

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable William H. Seals, Circuit Court Judge

ALONZA DENNIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000089

APPENDIX

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1 A. Yes, ma'am.

2 Q. And this is a convenience store where children
3 come by after school to buy their snacks, right?

4 A. Yes, ma'am.

5 Q. And this is a place where school buses come and
6 get their gas.

7 A. Yes.

8 MR. GRIMES: Your Honor, objection. There
9 has been no evidence that there are school buses with
10 children at the store this day.

11 THE COURT: Sustained.

12 BY MS. SHEALY:

13 Q. You pull this weapon out, you let it kick once,
14 you let it kick twice, you let it kick a third time, but
15 that wasn't enough, in that public parking lot of
16 Kangaroo, to scare Mr. Dennis?

17 MR. GRIMES: Objection. Asked and answered.

18 THE COURT: Overruled. It's
19 cross-examination.

20 BY MS. SHEALY:

21 Q. Is that correct?

22 A. Scared, because I was scared.

23 Q. I understand that, but I'm trying to figure out
24 how many times do you need to pull the trigger and how
25 many times does a bullet need to fly for you to think

1 that Mr. Alford was significantly scared? He never shot
2 back, did he?

3 A. No, ma'am.

4 Q. He valued your life more than you valued his; is
5 that right?

6 MR. GRIMES: Objection. Calls for
7 speculation.

8 MS. SHEALY: It's not speculation when I'm
9 asking him.

10 THE COURT: Overruled.

11 THE WITNESS: If that's how you feel about
12 it, yes.

13 BY MS. SHEALY:

14 Q. Okay. Three shots, how about the fourth shot?
15 Not enough still?

16 A. No, ma'am.

17 Q. Got to have that fifth shot, five shots,
18 Mr. Alford. That's how many it takes to scare you, and
19 during your one, your two, your three, your four, your
20 five shots, Mr. Alford never shot at you; is that
21 correct?

22 A. Yes, ma'am, but it was in a way I shot at him,
23 fast, because I was fast, like, pow, pow, pow -- I was
24 fast.

25 Q. You're just a quick shoot?

1 A. Quick shoot.

2 Q. Oh, I see. You're quick, and it takes a certain
3 number to significantly scare him, right?

4 A. Yes, ma'am. And he still had his hand on his gun,
5 so I didn't know -- he still wanted to come, you know --

6 Q. He wanted to --

7 A. He still keep his hand right here.

8 Q. Mr. Dennis, let me ask you this: The truth of the
9 matter is you're a little jittery that day because you
10 needed a fix of crack cocaine; isn't that true?

11 A. No.

12 Q. And you tried to sell this weapon to help you buy
13 some; isn't that true?

14 A. I don't know that. I know when I got it from
15 Kaylab that's the first time I have seen it.

16 Q. And when you were left at the house at Quan's
17 under the story you've told us today --

18 A. Yes, ma'am.

19 Q. -- those guys, La Seto and Kaylab, they told you,
20 we don't want you involved; is that right?

21 A. Yes, ma'am.

22 Q. And they said, We don't need you; is that correct?

23 A. Yes, ma'am.

24 Q. And in your written statement to Detective
25 Lawrence, you said, They didn't need me; is that correct?

1 A. Yes, ma'am.

2 Q. So tell the jury if it happened the way you said
3 it happened, they're talking about robbing somebody.

4 A. Yes, ma'am.

5 Q. And they're loading you up in the car and they're
6 not taking you; is that right?

7 A. I left before them.

8 Q. You left before they did.

9 A. Yes, ma'am.

10 Q. You're saying the granddaddy left before the boys
11 did?

12 A. The granddaddy came out of the house and Quan said
13 they didn't want -- they didn't want to use me, and Quan
14 said, Granddaddy, could you take Alonza back to the
15 store, and he said yeah, and we left.

16 Q. Why didn't you go to Murray's, because isn't that
17 where were you heading before?

18 A. No. I changed my mind.

19 Q. I bet you did change your mind because you got
20 wind of some money and some clothing, right? Maybe a
21 little drugs, try out that pipe?

22 A. No, ma'am.

23 Q. Well, you didn't go to your buddy's house?

24 A. Not again.

25 Q. You were there when they talked about meeting him

1 at the Kangaroo station, right?

2 A. No, ma'am.

3 Q. So you're saying you didn't know that either.

4 A. I know -- I knew Mr. Moses. I seen Mr. Moses. I
5 know he's a nice person, and I know --

6 Q. That's not what I'm asking you, Mr. Dennis. I'm
7 asking you a question.

8 MS. EHRLICH: Is he allowed to explain his
9 answer?

10 MS. SHEALY: He's not answering it.

11 THE COURT: Ask the question, answer the
12 question. If you need to explain your answer, you can
13 explain your answer. Whatever it is, go ahead.

14 BY MS. SHEALY:

15 Q. Did you know or didn't you know that they were
16 planning on meeting whoever it was that's coming that
17 they're going to rob at the Kangaroo?

18 A. No, ma'am.

19 Q. You didn't know that?

20 A. No, ma'am.

21 Q. You just happened upon the Kangaroo while those
22 guys are parked at the pump; is that right?

23 A. Yes, ma'am.

24 Q. And you get in that car with them when they're
25 parked over at the pumps?

1 A. No, ma'am. They came and pulled it over, the way
2 I was.

3 Q. Over by the tree?

4 A. Yeah. It came -- like, this is the end of the
5 store. Like, all this is the store area. It came from
6 parked this way and stopped right here, and Mr. Moses'
7 car was right here. And I got in the car right here, and
8 Mr. Moses was right there.

