brown showed up, Attorney Barr
4 was, like, surprised because he whispered to us, like, he
5 didn't know that Judge Brown was going to be there.

6 THE COURT: Was going to be there? Do you remember -- do
7 you have any recollection of what was going on in the trial
8 when you first saw Judge Brown? What was taking place? Any
9 -- any recollection of what was taking place at that point in
10 time?

11 THE WITNESS: I can't quite remember. I know they were
12 selecting the jury. I think they had already selected the
13 jury.

14 THE COURT: Okay. And then he shows up?

15 THE WITNESS: Right.

16 THE COURT: Okay. All right. Now, looking at the record
17 here, it was -- let's see. The Court broke for lunch and I'm
18 not sure on what -- what day this was, but it was -- let's
19 see. Let's see who the last witness was. Lieutenant Jeff
20 Scott. Do you remember Lieutenant Jeff Scott testifying
21 before lunch one day?

22 THE WITNESS: I think I can recall that.

23 THE COURT: All right. And after lunch, at that point in
24 time the -- Judge Newman talked to the jury and told everyone
25 assembled that Judge -- Judge Brown is going to now take over

ABIGAIL COOPER - DIRECT BY THE COURT

1 presiding in this case. Do you remember that?

2 THE WITNESS: I remember that. Yes, sir.

3 THE COURT: Okay. All right. So -- and then they call
4 the next witness and apparently that was John Gray Dodd
5 Roberts. He worked for SLED. After that, how much of the
6 time was Judge Newman in the -- in the courtroom when that
7 occurred?

8 THE WITNESS: When that occurred, Judge Newman -- he left
9 because I think this was right after lunch.

10 THE COURT: Right. It was right after lunch.

11 THE WITNESS: Right.

12 THE COURT: That's what the record says. Yes, ma'am.

13 THE WITNESS: I think he left.

14 THE COURT: Okay.

15 THE WITNESS: And that's when Lawyer Barr had the
16 conversation with us --

17 THE COURT: Okay.

18 THE WITNESS: -- that he didn't know this was going to
19 happen. And he said if he had known, then he would not have
20 brought my son before Judge Brown. That's his name?

21 THE COURT: Okay. Judge Brown. All right. So now --
22 and so when Judge Newman left, did you ever see him come back?

23 THE WITNESS: I never seen him come back.

24 THE COURT: Through the end of the trial?

25 THE WITNESS: Through the end of the trial.

1 THE COURT: All right. Thank you, ma'am. Further
2 questions from the applicant?

3 MS. BLANCHETTE: None, Your Honor.

4 THE COURT: Further questions from the attorney general?

5 MR. GOURLEY: No, Your Honor.

6 THE COURT: All right. Thank you, ma'am. You may step
7 down.

8 Just hold on a second. Just one second, please.

9 (WHEREUPON, there was a pause in the proceedings.).

10 THE COURT: All right. Ms. Blanchette, further
11 presentation by the applicant?

12 MS. BLANCHETTE: Your Honor, I just have several cases
13 that I have printed off to hand up.

14 THE COURT: Sure.

15 MS. BLANCHETTE: If that's okay?

16 THE COURT: I'd be glad for you to give them to me.

17 MS. BLANCHETTE: Okay.

18 THE COURT: I'll be glad to see them.

19 MS. BLANCHETTE: Your Honor, I do not have a closing
20 argument, but I could provide a brief explanation as to why
21 we're here --

22 THE COURT: Well, I don't know if the State is done yet.

23 MS. BLANCHETTE: Oh, I'm sorry.

24 THE COURT: But if you want to give me those cases, I'll
25 be glad for you to come up and give those. Give me the cases.

1 MS. BLANCHETTE: I'll hand those to you now and then at
2 the conclusion of their case I can briefly explain why I'm
3 handing them up if you'd like.

4 THE COURT: All right. Go ahead.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 THE COURT: All right. Mr. Attorney General?

7 MR. GOURLEY: Your Honor --

8 THE COURT: Do you have any witnesses you want to
9 present?

10 MR. GOURLEY: No, Your Honor, I do not.

11 THE COURT: All right. Well, I just want to be clear
12 because, you know, you might have known that, Ms. Blanchette,
13 but I did not. So all right. So with that, I guess I'll be
14 glad for you to -- to make any closing argument that you'd
15 like to make, please, ma'am.

16 MS. BLANCHETTE: Your Honor, I haven't prepared an
17 argument. I'll just explain the reasons for handing up these
18 cases.

19 THE COURT: Sure.

20 MS. BLANCHETTE: And then I'd be happy to, you know, do
21 anything further that the Court would request.

22 THE COURT: Okay.

23 MS. BLANCHETTE: I've provided a copy of *Ard v. Cato* and
24 *Lounds, L-o-u-n-d-s, v. State*. I like to call those our basic
25 PCR cases in South Carolina. They set forth some very good

1 reasoning on ineffective assistance of counsel, failure to
2 prepare and investigate, which is an issue I think we've kind
3 of gone over quite a bit today.

4 I have provided a copy of *Cole v. State*. That goes to
5 ineffective assistance of counsel regarding suppression
6 hearings, which is an issue we've addressed today, and there
7 is also an interesting footnote in this case.

8 Even though it deals with a guilty plea, the footnote
9 addresses how an admission of satisfaction with counsel is
10 conditioned upon what the defendant knows at the time. So the
11 questions about, you know, was he satisfied with Mr. Barr, I
12 would just point to a footnote in *Cole* that addresses that
13 satisfaction with your attorney is conditional upon what you
14 know about your case at the time.

15 I have provided a copy of *People v. Vargas*, which is out
16 of my home state of Illinois because that is the only case I
17 could find somewhat on point about this two judge or judge
18 switch issue that I have been going over today. I could not
19 find any South Carolina cases on point, but in *Vargas*, there
20 the judge was absent during some of the portions of the trial
21 and they found that that was confusing to the jury and
22 prejudicial to the defendant and the case was reversed. So
23 I've provided *People v. Vargas* even though it's not directly
24 on point. I think it is very similar to the allegations that
25 we've made today.

1 And I also have provided two cases, *State v. Blurton* and
2 *State v. Tapp*, that deal with lay witnesses and the extent of
3 their testimony versus expert witnesses. There's just some
4 good reasoning in those cases that goes to the issues that
5 we've raised about the forensic evidence and the testimony
6 offered by the State's witnesses as to trajectory, Your Honor.

7 As I said before, I'd be happy to answer any questions
8 that the Court has or provide anything additionally that would
9 be of assistance to the Court.

10 THE COURT: Let me -- let me ask you one question.
11 Besides all the other issues you've raised, you did, you know,
12 raise that issue about the charge where the Court charged
13 attempted armed robbery on -- let me make sure I've got the
14 page here. Yep. All right.

15 But they've got -- on 325 there's -- he charges Count I,
16 assault with intent to kill, and the judge goes through that
17 charge. And if I'm understanding correct, you didn't have a
18 problem with that. Right after that, he goes into attempted
19 armed robbery -- the defendant is also charged with this
20 offense -- and talks about attempted armed robbery.

21 And then on 328, it appears to go back to talking about
22 assault with intent to kill. It -- understanding that -- he's
23 talked about it and then he's talked about something else and
24 then he goes back and talks again about assault with intent to
25 kill. Considering the fact that your client was found not

1 guilty by the jury for assault with intent to kill, how is
2 this harmful or prejudicial to him?

3 MS. BLANCHETTE: Well, I would say at this point when Mr.
4 Barr did not object or make an exception, he didn't know that
5 he was going to be found not guilty of the assault with intent
6 to kill. And the jury instruction as a whole, I would deem it
7 confusing. And he was found guilty of the attempted armed
8 robbery, which is embedded in the middle of the assault with
9 intent to kill charge. So the ultimate question that I have
10 --

11 THE COURT: Okay.

12 MS. BLANCHETTE: -- is were they even sure what the
13 elements of the armed robbery were or if it's a layperson
14 reading it -- and it shows in the transcript that they were
15 provided a copy of the charge. Do they think it's assault
16 with intent to kill --

17 THE COURT: Unfortunately, we don't have it.

18 MS. BLANCHETTE: I'm sorry, Your Honor. Do they think
19 the assault with intent to kill -- where he picks up on page
20 328, line 10, if you're a layperson reading it, you would
21 think that maybe those are the elements of armed robbery? How
22 is a layperson going to know that he's picking back up on
23 another charge? I think we have the advantage of having seen
24 a jury charge before.

25 THE COURT: Okay.

1 MS. BLANCHETTE: So I think as a whole it's confusing and
2 he was convicted of one of the charges that's embedded in this
3 confusing section of the jury charge, and the jury has
4 questions. So I think it shows that they're confused.

5 THE COURT: All right.

6 MS. BLANCHETTE: Now, unfortunately, I can't tell you
7 verbatim what those questions are.

8 THE COURT: Well, we at least have some --

9 MS. BLANCHETTE: We get the gist of it.

10 THE COURT: We have some idea --

11 MS. BLANCHETTE: Right.

12 THE COURT: -- based upon what the Court and the
13 attorneys talk about, and then you see what the judge actually
14 --

15 MS. BLANCHETTE: Uh-huh.

16 THE COURT: -- recharged the jury --

17 MS. BLANCHETTE: Uh-huh.

18 THE COURT: -- after them. So you can discern fairly
19 well what the questions would have been, don't you think?
20 Just looking at that?

21 MS. BLANCHETTE: Right. But in -- in Mr. Barr's argument
22 for a new trial, he's saying that clearly the State didn't
23 meet the elements and what's really interesting is here the
24 judge isn't even really charging them on the proper elements
25 if you read it straight through.

1 THE COURT: Okay. Well, I -- if you -- if you do that,
2 but I mean I also will point out obviously Judge Brown did
3 tell them that when he's giving them a copy of the
4 instructions in written form and he tells them you can refer
5 to them as you may need to guide your decision-making, but you
6 must consider the instructions as a whole. So he does tell
7 them they have to look at them in their entirety.

8 In talking about confusing -- but it does say when -- and
9 I agree. The record says he talks about assault with intent
10 to kill and then he talks about attempted armed robbery and
11 then he goes back to assault with intent to kill, but he does
12 say a specific intent to kill is not an element of assault
13 with intent to kill. So --

14 MS. BLANCHETTE: And they would have to pick up on that
15 one sentence there to I think realize he goes back.

16 THE COURT: Okay. All right. For there must be a
17 general intent to commit serious bodily injury. Well, I don't
18 see anything --

19 MS. BLANCHETTE: I guess my issue is does a juror know
20 where an armed robbery charge stops and where an AWIK charge
21 should stop and I don't think they do, and humbly, Your Honor,
22 I had to read this, like, ten times because I got confused.

23 THE COURT: Okay.

24 MS. BLANCHETTE: And that's why I provided the printout

25 ---

1 THE COURT: Okay.

2 MS. BLANCHETTE: -- because I had to line it up and
3 realize myself where one started and stopped.

4 THE COURT: Okay.

5 MS. BLANCHETTE: You know, so I just submit to you that
6 --

7 THE COURT: All right.

8 MS. BLANCHETTE: -- if I was incapable of doing it, I
9 think a juror may have -- a jury may have been confused as
10 well.

11 THE COURT: Okay. And I guess the other thing about the
12 charge when you -- when you're raising the issue about the
13 conspiracy, when you get to the point of the general charge
14 that's in the instructions on the -- on the website, that
15 unfortunately is the point in time on the charge when Judge
16 Brown is giving it that it says portion off the tape.

17 So he could very well have said that because they sort of
18 seem to coincide where he's supposed to be talking about that
19 part that you find on the website and then you look at the
20 record and it says portion off tape. So we don't know what
21 Judge Brown did or did not do; correct?

22 MS. BLANCHETTE: Right. Your Honor, and I hope I was
23 clear in conceding that.

24 THE COURT: Okay.

25 MS. BLANCHETTE: But that is off tape. I can't say one

1 way or another. I just needed to point out that it was
2 omitted.

3 THE COURT: Okay. And obviously it would have helped if
4 we -- you know, the clerk could have -- would have kept the --
5 the instructions -- the written instructions that the jury
6 got, you know, once they came back if the clerk would've kept
7 them, but they didn't; so we don't know. All right. Very
8 good. Thank you, ma'am. I appreciate it very much.

9 MS. BLANCHETTE: Thank you, Your Honor. I appreciate it.

10 THE COURT: All right. Mr. Attorney General?

11 MR. GOURLEY: Yes, Your Honor. Just a kind of
12 overarching theme, Your Honor, I would submit to the Court
13 that Mr. Matthews can't show any prejudice due to the
14 overwhelming evidence against him.

15 Obviously, if we take the record as a whole, including
16 Mr. Barr's testimony here today, which he obviously stated
17 that Mr. Matthews admitted to him that he committed this
18 robbery and shot at the victim in this case. So based off of
19 that alone, Your Honor, any kind of deficiencies in this trial
20 are -- you can't show any prejudice due to any deficiencies
21 because of the overwhelming evidence in the case.

22 Regarding the judge switch, Your Honor, I think --

23 THE COURT: (Coughs) Excuse me.

24 MR. GOURLEY: -- Judge Brown obviously was a qualified
25 sitting Circuit Court judge. He was there during the course

1 of the trial. I know there were statements that Judge Brown
2 was not there during the jury selection of the case. Mr. Barr
3 stated that Judge Brown was there the entire time.

4 Judge Newman's absence during the course of trial -- I
5 would submit to the Court that applicant can't show any
6 prejudice due to Judge Newman's absence when Judge Brown was
7 sitting there the entire time listening to the course of
8 trial.

9 And just briefly on the jury charge issue, Your Honor, as
10 you pointed out, if we take the jury charge as a whole, with
11 that being said I think given the whole jury instruction it
12 was clear enough for the jury to determine adequately to find
13 the defendant guilty.

14 THE COURT: All right, sir.

15 MR. GOURLEY: Thank you, Judge.

16 THE COURT: All right. Counsel, y'all did an excellent
17 job presenting a lot of issues that I have to consider. I'm
18 obviously going to need to take this one under advisement.
19 Honestly, it's not something I routinely do on a lot of
20 matters.

21 So you can understand that you -- both of you did a very
22 good job and have presented a number of issues that I have to
23 consider further, obviously along with the cases that you gave
24 me, Ms. Blanchette. I need time to read through those and see
25 how they may or may not apply to the situation at hand, but

1 I'm definitely going to consider them.

2 What I'll do is as soon as I have reached a conclusion in
3 this matter, my law clerk will email counsel with instructions
4 as to a proposed order and then we'll just go from there. All
5 right?

6 MS. BLANCHETTE: Thank you, Your Honor.

7 MR. GOURLEY: Thank you.

8 THE COURT: Thank y'all very much. I appreciate it very
9 much. Thank you.

10 (WHEREUPON, the proceedings ended at 4:31 p.m.)

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1 State of South Carolina)

2) Certificate

3 County of Florence)

4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 181 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Williamsburg County, South Carolina, held in
13 Sumter, South Carolina, on the 16th day of July, 2015.

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

16

17 s/Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 March 12, 2016

22

23

24

25

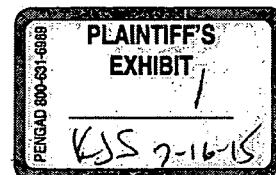
March ▼ 2010 ▼ Go To Date

Assignment of Judges to Terms of Circuit Court March 2010

Judge Name	3/1/2010	3/8/2010	3/15/2010	3/22/2010	3/29/2010
Brown, D. (2160)					

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11:11 AM

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CLERK OF COURT
WILLIAMSBURG COUNTY



April ▼ 2010 ▼ Go To Date

**Assignment of Judges to Terms of Circuit Court
April 2010**

Judge Name	4/5/2010	4/12/2010	4/19/2010	4/26/2010
Brown, D. (2160)				



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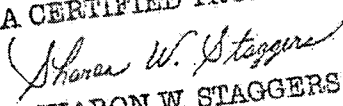
The State of South Carolina VS Evelyn T. Mitchell

Case Number:	M061619	Court Agency:	General Sessions	Filed Date:	12/01/2009
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Brown, D Craig	Disposition Judge:	Brown, D Craig
Disposition:	Pled Guilty				
Disposition Date:	05/12/2010	Date Received:	12/01/2009	Arrest Date:	11/23/2009
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS4500066	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Carraway	000000000				Other Party to Case		
Mitchell, Evelyn T.		Black	F	1966	Defendant		
Ronnie Sabb					Solicitor		

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 CLERK OF COURT
 WILLIAMSBURG COUNTY

6/25/2015

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The State of South Carolina VS David M Barr

Case Number:	I785263	Court Agency:	General Sessions	Filed Date:	11/20/2009
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Brown, D Craig	Disposition Judge:	Brown, D Craig
Disposition:	Pled Guilty				
Disposition Date:	05/12/2010	Date Received:	11/20/2009	Arrest Date:	11/18/2009
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS4500040	Walver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Barr, David M		Black	M	1964	Defendant		02/15/2011
Barr, Verdell					Other Party to Case		
Ronnie Sabb					Solicitor		

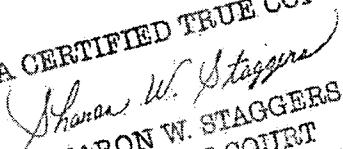
Assignment of Judges to Terms of Circuit Court May 2010

Holidays:

Mon May 10 - Confederate Memorial Day

Mon May 31 - National Memorial Day

Judge Name	5/3/2010	5/10/2010	5/17/2010	5/24/2010	5/31/2010
Swanman, Clifton (27)	In Chambers	General Sessions Williamsburg Sitting With: Brown, D.	General Sessions 17, 18 Williamsburg Official Leave 19 General Sessions 20, 21 Williamsburg	General Sessions Lexington	Common Pleas 31, 1 Lexington Official Leave 2, 3, 4

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 WILLIAMSBURG COUNTY

May ▼ 2010 ▼ Go To Date

**Assignment of Judges to Terms of Circuit Court
May 2010**

Holidays:

Mon May 10 - Confederate Memorial Day

Mon May 31 - National Memorial Day

Judge Name	5/3/2010	5/10/2010	5/17/2010	5/24/2010	5/31/2010
Brown, D. (2160)	In Chambers			Common Pleas Florence	Common Pleas Florence

STATE OF SOUTH CAROLINA)
) COURT OF MAGISTRATE
 COUNTY OF WILLIAMSBURG)

THE STATE,)

Plaintiff,)

-vs-)

PRELIMINARY)

Antwine Matthews, Jeffrey Dawkins,)
 and Melvin Segars,)

Defendant.)

MAGISTRATE: Judge Bill Driggers

DATE: January 22, 2009

TIME: 9:00 a.m.

LOCATION: Williamsburg County Magistrate's Office, Kingstree,
 S. C.

TAKEN BY: Mr. Charles David Barr

REPORTER: Andrea R. Kelly (transcription only)

APPEARANCES:

FOR THE STATE

Investigator Lail

Williamsburg County Sheriff's Office

Kingstree, S. C. 29556

FOR THE DEFENDANT

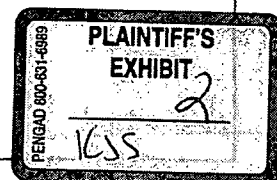
Mr. Charles David Barr

Barr and Barr

Kingstree, S. C. 29556

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Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

ANDREA R. KELLY
 401 WITHERSPOON DRIVE
 KINGSTREE, S. C. 29556
 PHONE: 843-354-7169



1 Judge Driggers The next case please.

2 Mr. Barr If it please the court, as much as I am already
3 here, I would certainly like to participate and I
4 would request that Mr. Antwine Matthews be
5 granted a preliminary hearing, and I will waive
6 his presence.

7 Judge Driggers I understand, but we don't have any paperwork
8 that has been prepared for this in reference to our
9 file. There have been no additional warrants put
10 together, and there has been no documentation for
11 the court to have in its possession with a
12 preliminary hearing.

13 Mr. Barr Judge, as I understand it, this is a case involving
14 three people who are charged with the same
15 offense.

16 Judge Driggers I understand.

17 Mr. Barr And as I said, I think that the court does have the
18 authority to grant or deny a preliminary hearing.

19 Judge Driggers I'm not arguing that either.

20 Mr. Barr The only thing that I'm asking the court to do is
21 allow me to request a preliminary hearing for a
22 Defendant that I am willing to waive his presence.

23 Judge Driggers I understand that too. I don't have any arguments
24 with that. I'm just saying that I don't have any file
25 and I have no warrants, which means I don't have

1 jurisdiction without warrants unless we can get
2 the warrants with his name on them. If she makes
3 copies, and it can be proven, and I don't know
4 that the copies are signed copies, but if you will
5 waive the signature and you will say that yes they
6 have been served, then I will be more than happy
7 to grant you a preliminary hearing.

8 Mr. Barr I will be more than happy to waive it.

9 Judge Driggers And I will be more than happy to grant it. I just
10 have to have some jurisdiction to do so.

11 Mr. Barr Yes, sir.

12 Judge Driggers And the document gives me that. Mr. Carraway,
13 good to see you.

14 Mr. Carraway Good to see you.

15 Judge Driggers Are you here for this hearing.

16 Mr. Carraway I'm here for Jeffrey Dawkins.

17 Judge Driggers Dawkins.

18 Mr. Carraway I was asking which one of these gentlemen was
19 representing the other one.

20 Judge Driggers Are you ready to proceed?

21 Mr. Floyd Ready.

22 Mr. Barr I'm ready.

23 Judge Driggers For the record I have before me at this time arrest
24 warrant M-060311 charging Jeffrey Laron
25 Dawkins with armed robbery. Does he waive the

- 1 reading of the warrant?
- 2 Mr. Carraway? He does your honor.
- 3 Judge Driggers I also have arrest warrant M-060316 charging
- 4 Jeffrey Laron Dawkins with conspiracy to commit
- 5 armed robbery. Does he waive the reading of that
- 6 warrant?
- 7 Mr. Carraway He does your honor.
- 8 Judge Driggers I also have arrest warrant M-060317 charging Mr.
- 9 Dawkins with possession of a weapon during a
- 10 violent crime. Does he waive the reading of that
- 11 warrant?
- 12 Mr. Carraway He does your Honor.
- 13 Judge Driggers I also have M-060320 charging Jeffrey Laron
- 14 Dawkins with assault and battery with intent to
- 15 kill. Does he waive that?
- 16 Mr. Carraway He does your Honor.
- 17 Judge Driggers And you have warrants here for Mr. Matthews. I
- 18 have before me at this time arrest warrant M-
- 19 060312 charging Antwine Lamar Matthews with
- 20 robbery, armed robbery. Does he waive the
- 21 reading of the warrant?
- 22 Mr. Barr Yes, sir, judge.
- 23 Judge Driggers And my copies are unsigned, because they come
- 24 straight out of the computer, but do you indicate
- 25 that those warrants have been served on your

1 client?

2 Mr. Barr Yes, sir.

3 Judge Driggers I also have arrest warrant M-060313 charging Mr.

4 Matthews with possession of a weapon during a

5 violent crime. Do you waive the reading of that

6 warrant?