9 Q. So you're saying there was another little route
10 these guys took that hasn't been testified to yet.
11 You're saying they went from the pumps over to you and
12 then to Moses?

13 A. Then to Mr. Moses.

14 Q. Oh, okay. Well, when you get in that vehicle, do
15 you get in the front seat or the back seat?

16 A. In the back, behind the driver.

17 Q. Okay. And when you get in then, is this gun
18 laying on the back seat?

19 A. On the back seat, yes.

20 Q. How did you get in the back seat?

21 A. I got in -- open the door and got in the back
22 seat.

23 Q. And when you look in there and you see that gun,
24 you don't get back out of that car?

25 A. I didn't see it when I got in. I saw all the guys

1 first and I got in and they said, Get the gun. And I
2 closed the door, and they said get the gun, and that is
3 the man right there. And I look up and I see him. I see
4 it was Mr. Moses.

5 Q. You're how old, Mr. Dennis?

6 A. Forty-six.

7 Q. You're a grown man.

8 A. Yes, sir.

9 Q. And under your theory, you're going to let these
10 guys tell you to take a gun out when somebody is meeting
11 them at a gas station? You're just going to do that?

12 A. I'm a little old, but I got a little sense. Them
13 little guys like that, a gun like that could hurt you.

14 Q. Well, a gun like that hurt Mr. Alford, didn't it?

15 A. Yes, ma'am.

16 Q. It hurt him badly, didn't it?

17 A. Yes, ma'am.

18 Q. It could have killed him, couldn't it have?

19 A. Yes, yes, ma'am.

20 Q. But, nevertheless, when you say these guys told
21 you, Get the gun and get out that you didn't.

22 A. Yes, ma'am.

23 Q. Now, you have testified and you've given
24 statements and never have you said Quan had a gun, and he
25 took that gun and he pointed it at you and said, You're

1 going to help us. That never happened, did it?

2 A. No, ma'am.

3 Q. And Kaylab never took a gun out, lifted his shirt,
4 put it in a pocket and threatened to kill him, did he?

5 A. No, ma'am.

6 Q. They never said to you, Alonza Dennis, You help us
7 or we're going to hurt your family? They never said
8 that, did they?

9 A. No, ma'am.

10 Q. They never said, If you don't get out with a gun
11 in broad daylight and pull it on that guy and rob them,
12 you're in trouble. They never said that to you, did
13 they?

14 A. No, ma'am.

15 Q. You, a grown man, chose to do what they told you
16 to do under your theory; is that right?

17 A. Yes, ma'am.

18 Q. And then they never told you shoot him, did they?

19 A. No, ma'am.

20 Q. Okay. So even if you're saying that they tried --
21 that they're the ones who made you pick the gun up, you
22 chose to shoot five times; is that correct?

23 A. Yes, ma'am, defending myself.

24 Q. Defending yourself?

25 A. Yes.

1 Q. You agree Moses Alford had a right to pull his gun
2 at some point, don't you?

3 A. No, ma'am.

4 Q. You don't agree that he did?

5 A. No, ma'am.

6 Q. Let me ask you something: You heard Mr. Alford
7 testify that this weapon was pointed at him.

8 A. Yes, ma'am.

9 Q. And you said, Give me everything.

10 MR. GRIMES: Objection, Your Honor. She's
11 pitting witnesses.

12 THE COURT: I wouldn't say that. Go ahead.

13 BY MS. SHEALY:

14 Q. You knew that clothes were a possibility and money
15 was a possibility, right?

16 A. I don't --

17 Q. You wanted it all. You didn't just want the
18 T-shirt or the Spiderman shoes, you wanted the money and
19 you wanted the clothing. And then maybe, maybe tonight's
20 the night, just maybe, for the first time in my life,
21 I'll use a crack pipe and enjoy that. That is what was
22 on your mind, wasn't it?

23 A. No, ma'am.

24 Q. So you're telling this jury that you, La Seto, and
25 Kaylab get out at the same time?

1 A. Yes, ma'am.

2 Q. Somebody else is left in the car.

3 A. Yeah, there was somebody.

4 Q. Was there somebody else in the car?

5 A. Yes, ma'am.

6 Q. And you weren't paying attention enough to know
7 who it was in the car?

8 A. No, ma'am.

9 Q. Because you kind of had your mind on one thing,
10 right? Robbing him.

11 A. No, ma'am. I didn't need to do that.

12 Q. No, you didn't need to do that.

13 A. No, ma'am.

14 Q. No, you didn't need to do that. Now, are you
15 typically good with a gun, pretty good shot?

16 A. No, ma'am.

17 Q. Now, let me ask you this -- never mind this. Let
18 me ask you then, on this day that you're sending out the
19 warning shots, tell the jury, do you shoot them up?

20 A. No, ma'am.

21 Q. Oh, so you don't take the gun and as a warning to
22 Mr. Alford shoot up, you shoot towards him, right?

23 A. On the side of him.

24 Q. The side of him.

25 A. Yes, ma'am.

1 Q. Did he run over to receive the shots?

2 A. No, ma'am.

3 Q. Okay. So you agree then that you are a doggone
4 good shot, right? You nail him in the arm; you nail him
5 in the leg. You shoot the man in his back. Right?

6 A. Right.

7 Q. And, again, that is just a lucky shot. You're
8 warning him, scaring him.

9 A. Yes, ma'am.

10 Q. Just to scare him?

11 A. Just to scare him. I could see that my hand
12 aim -- like you aim at anything else with your hand, you
13 could see where it was aiming at. If you want to aim at
14 you, I got my hand, I'm aiming at you. I'm going to hit
15 you, straight up. But if I don't want to hit him, my
16 hand will be this way, and that is where I was aiming.

17 Q. Well, then how did it happen? How did it nail
18 him?

19 A. I don't know.

20 Q. Magic, kind of like the crack pipe in the pocket?

21 A. Not magic, no, ma'am.

22 Q. Just to make sure I'm absolutely clear, even with
23 the version you're giving today, there were no threats
24 made to you.

25 A. No.

1 Q. No one threatened you.

2 A. They threatened me, like, and I was scared of
3 them.

4 Q. So, in other words, because one of them resembled
5 a character from a television show, you needed to shoot
6 Mr. Alford?

7 A. No, ma'am.

8 Q. Are you always willing to shoot when somebody has
9 a mean face?

10 A. No, ma'am, but it's a chance you're going to take.
11 Every chance you got, you take it the right way, you
12 know, you might don't have a chance all the time, you
13 know, if you take a chance and then you might end up
14 getting hurt or shot or killed.

15 Q. So the choice you made that day, under what you're
16 telling us now --

17 A. Yes, ma'am.

18 Q. -- is better you get killed than I get killed; is
19 that right?

20 A. No, ma'am. I was going to leave everybody live.
21 I didn't want to hurt Mr. Moses.

22 Q. You were hoping everybody lived.

23 A. Yes, ma'am.

24 Q. When you finish with your fifth shot, do you stop
25 and run in the store and say, Oh, my God, I hit him and I

1 didn't mean him, call 911? Do you do that?

2 A. No, ma'am.

3 Q. Do you look for someone in the parking lot to see
4 if they have a phone so that you can call the police and
5 tell them, Good God, he was pulling a gun on me and I
6 shot him? Did you do that?

7 A. No, ma'am.

8 Q. What you did was you ran as fast as you could,
9 right?

10 A. Yes, ma'am.

11 Q. And you go across the street and wait for a bit;
12 is that right, looking to see what had gone on?

13 A. No. I went over the street -- I didn't went
14 across the street. I went across the street, but I
15 didn't went to that fruit stand, no, ma'am.

16 Q. So that wasn't you.

17 A. That wasn't me, no, ma'am.

18 Q. So did you see another black male with Jean shorts
19 and a black T-shirt over in that area that afternoon?

20 A. No, ma'am.

21 Q. That is the fruit stand, if you look behind you.

22 A. Yes, ma'am, I know.

23 Q. That's State's Exhibit 28. You know the fruit
24 stand?

25 A. Yes, ma'am.

1 Q. So you're not saying that's where you ran.

2 A. I ran, like you see where the trees in the back,
3 do you see, like, where the grass is cut, the property
4 line? I went through behind the trees and stayed in the
5 big trees and came up on this side.

6 Q. So you ran back this way?

7 A. No. You see where the property line is, like
8 where you can see the lawn.

9 Q. Let me give you a pointer. Here is a little
10 button. Show us what you did.

11 A. I came through here into the woods right here, go
12 in there, behind the trees. I didn't stay in this area
13 because that was -- like, they could see me. I just went
14 in this area right here, up all the way behind these
15 trees and all the way through and come around like this.

16 Q. And when you did that, did you look back at the
17 convenience store to see what was going on?

18 A. Yes, ma'am.

19 Q. And did you see Mr. Alford bleeding and entering
20 the store?

21 A. I didn't see him.

22 Q. Didn't see him bleeding.

23 A. He wasn't out there.

24 Q. He wasn't in the parking lot?

25 A. Nobody was out there then.

1 Q. Nobody was there.

2 A. No, ma'am.

3 Q. Did you see a lot of chaos?

4 A. No. I went to the other store. I didn't see any
5 chaos.

6 Q. You went over to Bull's Bay?

7 A. Yes, ma'am.

8 Q. Okay. So were you still out in that area when the
9 first police or emergency vehicle or rescue vehicle comes
10 in that area?

11 A. Yes, ma'am.

12 Q. You were still out there.

13 A. I was still at Bull's Bay.

14 Q. Okay. So you saw the rescue vehicle come by.

15 A. Yes, ma'am.

16 Q. You saw the police come by, or did you?

17 A. Either a rescue vehicle or police.

18 Q. Did you see them come zooming into the convenience
19 store?

20 A. No. It, like, kept on up -- like, well, I went up
21 to Elliott's way.

22 Q. So, in other words, you sprinted through those
23 woods to get out on River Road. You were jacked up,
24 weren't you?

25 A. Yeah, I was moving.

1 Q. Your adrenaline was pumping?

2 A. Yes, ma'am.

3 Q. You had to move fast.

4 A. Yes, ma'am.

5 Q. And you had to move fast because you knew you just
6 pulled a gun and attempted to rob Moses Alford; is that
7 correct?