7 A Yes, sir.

8 Judge Driggers I also have arrest warrant M-060314 charging

9 Antwine Lamar Matthews with assault with intent

10 to kill. Does he waive the reading of the warrant?

11 Mr. Barr Yes, sir.

12 Judge Driggers And also M-060315 charging Antwine Matthews

13 with conspiracy to commit armed robbery. Does

14 he waive the reading of the warrant?

15 Mr. Barr No, sir.

16 Judge Driggers He does not. Of which the narrative indicates that

17 on 12/31/08 at approximately 0022 hours at 276

18 Sandridge Road, Kingstree, South Carolina at the

19 business of E. L. Cooper Grocery which is in the

20 jurisdiction of Williamsburg County the

21 Defendant along with two co-Defendants did

22 commit the offense of conspiracy to commit

23 armed robbery in that the three assailants did plan

24 and conspire while at a separate location to drive

25 to the business and to enter the business armed

1 with a handgun with the intent of robbing the
2 store owner of money, all against the peace and
3 dignity of the State of South Carolina, and the
4 South Carolina Code of Laws.

5 Mr. Barr Thank you judge.

6 Judge Driggers You're welcome. Are you ready?

7 Mr. Barr Yes, sir.

8 Judge Driggers Call your first witness.

9 Inves. Lail That would be myself.

10 INVESTIGATOR LAIL, HAVING been duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY THE COURT:

13 Q Proceed.

14 A This incident occurred on December 31, 2008 at
15 the business of E. L. Cooper grocery which is
16 located at 276 Sandridge Road, Kingstree, which
17 is within the jurisdiction of Williamsburg County.

18 The 61 year old victim who is also the store
19 manager of Cooper Grocery called in to 911
20 dispatch that he had been robbed, and that there
21 were three individuals. He described them as
22 three black males, and he described their clothing.
23 They had left the business in a white in color
24 Cadillac. The victim also advised that there were
25 shots fired and upon the first shot being fired at

1 him he fell to the floor and when he got up he
2 took possession of his firearm which was
3 underneath the counter, and he started shooting.
4 At that time he was not sure to my knowledge
5 whether anyone had been hit or not. Upon my
6 arrival I met with an individual from
7 , who stated...correction there was a
8 separate call that came in at the same time that the
9 call came in from Cooper Grocery, and it was
10 from . It was that an individual
11 had been shot, and they needed to get an
12 ambulance. Officers at that time went out to
13 where we met with Mr.
14 Bishop, and he stated that his cousin, Mr. Segars
15 was there with him, and he stated that Mr. Segars,
16 Mr. Dawkins and Mr. Matthews were together
17 that day, earlier that day and that afternoon, and
18 they had left after dark that day, and that they
19 were in Mr. Matthews' white color Cadillac. He
20 did not know what exactly took place, but that
21 around midnight or shortly afterwards that Mr.
22 Segars along with Mr. Matthews had come back
23 to , and that Mr. Matthews
24 laid over on the couch and he told him that he
25 needed some help. At that time Mr. Bishop saw a

1 vast amount of blood on the couch and saw that it
2 was coming from Mr. Matthews, and he asked
3 him if he had been shot or stabbed or what, and he
4 said just get me some help. At that time 911 was
5 notified and EMS responded. Mr. Matthews was
6 taken to Williamsburg Hospital and immediately
7 transferred to McLeod for a gunshot wound to the
8 left side. I was later notified by McLeod
9 Regional Medical Center after several hours of
10 surgery that a projectile was removed from Mr.
11 Matthews, and it was retrieved through chain of
12 custody at McLeod Regional and it has been sent
13 to SLED for analysis. The handgun that Mr.
14 Cooper owned, and he did advise that once a shot
15 was fired at him he fell to the floor, and when he
16 got up he started shooting back, and that weapon
17 has been sent to SLED along with the ammunition
18 from the shell casing. It has been sent to SLED
19 for analysis and comparison to the one removed
20 from Mr. Matthews. At this point we were able to
21 locate Mr. Dawkins and Mr. Segars, and both of
22 them waived Miranda, and submitted a statement,
23 whereas Mr. Dawkins advised that he and Segars
24 and Matthews had been together most of the day
25 since about 10:00 o'clock that morning. Earlier

1 in the afternoon they had gone to ,
2 where they had left and went to a location in
3 Kingstree and bought marijuana. They came back
4 and smoked that, and realized that they needed
5 more. They didn't have any money, and at this
6 point Mr. Dawkins stated that Bennie suggested
7 that we could get money from Mr. Ervin, meaning
8 Mr. Ervin Cooper from Cooper's store. Mr.
9 Dawkins also said in his statement that Segars
10 who he referred to as Bennie had a handgun in his
11 possession all day. Once we interviewed Mr.
12 Segars and he waived his Miranda and gave us a
13 statement, he advised basically the same thing,
14 that they were at , and they
15 decided that they would go and rob somebody.
16 He said Mr. Dawkins knew Mr. Ervin, so both of
17 them were suggesting that the other one knew, but
18 he also stated that the gun also belonged to Mr.
19 Matthews. Both of them advised that the three of
20 them were together and the three of them did
21 enter the store with a handgun and their intentions
22 were to get money to buy more marijuana. The
23 keys to Mr. Matthews' vehicle were actually
24 found on Mr. Segars in his pocket, and that's
25 when he informed us that after the shooting

1 occurred that he and Matthews drove to a location
2 near Holy Wood Road and parked the vehicle
3 somewhere else and actually walked to his
4 residence, and then called 911. A search was
5 made of the vehicle to obtain the handgun but it
6 was not obtained. The vehicle was also
7 processed, and it was later determined that the
8 victim in protecting himself had shot through his
9 glass plate window, and the bullet had entered the
10 side of the vehicle and in fact the same angle that
11 Mr. Matthews received the wound to his left side.
12 Based upon the statements from Mr. Dawkins and
13 Mr. Segars the charges were brought, and at this
14 point has not been located. Again Mr. Segars and
15 Mr. Dawkins said that Segars had the weapon,
16 and Mr. Segars said Mr. Matthews had the
17 weapon, but all three of them knew that there was
18 one weapon involved. I also upon talking to Mr.
19 Dawkins and Mr. Segars they advised that they
20 had gone to a location in Lake City, and upon
21 searching Mr. Segars incident to arrest, he had a
22 medicine bottle on him that came back to a lady in
23 Lake City. I met with her and met with her
24 daughter, and it was confirmed that earlier that
25 day around midday the three of them were

1 together, and that they had items in their vehicle
2 that were actually stolen from another robbery
3 that we have not determined a victim. That came
4 from Mr. Segars, and he advised this female that
5 they took the gun from the front seat where this
6 witness was, and that they robbed the individual
7 for a PSP and some other items, and those were
8 found in the trunk of Mr. Matthews' vehicle, but a
9 victim has not been located at this time.

10 Q Anything else?

11 A No, sir.

12 Q Mr. Carraway?

13 CROSS EXAMINATION BY MR. CARRAWAY:

14 Q I assume this is a taped statement.

15 A Correct.

16 Q And you've got that on tape where he said they
17 planned this and everything?

18 A Yes, sir.

19 Q And everything you have testified to here today
20 that Mr. Dawkins said you have on tape?

21 A Yes, sir.

22 Q I have no further questions.

23 Judge Driggers Mr. Floyd.

24 CROSS EXAMINATION BY MR. FLOYD:

25 Q What was stolen from Mr. Cooper's store?

1 A Nothing. They requested candy, and to my
2 knowledge Mr. Cooper asked what color meaning
3 in the jar behind him, red, yellow or blue if I'm
4 not mistaken, and one of them said blue. When
5 he turned around to reach into the jar, his words,
6 and we have a taped statement from him also was
7 that he could feel the wind from the bullet that
8 went by him. When we processed the scene you
9 could see where it actually did go into the wall
10 and cut through the wall into the adjacent room
11 because of the close range.

12 Q Did he say who asked for the company. Did he
13 know the individuals who came in, did he identify
14 all three of them?

15 A No, sir.

16 Q Did he identify any of them?

17 A No, sir, he said one of them when they walked in
18 said Mr. Ervin, but he said are so many that come
19 in there is no way for him to know who it was.
20 He said it happened so momentarily everything
21 that took place and he couldn't tell.

22 Q Since you were describing the bullet I presume
23 you went out to the crime scene and did the
24 investigation at the scene?

25 A Lt. Scott did.

1 Q And this scene is a well lit area, it's a public store,
2 is that correct?

3 A Yes, it is.

4 Q Were there any other witnesses in the store?

5 A Not that I am aware of, no, sir.

6 Q But it's your testimony that Mr. Ervin could not
7 positively identify any of these three Defendants?

8 A That's correct.

9 Q I think you also stated that he could identify the
10 clothing that they had on?

11 A Yes.

12 Q Did he identify the clothing of all three
13 Defendants?

14 A I'm not exactly sure without his statement in front
15 of me. I recall him saying it was dark clothing but
16 again he said he just did not pay that much
17 attention. When he turned around the shot was
18 fired, and then he fell.

19 Q And Mr. Segars it is my understanding that he
20 told Antwine if I'm not mistaken that you may
21 can get some money from Mr. Ervin, so Mr.
22 Segars apparently knew Mr. Ervin, is that correct?

23 A That's correct.

24 Q And this Cadillac that they were driving, did Mr.
25 Ervin get the license plate off of it? It is Mr.

- 1 Ervin or Mr. Cooper, what does he go by?
- 2 A Everybody calls him Mr. Ervin, because he's been
- 3 in the community for so long.
- 4 Q So if I refer to him as Mr. Ervin, he's the victim in
- 5 this case?
- 6 A Yes, sir.
- 7 Q And we understand each other?
- 8 A That's correct.
- 9 Q And Mr. Ervin was he able to get any license tag
- 10 number off of the Cadillac?
- 11 A Not that I recall, only the color and it was a whit
- 12 Cadillac.
- 13 Q I think you stated earlier that shots were fired.
- 14 When you say shots how many shots were fired at
- 15 Mr. Ervin?
- 16 A To my knowledge it was only one.
- 17 Q And what caliber handgun was it fired from, do
- 18 you know?
- 19 A That I do not know. I am waiting on the ballistics
- 20 to come back.
- 21 Q But the bullet was recovered?
- 22 A Yes, that's correct.
- 23 Q And there were no other witnesses, is that
- 24 correct?
- 25 A That's correct.

- 1 Q And you have not recovered the pistol?
- 2 A That's correct.
- 3 Q Were there any fingerprints done at the scene or
- 4 any gunshot residue tests done on anybody or
- 5 anything along that line?
- 6 A To my knowledge the scene was processed by Lt.
- 7 Scott, and as far as gunshot residue there was one
- 8 conducted on the victim because he was there. As
- 9 far as Mr. Matthews he was immediately
- 10 transported to Williamsburg Hospital and then on
- 11 to McLeod. We were unable to get to him prior to
- 12 going to surgery. We were not allowed to see
- 13 him. As far as the other two it was beyond the six
- 14 hour scope of conducting the GSR.
- 15 Q Okay. Really the only conflicting statement is
- 16 that Mr. Matthews says that Mr. Segars was
- 17 shooting and Mr. Segars says Mr. Matthews was
- 18 shooting, is that correct?
- 19 A I have not taken a statement from Mr. Matthews.
- 20 Mr. Dawkins stated that Mr. Segars had the gun
- 21 and that he had the gun all day, and actually did
- 22 the shooting. According to Mr. Segars, Mr.
- 23 Matthews had the gun and he actually did the
- 24 shooting.
- 25 Q Did any of them state what order they entered

1 they store?

2 A Again, it's according to who you talk to.

3 According to Dawkins he stated that he went in
4 behind Matthews and Segars. According to
5 Segars he went in behind Dawkins and Matthews.

6 Q And Mr. Ervin wasn't able to tell you the
7 difference was he?

8 A No, sir.

9 Q And the items that were recovered from the other
10 robbery, the second robbery in Lake City, what
11 items were they?

12 A Again that was only from a witness that was with
13 them earlier that day, and she said it was some
14 type of CB radio, some clothes and a PSP. The
15 inventory of the vehicle when Lt. Scott was
16 processing it, those items were in the trunk but
17 without a bench warrant or anything, we didn't
18 have cause to remove those items.

19 Q So you were unable to identify where they came
20 from?

21 A That's right, or the validity. All we have is a
22 statement from a witness.

23 Q I don't have anything further.

24 Judge Driggers Mr. Barr.

25 CROSS EXAMINATION BY MR. BARR:

- 1 Q Where are you contending that this armed robbery
2 took place?
- 3 A At the store.
- 4 Q And what did you say was taken?
- 5 A Nothing was taken, because they didn't get a
6 chance to actually hand anything to the assailants.
7 There were shots fired immediately upon the
8 victim falling, and when he got up, he got up
9 shooting.
- 10 Q So there was nothing taken?
- 11 A There was not.
- 12 Q So maybe this is attempted armed robbery?
- 13 A Maybe.
- 14 Q Are you conceding this now with respect to a
15 motion to dismiss the armed robbery or a lesser
16 included offense?
- 17 A No, that's up to the judge. I would like for all the
18 charges to be looked at.
- 19 Q But you conceded that nothing was taken?
- 20 A But the intentions were there, although nothing
21 was actually taken.
- 22 Q You said that the intentions were there because
23 based on the information you got the young men
24 had discussed, and when I say young men, I'm
25 talking about the three individuals, Segars,

- 1 Dawkins and Matthews had discussed robbing
2 Mr. Cooper?
- 3 A That's correct, and the fact that when they walked
4 in one of them asked for candy.
- 5 Q I think you indicated that you don't know the
6 order in which they walked in the store?
- 7 A Correct.
- 8 Q You don't know how they walked in the store?
- 9 A That's correct.
- 10 Q Do you know if at all who actually went in the
11 store?
- 12 A According to both Segars and Dawkins all three
13 of them went into the store, but as far as who
14 walked in first, it's according to who you are
15 talking to.
- 16 Q So you got statements, are they oral statements or
17 written statements, from Dawkins and Segars.
- 18 A They are taped statements that have been
19 transcribed from Dawkins and Segars.
- 20 Q So you have them talking on tape?
- 21 A Correct.
- 22 Q And the same thing applies to Mr. Segars?
- 23 A Mr. Segars.
- 24 Q And you have transcribed their oral statements?
- 25 A Yes, sir.

- 1 Q But no statement from Mr. Matthews?
- 2 A No, sir.
- 3 Q Have you listened to the statements from Mr.
- 4 Dawkins and Mr. Segars?
- 5 A I have.
- 6 Q And are they Mirandized on these statements?
- 7 A Yes, sir.
- 8 Q And that is included in the statement?
- 9 A Yes, sir.
- 10 Q And if you would please ma'am, you indicated
- 11 that you don't know the order in which these
- 12 young men walked in the store, but you believe
- 13 that they were all in the store.
- 14 A Yes, they all walked in.
- 15 Q At the time the attempted armed robbery took
- 16 place if you would what, if any, evidence do you
- 17 have or what can you tell the court did anybody
- 18 demand money?
- 19 A Not to my knowledge, no, sir.
- 20 Q Did anybody demand any other thing of value in
- 21 the store of the three people that were supposed to
- 22 be in the store?
- 23 A To my knowledge the only thing they asked for
- 24 was the candy and when he turned around the shot
- 25 was fired, and immediately there were shots

- 1 coming from the victim, and they didn't have time
2 to ask for money. They ran and that is from my
3 knowledge from the victim.
- 4 Q Have you questioned the victim?
- 5 A Yes, sir.
- 6 Q And do you have an oral statement from him?
- 7 A Yes, sir.
- 8 Q Are you the person who did the questioning?
- 9 A Yes, sir.
- 10 Q And did you ask the victim where he had his gun
11 hidden?
- 12 A Yes, sir.
- 13 Q Where was it?
- 14 A He said underneath the counter right near the cash
15 register.
- 16 Q And the cash register was underneath the counter?
- 17 A He said he had the gun under the counter under
18 the register. The register was sitting on top of the
19 counter, and immediately when the shot was fired
20 he thought quick enough to fall to the floor and
21 when he did he reached under it and got the gun.
- 22 Q So he would have had his back turned when the
23 shot was fired?
- 24 A That's correct.
- 25 Q And you said that he heard gun fire?

- 1 A All of it was at one time he said he heard a gun
2 shot, but he also said he felt the wind as it went
3 by his head.
- 4 Q How long have you been in this business of law
5 enforcement?
- 6 A About 16 or 17 years.
- 7 Q Have you ever heard anybody describe the wind
8 from a bullet? You have never heard anything
9 like that, have you?
- 10 A Similar.
- 11 Q Oh, you have.
- 12 A Yes, sir.
- 13 Q Feel the wind off of a bullet?
- 14 A If it's close enough, he probably felt the impact. I
15 don't know.
- 16 Q As I understand it the bullet impacted the wall?
- 17 A That's true, but you asked what he stated to me.
- 18 Q Yes, ma'am.
- 19 A I don't know.
- 20 Q I guess what I'm getting at is you didn't think that
21 was kind of something you needed to look into
22 that some more?
- 23 A No, sir, that was his statement. I'm not going to
24 ask him to change his words.
- 25 Q I understand that, but did you actually believe as a

- 1 police officer with 17 years experience that he
2 could feel the wind off the bullet?
- 3 A That's what he said.
- 4 Q So you believed him?
- 5 A I guess so.
- 6 Q Now, in fact his back would have turned to the
7 cash register, and he would have had to turn
8 around to get his pistol. How does he describe to
9 you did he bring his head up above the counter or
10 did he stick his hands up and start shooting before
11 he stuck his head up?
- 12 A He stated to me that when he fell to the floor he
13 reached and got his gun, and when he came up he
14 started shooting.
- 15 Q Did he see anybody or did you ask him whether
16 he saw anybody to shoot at?
- 17 A I didn't. He said the three individuals were
18 standing there, and he said I think they thought
19 they had shot me, because their hands just
20 dropped by their sides. Now I look back and I
21 can remember seeing that, and I was shooting and
22 they were running.
- 23 Q So he was shooting and they were running?
- 24 A They started running, that's right.
- 25 Q He said I was shooting and they were running, so

- 1 he was shooting at some point when they were all
2 running or at least that is what he told you.
- 3 A According to his statement, that's correct.
- 4 Q And you have an oral statement.
- 5 A Yes.
- 6 Q When he started shooting did he say whether or
7 not he could see anyone or more of the
8 Defendants?
- 9 A He saw all three of them running.
- 10 Q When he started shooting?
- 11 A I don't know if it was when he started, Mr. Barr.
- 12 Q Did you ask him?
- 13 A Not precisely that question.
- 14 Q But in fact based on the information that you got
15 you examined the vehicle?
- 16 A Lt. Scott processed the vehicle.
- 17 Q You processed it, and you found where Matthews
18 had actually been shot in the vehicle?
- 19 A That would be left for forensic evidence. I'm not
20 sure if he was shot...to my knowledge he was shot
21 while in the vehicle.
- 22 Q You say it would be left for the forensic people,
23 did you send this to SLED?
- 24 A It has been.
- 25 Q But based on what you were able to find out, he

- 1 was shot in the vehicle?
- 2 A It appears so.
- 3 Q And you never found the gun.
- 4 A No, sir.
- 5 Q You also charged Mr. Matthews with assault and
- 6 battery with intent to kill, is that correct?
- 7 A Assault with intent to kill.
- 8 Q Assault and not battery?
- 9 A That's correct.
- 10 Q A bullet by his head.
- 11 A There was no physical touching.
- 12 Q But a bullet whizzed by, so that's why you
- 13 charged him with assault. I have one more issue.
- 14 It was later decided that the victim was protecting
- 15 himself. Who made that decision?
- 16 A Based upon all of the circumstances that night.
- 17 Q Who made the decision?
- 18 A I for one, and then Lt. Collins was notified and
- 19 the supervisor in charge of patrol that night and
- 20 Investigator Brown and myself, everyone
- 21 involved.
- 22 Q So if I understand correctly, based on what you
- 23 and the other officers have seen that night, I want
- 24 to know what other officer was present and privy
- 25 to the evidence that participated in making the

1 decision that the victim was protecting himself
2 when he shot Mr. Matthews. I want to know
3 exactly who participated in that decision?

4 A I would be the main one, because I signed the
5 warrant, and based upon the victim stating that he
6 feared for his life. The victim stated he feared for
7 his life, and he has a right to protect his life and
8 property.

9 Q Who else participated in the making of that
10 decision with you. I realize that no charges have
11 been brought, and I want to know who made the
12 decision not to do it?

13 A I can't point a finger, Mr. Barr, but I for one with
14 other officers.

15 Q So do you know of anybody else that you
16 collaborated with in making this decision?

17 A It was a joint effort. My lieutenant for one.

18 Q Lieutenant who?

19 A Lt. Collins and anytime there is a major crime that
20 has occurred other individuals besides the
21 investigators are notified.

22 Q So with respect to this case and the shooting of
23 Mr. Matthews, you made the decision and you
24 consulted with Lt. McElveen. Was there anybody
25 else in on making the decision?

1 Judge Driggers Mr. Barr, are we still dealing with probable cause
2 or are we trying another case.
3 Q This is the last question.
4 Judge Driggers One more question.
5 Q Judge, I asked who...
6 Judge Driggers You asked for a preliminary hearing, not to solve
7 another case.
8 Q This is the same case. I'm not talking about
9 another case.
10 Judge Driggers Well, let's keep it on probable cause.
11 Q Judge, I'm only asking and she specifically said,
12 and I quote, it was later decided that the victim
13 was protecting himself, and I'm just asking who
14 made that decision. That's all I asked.
15 Judge Driggers And it was answered about three times.
16 Q I don't know about three times, but I still don't
17 know the names of the people that did it and Di
18 McElveen, but that's alright. That's good.
19 Judge Driggers Any other questions?
20 Q No, sir.
21 Judge Driggers Call your next witness.
22 A That's it.
23 Judge Driggers Arguments.
24 Mr. Floyd Your Honor, I would just argue that the robbery
25 charge be dismissed.

- 1 Judge Driggers Are you covering Segars?
- 2 Mr. Floyd Yes, sir. I don't want to speak for the other
- 3 Defendants but I think it would apply to all
- 4 three, but nothing was ever taken, and at best it
- 5 was attempted armed robbery.
- 6 Judge Driggers Right.
- 7 Mr. Floyd Nothing was stolen, nothing was taken, so I
- 8 would ask that there is no probable cause in
- 9 regards to the robbery. If the State wants to
- 10 amend it at a later time, and charge them with
- 11 attempted armed robbery, they certainly have the
- 12 right to do so.
- 13 Judge Driggers Under 16-11-330, it says that robbery and
- 14 attempted robbery while armed, so it's all under
- 15 the same code. Motion denied.
- 16 Mr. Barr For the record I would associated myself with the
- 17 motion that was made by Mr. Floyd.
- 18 Judge Driggers And again based on the way it's written in the
- 19 Code, under the Statute, it is denied. Anything
- 20 else. I find probable cause on each and every
- 21 charge on each and every Defendant.
- 22 Mr. Barr Thank you.
- 23 Mr. Floyd Thank you.
- 24 Mr. Carraway Thank you.

State of South Carolina)
)
 County of Williamsburg)

In the Court of Common Pleas
 Third Judicial Circuit
 2013-CP-45-0006

Antwine Lamar Matthews,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)
)
)

Transcript of Record

September 10, 2014
 Sumter, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

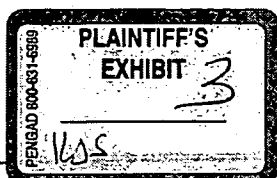
A P P E A R A N C E S:

Tricia A. Blanchette, Esquire
 Attorney for the Applicant

Daniel F. Gourley, II, Esquire, Assistant Attorney General
 Attorney for the Respondent

A CERTIFIED TRUE COPY
Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter



I N D E X

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No Exhibits Introduced.

1 THE COURT: Yes, sir.

2 MR. GOURLEY: Yes, Your Honor. This is Antwine
3 *Matthews vs. State of South Carolina*, docket number
4 2013-CP-450-006. He's presently confined in the South
5 Carolina Department of Corrections pursuant to orders of
6 commitment of the Williamsburg County clerk of court.

7 He was true-bill indicted in the May 2009 term of the
8 Williamsburg County grand jury for assault with intent to
9 kill, armed rob -- attempted armed robbery, possession of a
10 weapon during a violent crime, criminal conspiracy. Mr.
11 Charles Barr represented him. He proceeded to a jury trial
12 before the Honorable D. Craig Brown. Was found guilty of
13 attempted armed robbery and criminal conspiracy, and on May
14 14, 2010, he was sentenced to fifteen years for attempted
15 armed robbery and sentenced to a consecutive term of five
16 years for criminal conspiracy.

17 Timely notice of appeal was filed on applicant's
18 behalf. An appeal was perfected by Mr. Tristan Shaffer and
19 Susan Hackett. The South Carolina Court of Appeals
20 dismissed the appeal. The remittitur was issued on
21 September 24, 2012. He subsequently filed an application
22 for post-conviction relief on October 12, 2011, alleging
23 that he was being held in custody unlawfully based on
24 ineffective assistance of trial counsel and ineffective
25 assistance of appellate counsel. State made its return on

1 June 17, 2013.

2 He is represented here today by Ms. Tricia Blanchette,
3 and I believe she has a motion before the court, Your
4 Honor.

5 THE COURT: All right, Ms. Blanchette.

6 MS. BLANCHETTE: Thank you, Your Honor. May it please
7 the court? I was recently substituted in June of this
8 year. Shortly thereafter I returned from maternity leave,
9 and I sent a letter requesting a complete copy of Mr.
10 Matthews's file to his prior counsel, Charles David Barr.

11 I set forth in my motion -- if Your Honor doesn't have
12 a copy, I do have a copy of this for you.

13 THE COURT: I do not have a copy.

14 MS. BLANCHETTE: Okay. May I approach, Your Honor?

15 THE COURT: Yes. I'm looking at this transcript, by
16 the way. Go ahead. I'll look at it. Yes, ma'am.

17 MS. BLANCHETTE: Yes, Your Honor. I indicated in here
18 that I had not received the complete copy of Mr. Barr's
19 file. I did send a written request for that on July 24th,
20 and I have followed up with phone calls requesting that.
21 Unfortunately, my experience with two other cases right
22 now, I've just not been successful in getting a copy of Mr.
23 Barr's file. So, I would ask for that as part of the
24 discovery. If some reason ---

25 THE COURT: For, for what?

1 MS. BLANCHETTE: For a complete copy of my client's
2 file maintained at Mr. Barr's office. That's our first
3 request.

4 The second request is for a complete copy of the SLED
5 file. There was a number of evidentiary issues that went
6 -- or evidentiary items went to SLED, and there was testing
7 done by SLED. In my experience, SLED is very compliant
8 with just providing a CD with all of the materials so that
9 we can ensure that he's seen all of those and gone over all
10 of those because he has informed me that is something Mr.
11 Barr failed to do with him.

12 We would also ask for the ability to review and/or
13 obtain copies of the Williamsburg County Solicitor's Office
14 file only if Mr. Barr does not provide us the Rule 5 or
15 discovery materials. I don't want to just go look at their
16 file. That's only if I cannot get those materials from Mr.
17 Barr.

18 And then finally just the ability to review the trial
19 exhibits. I'm not familiar with the procedure in
20 Williamsburg County, but some counties do require me to
21 have a discovery order before they allow me to obtain
22 copies of those trial exhibits.

23 This isn't meant as a fishing expedition. I am new on
24 the case, so I don't have, you know, our allegations before
25 this court or an amendment done at this point. But these

1 are materials that I deem are necessary to properly prepare
2 his case and to properly put together the allegations that
3 he has already informed me of. If the court has any
4 questions, I'd be happy to answer those, but those are the
5 materials that we're requesting today.

6 THE COURT: All right, says the state?

7 MR. GOURLEY: The state has no opposition to Ms.
8 Blanchette's discovery motion.

9 THE COURT: All right. Looking at the record on
10 appeal, it say appeal from Williamsburg County, Clifton
11 Newman and D. Craig Brown. I recall that when Judge Brown
12 was -- during his first few weeks on the bench, he sat with
13 me in Williamsburg County during his initial observation
14 period, you might say, and also during that time took the
15 lead in some of the cases.

16 So, I believe that space on this transcript, that I
17 would have been the lead trial judge, you might say. So,
18 this is not a case that I would hear as far as making any
19 rulings, in fact, in the interest of anyone, including Mr.
20 Matthews, since I was the trial judge.

21 What do you think about all that, Ms. Blanchette?

22 MS. BLANCHETTE: Can I have one moment? Your Honor, I
23 was aware. In the transcript, there is a point where you
24 do step out and say that Judge Brown is going to take over
25 at that point. It's about midway through.

1 THE COURT: You know, we're aware. We'll take charge.
2 When they seem that they have their footing, we say okay,
3 you're on your own.

4 MS. BLANCHETTE: Yeah, and I had never read a
5 transcript like that before, but I assumed that was
6 happening because he was a newer judge, and you were
7 probably sitting with him.

8 If you don't mind if I just confer with ---

9 THE COURT: He was sitting with me. I wasn't sitting
10 with him.

11 MS. BLANCHETTE: He was sitting with you.

12 If I could just confer with my client for a moment to
13 see if that causes him any concern? I assume that's what
14 the court is asking me.

15 THE COURT: Sure.

16 (COUNSELOR CONFERS WITH APPLICANT.)

17 MS. BLANCHETTE: Your Honor, for the record, in light
18 of the state's position that they do not oppose, I don't
19 see that this is a contested matter. So, we are completely
20 comfortable with Your Honor ruling on this unless Your
21 Honor sees otherwise.

22 THE COURT: All right. Well, let's talk to Mr.
23 Matthews for just a moment.

24 ANTWINE LAMAR MATTHEWS, BEING DULY
25 SWORN, TESTIFIES AS FOLLOWS:

A. MATTHEWS - EXAMINATION BY THE COURT

8

1 EXAMINATION BY THE COURT:

2 THE COURT: All right, Mr. Matthews, if you will
3 remain standing for a moment. How are you today?

4 APPLICANT: Fine. How are you doing, sir?

5 THE COURT: Doing good. You remember me from your
6 trial?

7 APPLICANT: Yes, sir, I do.

8 THE COURT: I was one of the two judges there?

9 APPLICANT: Yes, sir.

10 THE COURT: And did I do most of the trial?

11 APPLICANT: You sat for, like, two days and then the
12 Judge Brown took over.

13 THE COURT: Okay, and how much longer did it last?

14 APPLICANT: For probably another two days.

15 THE COURT: Okay, and the appeal -- I mean, the PCR
16 that you have here and the lawyer wanting to get Mr. Barr's
17 file, SLED file, solicitor's file, et cetera, you have no
18 objection to me granting that request?

19 APPLICANT: No, sir. I have no objection.

20 THE COURT: All right, and hearing this matter as far
21 as dealing with that request only because you would have to
22 have a separate judge to hear the PCR case. You understand
23 that, right?

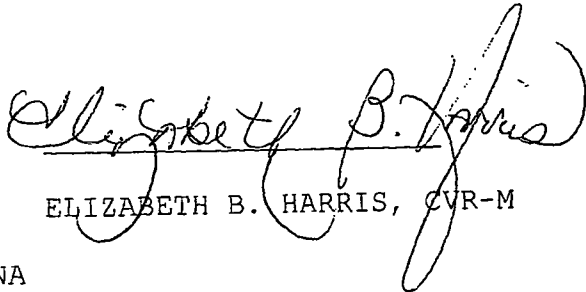
24 APPLICANT: Yes, sir.

25 THE COURT: All right. So, the only thing that I --

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR WILLIAMSBURG COUNTY, SOUTH CAROLINA,
ON THE 10TH DAY OF SEPTEMBER, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

APRIL 30TH, 2015

Melvinas 0811032 R. OYES CINO

1 Inves. Lail

Today's date is December 31, 2008, the time now
 2 is 3:49 a.m. Present during this interview would
 3 be myself Investigator Lail, Investigator Brown,
 4 and what is your full name?

5 Melvin Segars

Melvin Lee Segars, III.

6 (From this point forward questions will be posed
 7 by Investigator Lail, and answers will be given by Melvin Segars, unless
 8 otherwise noted.)

9 Q

Melvin?

10 A

Lee Segars.

11 Q

S-e-g?

12 A

S-e-g-a-r-s.

13 Q

The III?

14 A

Yes, ma'am.

15 Q

What is your address?

16 A

that's where I stay. *W. Staggars*
 A CERTIFIED TRUE COPY
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

17 Q

And your date of birth?

18 A

19 Q

And your social?

20 A

I don't know that number.

21 Q

You don't know?

22 A

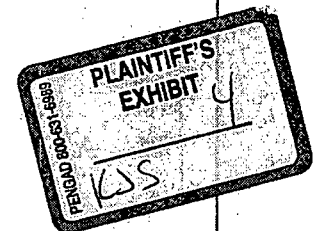
No, ma'am.

23 Q

What's your phone number? Do you have a cell
 24 number?

25 A

No, ma'am, my mama I usually use her cell



- 1 phone, but I can give you that.
- 2 Q What's that cell number?
- 3 A
- 4 Q
- 5 A Yes, ma'am.
- 6 Q I am going to read this to you. The constitution
- 7 requires that we inform you that you have the
- 8 right to remain silent. Anything you say can and
- 9 will be used against you in a court of law. You
- 10 have the right to talk to a lawyer, and have him
- 11 present with you while you are being questioned.
- 12 If you cannot afford to hire a lawyer, one will be
- 13 appointed to represent you before any questioning
- 14 if you wish. You can decide at anytime to
- 15 exercise these rights and not answer any questions
- 16 or make any statements. Do you understand each
- 17 of these rights I have explained to you?
- 18 A Yes, ma'am.
- 19 Q If you will write your answer in on number 6, and
- 20 put your initials by it.
- 21 A (Witness complies)
- 22 Q I need you to write yes or no?
- 23 A Oh, okay. And right here?
- 24 Q Yes, sir, if that's your answer. Having these
- 25 rights in mind do you wish to talk to us now.

1 A (Witness complies)

2 Q Under waiver of rights read that paragraph out

3 loud to me please sir.

4 A I have read the above statement of my rights, and

5 I understand each of those rights and know what

6 they are. I waive those rights, and I am willing to

7 make a statement and answer questions. I do not

8 want a lawyer at this time. I understand and know

9 what I am doing. No threats or promises have

10 been made to me, and no pressure or coercion of

11 any kind has been used against me by anyone.

12 Q If you agree with that, sign the signature line.

13 A What is this saying. I have read the above....

14 Q Let me read it out loud to you. Then if you have

15 any questions, you ask me.

16 A Okay.

17 Q Basically this is explaining this waiver of rights.

18 A Okay.

19 Q I have read the above statement of my rights, and

20 I understand each of those rights and what they

21 are. I waive those rights, and I am willing to

22 make a statement and answer questions. I do not

23 want a lawyer at this time. I understand and know

24 what I am doing. No threats or promises have

25 been made to me, and no pressure or coercion of

1 any kind has been used against me by anyone.

2 We haven't tricked you or promised you or
3 threatened you in anyway to give a statement?

4 A Oh, okay.

5 Q And you have every right to exercise any part of
6 your rights.

7 A (Witness signs)

8 Q *Indicate* *trial* * Go back through what you were telling us when
9 you first came in from earlier this morning until
10 right now.

11 A Earlier this morning until right now?

12 Q Yes.

13 A Okay, oh Lord let me get the thing straight. We
14 went to Wal-Mart.

15 Q In Lake City?

16 A Yes, ma'am and we came back to Kingtree. We
17 came back and I hooked up with my friends...all I
18 was thinking about was smoking or what not. I
19 was playing my PSP watching the game on it.
20 You can watch movies on it or what not, and I
21 was watching a movie. We found a little bit of
22 money and went and picked us up something to
23 smoke or whatever. What time was that, 10:00. I
24 know it was late, like 11:30 or 12:00. I know it
25 had to have been late. I was sitting in the car

1 smoking a Blunt or what not, and I got out of the
2 car. Bill was supposed to be going to get a cigar.

3 Q Ya'll were still at the Holy Woods?

4 A Yes, ma'am, we were still in the Holy Woods
5 sitting in the same yard or what not. I told him to
6 go get the cigar, I'll give you this ten dollars or
7 what not, and then go pick up a bag of weed.
8 Okay, I was coming up to the house, and I got
9 half my head taken off. I came out of the house
10 and here he is meeting me up the road coming
11 towards me.

12 Q He who?

13 A Twain, the one that got shot. I am walking and I
14 was like what's wrong with you. I looked and he
15 was holding his side, and I said boy you done
16 wrecked or something. No, I got shot, so I was
17 trying to rush him and get him down to the house
18 because he was losing a lot of blood from what I
19 saw. When I got him to the house at first he
20 didn't want to call the police, and then I said call
21 the ambulance or whatever. I can't sit here and
22 watch that, that boys is about to die, you know
23 what I'm saying. Spank called 911, and I was
24 getting kind of frustrated because the ambulance
25 was taking too long or whatever so I called my

1 aunt. My aunt came across the road I think. I
2 believe my aunt said she came across the road and
3 she's an RN. I said aunt he's bleeding very bad,
4 and we can't do nothing for him, and he don't
5 want us to call the police, but we have already
6 done that. He got kind of mad at us or what not,
7 but I wasn't going to watch.

8 Q But you had to?

9 A Yes, I didn't really care nothing about that you
10 know what I'm saying. I saw ya'll's blue light,
11 and I said Spank I've got a ticket and I don't need
12 to be around here. He said don't go no where,
13 and I said I'm shook, and he was like don't go no
14 where. I just left them or what not, and I started
15 going toward my mama's house. Understand I
16 was not staying out there.

17 Q No, I ain't going to wait around here.

18 A Un-huh.

19 Q Let's go back earlier this morning

20 A Okay.

21 Q What time did Twain come to your house? *

22 A It was almost 10:00 or 10 to 11:00.

23 Q Alright, between 10:00 and 11:00?

24 A Yes, ma'am.

25 Q And he picked you up?

- 1 A Yes, ma'am.
- 2 Q And ya'll went where from there?
- 3 A Where we went from there we went to his
- 4 girlfriend's house in Lake City.
- 5 Q Wait a minute, ya'll made a stop in Kingstree
- 6 before you went to Lake City. Whose house did
- 7 ya'll go to?
- 8 A Ah...
- 9 Q Because three of you went to Lake City.
- 10 A Yeah, I'm trying to think. No, ain't no way. I
- 11 didn't go there. Where he took me to he took me
- 12 straight to Lake City.
- 13 Q So ya'll went straight to Lake City?
- 14 A When he got me we went straight to Lake City.
- 15 Q To Wal-Mart?
- 16 A No, to his girlfriend's house. We went and picked
- 17 his girlfriend up and we went to Wal-Mart.
- 18 Q What's her name?
- 19 A Kim.
- 20 Q Kim?
- 21 A Yes, ma'am.
- 22 Q And there wasn't anybody else with ya'll?
- 23 A Just us four, the girls, and Powder and Twain.
- 24 Q That's what I'm trying to say. When Twain
- 25 picked you up, ya'll then went to Powder's

- 1 house?
- 2 A Yeah, that's just right, because he did have to
- 3 pick up Powder.
- 4 Q And then you went to Kim's house?
- 5 A Yes, ma'am, he went straight to Kim's house after
- 6 that.
- 7 Q And then you went to Wal-Mart?
- 8 A We went to Wal-Mart.
- 9 Q And then what?
- 10 A Came back to Kingstree.
- 11 Q Okay.
- 12 A Got us a bag of weed.
- 13 Q Where did you go before you bought the weed?
- 14 A Where did we go before we bought the weed?
- 15 Q Yes.
- 16 A In my house.
- 17 Q Okay, so ya'll went to the Holy Woods?
- 18 A Yes, ma'am.
- 19 Q And ya'll decided to go buy some weed?
- 20 A Yes, ma'am.
- 21 Q Did ya'll go to what is that King's Court?
- 22 A King's Crossing, yes, ma'am.
- 23 Q King's Crossing. Ya'll bought weed?
- 24 A Yes, ma'am and I talked to my heavy set friend
- 25 Ernest, and we were back to the Holy Woods

1 from there.

2 Q And then back to the Holy Woods?

3 A Yes, ma'am.

4 Q Then what happened? Were ya'll out smoking?

5 A Yes, ma'am, we were still smoking.

6 Q Okay, we're going.

7 A We were smoking a blunt, and we were sitting in
8 his car. We weren't smoking in the house, we
9 were sitting in his car. We ain't been smoking in
10 the house, we were sitting in his car. That blunt
11 had done vanished or whatever.

12 Q It was gone?

13 A Gone, so I was saying well, Twain the party ain't
14 over yet. I said Twain we need a cigar, because I
15 know I can get ten dollars from my aunt. He said
16 we can do that, and I said Twain make sure you
17 come back over here because sometimes when he
18 leaves he don't like to come back. I said Twain
19 make sure you come back over here, and he said
20 I'm going to be back over here. I walked to my
21 aunt's house and I got out and closed the door,
22 and he pulled off right as soon as I closed the
23 door. I walked to my aunt's house, and got the
24 little girl in the house to finish undoing my hair.
25 When I walked out of the door with the ten

- 1 dollars ready to go get a bag of weed, he was
2 walking up meeting me. Just like I said he
3 looked sick like he was limping.
- 4 Q Let's go back.
- 5 A Okay.
- 6 Q While ya'll were out smoking weed in the Holy
7 Woods at your house, and you are going to be
8 straight up with me now, right.
- 9 A Yes, ma'am, I'm going to be straight up with you.
- 10 Q Ya'll decided that you needed some money, and
11 you knew you couldn't get it from your aunt.
- 12 A I knew I could get it from my aunt.
- 13 Q But you didn't.
- 14 A I didn't even mess with it, because I already knew
15 how she was going to act.
- 16 Q But that's what I'm saying, you need to be
17 straight.
- 18 A I'm being straight.
- 19 Q You didn't get the money from her?
- 20 A I didn't get the money from her.
- 21 Q But you just said that you did.
- 22 A My mama was the one that bought me a pack of
23 cigarettes and everything.
- 24 Q But you said that you went to get ten dollars.
- 25 A Yes, ma'am. I lied to them and told them I had ten

- 1 dollars because I was going to go and credit weed
2 from the girl that was selling me the weed.
3 Q Let's cut through all that.
4 A Okay.
5 Q Where is the gun that ya'll went to the store with?
6 A The gun...
7 Q You left that part out.
8 A That gun they went to the store with.
9 Q Un-huh.
10 A I don't know what gun they went to the store
11 with. 
12 Q Well, when ya'll left the Holy Woods you and
13 Twain and Powder.
14 A When we went to Lake City?
15 Q No.
16 A When we went to King's Crossing.
17 Q Ya'll had already come from King's Crossing,
18 ya'll were at the Holy Woods smoking a joint.
19 A Un-huh.
20 Q And you ran out.
21 A Un-huh.
22 Q And you made the comment I know where we can
23 get some change.
24 A Yes, I did say that.
25 Q Alright, there you go. Look at that, and then what

1 happened?

2 A I went to my aunt's house.

3 Q No, ya'll got in the car and went where? Come on
4 now?

5 A Who me, no. You've got the wrong one. No, I'm
6 sorry ma'am. My aunt's house, and if ya'll need
7 me to go to my aunt's house and she will verify
8 for me right now.

9 Q Mrs. Segars?

10 A No, not Mrs. Segars, Mrs. Rebecca Fulton.

11 Q Alright, that's whose house you went to?

12 A Yes, ma'am, Mrs. Rebecca Fulton and her
13 granddaughter finished loosening my hair.

14 Q What is her granddaughter's name?

15 A Aerial.

16 QUESTIONS BY INVESTIGATOR BROWN:

17 Q What time was that?

18 A Like 12:00 or 12:30. All it was was twists in my
19 hair, and all she had to do was take the pick and
20 go through them.

21 QUESTIONS BY INVESTIGATOR LAIL:

22 Q So it was about 12:00 or 12:30?

23 A Yes, ma'am.

24 Q Where does she live?

25 A The green house right beside my mama right

1 beside the church.

2 Q Right there in the same Holy Woods section?

3 A Yes, ma'am.

4 QUESTIONS BY INVESTIGATOR BROWN:

5 Q Did you ask Twain where his car was at?

6 A I didn't even ask him that. All I was thinking
7 about was what we were going to do with that
8 bullet wound. He told me he got shot, and that
9 was all I was thinking about, boy you need to get
10 to the hospital.

11 QUESTIONS BY INVESTIGATOR LAIL:

12 Q And he was walking?

13 A He was walking. I said Twain boy you need to get
14 to the hospital, and he argued with us about don't
15 call no police.

16 QUESTIONS BY INVESTIGATOR BROWN:

17 Q Which direction did he walk up to the house
18 from?

19 A You see where the church is.

20 Q I know where the church is.

21 A He was coming like he was going to my house.

22 Q So blood would be down the road from where he
23 was walking from?

24 A Blood should be down the road. I know blood
25 has got to be down the road the way he was

1 bleeding. I know it would have to be. There ain't
2 no way, he had blood all across my hand so I
3 know blood has got to be out there. What's his
4 name, Powder was supposed to be back home,
5 and I don't know what happened but I know he
6 was supposed to be dropping Powder's behind
7 off, and me and him were supposed to be the only
8 ones smoking that blunt together.

9 Q Powder told a different story. Powder and his
10 mama were back here. You saw the fellow
11 standing out there we were talking to just a few
12 minutes ago.