8 A. No, ma'am.

9 Q. You were running?

10 A. Yeah, if you look at it that way. I was running
11 because I shot the gun around the public store.

12 Q. Okay. But you're telling this jury you had a good
13 reason to shoot that gun, right?

14 A. Yes, ma'am.

15 Q. You want this jury to believe that's the way you
16 handle problems. You shoot towards someone, and that
17 will take care of it, right?

18 A. Shoot from, but not --

19 Q. And are you saying to the ladies and gentlemen of
20 the jury if you ever see anybody with a mean expression
21 you better assume they're going to kill you?

22 A. They could have -- it could mean they're going to
23 kill you.

24 Q. And mean can pick up a gun and point it at
25 somebody you have absolutely no problem with and tell

1 him, Give me everything, and then start shooting. Mean
2 can do that too, can't it?

3 A. Yes, ma'am.

4 Q. Now, after you gave your statement, Detective
5 Lawrence gave you the opportunity to say who all these
6 mean guys were, right?

7 A. Yes, ma'am.

8 Q. And even though you were too scared still of the
9 mean guys to tell the detective on the case that you did
10 it because you had been threatened, or felt threatened --
11 because you hadn't been threatened, right?

12 A. I was --

13 Q. Tell me this: Did you do what they say because
14 they weren't nice?

15 A. Right.

16 Q. Okay. You did what they said, because they
17 weren't nice.

18 A. Yes, ma'am.

19 Q. And you felt like you could tell Detective
20 Lawrence, Look, those guys were there. They planned to
21 rob him. They're the ones who said give me everything.
22 That was okay to tell Detective Lawrence, right? That
23 was okay?

24 A. Being that he knew already.

25 Q. But what you couldn't tell Detective Lawrence was,

1 oh, because they weren't nice, that's why I did it.

2 Right?

3 A. Yes, ma'am.

4 Q. And when Detective Lawrence gave you the
5 opportunity with the lineups to write a comment about
6 these people, you didn't say, I felt threatened, did you?

7 A. No.

8 Q. Do you know what I'm talking about?

9 A. Not that way, not by writing it out.

10 Q. Yeah. You didn't do that then.

11 A. But I said, I didn't want to pull my gun and stuff
12 like that. That is meaning I didn't want to do.

13 Q. So let's see. This happened June 22. Here we
14 are -- in '09, here we are in March, and you're telling
15 this jury that this story that you're telling here
16 today --

17 A. Yes, ma'am.

18 Q. -- has always been the truth?

19 A. Always been the truth, yes, ma'am.

20 Q. But you didn't tell it to Detective Lawrence that
21 day, on the 29th.

22 A. Not that way.

23 Q. Uh-huh. Now, that Kangaroo -- let me see if I can
24 get a better picture, but in kind of describing where
25 that Kangaroo is, there is open area to the right of it,

1 and there is open area to the left of it; is that right?

2 A. Yes, ma'am.

3 Q. It's kind of just out in a rural area.

4 A. Yes, ma'am.

5 Q. So when you got in that vehicle with that gun, you
6 made no effort to flee at that point; is that correct?

7 A. No, ma'am.

8 Q. When you saw this and say, Wow, it's a little more
9 involved with this than I thought --

10 A. Right.

11 Q. You didn't try to get out of that car, did you?

12 A. No, ma'am.

13 Q. And when you say you got out of the car with La
14 Seto and Kaylab, you are the man with power. You got the
15 gun in the pocket according to what you're telling us
16 today, right?

17 A. Yes, ma'am.

18 Q. So the man with the power doesn't choose at that
19 point to flee straight ahead, to flee to his right, to
20 flee to his left, or to flee behind him, woods
21 everywhere. You don't leave at that point.

22 A. No, ma'am.

23 Q. Only time you're running is when you're running
24 for you, right?

25 A. Yes, ma'am.

1 Q. And you wait until you try to rob that man, not
2 only of money, not only of clothes, but of his life; is
3 that correct?

4 A. No, ma'am.

5 Q. No effort to flee until you realize you're in hot
6 water, okay, if he's in hot water, but you don't want to
7 be in it, right?

8 A. No, ma'am. Yeah, I was.

9 MR. GRIMES: Objection, Your Honor. Compound
10 question.

11 THE COURT: Give him the opportunity to
12 answer the question.

13 MS. SHEALY: I thought he did answer it.

14 BY MS. SHEALY:

15 Q. You were in hot water.

16 A. Yes, ma'am.

17 Q. Okay. When you were telling Detective Lawrence
18 about what happened, you are not telling us even today,
19 are you, that Kaylab or Quan or the little guy in the
20 back would take that gun and give it to you and say, Do
21 it or else. Nobody did that, did they?

22 A. Nobody -- no, sir.

23 Q. Nobody did it?

24 A. No, ma'am.

25 Q. So your second statement, are you telling us then,

1 like your first statement, is not true? Is it not true?

2 A. It's not true. It's true, but I was scared. I
3 didn't finish letting them know that I shot Mr. Moses.

4 Q. Let me share your statement from the 29th and ask
5 you to read for us, if you would, when Detective Lawrence
6 said, Why did you lie in your first statement? What was
7 your answer?

8 A. I was thinking let me see what they got first.

9 Q. Let me see what they got first.

10 A. Yes, ma'am.

11 Q. Are you a gambling man?

12 A. No, ma'am.

13 Q. Just self protective.

14 A. Right.

15 Q. Look out for yourself?

16 A. No, I just didn't want to end up being a snitch.

17 Q. You weren't looking out for Mr. Alford, were you?

18 A. I was looking out for him, my intentions.

19 Q. Do what?

20 A. My intentions, I was looking out for him.

21 Q. Those intentions when you kicked that gun five
22 times and pointed it at him? Has anybody ever told you,
23 Hey, do me no favors? Don't try to help me? Anybody
24 said that to you before? Would you want somebody to help
25 you by pointing a gun at you and firing? Would you?

1 A. No, ma'am.

2 MS. SHEALY: I beg the Court's indulgence
3 just a moment.

4 BY MS. SHEALY:

5 Q. Okay. A couple other questions. You say Moses
6 Alford ran back away from the car.

7 A. Yes, ma'am.

8 Q. Ran 40 or 45 feet?

9 A. I think 40, 45 feet.

10 Q. And where are you saying you were standing?

11 A. I was standing, like, in the middle between the
12 two cars, like between the two cars.

13 Q. Okay. Now, the piece of plastic from the
14 headlamp --

15 A. Yes, ma'am.

16 Q. You were shooting right up by that car, weren't
17 you?

18 A. No, ma'am.

19 Q. Weren't shooting by that car?

20 A. I was shooting by it but not in front of it.

21 Q. Not in front of it.

22 A. No, ma'am.

23 Q. So it just so happens that this headlamp, off the
24 Crown Vic, loses its piece of plastic in the shape of a
25 gunshot wound, just another, oh, flukey thing that

1 happened that afternoon?

2 A. Yes, ma'am.

3 Q. Another flukey thing. When you were standing
4 across the street looking at the scene, could you see the
5 blood trails that were left from Mr. Alford's warning
6 shots?

7 A. No, ma'am. I was running, and I kept on -- I just
8 looked back to see if he was anywhere in the area, if
9 you're standing on the front of the stores.

10 Q. Would it surprise you to know that the blood
11 trails start right where Mr. Alford was shot, near the
12 cars? You're not telling the truth when you say he ran
13 40 to 45 feet, are you?

14 A. Yes, I am telling the truth. He ran, like, 40
15 feet from where we was. See in that statement where he
16 attempt to run? He did ran too.

17 Q. Okay. Showing you then what is marked as State's
18 Exhibit 8, show me where you were standing when you shot.

19 A. The car was right here, back in this -- right
20 here, in this area, and the Crown Vic was, like, cross
21 like, this cross, like, out here somewhere, like this,
22 and right in here, I was here, like in here somewhere,
23 like in here somewhere, and Moses ran off like this way.

24 Q. So when Moses runs backwards, you don't duck or
25 try to hide behind any of the cars. The only thing

1 available to you was to take this gun and start shooting?

2 A. No. When he ran off, I looked at Quan and them
3 and I was still scared they was going to say, Well,
4 you're running off, so I looked back at Mr. Moses and he
5 was right here. He turned around and he went -- going
6 for his gun, and I figure if I had ducked down then he
7 probably would have shot me.

8 Q. Well, Mr. Dennis, from what I understand you're
9 testifying to, you cared more about what Quan and Kaylab
10 thought than the life of Mr. Alford; is that fair to say?

11 A. No, no, ma'am. I cared about my life too.

12 Q. Oh, I'm sorry. You cared about what they thought
13 and your life.

14 A. Yes, ma'am.

15 Q. And not one bit about Mr. Alford.

16 A. I cared about Mr. Alford, because Mr. Alford
17 didn't say that. He ran off from the scene. He ran off
18 from the scene. I'm thinking he going in the store,
19 running from the scene because I didn't want to do
20 anything. I never pulled my gun. He never seen a gun.
21 I'm thinking he was going to run and ran to the store.

22 Q. You're saying Mr. Alford never saw a weapon,
23 right? That's what you're saying? He never saw a gun?

24 A. Never saw a gun.

25 Q. And here is Mr. Alford just out of the blue,

1 running back towards, showing his gun?

2 A. I wouldn't say they didn't say give me your
3 clothing and money, but I didn't say give me your
4 clothing and money, and he came running out from that
5 area and a bullet would have hit him right there, and
6 there is a CSI record, right.

7 Q. What?

8 A. CSI report.

9 Q. Does everything revolve around television?

10 A. That is how far you is when you got hit by the
11 bullet.

12 Q. Mr. Dennis, how long did it take you to concoct
13 this story?

14 A. It took me -- it didn't took me anything to
15 concoct the story because that's what happened. It was
16 the truth. He ran off from the scene and went for his
17 gun. He could have ran in the store. You asking me
18 why -- if he running from us, why he ain't ran in the
19 store? Nobody pulled a gun on him. He ran and took it
20 into his own, to turn around and he was going to fire us
21 up, but end up he got hurt.

22 Q. So, in other words, really, to summarize this,
23 this whole thing is really Mr. Alford's fault and Quan
24 and La Seto for not having good expressions on their
25 face?

1. A. I wouldn't say it's his fault.

2 Q. Okay. Well, when you're telling us that today
3 you're telling us the truth, you didn't tell us the truth
4 on the 22nd of June and you didn't tell the truth on the
5 29th of June; isn't that correct?