13 A No, I didn't pay no attention.

14 Q You didn't pay it any attention?

15 A No.

16 Q Powder tells a different story.

17 A Oh shoot.

18 Q Twain is telling a different story, what he could
19 say.

20 A How is he doing?

21 Q Not good.

22 QUESTIONS BY INVESTIGATOR BROWN:

23 Q Not good, they aren't looking for him to live.

24 A They ain't looking for him to live.

25 Q No.

1 QUESTIONS BY INVESTIGATOR LAIL:

2 Q He made some comments to the EMS when they
3 were transporting him over to Florence. We have
4 to go on the information that we have, that's why
5 we are giving you the opportunity to be straight
6 up.

7 A And I'm being straight up with you.

8 QUESTIONS BY INVESTIGATOR BROWN:

9 Q The boy is about to die now, and you are sitting
10 there putting us through the ringer.

11 A Sir, if he dies, I will feel way sorry for him,
12 because all that is a...

13 Q Don't let him die on a lie, man.

14 A I ain't going to let him die on no lie. Not no lie
15 coming from here, but I know this I hope he ain't
16 lying on his dying bed, because hell ain't no good
17 place.

18 Q Two people aren't lying, they came up with the
19 same story.

20 A I know...

21 Q I'm going to say three, because the store owner
22 corroborated what those two said.

23 A And what did Twain and them say?

24 Q They told me you went in there to rob the man,
25 and he shot Twain. That's what Powder said too.

1 A No, I know better than that.

2 Q You don't think so.

3 A No, I ain't saying they didn't.

4 Q I'm just saying.

5 A I ain't going to say they didn't say that. That's
6 why you shouldn't be hanging around them type
7 of dudes. I pray to God he makes it.

8 QUESTIONS BY INVESTIGATOR LAIL:

9 Q You need to work with us and tell us exactly your
10 involvement. We know it's more than this.

11 A My involvement was smoking the weed.

12 QUESTIONS BY INVESTIGATOR BROWN:

13 Q And that's it?

14 A Smoking marijuana. I was smoking marijuana.

15 Q Is that your mama or your aunt out there?

16 A My mama.

17 Q That's your mama?

18 A Yes, sir.

19 QUESTIONS BY INVESTIGATOR LAIL;

20 Q And where can we get the gun?

21 A I don't know where you can get it.

22 Q They said you've got it?

23 A Oh, my God.

24 QUESTIONS BY INVESTIGATOR BROWN:

25 Q And you're the one that had the car too?

1 A Oh, my God. The gun and the car, woooo, un-
2 huh.

3 QUESTIONS BY INVESTIGATOR LAIL:

4 Q Be straight up with us? You have never been to
5 jail before?

6 A No, ma'am.

7 Q We need to put our hands on that car and that gun.
8 tonight?

9 QUESTIONS BY INVESTIGATOR BROWN:

10 Q You have to help us.

11 A Oh, man.

12 Q You have to, that will help a lot. It will help you
13 a lot.

14 A Yeah, you know what I'm saying I don't have no
15 problem with helping ya'll.

16 Q I understand.

17 A My boy is in the hospital about to die, you know
18 what I'm saying.

19 Q I understand.

20 A Now ya'll are telling me he has done robbed
21 somebody you know what I'm saying.

22 QUESTIONS BY INVESTIGATOR LAIL:

23 Q No, the word is that ya'll went there to rob him.

24 A See, that's what I'm saying. Oh, boy, that's what
25 a hard head makes for a soft behind, because I

1 know I shouldn't have been hanging around them
2 boys.

3 QUESTIONS BY INVESTIGATOR BROWN:

4 Q Something happened, and I mean it will take a
5 grown man to stand up for what he did.

6 A Yeah, you're right.

7 Q Like Powder said, he knows it was wrong, and he
8 did it, and peer pressure is a mother fucker.

9 That's his exact words. If you know him like I
10 know him, you know that's what he said.

11 A Yeah, knowing Powder but knowing Twain I
12 don't know because I'm trying to tell you I didn't
13 deal with them in the long run. I didn't deal with
14 them, and I know what kind of lies he will tell.

15 Q Is the old man going to lie on ya'll too?

16 A The old man?

17 Q Yeah.

18 A What old man?

19 Q The old man that got robbed.

20 A I don't know what old man got robbed.

21 Q Is he going to lie on you and say you went in that
22 store to rob him?

23 A He shouldn't. Where is he at? He shouldn't, and
24 I'll let him see my face right now. Yes, sir, I
25 would let him see my face right now. How many

1 guys did he say robbed him?

2 Q You, Twain and Powder.

3 A They were at the house with me, and there ain't

4 no way.

5 QUESTIONS BY INVESTIGATOR LAIL:

6 Q Who as at the house with you?

7 A Spank was at the house, and I walked to my

8 aunt's house. I know he was still sitting in the

9 house because he was there when I got there.

10 Boy, I know Powder and Twain ain't saying that

11 craziness. What else have they said?

12 QUESTIONS BY INVESTIGATOR BROWN:

13 Q That's pretty much it.

14 A Oh, I'm about to say...did they say I went in

15 shooting and all kinds of craziness too?

16 Q Yeah.

17 A Oh, my God. They said I shot?

18 Q Un-huh.

19 A They said I shot at whoever they were shooting

20 at?

21 Q No, they said you were shooting, they weren't

22 shooting.

23 A They said I was shooting?

24 Q They said they didn't even have a gun.

25 A Whew...

- 1 Q They said they are willing to testify against you or
2 Powder is. I don't know if Twain is going to
3 make it.
- 4 A And Twain said I...
- 5 Q No, I didn't say Twain. Twain only gave a little
6 bit of information because he damn near bled
7 about, and he's about to die. Powder said he
8 would testify against you, because he needs all the
9 help he can get. He's already on probation.
- 10 A Powder?
- 11 Q Powder.
- 12 A Powder is trying to put it...
- 13 Q It's hard for a man to put himself at a crime and
14 he didn't do something or don't know about it.
- 15 A And then he is going to say that I did it. Boy, I
16 know Powder ain't done no crap like that.
- 17 Powder? Powder said I've been in that room?
- 18 Q He said you shot.
- 19 A Powder said I shot, oh, my God. Powder needs
20 to stop that for real.
- 21 Q Well, who shot?
- 22 A I don't know who shot. That's the thing, and
23 that's what I'm telling you Powder needs to stop
24 that. It ain't no way. You know what I'm saying,
25 if I was in a car with a gun, and all that junk you

1 are asking me about, I would have walked politely
2 and pointed and that's where that car is or what
3 not, I don't know where nothing else is.

4 QUESTIONS BY INVESTIGATOR LAIL:

5 Q But sometimes you leave things out. I saw that.

6 A Yeah, you see how bad my head is.

7 Q A lot of that is because when you went to Kim's
8 house what did you get from Kim's house?

9 A What did I get?

10 Q Un-huh.

11 A Some pills.

12 Q That belonged to who?

13 A Kim's mother.

14 Q Kim's mother, and you see you left that out.

15 A Oh, I didn't really think that was important.

16 Q How many did you take?

17 A Four or five of them.

18 Q And then when ya'll got back you smoked weed
19 on top of it. Where is the bottle of pills now?

20 A Right here.

21 Q Alright. This belongs to... do you even know
22 what this kind of medicine is?

23 A Ah...

24 Q Marguerite Hanna. But in any case you took this
25 medicine.

- 1 A Yes, ma'am.
- 2 Q You came back, and you smoked and you were
3 already walking around with a gun because you
4 had it in your jacket pocket. Am I right so far?
- 5 A No, ma'am.
- 6 Q I have been right on every single thing that you
7 left out.
- 8 A No, ma'am...do you think...
- 9 Q Every single thing that you forgot or you left out.
- 10 A Yeah, about the pills and everything. I'm not
11 about to...
- 12 Q And about going to Powder's house.
- 13 A Yeah, I'm not going to be edgy about telling you
14 about the pills and going to Powder's house.
- 15 Q That's fine.
- 16 A I'm sorry if I forgot that, you know what I'm
17 saying.
- 18 Q That's alright, but what I'm saying is it's amazing
19 how Powder could be exact on every single thing
20 he has told us with the exception of that.
- 21 A With the exception of what.
- 22 Q One of three of ya'll had the gun before you left
23 the Holy Woods.
- 24 A Un-huh.
- 25 Q Now, who had the gun and where is it now?

- 1 A Ma'am, I will put this on my life, I never touched
2 that gun. I never touched that gun, because I
3 already knew what time it is with that gun. That
4 gun was hot or stolen or whatever, and I already
5 knew. They were talking about I was carrying it
6 in my pocket and I've got warrants.
- 7 Q That's all you have got to say?
- 8 A That's all I have to say ma'am, yes, ma'am.
- 9 Q Brown, do you have any more questions?
- 10 Inves. Brown No.
- 11 Q Alright, the time now is...Oh, I will take this
12 medicine back to her.
- 13 A Yes, ma'am.
- 14 Q 4:13 a.m.

1 Inves. Lail The time now is 4:20 a.m. Present during this
2 interview is myself Investigator Lail, Investigator
3 Brown, and Mr. Melvin Lee Segars. Mr. Segars,
4 you are already Mirandized, is that correct?

5 Melvin Segars Yes, ma'am.

6 (From this point forward questions will be posed
7 by Investigator Lail, and answers will be given by Melvin Segars, unless
8 otherwise noted.)

9 Q And you waived your rights and said that you
10 were willing to make a statement to law
11 enforcement?

12 A Yes, ma'am.

13 Q And that was at 3:39 a.m., just a little while ago?

14 A Yes, ma'am.

15 Q Now since that time we found the keys to the
16 Crown Vic?

17 A Yes, ma'am.

18 Q That belongs to Antoine McFadden?

19 A Yes, ma'am.

20 Q And they were where?

21 A In my pocket.

22 Q In your front pocket?

23 A Yeah.

24 Q How did they get there?

25 A I gave him the keys to the car.

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY



- 1 Q Earlier today and this goes back to the first
2 statement that you gave us, y'all went to Lake
3 City, and it was you, Antoine and Powder.
4 A Un-huh.
5 Q You went to Lake City to see a girl by the name
6 of Kim.
7 A Yes, ma'am.
8 Q From there y'all went to Wal-Mart?
9 A Yes, ma'am.
10 Q Dropped Kim back off at her house, came back to
11 Kingstree and went to your house, and decided
12 that you wanted some weed. Y'all went to Kings
13 Crossing, right.
14 A Yes, ma'am.
15 Q And met up with Ernest?
16 A Yes, ma'am.
17 Q Got some weed, and came back to the Holy
18 Woods to your house?
19 A Yes, ma'am.
20 Q The three of y'all?
21 A Yes, ma'am.
22 Q Sat outside, smoked weed, and from there what
23 happened?
24 A Okay, from there just like I said we got a blunt
25 from...and we were going to the store to get a

1 cigar. When we pulled up at the store Antoine
2 was talking crazy, talking about he was tired of
3 being broke and he needed money. I said well,
4 y'all about to go in here and get me a cigar, and
5 y'all go ahead and do that craziness if y'all want
6 to. When I got out of the car, all three of us got
7 out of the car, so I walked into the store and the
8 man was passing us a Dutch Master and some
9 candy. By the time I looked I turned my head, I
10 heard boom so I ran out the store or what not. I
11 looked, and Toine had beat me to the car. I went
12 hopping in the back seat, and after I looked the
13 store owner was shooting at us. You know what
14 I'm saying, he was shooting at us or what not.

15 Q

Un-huh.

16 A

He hit the driver's side of the car, and we ran, and
17 got to the Holy Woods and Toine parked the car.
18 I said Toine, we've got to get you to a hospital. I
19 said we've got to get you to a hospital, and he
20 didn't want to go to the hospital. He refused to go
21 to the hospital, he refused to go to the hospital,
22 and I said Toine we've got to call the police.
23 Powder went ahead and called the police anyway.
24 Q So you're saying that Toine got hit in the side
25 after he had gotten back in the car?

- 1 A Yes, ma'am.
- 2 Q You got in the back seat where was Powder.
- 3 A Running.
- 4 Q Running, okay. Then y'all left there and went
- 5 back to the Holy Woods?
- 6 A Yes, ma'am.
- 7 Q How did the car get...where is it right now?
- 8 A It's supposed to be over there by all the trailers.
- 9 It's by the green house down the dirt road at the
- 10 trailers.
- 11 Q This is in the Holy Woods?
- 12 A Yes, ma'am.
- 13 Q And who put it there?
- 14 A Toine drove it all the way there while I was
- 15 steering.
- 16 Q You were steering?
- 17 A Yes, ma'am.
- 18 Q So what did you do, get out the back seat.
- 19 A I was in the back seat leaning all the way over like
- 20 this fussing.
- 21 Q And he was driving, you were steering?
- 22 A Yes, ma'am, he was still driving. I'm yelling at
- 23 him like why are you driving or what not. I'm
- 24 turning the car and everything. We took curves
- 25 doing 20 on Sandridge Road, we turned that

1 doing 20. It was just straight turning, no brakes
2 no nothing. You know what I'm saying my heart is
3 still beating fast, because that's the first time I've
4 ever been around something like that.

5 Q So y'all pulled up there, and then walked back,
6 y'all left the car just you and him.

7 A No.

8 Q You and Antoine?

9 A No, I beat them in the store. I walked in the store
10 first, because I was going to buy me a Dutch
11 Master and Toine walked around me.

12 QUESTIONS BY INVESTIGATOR BROWN:

13 Q Who asked for the candy?

14 A Powder asked for the candy. Toine walked
15 around this side or what not, and I'm looking at
16 him like why is Toine looking like that. You
17 know what I'm saying, I said Toine is about to get
18 on that craziness or what not. I asked Powder to
19 let me go ahead and get the change so I could get
20 the Dutch Master. By that time the old man had
21 done walked in the closet, and he shot. I thought
22 for sure he shot the old man or what not, because
23 I turned my head and I said oh Lord, Toine don't.
24 I was looking at him like don't do that Toine.
25 When I looked I turned my head and by the time I

1 could turn my head he was going boom, and I ran
2 out of the store. I didn't even know if he was still
3 shooting or whether the dude was shooting.
4 When I ran out the door a bullet hit the car, and I
5 was like he's shooting at us. Toine slammed on
6 the gas, and by the car spinning the bullet came
7 and hit the side of the door, and knocked the glass
8 out and everything and it hit him in the side. I
9 said Toine are you straight, Toine, can you drive,
10 and Toine said I've got it. He was just holding his
11 foot on the gas, and I said boy slow this thing
12 down, slow this thing down. He just took his foot
13 off the gas, and he let it coast all the way down to
14 the end of the thing, and I wheeled it around. We
15 left there and we took it all the way to the Holy
16 Woods, got out and went to Snake's house and
17 called the ambulance.

18 QUESTIONS BY INVESTIGATOR LAIL:

19 Q Then you took the car back?
20 A No, no. See there, no. That's one lie I ain't let
21 nobody get me with. No, me and Toine were still
22 in that car together. When we walked to the Holy
23 Woods Toine was still in that car with me, and I
24 told him, I said Toine I ain't driving this car, I
25 ain't touching no gun because y'all are crazy.

1 Q The only one that had their hands on the guns was
2 Toine?
3 A Toine, you know what I'm saying we were
4 smoking the blunt in what you call it at Kings
5 Crossing. I think him or Powder were playing
6 around over there, but me, no. You know what
7 I'm saying, when he first showed me the gun I did
8 get a little excited.
9 Q When did he first show you the gun?
10 A It might have been two or three weeks ago almost.
11 You know what I'm saying I did get a little
12 excited, boy where did you get this from or what
13 not. You know what I'm saying acting like a boy,
14 and then I gave it back to him. Me holding that
15 gun now, no, I ain't put a finger on that gun. I bet
16 that old man can witness and say he didn't see me
17 touch that gun. He didn't see me shoot at him,
18 and I know he knows who shot at him, because I
19 was the first one to walk in, and he could open the
20 door or what not. Powder was standing on this
21 side of me, and Tonie was standing close to the
22 corner. Toine picked the gun up, and I turned my
23 head, and it was boom, and I ran out the store. If
24 they were even making a robbery they would have
25 been made with me, because I didn't stay in that

1 store, because I'm a person that I can't even be
2 around nothing like that. See somebody get shot,
3 no.

4 QUESTIONS BY INVESTIGATOR BROWN:

5 Q And you say you put the car, or y'all parked the
6 car where you turn by the green house.

7 A By the green house on the dirt road.

8 Q On the dirt road.

9 A And Toine was right there, and I steered it right
10 back there for him...

11 Q Mr. Stackley's house, not at the abandoned
12 trailer?

13 A Eli's house.

14 Q Eli's house. Over by the old barn?

15 A Yes, sir.

16 QUESTIONS BY INVESTIGATOR LAIL:

17 Q Brown, do you have any more questions.

18 Inves. Brown No, that's it.

19 Q Do you have anything else you want to say.

20 QUESTIONS BY INVESTIGATOR BROWN:

21 Q As far as you know the gun is still in the car?

22 A Yeah, he said he left it in the car or what not.

23 Q Okay.

24 QUESTIONS BY INVESTIGATOR LAIL:

25 Q Anything else you can think of?

1 A

I'm going to get charged with doing nothing.

2 Q

The time now is 4:29 a.m.

Case Number: 0811032

Officer: 2363 LEE, PAMELA

Date Entered/Changed: 12/31/2008

Reviewer:

Review Date:

DETAILED STATEMENT OF INVESTIGATION: ON 12-31-08 AT APPROX. 12:20 AM, THIS INVESTIGATOR RECEIVED A CALL IN REFERENCE TO AN ATTEMPTED ARMED ROBBERY AT E.L. COOPER GROCERY AND WAS FURTHER ADVISED THAT ONE OF THE ASSAILANTS WAS POSSIBLY SHOT AS A RESULT OF THE INCIDENT. I WAS ADVISED THAT ONCE THE CALL WAS RECEIVED IN REFERENCE TO THE ARMED ROBBERY THAT A SUBSEQUENT CALL WAS RECEIVED, IN REFERENCE TO A GUNSHOT VICTIM IN THE HOLY WOODS AREA OF KINGSTREE. UPON MY ARRIVAL AT THE SHERIFF'S OFFICE, I MET WITH CHARLES ALLEN BISHOP, JR. WHO RESIDES AT , KINGSTREE. MR BISHOP ADVISED THAT HE CALLED 911 TO HIS RESIDENCE WHEN HIS FRIEND, ANTWINE MATTHEWS ARRIVED AT THE RESIDENCE AND WAS BLEEDING FROM WHAT APPEARED TO BE A GUNSHOT WOUND OR A STAB WOUND. MR BISHOP SUBMITTED A STATEMENT ADVISING THAT A BLACK MALE KNOWN TO BISHOP AS "TWN", A BLACK MALE KNOWN TO BISHOP AS "VINNY" AND ANOTHER BLACK MALE KNOWN TO BISHOP AS "POWDER" WERE AT HIS RESIDENCE EARLIER THIS DAY. MR BISHOP STATED THAT THE THREE HAD LEFT, IN "TWN'S" WHITE IN COLOR CROWN VICTORIA, TO GO AND BUY MARIJUANA. MR BISHOP STATED THAT THE THREE RETURNED TO HIS RESIDENCE AND AFTER A WHILE, LEFT AGAIN. BISHOP STATED THAT HE DID NOT KNOW WHERE THEY HAD GONE UNTIL "TWN" AND "VINNY" CAME BACK TO HIS RESIDENCE. BISHOP ADVISED THAT "VINNY" RESIDES AT , WITH HIM. HE FURTHER STATED THAT WHEN HE SAW HOW SERIOUS "TWN" WAS BLEEDING, HE HAD TO CALL 911. "VINNY" CALLED HIS AUNT, WHO IS A NURSE AND LIVES ON ALEXANDER RD, TO COME TO THE HOUSE TO POSSIBLY HELP "TWN" UNTIL THE AMBULANCE COULD GET THERE. AS A RESULT OF MR BISHOP'S STATEMENT, I ASKED IF HE WOULD CONSENT TO A SEARCH OF HIS RESIDENCE BEING THAT THE INDIVIDUAL HAD COME TO HIS HOUSE AND WAS PICKED UP BY EMS, AT HIS HOUSE AND DUE TO THE FACT THAT "VINNY" LIVED IN THE HOUSE WITH HIM, MR BISHOP CONSENTED. A COMFORTER WITH BLOOD STAINS WAS FOUND ON THE COUCH, IN THE LIVING ROOM. THERE WAS BLOOD ON THE CARPET IN FRONT OF THE COUCH. THIS WAS CONSISTENT WITH WHAT MR BISHOP HAD ADVISED IN HIS STATEMENT. (CONSENT FORM SIGNED, PHOTOGRAPHS WERE TAKEN AND COMFORTER WAS COLLECTED AND PLACED INTO EVIDENCE) I THEN ASKED MR BISHOP IF HE WOULD SHOW THIS INVESTIGATOR WHERE "VINNY" AUNT LIVED. MYSELF AND DEP SETH SCOTT WAS ESCORTED TO , THE RESIDENCE OF MS SEGARS. SHE ADVISED THAT SHE DID RECEIVE A CALL FROM HER NEPHEW AND THAT WHEN SHE GOT TO THE RESIDENCE, WHICH IS DIRECTLY ACROSS HWY 377, SHE FOUND THE "VICTIM", ANTWINE MATTHEWS ON THE FRONT STEPS OF THE RESIDENCE. MS SEGARS STATED THAT HE WAS BLEEDING PROFUSELY FROM HIS LEFT SIDE. MS SEGARS STATED THAT SHE FOLLOWED THE AMBULANCE TO THE WILLIAMSBURG E.R. AND FROM THERE, MATTHEWS WAS SENT TO MCLEOD REGIONAL IN FLORENCE. MS SEGARS ADVISED THAT SHE HAD SPOKEN TO HER NEPHEW "VINNY" OVER THE PHONE BUT HE WOULD NOT TELL HER WHERE HE WAS. SHE STATED THAT THE ONLY THING HE SAID WAS TO TAKE CARE OF HIM, MEANING ANTWINE. MS SEGARS STATED THAT HE WOULD MAKE CONTACT WITH VINNY'S MOTHER AND IF EITHER OF THEM COULD LOCATE HIM, THEY WOULD BRING HIM TO THE SHERIFF'S OFFICE.

MYSELF AND INV BROWN THEN MET WITH JEFFREY LARON DAWKINS AKA: "POWDER". UPON WAIVING MIRANDA, DAWKINS ADVISED THAT HE WAS WITH ANTWINE MATTHEWS AND "VINNY", EARLIER THAT DAY. DAWKINS STATED THAT THEY HAD GONE TO LAKE CITY, THEN RETURNED TO VINNY'S RESIDENCE IN THE HOLY WOODS, LEFT TO GO BUY MARIJUANA AND THEN RETURNED TO "VINNY'S" RESIDENCE. DAWKINS STATED THAT WHILE THEY WERE THERE, "VINNY" (MELVIN LEE SEGARS III) STATED THAT HE KNEW WHERE THEY COULD GET SOME CHANGE. DAWKINS STATED THAT HE (VINNY) TOLD ANTWINE THAT HE COULD DRIVE AND THAT THEY, MEANING HIM AND ANTWINE MATTHEWS COULD JUST FOLLOW HIS LEAD. DAWKINS STATED THAT ALL OF THAT AFTERNOON, DAWKINS WALKED AROUND HIS RESIDENCE WITH A GUN IN HIS JACKET POCKET. DAWKINS STATED THAT SEGARS WAS THE ONLY ONE, THAT HE KNEW OF, THAT HAD A GUN OR THAT HAS EVER HAD A GUN. DAWKINS STATED SEGARS STATED THAT THEY COULD ROB "MR ERVIN", THE STORE OWNER OF COOPER'S GROCERY IN SANDRIDGE AREA. DAWKINS STATED THAT HE KNEW MR ERVIN COOPER, PRIOR TO THIS INCIDENT AND THAT HE DID NOT WANT TO GO WITH THEM. DAWKINS ADVISED THAT THEY DROVE ANTWINE MATTHEWS CAR, A WHITE IN COLOR CROWN VICTORIA, TO THE STORE. THEY PULLED UP TO THE SIDE OF THE STORE AND GOT OUT. DAWKINS STATED THAT ANTWINE AND VINNY ENTERED THE STORE AND HE WAS BEHIND THEM WHEN HE HEARD SEVERAL SHOTS FIRED. DAWKINS STATED THAT HE BEGAN RUNNING AND ONCE HE HAD FLED FROM THE STORE, HE SAW ANTWINE AND VINNY GOING BY HIM, IN THE WHITE CROWN VICTORIA. (SEE STATEMENT)

MYSELF AND INV BROWN THEN MET WITH MELVIN LEE SEGARS III AKA: VINNY WHO RESIDES AT 9 HOLY WOODS RD, KINGSTREE, S.C. UPON WAIVING MIRANDA, SEGARS SUBMITTED TWO SEPARATE STATEMENTS. AFTER THE FIRST STATEMENT, SEGARS WAS PLACED UNDER ARREST AT WHICH TIME I CHECKED HIS POCKETS, FINDING A SET OF KEYS TO A CROWN VICTORIA. AT THIS POINT, SEGARS ADVISED THAT HE HAD NOT TOLD ALL OF THE TRUTH AND FURTHER ADVISED THAT THE CROWN VICTORIA, BELONGING TO ANTWINE MATTHEWS WAS PARKED IN THE HOLY WOODS AREA. SEGARS STATED THAT HE, MATTHEWS AND DAWKINS WERE TOGETHER MOST OF THE DAY AND THAT LATER IN THE AFTERNOON, THEY HAD GONE TO KINGS CROSSING, TO BUY MARIJUANA. SEGARS STATED THAT THEY RETURNED TO HIS RESIDENCE AND SMOKED THE MARIJUANA AND THEN DECIDED THAT THEY NEEDED MORE MONEY TO BUY MORE MARIJUANA. SEGARS ADVISED THAT DAWKINS THEN STATED THAT HE KNEW "MR ERVIN" AND THAT THEY COULD GET SOME MONEY FROM HIM. SEGARS ADVISED THAT WHEN ALL THREE OF THEM ARRIVED AT THE COOPER GROCERY, THEY WALKED IN AND "POWDER" (DAWKINS) ASKED THE STORE OWNER FOR SOME CANDY. SEGARS STATED THAT ANTWINE HAD THE GUN AND THAT ANTWINE SHOT AT THE OWNER AND THEN THE OWNER SHOT BACK. SEGARS STATED THAT HE JUMPED INTO THE BACKSEAT OF ANTWINE'S CAR AND ANTWINE WAS DRIVING. SEGARS STATED THAT ANTWINE TOLD HIM THAT HE HAD BEEN SHOT. AS A RESULT, SEGARS STATED THAT HE REACHED OVER THE BACKSEAT AND WAS STEERING THE VEHICLE FOR ANTWINE. SEGARS STATED THAT ONCE THEY GOT THE HOLY WOODS AREA, ANTWINE WANTED TO PARK HIS CAR AT AN ABANDONED TRAILER NEAR HIS RESIDENCE. SEGARS STATED THAT HE AND MATTHEWS THEN WALKED TO (SEE STATEMENT)

THEN MET WITH MR ERVIN COOPER, THE OWNER OF E.L. COOPER GROCERY. MR COOPER ADVISED THAT THREE BLACK MALES WALKED IN THE STORE, TOGETHER AND ONE OF THE BLACK MALES CALLED HIS NAME. MR COOPER STATED THAT HE THINKS HE HAS SEEN ONE OF THE BLACK MALES BUT HE COULD NOT RECALL WHO HE WAS. MR COOPER STATED THAT ONE OF THE BLACK MALES ASKED HIM FOR SOME CANDY AND WHEN HE TURNED AROUND TO GET THE CANDY, HE HEARD A SHOT AND "FELT THE WIND" FROM THE SHOT, BESIDE HIS EAR. MR COOPER STATED THAT HE FEARED THAT THEY WERE GOING TO SHOOT AGAIN. AT THIS POINT, MR COOPER STATED THAT AS HE TURNED AROUND, HE LOOKED AT THE THREE MALES AND THEN FELL ONTO THE FLOOR. MR COOPER SAID THAT ONCE HE FELL, HE REACHED UNDERNEATH THE COUNTER AND RETRIEVED HIS REVOLVER. MR COOPER STATED THAT WHEN HE GOT UP, HE SHOT TOWARDS THE DOOR. THE

SHARON W. STILES
CLERK OF COURT
WILLIAMSBURG COUNTY



INCL T REPORT SUPPLEMENTAL

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Case Number: 0811032

Officer: 2363 LEE, PAMELA

Date Entered/Changed: 12/31/2008

Reviewer:

Review Date:

THREE BLACK MALES RAN FROM THE STORE AND, AS FAR AS HE KNEW, GOT INTO THE WHITE CROWN VICTORIA AND LEFT. MR COOPER STATED THAT HE FIRED MORE THAN ONE TIME AT THE ASSAILANTS. MR COOPER ADVISED THAT HE DID NOT KNOW, FOR SURE, WHICH ONE OF THE BLACK MALES HAD THE GUN. (SEE STATEMENT)

LT. JEFF SCOTT RESPONDED AND DID PROCESS THE SCENE. (SEE REPORT)

THE 1990 CROWN VICTORIA WAS LOCATED AND TOWED TO THE WILLIAMSBURG COUNTY DETENTION CENTER FOR PROCESSING. ON 12-31-08, A SEARCH WARRANT WAS ISSUED AND EXECUTED ON THE SAID VEHICLE. (SEE SEARCH WARRANT RETURN)

THIS INVESTIGATOR MADE CONTACT WITH MCLEOD REGIONAL MEDICAL CENTER AND ADVISED THE OPERATING ROOM STAFF THAT THIS AGENCY SHOULD BE NOTIFIED PRIOR TO THE RELEASE OF ANTWINE MATTHEWS. AT APPROX. 7:30 AM, I RECEIVED A CALL ADVISING THAT THERE WAS A SHOT WAS REMOVED FROM MATTHEWS AND A CHAIN OF CUSTODY WAS COMPLETED BETWEEN THE OPERATING ROOM STAFF AND THE MCLEOD'S SECURITY. SHE FURTHER ADVISED THAT MATTHEWS' CLOTHING WAS ALSO BEING HELD BY MCLEOD SECURITY.

ON 12-31-08, THIS MATTER WAS DISCUSSED WITH MAGISTRATE DRIGGERS. ANTWINE MATTHEWS, MELVIN LEE SEGARS AND JEFFREY LARON DAWKINS WERE CHARGED WITH ATTEMPTED ARMED ROBBERY; POSSESSION OF A WEAPON DURING A VIOLENT-CRIME; CONSPIRACY TO COMMIT ARMED ROBBERY AND ASSAULT WITH THE INTENT TO KILL.

LT. SCOTT RESPONDED TO MCLEOD REGIONAL WHERE HE TOOK POSSESSION OF THE PROJECTILE THAT WAS REMOVED FROM ANTWINE MATTHEWS, DURING SURGERY AND OF HIS CLOTHING. ALL ITEMS WERE SECURED BY MCLEOD REGIONAL SECURITY. THESE ITEMS WILL BE SUBMITTED TO SLED FOR ANALYSIS.

ON 01-05-08, THE CLOTHING BELONGING TO MELVIN SEGARS AND JEFFREY DAWKINS WERE COLLECTED BY INV LAIL, FROM THE WILLIAMSBURG CO. DETENTION CENTER TO BE SUBMITTED TO SLED FOR ANALYSIS. THE GSR KIT CONDUCTED ON THE VICTIM, ERVIN COOPER WILL BE SUBMITTED TO SLED FOR ANALYSIS. A GSR KIT WAS NOT CONDUCTED ON EITHER OF THE SUSPECTS DUE TO THE TIME LAPSE BETWEEN THE INCIDENT AND THE TIME OF ARREST, THE FACT THAT DAWKINS AND SEGARS HAD INFORMED LAW ENFORCEMENT THAT THEY HAD WASHED THEIR HANDS SINCE THE INCIDENT AND IN REFERENCE TO ANTWINE MATTHEWS, HE WAS IMMEDIATELY TRANSPORTED FROM WILLIAMSBURG E.R. TO MCLEOD REGIONAL E.R. AND FROM THAT POINT, TO SURGERY. LAW ENFORCEMENT WAS NOT ABLE TO PERFORM THE TEST ON MATTHEWS DUE TO THE ABOVE NOTED FACTORS.

THE NOTED WARRANTS ISSUED FOR ANTWINE L. MATTHEWS WERE ENTERED INTO NCIC AND WAS ALSO COUNTERSIGNED BY JUDGE GRIMSLEY, FLORENCE COUNTY. COPIES OF THE WARRANTS WERE FAXED TO MCLEOD REGIONAL, SGT. ESLINGER AND TO FLORENCE CO. SHERIFF'S OFFICE. SGT ESLINGER WAS REQUESTED TO NOTIFY WILLIAMSBURG CO. SHERIFF'S OFFICE AND/OR FLORENCE CO SHERIFF'S OFFICE UPON THE RELEASE OF MATTHEWS. AS OF THIS DATE, 01-06-09, ANTWINE MATTHEWS REMAINS A PATIENT (ANTWINE BROWN) AT MCLEOD REGIONAL MEDICAL CENTER.

ON 01-05-08, INV LAIL ATTEMPTED TO RETURN THE COMFORTER AND THE SHIRT THAT WAS REMOVED FROM ANTWINE MATTHEWS. A CONTACT SHEET WAS LEFT FOR MR BISHOP, ADVISING HIM TO CALL AND I WOULD RETURN THE ITEMS. IN REFERENCE TO THE COMFORTER, IT WAS DETERMINED THAT ANTWINE MATTHEWS HAD RETURNED TO BISHOP'S RESIDENCE AND BASED UPON THE INFORMATION FURNISHED BY THE CO-DEFENDANTS AND MR BISHOP, THERE WAS NO EVIDENTIARY VALUE TO HAVING THE ITEMS SUBMITTED TO SLED. IN REFERENCE TO THE SHIRT THAT WAS COLLECTED, IT WAS NOT IDENTIFIED BY THE VICTIM AS A SHIRT THAT EITHER OF THE SUSPECTS WERE WEARING DURING THE INCIDENT. ORIGINALLY, THE VICTIM HAD DESCRIBED A "STRIPED" SHIRT. UPON SHOWING THE VICTIM THIS SHIRT, HE ADVISED THAT NEITHER OF THE SUSPECTS WERE WEARING THIS SHIRT. (BRIGHT COLORS VERSUS A DARK IN COLOR SHIRT OR SHIRT WITH A WHITE STRIPE).

01-06-09, THIS INVESTIGATOR MET WITH MS MARGARET HANNAH WHO RESIDES AT 412 BRENTWOOD CIRCLE, LAKE CITY, S.C. MS HANNAH STATED THAT SHE WAS NOT AWARE OF ANY MEDICATION MISSING FROM HER RESIDENCE. UPON SHOWING THE MEDICATION BOTTLE TO MS HANNAH, SHE VERIFIED THAT THIS WAS, IN FACT, HER MEDICATION. AT THIS POINT, I ASKED MS HANNAH IF SHE HAD A FIGHTER NAMED "KIM" AND SHE ADVISED THAT SHE DID AND THAT HER DAUGHTER WAS PRESENTLY IN SCHOOL. MS HANNAH ADVISED THAT I COULD ACCOMPANY HER TO THE LAKE CITY HIGH SCHOOL TO MEET WITH HER DAUGHTER. THE 17 YR OLD, KIMBERLY VICTORIA HANNAH, ADVISED THAT ON DEC. 31ST, AT APPROX. 11:00 AM, SHE HAD RECEIVED A CALL FROM ANTWINE MATTHEWS, ADVISING THAT HE WANTED TO COME OVER TO HER HOUSE. KIM HANNAH AGREED AND UPON HIS ARRIVAL AT APPROX. 12:00 PM, HE HAD TWO MALES WITH HIM, "VINNY" AND "POWDER". SHE STATED THAT THEY DID NOT COME INSIDE BECAUSE SHE DIDN'T WANT HER NEIGHBORS TO SEE THEM BECAUSE HER MOTHER WOULD FIND OUT THAT THEY WERE THERE. K. HANNAH STATED THAT SHE GOT INTO THE CAR WITH THEM AND THEY WENT TO KINGSTREE. K. HANNAH STATED THAT THEY WENT TO "VINNY'S BROTHER'S HOUSE". K. HANNAH STATED THAT SHE DIDN'T KNOW EXACTLY WHERE THE HOUSE WAS LOCATED BUT SHE DESCRIBED THE HOUSE AS A WHITE, DIRTY HOUSE WITH A WHITE BUILDING. SHE FURTHER STATED THAT VINNY'S BROTHER WAS AT THE HOUSE WHEN THEY GOT THERE. K. HANNAH STATED THAT WHEN THEY HAD GOTTEN INTO THE CAR, IN LAKE CITY, SHE SAW A BLACK AND GRAY GUN IN THE FRONT FLOORBOARD, BETWEEN THE DRIVER AND PASSENGER SEATS. HANNAH STATED THAT SHE ASKED WHAT THEY WERE DOING WITH A GUN BUT NO ONE ANSWERED HER. SHE STATED THAT THE ONLY PERSON SHE SAW WITH THE GUN WAS ANTWINE. HANNAH ADVISED THAT AFTER SHE AND ANTWINE MATTHEWS WERE IN THE ROOM, THE GUN WAS ON THE NIGHTSTAND NEAR THE BED. I ASKED HANNAH TO DESCRIBE THE INSIDE OF THE RESIDENCE THAT SHE HAD TAKEN TO, IN KINGSTREE. HANNAH STATED THAT WHEN SHE WALKED IN, THERE WERE THREE COUCHES IN THE FRONT ROOM OR THE LIVING ROOM. SHE STATED THAT THE BEDROOM WAS TO THE RIGHT AS YOU WALK IN AND THERE WAS A DOOR, IMMEDIATELY TO YOUR LEFT. ONCE YOU WALK INTO THE BEDROOM. SHE STATED THAT IT WAS VERY DIRTY AND THAT THERE WERE CLOTHES, ON THE FLOOR ALL

Case Number: 0811032

13 LEE, PAMELA	Date Entered/Changed: 12/31/2008	Reviewer:	Review Date:
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HOUSE. (THIS IS CONSISTENT WITH THE RESIDENCE LOCATED AT , KINGSTREE, S.C. - THE RESIDENCE
S BISHOP AND MELVIN SEGARS) MS MARGARET HANNAH ADVISED THAT SHE DID NOT WANT THE MEDICINE BOTTLE BACK, THAT I
POSSESSION. SHE REQUESTED THAT IT BE DESTROYED. ON 1-6-08, THE BOTTLE WAS TURNED OVER TO LT SCOTT AND
HAT IT WAS TO BE DESTROYED.

1, THIS AGENCY WAS ADVISED BY MCLEOD REGIONAL SECURITY THAT ANTWINE L. MATTHEWS WAS BEING RELEASED. ANTWINE
WAS TRANSPORTED TO THE WILLIAMSBURG CO. DETENTION CENTER AND THE NOTED WARRANTS WERE SERVED.

1 Inves. Lail Today's date is December 31, 2008, the time now
2 is 4:58 a.m. Present during this interview is
3 myself Investigator Lail and Mr. Ervin Cooper.
4 Mr. Ervin, I know you have already spoken to
5 other officers tonight in reference to what
6 occurred at your store.

7 Ervin Cooper Yes, ma'am.
8 (From this point forward questions will be posed
9 by Investigator Lail, and answers will be given by Ervin Cooper, unless
10 otherwise noted.)

11 Q And you live at ?

12 A Yes, ma'am.

13 Q And that is here in Kingtree?

14 A Yes, ma'am.

15 Q And your date of birth is what?

16 A

17 Q And what is the name of your business?

18 A It's E. L. Cooper Grocery.

19 Q And how long have you had this store out there,
20 Mr. Cooper?

21 A From 1992 up to now.

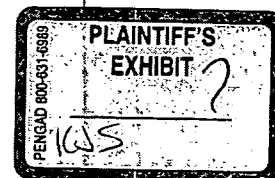
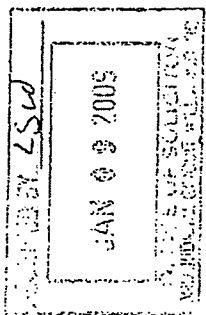
22 Q So it's been a good while?

23 A Yes.

24 Q And tell me what happened tonight?

25 A I usually have...(tape fades out) don't open, and I

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1 usually have it changed because of that stuff gets
2 gone. The guy came in and when I walked behind
3 the counter he called my name, and it seems like I
4 had seen him before. He said Mr. Ervin, I would
5 like to have some of that, and I said how many do
6 you want. It was some little candy down on the
7 end down there, and so two more walked in.
8 They were standing up, and he counted out
9 eighteen cents to me for the candy. There are
10 three jars, and I walked and turned my head and
11 said which one of the candies do you want. He
12 said the blue one, and I guess what he was trying
13 to do as make me turn my head. I turned my
14 head, and I picked up the candy. I stuck my
15 fingers down in the jar to get the candy and I
16 looked around, and I reached around and I heard
17 gunfire and it hit my ear, and I ducked around,
18 and I looked at them, but who shot the gun I don't
19 know. They must have dropped the gun back
20 down, and at the end I have a gun down under the
21 counter, and something told me no. If I go for the
22 gun, they probably would finish me off right
23 there. I guess they figured I was shot or they
24 thought he hit me. I fell down and reached under
25 the counter and wiggled up, and when they broke

1 for the door they ran to the side. I shot through
2 the window twice, and I kind of peeped through
3 the window because I have posters on the front
4 and the car was parked on the side. I shot
5 through the window twice at the car, and both of
6 them ran out. When I looked around to see who
7 had the gun they were standing there looking at
8 me kind of funny, and something said you had
9 better fall. The gun was right there, but I never
10 saw their gun. When I fell I guess they figured I
11 was hit, and that's when I reached under the
12 counter and got the gun. I shot up and one of them
13 broke for the door and the other one ran behind
14 him. The only thing I could do was look through
15 the window and I shot twice through the front
16 window, and the car was parked sideways the
17 store with the door facing like that. I shot through
18 the window at the car.

19 Q So it was parked if you pull up to the store, the car
20 was parked on the right hand side?

21 A Yeah, on the right hand side. That's the highway
22 there, but the store is facing this way. The
23 driveway is in the front, and they parked on the
24 side and they walked up to the door facing this
25 way .

1 Q

When you shot through the window that's when
you hit the car?

2

3 A

Yeah when I shot through the side window
because the car was parked on the side.

4

5 Q

Okay, I've got you.

6 A

I saw them drive off, and it looked like a Ford on
the back, but I know the car was all white taking a
good look at. One of the guys called my name and
it seems like I have seen him before, but it was
three of them.

7

8

9

10

11 Q

What was the one that called your name wearing?

12 A

The shirt looked kind of solid like that and had
the little fine plaid or whatever, but I didn't take a
good look at it. I just took a glimpse at it, but the
shirt looked kind of plaid or a little pin stripe. It's
hard for me to describe. Something sort of like
that chair that.

13

14

15

16

17

18 Q

Okay. The little tiny stripe?

19 A

Yeah, tiny stripes. Who had the gun I don't know,
and I heard the fire and I felt the wind hit my ear,
and I looked around and they looked kind of
strange leaning up at the counter. When I looked
down at the gun then I stood up, and something
said no, if you go for that gun, they'll probably
drop you down so I fell. Then I looked up and

20

21

22

23

24

25

- 1 then I felt for the gun. I guess they probably
2 thought they had hit me, and that's what
3 happened. I don't know who had the gun.
- 4 Q But it was three of them?
- 5 A Yes, there were three of them standing inside the
6 store. They were in the store when they shot in the
7 store. The guy was checking for fingerprints and
8 I see on the cement wall was chipped off and I
9 never saw that chip before. He found the
10 Sheetrock wall back in the other room.
- 11 Q One of them was wearing like a plaid looking
12 shirt.
- 13 A Yeah, and the other one was wearing a jacket
14 something like this but I don't think it was one of
15 the Members Only jackets. It was a jacket
16 something like this, but it was a light color. It was
17 a light colored jacket. Another one had on a
18 sweater, but the top was hanging down, but it
19 wasn't a red sweater shirt with it hanging down. It
20 looked like it had a sweater shirt with some
21 stripes on it. It was black or dark blue one or the
22 two with white stripes in it.
- 23 Q Okay. And that's all that you can remember right
24 now?
- 25 A Yes, ma'am.

- 1 Q Did they say anything else to you?
- 2 A The only thing they asked for the candy, and the
- 3 thing that surprised me other people come in the
- 4 place and say this is a stickup, and I said
- 5 something like that I would probably cooperate
- 6 until they get out of there. The only thing they did
- 7 was just wait until I turned my head and then they
- 8 shot.
- 9 Q And then shot.
- 10 A And then they shot.
- 11 Q They never did tell you I'm robbing you, they just
- 12 went ahead and shot at you.
- 13 A Yeah, but I guess what I was looking at I don't
- 14 know which one did the shooting, but they did
- 15 some poor shooting and I just was lucky because I
- 16 could feel one go wow and the wind brushed my
- 17 ears.
- 18 Q Well, you were lucky. Especially with them being
- 19 that close too?
- 20 A Yes.
- 21 Q Is there anything else that you can remember, Mr.
- 22 Cooper?
- 23 A That's about all I can remember right at the time,
- 24 and things happened so fast.
- 25 Q Yes, sir. I want to show you a shirt, and I don't

1 think from what you are saying, I don't think it
2 was one that they were wearing. Was it anything
3 bright like that?