6 A. I didn't tell the whole truth, but those are the
7 same things that happened that day.

8 Q. Those are the same things that happened.

9 A. Yes, ma'am.

10 Q. But no matter what, you're the man that took the
11 gun out of the car; is that correct?

12 A. Yes, ma'am.

13 Q. You're the man who you say put it in your pocket
14 and chose to pull it out.

15 A. Yes, ma'am.

16 Q. Is that true?

17 A. Yes, ma'am.

18 Q. You're the man who instead of shooting up into the
19 air for this theory of warning Mr. Alford, you shot him
20 and nailed him three times, once in the back, that's
21 true, isn't it?

22 A. No, ma'am. I shot away from him, not -- I shot
23 away from him, knowing that I didn't shoot him.

24 Q. Knowing that you didn't shoot him.

25 A. I didn't shot in the air -- I know by the air

1 shot, but I shot away from him. Like you standing right
2 there, I shot away from him. I didn't want it to hit
3 him.

4 Q. So some fluke of nature that took -- that allowed
5 not one, not two, but three shots, one in the man's back
6 to you, that allowed Mr. Alford to get shot that day.

7 A. Yes, ma'am.

8 MS. SHEALY: Thank you very much.

9 THE COURT: Are you going to have redirect?

10 MR. GRIMES: Yes, sir.

11 THE COURT: Let's take a ten-minute break
12 here so that can you go to the rest room. Don't begin
13 deliberating or discuss the case in any way.

14 (Recess taken.)

15 (In open court, jury present.)

16 THE COURT: All right. We will resume with
17 the redirect.

18 REDIRECT EXAMINATION

19 BY MR. GRIMES:

20 Q. Thank you, Your Honor.

21 Mr. Dennis, I want to ask you about four topics,
22 okay?

23 A. Yes, sir.

24 Q. First topic is, there is some talk about warning
25 shots, and how come you didn't shoot the gun up in the

1 air.

2 A. Right.

3 Q. If someone is reaching for a gun, do you think it
4 would be scary to them if they see you pointing the gun
5 in the air?

6 A. Yes, sir.

7 Q. Do you think that would scare them off, by
8 shooting the gun in the air?

9 MS. SHEALY: I think he answered the
10 question.

11 THE WITNESS: Yes.

12 THE COURT: Let him answer the question. All
13 right.

14 BY MR. GRIMES:

15 Q. And that would scare him off? How come you didn't
16 just point the gun up in the air instead of aiming it to
17 the side of Mr. Alford?

18 A. I wasn't thinking clearly. My first response is
19 aiming it beside him, yes.

20 Q. So when you're about two years after the incident,
21 and you're in a nice courtroom, no Quan and Kaylab around
22 you --

23 A. Yes, sir.

24 Q. -- you've reflected upon what you should have
25 done; is that fair to say?

1 A. Yes, sir.

2 Q. But in the heat of the moment, things happen.

3 A. Yes, sir.

4 MS. SHEALY: Your Honor, I object to the
5 leading nature of the questions.

6 THE COURT: Sustained.

7 BY MR. GRIMES:

8 Q. Okay. What was going through your mind at that
9 time?

10 A. At that time, I was scared, at that time, and I
11 was trying to keep him from shooting me.

12 Q. Were you thinking clearly?

13 A. Clearly as I could be. Panicky, scared.

14 Q. Okay. Now, the second topic I want to ask you
15 about is these threats.

16 MS. SHEALY: Objection, Your Honor. There
17 has been no testimony about any threats.

18 THE COURT: There was no testimony about any
19 threats, or no evidence --

20 MR. GRIMES: I was trying to address that.

21 THE COURT: Well, maybe you want to rephrase
22 your question.

23 BY MR. GRIMES:

24 Q. On cross-examination, Ms. Shealy said had anyone
25 asked you, threatened you, put a gun to your head, or

1 anything like that?

2 A. No.

3 Q. Do you remember those questions?

4 A. Right.

5 Q. Can you be intimidated or scared in other ways
6 other than someone putting a gun to your head?

7 A. Yes.

8 Q. What other ways could someone scare or intimidate
9 you?

10 A. By body reaction, face reaction.

11 Q. And if you know, would someone's reputation also
12 have an effect on that?

13 MS. SHEALY: I object to the leading nature.

14 THE COURT: Sustained.

15 BY MR. GRIMES:

16 Q. Now, on June 22nd, right before the shooting
17 happened, who were you with?

18 A. Before the shooting happened, I was at Quan's
19 house.

20 Q. Right before the shooting in the car, who was
21 there?

22 A. Nobody.

23 Q. In the car, who was in the car with you?

24 A. Quan, Kaylab, and the little kid.

25 Q. And what kind of person is Quan?

1 A. Not a nice person.

2 Q. And the third topic I want to ask you about,
3 Ms. Shealy said something about people not being nice to
4 you and being mean. Why did you believe Kaylab was a
5 mean person?