4 A No, I don't remember seeing it, but the sweater on
5 was sort of like a color like that. I don't
6 remember seeing that. But the color of the sweater
7 that the little short fellow was wearing with...the
8 white cloth on the end was something like that
9 color with that kind of stripe. At night your eyes
10 can fool you, and it could be black or it could be
11 dark blue.

12 Q Okay.

13 A That was the little short fellow about like that
14 who was wearing that.

15 Q Brown, can you think of anything.

16 QUESTIONS BY INVESTIGATOR BROWN:

17 Q You said you didn't see who shot at you first,
18 right?

19 A When I looked around I didn't see who had the
20 gun. When I looked around they had their hands
21 down, and they looked at me strange, and when I
22 looked at them I said they ain't moved. I looked
23 down, and the first thing that hit my mind was
24 don't you go for that gun, fall first. That's what I
25 did, my mind told me to fall, because if I had gone

1 for it, they would have dropped me right there.

2 Q Oh, yes.

3 A I guess when I fell they might have figured they
4 had hit me.

5 Q Yes.

6 QUESTIONS BY INVESTIGATOR LAIL:

7 Q Did you see all three of them get back in the car?

8 A Yeah, they ran back to the car, because I looked
9 through the window but really I couldn't tell
10 which one. The windows were kind of tinted like.

11 QUESTIONS BY INVESTIGATOR BROWN:

12 Q But you are saying that all three of them got in the
13 car, right?

14 A As far as I could see I saw them get in.

15 QUESTIONS BY INVESTIGATOR LAIL:

16 Q And then they took off?

17 A Yes, they took off.

18 Q But you think that one that called your name you
19 think you have seen him before?

20 A Yes, it seems like I have seen him before. My
21 mind since I was in that accident it don't
22 fluctuate...but I don't forget faces. The guy that
23 asked for the candy he called my name. The
24 strangest part was he came in here for candy and
25 the other two came in and stood up. One was

1 almost about your complexion, that's the one that
2 had the light colored jacket on. I don't think it
3 was a Members Only jacket.

4 QUESTIONS BY INVESTIGATOR BROWN:

5 Q And one of them had on a sweater like this.

6 A That black and stripe in there, but I don't
7 remember seeing that green looking color.

8 QUESTIONS BY INVESTIGATOR LAIL:

9 Q Anything else you can think of, Mr. Cooper?

10 A That's about as close as you can get, and it
11 happened so fast.

12 Q This concludes the statement at this time.

EXCUSE. THIS MALICE NEED NOT BE EXPRESS, BUT MAY BE INFERRED.

BURNING MEANS ACTUAL COMBUSTION OF SOME PORTION OF A PIECE OF PROPERTY. IT IS NOT NECESSARY THAT THE PROPERTY BE CONSUMED OR DESTROYED. CHARRING OF THE MATERIAL OF WHICH THE PROPERTY IS CONSTRUCTED OR A CHANGE IN THE FIBER OR COMPOSITION OF THE STRUCTURE, IS REQUIRED FOR A BURNING. SINGEING, SMOKING, BLISTERING, SCORCHING, OR DISCOLORING BY THE HEAT, HOWEVER, IS NOT ENOUGH TO CONSTITUTE A BURNING.³³

NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE PROPERTY WHICH WAS BURNED WAS A DWELLING HOUSE, BUILDING, STRUCTURE, OR ANY OTHER PROPERTY.

A DWELLING HOUSE IS A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS.

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE EXPLOSION OR BURNING DIRECTLY OR INDIRECTLY RESULTED IN BODILY INJURY TO A PERSON OR DAMAGE TO THE PROPERTY.

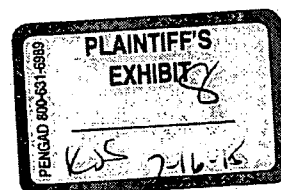
ASSAULT

ASSAULT WITH INTENT TO KILL

THE DEFENDANT IS CHARGED WITH ASSAULT WITH INTENT TO KILL. IN ORDER TO PROVE ASSAULT WITH INTENT TO KILL, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT, WITH MALICE

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³³ In the Interest of Christopher P., 328 S.C. 545, 492 S.E.2d 820 (Ct. App. 1997).



AFORETHOUGHT, UNLAWFULLY ATTEMPTED OR OFFERED TO COMMIT A VIOLENT INJURY UPON ANOTHER PERSON AND HAD THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM.³⁴ IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM ACTUALLY TAKE PLACE. FOR EXAMPLE, IF I WALK UP TO YOU, AND WHEN WE ARE WITHIN ARM'S REACH, I DRAW BACK TO HIT YOU, THAT IS AN ASSAULT.³⁵

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN

³⁴ State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000).

³⁵ When giving examples, be sure they do not constitute a charge on the facts of the case. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), overruled on other grounds, Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009).

WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.³⁶

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. [CAUTION: See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (Where evidence is presented that would reduce, mitigate, excuse, or justify a homicide or assault and battery with intent to kill caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon.)] A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE. THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY

³⁶ When giving examples, be sure they do not constitute a charge on the facts of the case. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), overruled on other grounds, Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009).

WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER FLUID.³⁷ A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.³⁸

[Include any of the following which are supported by the facts.]

[FIST AS A DEADLY WEAPON]: A HAND OR FIST IS NOT NORMALLY CONSIDERED A DEADLY WEAPON. HOWEVER, UNDER SOME CIRCUMSTANCES, DEPENDING ON THE MANNER AND MEANS OF ITS USE, THE WOUNDS INFLICTED, AND OTHER RELEVANT FACTS, A HAND OR FIST MAY BE CONSIDERED A DEADLY WEAPON. IT IS FOR YOU TO DECIDE IN THIS CASE, BEYOND A REASONABLE DOUBT, WHETHER OR NOT A HAND OR FIST IS A DEADLY WEAPON.³⁹

[ORDINARY OBJECTS]: ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS BODILY HARM OR DEATH.⁴⁰

[TOY GUN]: WHETHER A TOY GUN WHICH HAS THE APPEARANCE OF, AND/OR IS BELIEVED TO BE, A REAL GUN IS A DEADLY WEAPON IS A FACTUAL QUESTION FOR YOU TO DETERMINE.⁴¹

[BB GUN]: WHETHER A BB GUN IS A DEADLY

³⁷ State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985); S.C. Code Ann. § 16-11-330(A).

³⁸ State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979).

³⁹ State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

⁴⁰ State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

⁴¹ State v. Tasco, 292 S.C. 270, 356 S.E.2d 117 (1987).

ANOTHER'S LIFE.⁴⁴
**ASSAULT OF A HIGH AND AGGRAVATED
 NATURE**

If charging AHAN as a lesser included offense of AWIK, include the following paragraph and delete the italicized portions below.

[IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THAT THE DEFENDANT IS GUILTY OF ASSAULT WITH INTENT TO KILL, YOU MUST THEN DECIDE WHETHER THE STATE HAS PROVED THAT THE DEFENDANT IS GUILTY OF ASSAULT OF A HIGH AND AGGRAVATED NATURE. ASSAULT OF A HIGH AND AGGRAVATED NATURE CONTAINS ALL OF THE ELEMENTS OF ASSAULT WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT. IN ADDITION, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT A CIRCUMSTANCE OF AGGRAVATION.]

[INCLUDED WITHIN THE OFFENSE OF ASSAULT WITH INTENT TO KILL IS THE LESSER OFFENSE OF ASSAULT OF A HIGH AND AGGRAVATED NATURE. ASSAULT OF A HIGH AND AGGRAVATED NATURE CONTAINS ALL OF THE ELEMENTS OF ASSAULT WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT. IN ADDITION, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT A CIRCUMSTANCE OF AGGRAVATION.]

IN ORDER TO PROVE ASSAULT OF A HIGH AND AGGRAVATED NATURE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY ATTEMPTED OR OFFERED TO COMMIT A VIOLENT INJURY UPON

⁴⁴ State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

ESCAPE FROM THE CUSTODY OF AN OFFICER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT AIDED OR ASSISTED A PRISONER IN ESCAPING OR ATTEMPTING TO ESCAPE FROM AN OFFICER OR OTHER PERSON WHO HAD LAWFUL CUSTODY OF THE PRISONER.

ARMED ROBBERY - § 16-11-330

THE DEFENDANT IS CHARGED WITH ARMED ROBBERY. IN ORDER TO PROVE THIS OFFENSE, THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER PERSON.

PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT THE PERSON COULD, IF NOT OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR, KEEP POSSESSION OF THE PROPERTY.

THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY FOR THE DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY, EVEN FOR AN INSTANT, BY THE DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF THE PROPERTY.

THE TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE PROPERTY IN FEAR OF VIOLENCE.

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON DURING THE

ROBBERY. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER FLUID.²¹ A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.²²

[Include any of the following which are supported by the facts.]

[FIST AS A DEADLY WEAPON]: A HAND OR FIST IS NOT NORMALLY CONSIDERED A DEADLY WEAPON.

HOWEVER, UNDER SOME CIRCUMSTANCES, DEPENDING ON THE MANNER AND MEANS OF ITS USE, THE WOUNDS INFLICTED, AND OTHER RELEVANT FACTS, A HAND OR FIST MAY BE CONSIDERED A DEADLY WEAPON. IT IS FOR YOU TO DECIDE IN THIS CASE, BEYOND A REASONABLE DOUBT, WHETHER OR NOT A HAND OR FIST IS A DEADLY WEAPON.²³

[ORDINARY OBJECTS]: ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS BODILY HARM OR DEATH.²⁴

[TOY GUN]: WHETHER A TOY GUN WHICH HAS THE

²¹ State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985); S.C. Code Ann. § 16-11-330(A).

²² State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979).

²³ State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

²⁴ State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

APPEARANCE OF, AND/OR IS BELIEVED TO BE, A REAL GUN IS A DEADLY WEAPON IS A FACTUAL QUESTION FOR YOU TO DETERMINE.^{25]}

[BB GUN: WHETHER A BB GUN IS A DEADLY WEAPON IS A FACTUAL QUESTION FOR YOU TO DETERMINE.^{26]}

ROBBERY

If charging robbery as a lesser included offense of armed robbery, include one of the following paragraphs and delete the italicized portions below.

[IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON, YOU MAY THEN CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED ROBBERY.]

[ALSO INCLUDED WITHIN THE OFFENSE OF ARMED ROBBERY IS THE LESSER OFFENSE OF ROBBERY.] IN ORDER TO PROVE ROBBERY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ALL OF THE ELEMENTS THAT I HAVE JUST EXPLAINED EXCEPT THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON.

IN ORDER TO PROVE ROBBERY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER PERSON, WITHOUT THAT PERSON'S CONSENT, AND CARRIED IT AWAY.

PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT THE PERSON COULD, IF NOT OVERCOME WITH VIOLENCE OR

²⁵ State v. Tasco, 292 S.C. 270, 356 S.E.2d 117 (1987).

²⁶ State v. Heck, 304 S.C. 345, 404 S.E.2d 514 (Ct. App. 1991).

RESULTS IN SERIOUS BODILY INJURY TO THE PERSON.

A MOB IS THE GATHERING OF TWO OR MORE PERSONS, WITHOUT COLOR OR AUTHORITY OF LAW, FOR THE PREMEDITATED PURPOSE AND WITH THE PREMEDITATED INTENT OF COMMITTING AN ACT OF VIOLENCE ON ANOTHER PERSON.

Third Degree

IN ORDER TO PROVE ASSAULT AND BATTERY BY MOB IN THE FIRST DEGREE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT AN ACT OF VIOLENCE WAS COMMITTED BY A MOB ON THE BODY OF A PERSON WHICH RESULTS IN BODILY INJURY TO THE PERSON.

A MOB IS THE GATHERING OF TWO OR MORE PERSONS, WITHOUT COLOR OR AUTHORITY OF LAW, FOR THE PREMEDITATED PURPOSE AND WITH THE PREMEDITATED INTENT OF COMMITTING AN ACT OF VIOLENCE ON ANOTHER PERSON.

ATTEMPT

AN ATTEMPT IS AN EFFORT TO ACCOMPLISH A CRIME WHICH DOES NOT SUCCEED. AN ATTEMPT INCLUDES A SPECIFIC INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG WITH AN ACT FALLING SHORT OF THE ACT INTENDED. THE STATE MUST SHOW MORE THAN MERE PREPARATION AND INTENT. THERE MUST BE SOME OVERT ACT COMMITTED IN THE EFFORT TO COMMIT THE

CRIME.⁶⁷

INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.⁶⁸

ATTEMPTED MURDER - § 16-3-29

THE DEFENDANT IS CHARGED WITH ATTEMPTED MURDER. IN ORDER TO PROVE THIS CRIME, THE STATE MUST PROVE THE DEFENDANT ATTEMPTED TO KILL ANOTHER PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER

⁶⁷ See 21 Am. Jur.2d Criminal Law § 110, et seq., p. 188.

⁶⁸ State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

BEYOND A REASONABLE DOUBT THAT THE DEFENDANT PRESENTED OR POINTED AT ANOTHER PERSON A LOADED OR UNLOADED FIREARM.

POSSESSION OF WEAPON DURING THE COMMISSION OF, OR ATTEMPT TO COMMIT, A VIOLENT CRIME - § 16-23-490

THE DEFENDANT IS CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION OF, OR ATTEMPT TO COMMIT, A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT [WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM] [VISIBLY DISPLAYED A KNIFE] DURING THE COMMISSION OF A VIOLENT CRIME.

A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL, IS DESIGNED TO, OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE.

A KNIFE MEANS AN INSTRUMENT OR TOOL WITH A SHARP CUTTING BLADE, WHETHER OR NOT FASTENED TO A HANDLE, WHICH CAN BE USED TO INFLICT A CUT, SLASH, OR WOUND.

IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND THE DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR ATTEMPTING THE COMMIT A VIOLENT CRIME.

_____ IS A VIOLENT CRIME.

Violent crimes are listed in S.C. Code Ann. § 16-1-6.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE WEAPON FURTHERED, ADVANCED, OR HELPED IN THE COMMISSION OF THE CRIME.

PURSE SNATCHING - § 16-13-150

BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CARRIED, CONCEALED ON HIS (HER) PERSON, A DEADLY WEAPON USUALLY USED FOR THE INFLECTION OF PERSONAL INJURY. FOR PURPOSES OF THIS CRIME, A DEADLY WEAPON IS A FIREARM, A KNIFE WITH A BLADE OVER TWO INCHES LONG, A BLACKJACK, A METAL PIPE OR POLE, OR ANY OTHER TYPE OF OBJECT WHICH MAY BE USED TO CAUSE BODILY INJURY OR DEATH. HOWEVER, A DEADLY WEAPON DOES NOT INCLUDE A RIFLE, SHOGUN, DIRK, SLINGSHOT, METAL KNUCKLES, OR RAZOR UNLESS IT IS USED WITH THE INTENT TO COMMIT A CRIME OR IN FURTHERANCE OF A CRIME.

[Charge only the applicable exceptions, if any, below.]

[(1) A PERSON CANNOT BE FOUND GUILTY OF CARRYING A CONCEALED WEAPON IF THE PERSON IS ON HIS OR HER OWN PREMISES.]

[(2) A PERSON WHO HAS A PERMIT TO CARRY A CONCEALED WEAPON CANNOT BE FOUND GUILTY OF CARRYING A CONCEALED WEAPON.]

[(3) PEACE OFFICERS IN THE ACTUAL DISCHARGE OF THEIR DUTIES CANNOT BE FOUND GUILTY OF CARRYING A CONCEALED WEAPON.]

CONSPIRACY - § 16-17-410

THE DEFENDANT IS CHARGED WITH CONSPIRACY. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMBINED WITH ONE OR MORE PERSONS FOR THE PURPOSE OF COMMITTING AN UNLAWFUL ACT OR OF COMMITTING A LAWFUL ACT BY UNLAWFUL MEANS. THERE MUST BE A MUTUAL UNDERSTANDING, AGREEMENT, OR COMMON INTENTION AND PLAN. MERE PASSIVE KNOWLEDGE OF OR CONSENT TO THE CRIMINAL CONDUCT OF ANOTHER IS NOT ENOUGH TO MAKE A PERSON A CONSPIRATOR. THERE MUST

BE GUILTY KNOWLEDGE AND PARTICIPATION. SIMILARLY, THE MERE FACT THAT THE DEFENDANT MAY HAVE ASSOCIATED WITH ANOTHER PERSON OR MET WITH ANOTHER PERSON AND DISCUSSED COMMON AIMS AND INTERESTS DOES NOT NECESSARILY ESTABLISH PROOF OF THE EXISTENCE OF A CONSPIRACY OR THAT THE DEFENDANT WAS INVOLVED IN A CONSPIRACY.

ON THE OTHER HAND, IT IS NOT NECESSARY THAT THE AGREEMENT BE A FORMAL ONE, THAT IT BE IN WRITING, THAT THE PERSONS HOLD A MEETING AND EXPRESSLY STATE THE TERMS OF THE COMMON PLAN, OR THAT THE AGREEMENT BE STATED IN WORDS BETWEEN THEM. THE AGREEMENT OF A CRIMINAL CONSPIRACY MAY COME INTO BEING THROUGH AN IMPLIED, MUTUAL UNDERSTANDING. THE WILLFUL, INTENTIONAL, AND KNOWING ADOPTION BY TWO OR MORE PERSONS OF A COMMON PLAN IS SUFFICIENT.

NO OVERT ACTS NEED TO BE SHOWN TO ESTABLISH A CONSPIRACY.¹⁰³ A CONSPIRACY MAY BE SHOWN BY CIRCUMSTANTIAL EVIDENCE AND THE CONDUCT OF THE PARTIES.¹⁰⁴

IN ORDER TO CONVICT THE DEFENDANT OF CONSPIRACY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT NOT ONLY THAT DEFENDANT KNEW OF THE UNLAWFUL CONDUCT, BUT THAT THE DEFENDANT AGREED TO COMBINE WITH THE OTHER PERSON(S) FOR THE PURPOSE OF ACCOMPLISHING THE UNLAWFUL CONDUCT.

CONTRIBUTING TO THE DELINQUENCY OF A MINOR - § 16-17-490

¹⁰³ State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993); State v. Horne, 324 S.C. 372, 478 S.E.2d 289 (Ct. App. 1996).
¹⁰⁴ State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Follin, 352 S.C. 235, 573 S.E.2d 812 (Ct. App. 2002).

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Antwine Matthews, #340876,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-45-006

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 8, 2013 and amended on June 12, 2015. Respondent made its return on June 17, 2013. An evidentiary hearing in to the matter was convened on July 16, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true billed indicted at the May 2009 term of the Williamsburg County Grand Jury for Assault with Intent to Kill, Attempted Armed Robbery, Possession of a Weapon during a Violent Crime, and Criminal Conspiracy (2009-GS-45-90). Charles D. Barr, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Applicant was found guilty of Attempted Armed Robbery and Criminal Conspiracy, and on May 14, 2010, Applicant was sentenced to fifteen years for Attempted Armed Robbery and to a consecutive term of five years for Criminal Conspiracy.

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A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tristan Shaffer, Esquire and Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Matthews, Op. No. 2012-UP-508 (Ct. App. filed September 5, 2012). The Remittitur was issued on September 24, 2012.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
 - a. "Failure to prepare and investigate."
 - b. "Failure to make contemporaneous objections."
2. Ineffective assistance of appellate counsel
 - a. "Failure to raise all meritorious issues on appeal."

Applicant amended his application on June 12, 2015, alleging that he was being held unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel for failure to have Applicant present at his preliminary hearing and for failure to make a viable argument for dismissal.
2. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial.
3. Ineffective assistance of trial counsel for failure to properly advise Applicant regarding the State's case, available defenses and likely prison sentence before rejecting the ten year plea offer.
4. Ineffective assistance of trial counsel for failure to object to a switch in the presiding judge during the course of trial. See Transcript p. 196.
5. Ineffective assistance of trial counsel for the handling of the cross-examination of Investigator Lail regarding the statements obtained from Melvin Segars, which resulted in the trial court overruling a hearsay objection on the grounds that trial counsel opened the door to the line of objectionable testimony on redirect.
6. Ineffective assistance of trial counsel for failure to properly cross-examine Jeffrey Dawkins and Kim Hannah. Specifically, as to Jeffrey Dawkins, ineffective assistance of counsel for opening the door to the reading of his statement on redirect. Transcript p. 93.
7. Ineffective assistance of trial and/or appellate counsel for failure to address the missing portion of the testimony of Kim Hannah in the transcript and issue with the tape recordings. Transcript pp. 126, 132.

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8. Ineffective assistance of trial counsel for failure to move to suppress the forensic evidence recovered from the crime scene and/or object to the testimony of Deputy Scott that exceeded the scope of a lay witness.
9. Ineffective assistance of trial counsel to argue more fully for a directed verdict on the attempted armed robbery charge.
10. Ineffective assistance of trial counsel for failure to object to the State's closing argument due to vouching/bolstering the credibility of a witness and attempting to invoke the passions and prejudice of the jury. Transcript pp. 293-5.
11. Ineffective assistance of trial counsel for failure to request a charge on lesser included offenses.
12. Ineffective assistance of trial counsel for failure object to the jury charge. Transcript pp. 326-9. Ineffective assistance of trial and/or appellate counsel for failure to address the missing portion of the court's charge form the transcript. Transcript p. 331.
13. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to the following:
 - a. Objection to Jeffrey Dawkin's reading his statement. Transcript pp. 93.
 - b. Motion for mistrial due to Brady violation. Transcript p. 119.
 - c. Objection to the line of questioning regarding Melvin Segar's statement. Transcript p. 261.
 - d. Motion for a new trial. Transcript p. 339.

During the evidentiary hearing, PCR Counsel amended Applicant's PCR application to allege an additional claim of ineffective assistance of counsel for failing to object to the recharge of the jury.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Abigail Cooper. The State presented testimony from Charles Barr, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records,

appellate records, the PCR application, and return. During the evidentiary hearing, Applicant introduced various exhibits.

Applicant was called to testify on his own behalf. Applicant stated that he retained Charles Barr to represent him at trial. Applicant stated that he had two co-defendants, Jeffrey Dawkins (hereinafter "Dawkins") and Melvin Seagers (hereinafter "Seagers"). Applicant stated that he was found not guilty of assault with intent to kill and possession of a weapon during the commission of a violent crime. Applicant stated that he was convicted of attempted armed robbery and criminal conspiracy. Applicant stated Tristan Shaffer, Esquire, and Susan Hackett, Esquire, represented him during the appellate process. Applicant stated that they filed an Anders brief on his behalf. Applicant stated that he raised various issues in his *pro-se* response. Applicant stated that he wants a new trial.

Applicant stated that he was not present for his preliminary hearing. Applicant stated that he was out on bond during this time. Applicant stated Trial Counsel represented him at his preliminary hearing. Applicant stated Trial Counsel did not talk to him about the preliminary hearing. Applicant noted that the preliminary hearing transcript revealed that Trial Counsel waived Applicant's presence. Applicant stated that he never authorized Trial Counsel to waive his presence for his preliminary hearing. Applicant further noted that the preliminary hearing transcript revealed that the magistrate judge did not have signed warrants. However, Applicant stated Trial Counsel stated that they would go forward, despite the fact that the warrants were not signed. Applicant stated that the preliminary hearing transcript reveals that Trial Counsel conceded that the State could proceed on the attempted armed robbery charge. Applicant noted that his co-defendant's attorney, Wayne Floyd, argued that the charges did not rise to armed robbery. However, Attorney Floyd argued that attempted armed robbery was the more

appropriate charge. Applicant stated Trial Counsel merely joined in with Attorney Floyd's argument. Applicant stated that he would have liked Trial Counsel to present arguments on his own behalf. Applicant further stated that he would have liked to be present for his preliminary hearing and would not have waived his right to be present.

Applicant stated that he met with Trial Counsel four times. Applicant stated that he did not get a copy of discovery from Trial Counsel. Applicant stated Trial Counsel was working on securing a ten year plea offer. However, Applicant stated that the State thought he was the shooter.

Applicant stated that Trial Counsel advised him that he had a strong case. Applicant stated that Trial Counsel advised him that he felt Judge Newman would not give him more than fifteen years if he proceeded to trial and was found guilty. Applicant stated that he decided to risk going to trial because he felt an additional five years was worth the gamble. Applicant stated that he would have taken the ten year plea offer had he known that Kim Hannah was going to testify because she linked him to the gun. Applicant further stated that the plea offer came in before Judge Brown took over the trial. Applicant stated Trial Counsel had experience with Judge Newman, but no experience with Judge Brown.

Applicant stated that he saw Judge Brown sitting on the bench with Judge Newman at the start of trial. Applicant stated Trial Counsel did not object when Judge Brown took over the trial. Applicant referenced page 196 line 19 of the trial transcript which reveals that Judge Newman advised the jury that Judge Brown would be presiding over the remainder of the trial. Applicant stated Judge Brown presided over various objections and motions. Applicant referenced the introduction of Seagers' statement, Trial Counsel's directed verdict motion, and Trial Counsel's motion for a new trial. Applicant stated Judge Brown charged the jury.

A.H.J.

Applicant further stated Judge Brown answered various questions received from the jurors during deliberations. Applicant stated Judge Brown also sentenced him. Applicant concluded that he would not have wanted Judge Brown to preside because Trial Counsel had no experience with him.

Applicant further referenced a motion hearing where Judge Newman excused himself because he was the presiding judge during Applicant's trial. Applicant stated that Judge Newman explained that Judge Brown was sitting with him during the trial. Applicant stated Judge Brown was elected in February 2010. Applicant stated Judge Brown was not assigned to Applicant's trial. However, Applicant stated Judge Newman's calendar revealed that Judge Brown was sitting with Judge Newman during Applicant's trial.

Applicant noted that Seagers did not testify during his trial. Applicant stated that he never saw Seagers' statement prior to trial. Applicant accused the police of lying during Seagers' interview. Applicant noted that the police informed Seagers that Applicant had already spoken to them about the incident. Applicant stated that he never gave a statement to the police. Applicant stated Trial Counsel told him that Seagers' attorney was not going to allow him to testify against Applicant. Applicant referenced page 260-262 of the trial transcript and noted that Trial Counsel opened the door to Seagers' second statement coming in at trial. Applicant stated Trial Counsel did not ask questions that he would have liked Trial Counsel to ask. Specifically, Applicant would have wanted Trial Counsel to cross-examine Investigator Lail about her telling Seagers that Applicant had already spoken to police.

Applicant stated that Trial Counsel should have cross examined Dawkins about him consistently using the term "we" when testifying. Applicant stated Dawkins tried to place the blame on him. Applicant stated Trial Counsel should have pursued the issue of whether

Dawkins was "coached" by the Solicitor. Applicant further stated that Trial Counsel should not have opened the door to Dawkins' statement being read by Dawkins during trial. Applicant further stated Trial Counsel should have objected to a Brady violation when Kim Hannah testified. Applicant stated that he had never seen her statement.

Applicant stated Trial Counsel or Appellate Counsel should have raised the issue that there were missing portions of the transcript due to the tapes being switched out during the trial. Applicant referenced page 126 line 23 and page 132 line 13. Applicant stated that he did not know that there were only a certain number of days to raise this issue.

Applicant stated Trial Counsel was ineffective for failing to move to suppress the forensic evidence recovered from the crime scene. Applicant stated that there was no forensic evidence to tie the bullet recovered at the scene to the crime at issue. Applicant argued Agent Roberts exceeded the scope of his qualifications when he discussed the trajectory of the bullet. Applicant stated there was no "trajectory expert" at trial. Applicant claimed that an expert would have been able to tell how long the bullet had been present at the scene.

Applicant stated Trial Counsel should have argued harder for the dismissal of the attempted armed robbery charge during the directed verdict motion. Applicant stated Trial Counsel should have pointed out that there was only 18 cents on for the counter and it was never taken from the store. Applicant stated Trial Counsel should have referenced victim's testimony that this was not a typical stick up because there was never any demands made by the defendants.

Applicant stated Trial Counsel should have objected to the State's closing argument because it was bolstering. Specifically, Applicant stated Trial Counsel should have objected to the State arguing Kim Hannah was truthful and the State's reference to "awesome God."

Applicant further stated Trial Counsel should have requested a jury charge on the lesser included offense of strong armed robbery.

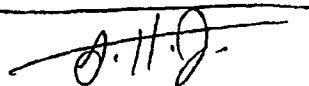
Applicant stated Trial Counsel was ineffective for failing to object to the jury charges as read by Judge Brown. Applicant noted that Judge Brown read the armed robbery charge then switched to assault and battery with intent to kill, then back to armed robbery. Applicant further stated Judge Brown failed to charge the jury on:

A conspiracy may be shown by circumstantial evidence and the conduct of the parties. In order to convict the defendant of conspiracy, the state must prove beyond a reasonable doubt not only that defendant knew of the unlawful conduct but that the defendant agreed to combine with the other persons for the purposes of accomplishing the unlawful conduct.

(Tr. p. 329 line 16—p. 330 line 15). However, Applicant noted that the transcript notes that a portion of Judge Brown's charge was inaudible. Applicant further alleged Trial Counsel should have requested that the jury questions be placed on the record.

Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the trial court erred in allowing Dawkins to read his statement. (Tr. p. 93). Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the trial judge abused his discretion in denying the mistrial due to a Brady violation. (Tr. p. 119). Applicant argued Appellate Counsel was ineffective for failing to brief the objection made by trial counsel to the line of questioning regarding Seagers' statement. (Tr. p. 261). Applicant argues Appellate Counsel was ineffective for failing to brief the issue of whether the trial court abused his discretion in denying Trial Counsel's motion for a new trial.

Applicant stated that he retained Trial Counsel and did fire him because he felt he was a good attorney at the time of his representation. Applicant claimed that he was unaware of all his grievances with Trial Counsel prior to and during the trial. Applicant noted that Trial Counsel

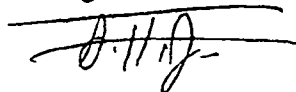


had represented him on other charges. Applicant stated this was not his first time being charged with criminal offenses.

Applicant stated that he never addressed the issue about being present at the preliminary hearing with Trial Counsel. Applicant claimed that he had no grievances with Trial Counsel until after he was sentenced. Applicant stated that he wanted the charges dismissed at his preliminary hearing. Applicant noted that he was indicted by the Williamsburg County Grand Jury following his preliminary hearing.

Applicant stated that Trial Counsel should have gone over the discovery material prior to trial. Applicant admitted that he was present during the robbery and that the victim shot him during the robbery. Applicant admitted that he was the driver of a white crown Victoria. Applicant stated that he would have taken a ten year plea offer, but would not have admitted his guilt. Applicant stated he would have told the judge that he was not guilty but that he could be found guilty due to the evidence against him. Applicant explained that he went in to the store three or four minutes after his co-defendants. As soon as he walked into the store, the victim fell to the ground and jumped up with a gun. Applicant claimed that the victim started shooting. Applicant claimed that he did not see any of his co-defendants with guns. Applicant acknowledged that Kim Hannah placed him with a gun prior to the robbery. Applicant stated that he went to Charles Bishop's house to seek medical attention. Applicant stated Charles Bishop was not employed in the medical field. Applicant stated Charles Bishop called the ambulance and he was taken to the hospital.

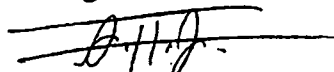
Applicant stated that he wanted Trial Counsel to bring out the fact that the investigator lied to Seagers. Applicant noted that Trial Counsel cross examined Dawkins about his plea deal with the solicitor's office.



Following Applicant's testimony, Trial Counsel was called to testify. Trial Counsel stated that he has been practicing law for thirty-five years. Trial Counsel stated that his practice includes both criminal and civil. Trial Counsel stated that he practices in Charleston, Horry, Georgetown, Sumter, Clarendon, Marion, Richland, and Williamsburg. Trial Counsel stated that he has an office in Kingstree, SC. Trial Counsel stated that this was a "local" case. Trial Counsel stated that he remembered the case. Trial Counsel stated that he was retained on January 15th or 16th, 2009. Trial Counsel stated he had represented Applicant on prior charges in Marion County. Trial Counsel stated that he got Applicant acquitted of the Marion County charges. Trial Counsel opined that he was prepared to try Applicant's case.

Trial Counsel stated that he recalled the preliminary hearing. Trial Counsel stated Applicant was not present because the magistrate judge was holding the preliminary hearing for his co-defendant. Trial Counsel stated Applicant requested a preliminary hearing, but the paperwork had not been processed. Trial Counsel stated he happened to be in the court room during co-defendant's preliminary hearing and Trial Counsel chose to waive Applicant's presence and proceed with the preliminary hearing at that time. Trial Counsel stated that it is better to have the client present, but you have to make a judgment call. Trial Counsel opined that they were not likely to receive a preliminary hearing because the Assistant Solicitor was prepared to present the indictment to the grand jury. Trial Counsel stated that it is not his typical practice to waive a preliminary hearing because you never know what information will come out during the preliminary hearing. Trial Counsel stated that a preliminary hearing is a good discovery tool.

Trial Counsel noted that the argument against the armed robbery charge was the exact same as his co-defendant. Trial Counsel noted Applicant would have been indicted by the grand



jury even if there was no probable cause found during the preliminary hearing. Trial Counsel stated the preliminary hearing is a good way to gain more information about the State's case. Trial Counsel stated that he immediately called Applicant following the preliminary hearing and requested that they set up a time to meet. Trial Counsel stated that he ordered the transcript from the preliminary hearing and went over it with Applicant.

Trial Counsel stated that he obtained discovery from Assistant Solicitor Barr and sent Applicant a letter that same day informing him of the receipt of the discovery. Trial Counsel stated Applicant knew exactly what was going on at trial. Trial Counsel recalled that there was a plea offer. Trial Counsel then stated that Applicant decided to "roll the dice" and proceed to trial. Trial Counsel opined that Applicant could have easily gotten acquitted of the charges. Trial Counsel stated Judge Newman would not accept negotiated pleas. Trial Counsel stated his clients always plead to a negotiated offer, except for compelling circumstances. Trial Counsel stated it was Applicant's decision to accept or reject a plea offer.

Trial Counsel stated that knowing who the presiding judge will be during trial is always a consideration. Trial Counsel stated it was not atypical to see two circuit judges presiding over a trial. Trial Counsel stated that this was the first time he has ever heard of two judges presiding over a trial being raised as an issue. Trial Counsel noted that Judge Newman and Judge Brown both presided over Applicant's trial. Trial Counsel opined that Applicant would get a fair shot with either Judge Newman or Judge Brown. Trial Counsel stated that Judge Brown tried a "good case." Trial Counsel stated that he was a little surprised when Judge Brown ran the five year sentence for weapons consecutively to Applicant's other charges. Trial Counsel could not recall whether Judge Newman stayed during the entire trial. Trial Counsel was certain Judge Brown

presided over the entire trial and did not leave the courtroom. Trial Counsel opined that there was simply no basis to object to Judge Brown presiding over Applicant's trial

Trial Counsel stated that he shared office space with his brother, Verdell Barr. Trial Counsel noted that the public index record showed that Judge Brown handled pleas on May 12, 2010, in Williamsburg County. Trial Counsel reiterated that Judge Brown never left the court room while the trial was taking place. Trial Counsel opined that there was no jurisdictional issue with Judge Brown presiding over Applicant's case. Trial Counsel stated that he did not object to Judge Brown presiding over the case because he did not see any procedural issue.

Trial Counsel stated that he had no intent to call Melvin Seagers as a witness. Trial Counsel stated that Seagers' attorney informed him that Seagers did not have a plea deal and his attorney was not going to allow him to testify. Trial Counsel noted that Seagers was the only person who could tell exactly what happened during the armed robbery, Trial Counsel stated that he did not continue to question Investigator Lail about Seagers' statement because he feared that Assistant Solicitor Barr would offer Seagers a plea deal to testify. Trial Counsel opined that he did not open the door to any harmful information during his cross examination of Investigator Lail.

Trial Counsel noted that Dawkins testified during trial. Trial Counsel opined that he successfully impeached Dawkins during trial. Trial Counsel noted that Dawkins admitted that he never heard a conversation between Applicant and Seagers about their intent to rob the victim.

Trial Counsel stated that he could not specifically recall the jury questions. However, Trial Counsel stated that had he felt that additional instructions were warranted then he would have requested them.

D. H. J.

Trial Counsel stated that a motion to suppress the forensic evidence recovered at the crime scene was not necessary. Trial Counsel noted that Applicant's entire defense was mistaken identity. Trial Counsel explained that whether a robbery occurred was not in dispute. As such, there was no reason to suppress the forensic evidence recovered at the scene because none of it linked Applicant to the crime. Trial Counsel noted that Applicant told him that he fired the gun at victim's head from point blank range. Trial Counsel stated that Applicant knew that he shot the bullet.

Trial Counsel stated that Kim Hannah could not put Applicant at the scene with a gun. Trial Counsel further noted that Dawkins did not know who shot the bullet. Trial Counsel opined that he did an excellent job of cross examining Dawkins.

Trial Counsel stated that he did not prepare his directed verdict argument ahead of time. Trial Counsel stated that Directed Verdict motions are made after the State presents their evidence. Therefore, Trial Counsel opined that he would not be able to fully prepare a directed verdict motion prior to the State's presentation of its case in chief. Trial Counsel stated that he did not request the lesser included offense of strong armed robbery because he did not feel the evidence would have warranted the charge.

Trial Counsel stated that he did not hear anything objectionable during Assistant Solicitor Barr's closing argument. Trial Counsel opined that Assistant Solicitor Barr's argument did not bolster Hannah's testimony. Trial Counsel further noted that he uses religious comments in most of his closing arguments. Trial Counsel stated that he would have objected to anything that he felt was prejudicial during closing arguments.

Trial Counsel stated that Judge Brown's jury instructions were not confusing. Trial Counsel opined that Judge Brown gave a proper jury instruction. Trial Counsel stated that he

typically does not object because he does not want to emphasize things. Trial Counsel opined that there were no egregious errors during Judge Brown's jury charge.

Following Trial Counsel's testimony, Abigail Cooper (hereinafter "Mother") was called to testify. Mother stated that she was Applicant's mom. Mother stated that there was a ten year plea offer. Mother stated that she sat through the trial. Mother stated Judge Brown was not there at the beginning of jury selection. Mother stated that Judge Newman left the trial on Wednesday and did not return.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant and Mother's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

OVERWHELMING EVIDENCE

Initially, this Court notes that Applicant can show no resulting prejudice stemming from any allegations of ineffective assistance of counsel as there is clear evidence of overwhelming guilt. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) (finding that where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial). Specifically, this Court notes the Victim identified Applicant as one of three defendants who robbed him. (App. p. 40 lines 18-25). Victim stated that he saw a white car outside running shortly before he was robbed. (App. p. 30 line 17—p. 31 line 2). Dawkins testified that Applicant owned a white Crown Victoria.

(App. p. 60 line 10-13). Although Victim could not positively identify Applicant as the shooter, it was undisputed that Applicant was in the store when the armed robbery took place. (App. p. 41 lines 8-12).

Further, Dawkins stated that he and Applicant committed the armed robbery. (App. p. 57 line 16—p. 58 line 16; p. 71 lines 7-12; p. 90 lines 10-13). Dawkins stated that he, Segars, and Applicant had run out of marijuana and they planned to rob the Victim in order to get more money to purchase marijuana. (App. p. 67 lines 2-25). Dawkins stated that Applicant was driving his white Crown Victoria when he robbed Victim. (App. p. 70 lines 12-14). During the robbery, the Victim fired several shots at the Applicant and his co-defendants using a .38 caliber pistol. (App. p. 33 line 22—p. 34 line 9). Dawkins testified that Applicant got shot by the Victim during the robbery. (App. p. 74 lines 21-22). Further, James Green of the South Carolina Law Enforcement Division (hereinafter "SLED") testified that the bullet recovered from Applicant's abdomen matched that of a .38 or .357 weapon.

Kim Hannah testified that she spent most of the day riding around with Applicant and his co-defendants. (App. p. 106-108). Hannah testified that Applicant was driving his white crown victoria. (App. p. 106 line 13—p. 107 line 6; p. 111 line 20-22). Hannah stated that she noticed a gun on the nightstand while she and Applicant were having sex. (App. p. 108 lines 17-25). Hannah stated that she noticed Applicant had the gun in his lap in the car on the drive back from Lake City, South Carolina. (App. p. 109 line 15—p. 110 line 12). Hannah stated that she never saw the gun in anyone else's possession other than Applicant. (App. p. 117 lines 2-11).

Notably, Applicant addressed the court prior to sentencing and apologized for everything that happened. (App. p. 341 lines 24-25). Applicant indicated that he learned from the mistakes he made and being shot was essentially a wakeup call for him to change his life. (App. p. 342

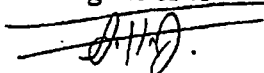
lines 1-3). See State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct.App.2010) (noting the defendant proclaimed his desire "to apologize to the Court for getting [himself] in this trouble"). Based off of the foregoing, there is clear evidence of overwhelming guilt. As a result, Applicant can show no prejudice from any of alleged allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,



but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Ineffective assistance of trial counsel for failure to have Applicant present at his preliminary hearing and for failure to make a viable argument for dismissal.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to make a viable argument for dismissal is wholly meritless. This Court notes that Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Trial Counsel stated that he happened to be present during Applicant's co-defendant's preliminary hearing and made the tactical decision to waive Applicant's presence and join in his co-defendant's preliminary hearing. Trial Counsel reasoned that a preliminary hearing is a great discovery tool. Trial Counsel stated that he feared that the Assistant Solicitor would present the

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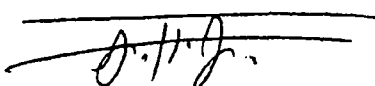
case to the grand jury and forego the preliminary hearing process. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

2. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to properly investigate and prepare for trial is meritless. This Court finds credible Trial Counsel's testimony that he reviewed discovery, met with Applicant, prepared a defense, and was prepared for trial. Notably, Applicant was acquitted of two of the four charges. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, this Court notes Applicant did not offer any credible evidence as to how Trial Counsel's alleged lack of preparation prejudiced him. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (noting mere speculation and conjecture on the part of respondent is insufficient to substantiate allegation that counsel's deficient performance was prejudicial to respondent).

3. Ineffective assistance of trial counsel for failure to properly advise Applicant regarding the State's case, available defenses and likely prison sentence before rejecting the ten year plea offer.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure properly advise Applicant of the State's case prior to him rejecting

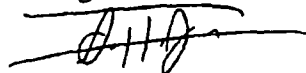
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the State's plea offer is without merit. This Court notes Applicant acknowledges that he was offered a ten year plea offer and chose to reject the offer based off of the advice of Trial Counsel. Applicant alleges that Trial Counsel advised him that he would most likely be sentenced to fifteen years if convicted at trial. Applicant further alleged that Trial Counsel advised him that he had a decent chance of getting acquitted at trial. Trial Counsel stated that he was surprised when Judge Brown gave Applicant a consecutive five years for criminal conspiracy. Trial Counsel testified that it was ultimately Applicant's decision to accept or reject the plea offer and Applicant chose to "roll the dice."

Notably, Applicant was sentenced to a total of twenty years. Furthermore, Applicant was acquitted of two of his four charges. This Court finds nothing about Trial Counsel's advice to Applicant regarding the plea offer fell below reasonable professional norms. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

**4. Ineffective assistance of trial counsel for failure to object to a switch in the presiding judge during the course of trial.
See Transcript p. 196.**

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to object to a switch in the presiding judge is wholly meritless. This Court finds credible Trial Counsel's testimony that Judge Brown presided over the entire trial. This Court notes that while it may be unusual for two circuit court judges to preside over a trial, Applicant has failed to meet his burden as defined by Strickland. Specifically, for an



applicant to be granted post-conviction relief as a result of ineffective assistance of counsel, the applicant must show that 1) counsel's performance was deficient, and (2) there is a reasonable probability that, but for counsel's errors, the result would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Court finds that Trial Counsel's performance was not deficient, and therefore was not ineffective. Furthermore, this Court finds Applicant has failed to present any credible evidence as to how he was prejudiced by Judge Brown presiding over his trial. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

5. Ineffective assistance of trial counsel for the handling of the cross-examination of Investigator Lail regarding the statements obtained from Melvin Segars, which resulted in the trial court overruling a hearsay objection on the grounds that trial counsel opened the door to the line of objectionable testimony on redirect.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's cross examination of Investigator Lail regarding Segars' statement is meritless. Specifically, Applicant argues Investigator Lail was allowed to discuss Segars' second statement about a gun over Trial Counsel's objection. (Tr. p. 262). This Court has reviewed the re-direct examination and finds nothing was so prejudicial as to affect the outcome of trial. Investigator Lail was not allowed to go into the substance of Segars' statement, but was merely able to acknowledge that Segars gave a second conflicting statement about a gun. At best this is merely impeaching Segars and casting doubt on his credibility towards law enforcement due to his conflicting statements. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

6. Ineffective assistance of trial counsel for failure to properly cross-examine Jeffrey Dawkins and Kim Hannah. Specifically, as to Jeffrey Dawkins, ineffective assistance of counsel for opening the door to the reading of his statement on redirect. Transcript p. 93.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to properly cross examine Jeffery Dawkins and Kim Hannah is meritless.¹

i. Ineffective assistance of counsel for opening door Dawkins reading his statement on redirect.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel opening the door to Dawkins reading his statement on redirect is meritless. This Court has noted that Trial Counsel properly conducted a thorough cross-examination of Dawkins. Specifically, Trial Counsel attempted to impeach Dawkins by pointing out various discrepancies in his trial testimony as compared to his two statements given to the police. Despite Applicant's assertion to the contrary, the Assistant Solicitor is allowed to rehabilitate Dawkins on redirect by allowing Dawkins to reference his two statements. Nothing about Dawkins referencing his prior statements on redirect was improper. Based off of the forgoing, this Court finds Applicant has failed to prove that Trial Counsel's cross-examination of the state's witness was deficient. Furthermore, Applicant failed to present any credible evidence that he was prejudiced.

ii. Ineffective assistance of counsel for failing to properly cross-examine Kim Hannah.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to properly cross examine Kim Hannah is meritless. This Court notes that the manner and extent of cross-examination should not be second-guessed. See Sallie

¹ This Court addresses this allegation as two separate allegations of ineffective assistance of counsel.

v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); United States v. Nersesian, 824 F.2d 1294, 3121 (2d Cir. 1987) ("decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature" and will not support an ineffective assistance claim). This Court has reviewed the cross-examination of Kim Hannah conducted by Trial Counsel and finds nothing deficient. This Court notes Trial Counsel is a seasoned criminal defense attorney who has tried countless criminal trials and conducted numerous cross-examinations.