6 MS. SHEALY: Your Honor, I would object. I
7 think all this was covered on direct.

8 THE COURT: Well, it's in response to
9 cross-examination questions, so go ahead.

10 BY MR. GRIMES:

11 Q. Why did you believe Kaylab was a mean person?

12 A. Because he hang around Quan, he look -- got scars
13 in the face, he look -- keep his face mean, like.

14 Q. And why do you believe Quan was a mean person?

15 A. What I heard of him, what I seen.

16 Q. And what have you heard of him?

17 A. I heard he has shot --

18 MS. SHEALY: I object again, Your Honor.
19 This was covered under direct, specifically.

20 THE COURT: Overruled. Go ahead.

21 BY MR. GRIMES:

22 Q. What had you heard about Quan?

23 A. I had heard that Quan had shot -- the guy that
24 shot at Quan's car that night, he had shot his sister.

25 Q. Okay. And the last topic I want to ask you about

1 is sort of the statement and lies Ms. Shealy was asking
2 you about. Do you remember that line of questions?

3 A. Yes, sir.

4 Q. In your statement of June 22, that was a fairly
5 short statement; is that fair to say?

6 A. Yes, sir.

7 Q. When you told Detective Lawrence, I was at my
8 mother's house at 9:00, was that a lie?

9 A. No, sir.

10 Q. And the party where you told Detective Lawrence
11 that you left and went to work, was that a lie?

12 A. No, sir.

13 Q. And at the end when you said I was under arrest
14 and I didn't even know -- and I didn't know what had
15 happened, was that a lie?

16 A. Yeah, that was a lie.

17 Q. Okay.

18 A. That was a lie to saying I didn't shot him.

19 Q. And when you say you didn't shoot him, you saw the
20 injuries, and we heard the doctor testify. We know
21 Mr. Alford's been shot.

22 A. Yes, sir.

23 Q. So why do you say that you didn't shoot him?

24 A. My intentions wasn't to shoot Mr. Moses.

25 Q. So when you say you didn't shoot him, by that you

1 mean your intent wasn't to hurt him?

2 A. My intent wasn't to hurt him.

3 MS. SHEALY: Objection to the leading nature.

4 THE COURT: Too many people talking at one
5 time. What is your objection?

6 MS. SHEALY: To the leading nature of that
7 question.

8 THE COURT: Sustained.

9 BY MR. GRIMES:

10 Q. When you say you didn't shoot Mr. Alford, what do
11 you mean by that?

12 A. I meant that my intention wasn't to shoot
13 Mr. Alford, but I did shot him, but my intentions wasn't
14 to shoot him.

15 Q. Okay. Do you get confused easily?

16 MS. SHEALY: Objection to the leading nature.

17 MR. GRIMES: It's not leading, Your Honor.

18 THE COURT: It does not suggest an answer.

19 Go ahead.

20 THE WITNESS: At times if I don't understand
21 a question, yes.

22 BY MR. GRIMES:

23 Q. And how far did you go in school?

24 A. Tenth.

25 Q. Now, in your statement on June 29th of 2009 to

1 Detective Lawrence, do you remember that statement?

2 A. Yes, sir.

3 Q. And remember Ms. Shealy asking about whether those
4 were statements and lies regarding that?

5 A. Yes, sir.

6 Q. And the first part of your statement, you said you
7 were at Quan's house and they were telling you about a
8 robbery. Was that a lie?

9 A. That is the truth.

10 Q. And they were talking about a robbery that they
11 were going to do and they would like for you to get in on
12 it. Did you lie about that?

13 A. No, sir.

14 MS. SHEALY: I have an objection to the form
15 of these questions, if we could approach.

16 THE COURT: Well, I sustain your objection.
17 It's not the proper way to ask these questions.

18 BY MR. GRIMES:

19 Q. Do you have a copy of your statement up there?

20 A. No, sir.

21 Q. I'm going to show you what has been marked as
22 State's Exhibit No. 76 and ask you to refer to the second
23 page or the first page of the statement, if you could
24 read that.

25 A. Read it?

1 Q. Just read it to yourself. Let me know when you
2 finish.

3 A. Yes, sir.

4 Q. From what you read, is there anything on that
5 first page that was a lie?

6 A. No, sir.

7 Q. All right. Now, there is a lot of stuff you
8 didn't tell Detective Lawrence.

9 A. Yes, sir.

10 Q. And why didn't you tell Detective Lawrence some of
11 the other stuff that you testified today to?

12 A. At that time, I know Quan and Kaylab was in
13 custody, and we were in the same jail. I was scared that
14 we would meet up with each other and got in a fight or
15 whatever.

16 MR. GRIMES: All right. Thank you,
17 Mr. Dennis.

18 THE WITNESS: Yes, sir.

19 MR. GRIMES: Please answer any questions
20 Ms. Shealy may have for you.

21 MS. SHEALY: Beg the Court's indulgence for a
22 moment.

23 I have no further questions. Thank you.

24 THE COURT: All right. You may step down.
25 Any other witnesses from the defense?

1 MS. EHRLICH: No, Your Honor.

2 THE COURT: All right. Anything in reply
3 from the state?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: Okay, folks. You've now heard
6 all of the evidence that is going to be presented in this
7 case. I'm going to send you back to the jury room right
8 now, not to begin deliberations. We've got to get the
9 case ready to present to you for oral arguments, and then
10 I'll charge you on the law. It should take about 15,
11 minutes, and then we'll have you back for oral arguments
12 and the charge on the law.

13 Again, you've heard all the evidence, but
14 it's improper at this point to begin deliberations or
15 discussions about the case in any way, so if you would,
16 go on back and we'll have you back in about 15 minutes.

17 (In open court, jury not present.)