Furthermore, Applicant failed to show how Trial Counsel's failure to "adequately cross-examine" Kim Hannah was prejudicial. Specifically, this Court notes Applicant failed to produce Kim Hannah for the additional questioning that Applicant alleges should have been asked. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). This Court cannot speculate as to how Kim Hannah would have responded to the additional questions Trial Counsel should have asked during cross examination. See Glover v. State, supra, 318 S.C. at 498-99, 458 S.E.2d at 540. (Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.) Based off of the foregoing, this Court finds that this allegation should be denied and dismissed with prejudice.

7. Ineffective assistance of trial and/or appellate counsel for failure to address the missing portion of the testimony of Kim Hannah in the transcript and issue with the tape recordings. Transcript pp. 126, 132.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's/Appellate Counsel's failure to object to the missing portion of the transcripts is meritless. It is incumbent upon Applicant to present some sort of credible evidence showing that the information missing from the transcript was somehow prejudicial in either the

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trial or appellate process. See Glover v. State, supra, 318 S.C. at 498-99, 458 S.E.2d at 540. (Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice). Instead, Applicant merely pointed to the excerpts missing from transcript without presenting any credible evidence as to what actually took place during the portions that were missing. Because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

8. Ineffective assistance of trial counsel for failure to move to suppress the forensic evidence recovered from the crime scene and/or object to the testimony of Deputy Scott that exceeded the scope of a lay witness.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to move to suppress the forensic evidence is wholly meritless. This Court notes no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

In the instant case, Trial Counsel testified that their trial strategy was to challenge the identification of Applicant. Trial Counsel stated that they were not attempting to dispute whether a robbery took place or whether someone shot at the Victim. Therefore, it would have been superfluous to try and suppress the forensic evidence found at the scene of the crime. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court notes Applicant simply makes the bare assertion that Trial Counsel should have filed a motion without providing any credible evidence that a motion to suppress the forensic evidence recovered would have been successful. It is incumbent upon Applicant to provide this Court with the appropriate arguments and evidence proving that the forensic evidence would have been suppressed had Trial Counsel made the motion. This Court finds Applicant has fallen well short of its burden of proof as required by Strickland. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

9. Ineffective assistance of trial counsel to argue more fully for a directed verdict on the attempted armed robbery charge.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to more fully argue his directed verdict motion is meritless. This Court notes Trial Counsel is an experienced criminal defense attorney who has participated in numerous trials and argued several directed verdict motions. This Court has reviewed the directed verdict motion and finds nothing about Trial Counsel's argument fell below professional norms. Furthermore, this Court notes Applicant failed to show that Trial Counsel's alleged errors or omissions during the directed verdict arguments resulted in the denial of the directed verdict

motion. To the contrary, this Court has reviewed the entire transcript and finds that there was ample evidence to overcome any directed verdict argument presented. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991) (when ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight). Based off of the foregoing, this Court finds Applicant's allegation should be denied and dismissed.

10. Ineffective assistance of trial counsel for failure to object to the State's closing argument due to vouching/bolstering the credibility of a witness and attempting to invoke the passions and prejudice of the jury. Transcript pp. 293-5.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to object to the solicitor's closing arguments is without merit. This Court notes a "closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions." State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. at 609-10, 602 S.E.2d at 744. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362,

373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

This Court, having reviewed the entire argument, finds it not to have been objectionable. This Court finds that the Solicitor made a valid argument regarding credibility and the oath taken by the victim to tell the truth to the jury. Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

11. Ineffective assistance of trial counsel for failure to request a charge on lesser included offenses.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to request a lesser charge on the lesser included offense of strong armed robbery is meritless. Strong arm robbery is defined under common law "as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Rosemond, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003). The trial court is required to charge a jury on a lesser included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser included offense when there is no evidence that the defendant committed the lesser rather than the greater offense. State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994).

This Court agrees with Trial Counsel's opinion that strong armed robbery was not appropriate charge given the factual circumstances in this case. Notably, Applicant and his co-defendants used a deadly weapon to rob the Victim. Therefore, strong armed robbery would not be an appropriate charge. Based off of the foregoing, this Court finds this allegation should be denied and dismissed because there was no evidence that the Applicant committed the lesser included offense of strong armed robbery rather than the greater offense of armed robbery.

12. Ineffective assistance of trial counsel for failure to object to the jury charge. Transcript pp. 326-9.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to object to the jury charge is meritless. "In reviewing jury charges for error; we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Id. at 318, 577 S.E.2d at 464; State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989) (recognizing that jury instructions must be considered as a whole and if as a whole, they are free from error, any isolated portions that might be misleading do not constitute reversible error). A jury charge that is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). This Court has reviewed the jury charge *as a whole* and finds that the jury charge was free from error. Based off of the foregoing, this Court finds that Trial Counsel was not deficient for failing to object to the jury charge; this allegation should be denied and dismissed with prejudice.

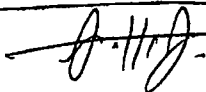
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13. Ineffective assistance of trial for failure to address the missing portion of the court's charge from the transcript. Transcript p. 331.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Trial Counsel's failure to address the missing portion of the transcript is wholly meritless. It is incumbent upon Applicant to present some sort of credible evidence or arguments showing that the information missing from the transcript was somehow prejudicial in either the trial or appellate process. See Glover v. State, *supra*, 318 S.C. at 498-99, 458 S.E.2d at 540. (Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice). Instead, Applicant merely pointed to the excerpts missing from transcript without presenting any evidence or testimony as to what actually took place during the portions that were missing. Because Applicant failed to present any credible evidence or testimony on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on



appeal that constituted reversible error).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is 'difficult to demonstrate that counsel was incompetent.'" United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

14. Ineffective assistance of Appellate counsel for failure to address the missing portion of the court's charge from the transcript, Transcript p. 331, failure to raise the objection to Jeffrey Dawkin's reading his statement, Transcript pp. 93, failure to raise the motion for mistrial due to Brady violation, Transcript p. 119, failure to raise the objection to the line of questioning regarding Melvin Segar's statement, Transcript p. 261, and failure to raise the motion for a new trial, Transcript p. 339.

This Court finds Applicant's allegation that he received ineffective assistance of appellate counsel for failing to address the missing the portion of the court's jury charge is meritless. This Court notes Applicant merely pointed to the excerpts missing from transcript without presenting any evidence as to what actually took place during the portions that were missing. Notably, Applicant presented no testimony from Appellate Counsel as to why he chose not to address this issue on appeal. This Court notes that Applicant's appellate counsel submitted and Anders brief on Applicant's behalf.

This Court finds Applicant's allegation that he received ineffective assistance of appellate counsel for failing to address the objection to Jeffrey Dawkins reading his statement on redirect is meritless. Notably, Applicant presented no testimony from Appellate Counsel as to why he chose not to address this issue on appeal. Furthermore, Applicant has not shown he was prejudiced by appellate counsel's decision not to brief the issue of Dawkins reading his statement during redirect examination because the Court of Appeals' dismissal of the Anders brief indicates it found no reversible error due to the judge overruling counsel's objection. Furthermore, because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

This Court also finds Applicant's allegation that he received ineffective assistance of appellate counsel for failing to address the motion for a mistrial due to Brady violation is

meritless. Furthermore, Applicant has not shown he was prejudiced by appellate counsel's decision to file an Anders brief because the Court of Appeals' dismissal indicates it found no reversible error in denying trial counsel's motion for a mistrial. Accordingly, Applicant has not demonstrated appellate counsel was ineffective. Furthermore, because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

This Court also finds Applicant's allegation that he received ineffective assistance of appellate counsel for failing to address the objection to the line of questioning regarding Melvin Segars' statement is meritless. Furthermore, Applicant has not shown he was prejudiced by appellate counsel's decision to file an Anders brief because the Court of Appeals' dismissal indicates it found no reversible error in the trial court overruling counsel's objection. Furthermore, because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

This Court also finds Applicant's allegation that he received ineffective assistance of appellate counsel for failing to raise the motion for a new trial is meritless. Furthermore, Applicant has not shown he was prejudiced by appellate counsel's decision to file an Anders brief because the Court of Appeals' dismissal indicates it found no reversible in the trial court denying Trial Counsel's motion for a new trial. Furthermore, because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina Supreme Court outlined the Anders procedure as follows:

[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the

reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the Anders procedure. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citations omitted). Accordingly, this Court must presume the Court of Appeals reviewed these issues before dismissing Applicant's direct appeal. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). If the Court of Appeals believed the missing portions of the transcript were problematic, it would have directed counsel to file a merits brief.

Furthermore, the United States Supreme Court has indicated applicants face a difficult burden to prove prejudice in cases where counsel has filed an Anders brief. Smith v. Robbins, 528 U.S. 259, 287 (2000) ("[I]n most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous."). The burden is high because "it is reasonable to presume that when the court affirms an Anders appeal it has fully considered and rejected all potential issues that were apparent on the face of the record." Towbridge v. State, 45 So. 3d 484, 487 (Fla. Dist. Ct. App. 2010). The Anders procedure requires the court to independently examine the trial proceedings and consider "any errors apparent on the face of the record." Id. at 486-87 (citations omitted); see also McHam, 404 S.C.

at 475, 746 S.E.2d at 46 (appellate court reviews all preserved issues for merit). The issue of the missing portion of the transcript is clearly apparent from the face of the transcript. Applicant presented no evidence that the Court of Appeals overlooked this issue. Therefore, this Court must presume the Court of Appeals' compliance with the Anders procedure included a review of the missing portion of the transcript, and the Court of Appeals dismissal of the appeal indicated it found no fault with missing portion of the transcript. Accordingly, Applicant has not demonstrated appellate counsel was ineffective. Furthermore, because Applicant failed to present any credible evidence on this issue, this Court finds the allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

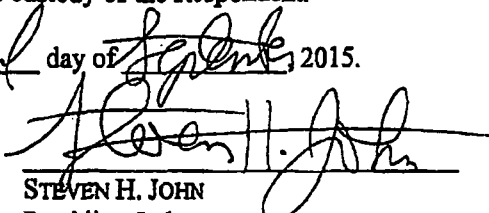
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conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2nd day of September, 2015.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

 South Carolina

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

ANTWINE MATTHEWS, #340876

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

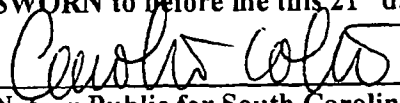
Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 12725
Columbia, SC 29211

This 21st day of October, 2015.



DANIEL GOURLEY
Attorney for Respondent

SWORN to before me this 21st day of October, 2015.



Notary Public for South Carolina.
My Commission Expires: 5/20/2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	THIRD JUDICIAL CIRCUIT
	)	
Antwine Matthews, #340876,	)	2013-CP-45-006
Applicant,	)	
v.	)	MOTION FOR REHEARING PURSUANT
	)	TO RULE 59(A), SCRCP, AND/OR
State of South Carolina,	)	MOTION TO ALTER OR AMEND
<u>Respondent.</u>	)	PURSUANT TO RULE 59(E), SCRCP

COMES NOW Applicant, through his undersigned attorney, and requests the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amendment of the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on January 8, 2013 and amended on June 12, 2015. Respondent submitted a Return on June 17, 2013. An evidentiary hearing was convened on July 16, 2015 at the Sumter County Courthouse in front of the Honorable Steven H. John. Applicant was present and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Daniel Gourley, Assistant Attorney General.

At the conclusion of the hearing, the Honorable Steven H. Brown took the matter under advisement. Thereafter, the request was made for Respondent to submit a proposed Order of Dismissal. Respondent complied, and an Order of Dismissal was signed by the Honorable Steven H. John on September 2, 2015. The Order was filed on September 16, 2015, and Applicant, through counsel, received a signed and filed copy of the Order on October 22, 2015.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific

findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court review the evidentiary hearing transcript, reconsider the standing Order of Dismissal, reconsider the attached Order proposed by Applicant and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCP.

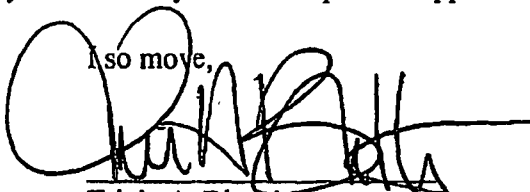
In support of the instant Motion, Applicant would submit the following:

1. The standing Order fails to address the following verbal amendment made at the evidentiary hearing: Ineffective assistance of counsel for failure to object to the Court's response to the jury's questions and recharge. Applicant would request that this Court properly address this issue, which was raised at the evidentiary hearing.
2. To ensure that the standing Order properly addresses the testimony offered and that such testimony is properly used as the basis for this Court's findings, Applicant would respectfully request that the transcript be obtained and the Order written in consideration of the transcript of the evidentiary hearing.
3. The standing Order makes a threshold finding of overwhelming evidence of guilt, and states that such finding is applicable to all issues raised. Applicant submits that it is an error of law to make such a finding respecting the issue raised regarding the presiding judges, which implicates matters of jurisdiction, and the issue raised regarding Applicant's rejection of the plea offer.

Interestingly, the majority of appellate decisions in South Carolina involving a

finding of overwhelming evidence of guilt that precludes post conviction relief involve matters related to jury instructions. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994), Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (2003), Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (1991). Applicant asks this Court to reconsider his finding of overwhelming evidence of guilt as Applicant submits it is also inapplicable to his case as a whole.

For the above stated reasons, Applicant would respectfully request that this Court obtain and review the evidentiary hearing transcript, hold a motion hearing to allow Applicant, through counsel, to address this Court regarding the standing Order of Dismissal. Applicant would further request that this Court reconsider the standing Order of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

Also move,


Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

October 30, 2015
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

Antwine Lamar Matthews, 340876,)
 Applicant,)

2013-CP-45-0006

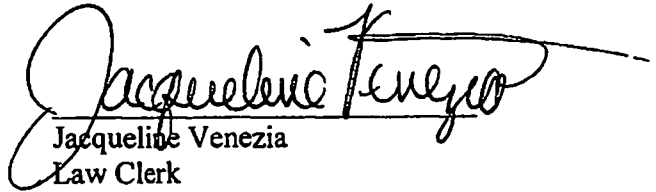
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Jacqueline Venezia, hereby certify that I hand delivered this 30th day of October, 2015, a copy of a Rule 59 Motion, to Daniel Gourley of the Attorney General's Office, at:

Office of the Attorney General
 Att: Daniel Gourley, Ast. AG
 100 Assembly Street, 5th Floor
 Columbia, SC 29201


 Jacqueline Venezia
 Law Clerk
 Law Office of Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

October 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

Antwine Lamar Matthews, 340876

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-45-0006

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 12725

Columbia, SC 29211

phone: 803-988-0008 fax: 8030988-8070

e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:

Daniel Gourley, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Rule 59 Motion

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 30, 2015

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT:☒ EXEMPT:☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Antwine Matthews, #340876,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-45-006

**RETURN TO APPLICANT'S "MOTION
TO RECONSIDER"**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Reconsider," would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true billed indicted at the May 2009 term of the Williamsburg County Grand Jury for Assault with Intent to Kill, Attempted Armed Robbery, Possession of a Weapon during a Violent Crime, and Criminal Conspiracy (2009-GS-45-90). Charles D. Barr, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Applicant was found guilty of Attempted Armed Robbery and Criminal Conspiracy, and on May 14, 2010, Applicant was sentenced to fifteen years for Attempted Armed Robbery and to a consecutive term of five years for Criminal Conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tristan Shaffer, Esquire and Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Matthews, Op. No. 2012-UP-508 (Ct. App. filed September 5, 2012). The Remittitur was issued on September 24, 2012.

II.

Applicant filed an application for post-conviction relief on January 8, 2013 and amended on June 12, 2015. An evidentiary hearing into the matter was convened July 16, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by counsel, Tricia Blanchette, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. By written Order signed September 2, 2015 and filed September 16, 2015, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. On October 30, 2015, Applicant filed a "Motion to Reconsider." This Return follows.

III.

In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's motion should be denied.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 13, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

2013-CP-45-006

ANTWINE MATTHEWS, #340876,)

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 to Applicant's "Motion to Reconsider"** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 12725
Columbia, SC 29211

DATED this 16th day of November, 2015.


Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

ANTWINE MATTHEWS, #340876)

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

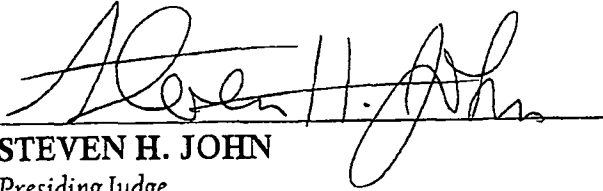
THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2013-CP-45-006

A CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

ORDER DENYING MOTION TO
RECONSIDER

Following the Court's September 2, 2015 Order, Antwine Matthews, by and through his attorney, Tricia A. Blanchette, Esq., requested the Court by his motion dated October 30, 2015, to reconsider the previous Order denying and dismissing the Application for Post-Conviction Relief with prejudice. The Court has reviewed the Applicant's Motion and the Respondent's Return and finds that the Court's Order of Dismissal contained the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC, and the Court properly ruled on all issues presented at the post-conviction relief hearing. Therefore, it is

ORDERED that the Applicant's Motion to Reconsider is denied, and the prior Order of Dismissal is reaffirmed *in toto*.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

November 23, 2015
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
 COUNTY OF WILLIAMSBURG) **ASSAULT WITH INTENT TO KILL, ATTEMPTED
 ARMED ROBBERY, POSSESSION OF A
 WEAPON DURING VIOLENT CRIME AND
 CRIMINAL CONSPIRACY**

At a Court of General Sessions, convened on May 11, 2009, the Grand Jurors of
 WILLIAMSBURG County present upon their oath:

COUNT ONE – ASSAULT WITH INTENT TO KILL

That **JEFFREY L. DAWKINS, MELVIN LEE SEGARS, III** and **ANTWINE L. MATTHEWS** did in Williamsburg County on or about December 31, 2008, violated the Common Law of State of South Carolina (1976), as amended, in that they with malice aforethought committed an assault upon the victim by shooting at the victim.

COUNT TWO – ATTEMPTED ARMED ROBBERY

That **JEFFREY L. DAWKINS, MELVIN LEE SEGARS, III** and **ANTWINE L. MATTHEWS** did in Williamsburg County on or about December 31, 2008, violated Section 16-11-330 (B) of the Code of Laws of South Carolina (1976), as amended, in that they attempt to take cash or merchandise for the person of victim, by means of force or intimidation cash or merchandise of the said victim.

A CERTIFIED TRUE COPY

Sharon W. Staggers

SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

09 MAY -7 PM 2:54

FILED

COUNT THREE – POSSESSION OF A WEAPON DURING VIOLENT CRIME

That **JEFFREY L. DAWKINS, MELVIN LEE SEGARS, III** and **ANTWINE L. MATTHEWS** did in Williamsburg County on or about December 31, 2008, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT FOUR – CRIMINAL CONSPIRACY

That **JEFFREY L. DAWKINS, MELVIN LEE SEGARS, III** and **ANTWINE L. MATTHEWS** did in Williamsburg County on or about December 31, 2008, violated Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unite, combine, conspire, confederate and/or agree with each other for the purpose of committing the crimes of Assault with Intent to Kill and Attempted Armed Robbery.

A CERTIFIED TRUE COPY
Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

FILED
 09 MAY -7 PM 2:54
 CLERK OF COURT
 WILLIAMSBURG COUNTY, S.C.

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

C. Kelly Jackson
 SOLICITOR

WITNESSES

SHERIFF'S OFFICE

Pamela Lail

ARREST WARRANT NUMBER

M 060317 - 321 & M 060310 - 316

D/A: 12/31/08

ACTION OF GRAND JURY

*True Bill**Sara Huggins*

Foreperson of Grand Jury

Date: 5/7/09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-45-

90

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE

vs.

JEFFREY L. DAWKINS

MELVIN LEE SEGARS, III

ANTWINE L. MATTHEWS

Indictment for

ASSAULT WITH INTENT TO KILL,
 ATTEMPTED ARMED ROBBERY,
 POSSESSION OF A WEAPON DURING
 VIOLENT CRIME AND CRIMINAL
 CONSPIRACY

C. KELLY JACKSON, SOLICITOR

FILED

09 MAY -7 PM 2:54

CAROLINE E. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

A CERTIFIED TRUE COPY

Sharon W. Staggers

SHARON W. STAGGERS

CLERK OF COURT

WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2009-GS-45-0090

STATE VS.

A CERTIFIED TRUE COPY

ANTWINE L. MATTHEWS

A/W#: M060312

AKA:

SHARON W. STAGGERS

Date of Offense: December 31, 2008

Race: Black

Sex: Male

CLERK OF COURT

S.C. Code §: 16-11-0330(A)

DOB: [REDACTED] 1990

SS#:

WILLIAMSBURG COUNTY

CDR Code #: 0139

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Attempted Armed Robberyin violation of § 16-11-330(B) of the S.C. Code of Laws, bearing CDR Code # 0101216
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lyndell V. Barr 8443
 Solicitor

Defendant

Charles D. Barr
 Attorney for Defendant

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 _____ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Defendant 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 _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 _____

\$56-1-286 (DUI Breath Test) \$25 _____

\$56-5-2995 (DUI Assessment) \$12 _____

\$35.13 (Public Def/Prob) \$500 _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 _____

\$50-21-114(BUI Breath Test Fee) \$50 _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea _____

3% to County (if paid in installments) _____

\$90.11 TP (SCCJA Surcharge) \$5 _____

TOTAL _____

_____ 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, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Court Reporter: _____

Clerk of Court/Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE

VS.

ANTWINE L. MATTHEWS

AKA:

Race: Black

Sex: Male

DOB: [REDACTED], 1990

SS#:

Address:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-45-0090

A CERTIFIED TRUE COPY

Sharon W. Stagg
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

A/W#: M060315

Date of Offense: December 31, 2008

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Conspiracyin violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 4 1 9
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Samuel V. Barr 8443
 Solicitor

Defendant

Charles D. Barr
 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: Attempted Armed Robbery☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

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
§56-1-286 (DUI Breath Test)	\$25
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
§90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

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, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
 212 / 18 / 10
 5-14-10