18 THE COURT: All right. Motions?

19 MS. EHRLICH: Just renew or motions on
20 directed verdict on all the charges.

21 THE COURT: They are denied. Okay. Let's
22 talk about the jury charges. Before lunch, one change --
23 and, again, I didn't know what he was going to say,
24 exactly, but the change that I had proposed to what I had
25 given y'all before lunch was to take out duress and to

1 give a charge on mere presence on the attempted armed
2 robbery charge only.

3 That was proposed changes that I had made on
4 that, and I will, of course, hear what the state and then
5 the defense wants to say about jury charges. So, Madame
6 Solicitor, you get first shot on telling me what you
7 want.

8 MS. SHEALY: Mr. Finch is handling this
9 aspect.

10 THE COURT: All right. Mr. Finch?

11 MR. FINCH: Thank you, Your Honor. May it
12 please the Court: We were going to object to the duress
13 and coercion. If you propose to remove that, the state
14 is in support of removing the jury charge on coercion and
15 duress. I don't think we have in front of us the mere
16 presence charge.

17 THE COURT: If you believe Mr. Dennis's side
18 of the story, he did not know that there was going to be
19 a robbery ahead of time. He just happened to be there.
20 All right? So that is his story. You can -- the jury
21 can believe it or not, but if so, then as to the armed
22 robbery, that's my thinking on the mere presence charge.
23 They can believe it, they can reject it, but it was his
24 testimony. He was there to buy clothes, and he did not
25 know they were going to commit an armed robbery.

1 MR. FINCH: Our understanding of the
2 testimony is he knew -- he was told there was going to be
3 a robbery, and that when he showed up and handed him the
4 gun and he was further told then to, he's the guy, go do
5 it, this was the robbery that he was then to be a part
6 of. That was his testimony, so, again, we would be
7 opposed to the inclusion of that mere presence charge as
8 to the armed robbery.

9 THE COURT: All right. Do you have anything
10 else on the jury charges?

11 MR. FINCH: Just that -- well, I can wait for
12 the defense -- Court's indulgence, please.

13 Nothing further at this time.

14 THE COURT: Well, I'm looking back at this
15 transcript, and he said that they talked to him about a
16 robbery, and that he frowned and said -- and they had
17 told him, yeah, we're going to rob this guy. You'll get
18 money, drugs, clothes out of the deal, and he did not
19 agree to join them and that he was happy about that and
20 he would at that point just get a ride back to the store
21 with them. That was his testimony.

22 MR. FINCH: That's correct. Up until when he
23 gets to -- up to the store and then they wave him over.
24 According to his testimony, they wave him over, he gets
25 in, he sees the gun, and then they tell him, while at the

1 store, which is a little bit further in his testimony,
2 that there is the -- they hand him the gun, according to
3 his testimony, or they say take the gun. There is the
4 guy. And so at that point he knew.

5 THE COURT: That's what other people -- I
6 don't think he said he got into the car and saw the
7 gun --

8 MR. FINCH: He says that, Your Honor. From
9 my memory he says when he got in -- he didn't see it
10 originally. He saw the guys first, and then he saw the
11 gun, described how the gun looked, confirmed that was the
12 same gun and said that someone in the front seat, I
13 believe it was Kaylab Wright told him, There is the guy
14 and they drove over and parked next to Mr. Alford.

15 It would be at that point that he knew the
16 plan was about to be set in motion.

17 THE COURT: Well, his story is not that
18 they're going to rob him at that point, but they went
19 over there, and that is when he -- one of those other
20 fellows said, Give me your stuff, and that is when
21 Mr. Alford started backing off and went for his gun. But
22 there is not really any evidence, that I see, where
23 Mr. Dennis has admitted that he knew there was a robbery
24 ahead of time.

25 MR. FINCH: Again, the state --

1 THE COURT: He admits there was talk about it
2 but he specifically said -- well, frowned, let them know
3 he didn't want to be part of it, and they said, We don't
4 need you and he thought he was getting a ride to the
5 store. He was happy.

6 MR. FINCH: It would be the state's position
7 when he got in the car and then they say there's the guy,
8 they talked about the robbery previous --

9 THE COURT: And that is certainly an argument
10 you can make, okay? I won't stop you from making that
11 argument.

12 MS. SHEALY: Judge, if you've ruled, I won't
13 go any further but we did find in her notes where the
14 reference was made about there is the man. If I can try
15 to direct that to you.

16 THE COURT: And that could be taken to mean
17 that is the guy we're talking about getting the clothes
18 from. They didn't say that's the man, let's go rob him.

19 MS. SHEALY: But the only conversation they
20 had about him was to rob him. He says --

21 THE COURT: But they had told him they didn't
22 need him. So he might have known that there was a
23 robbery -- he might have thought that there was something
24 going on, but he was not going to be participating in it.
25 You can believe that.

1 I'm not saying it's the strongest argument in
2 the world, but it's evidence, so I'm inclined to give him
3 a mere presence as to the armed robbery charge only. I
4 don't think you get mere presence on the assault and
5 battery with intent to kill. Okay?

6 Let's hear from the defense on jury charges.

7 MR. GRIMES: Thank you, Your Honor. May it
8 please the Court, first we would request a self-defense
9 charge on the ABWIK charge. Mr. Dennis specifically
10 stated he didn't do anything to bring on the
11 difficulties. He stated that after Quan said, Go get the
12 money that -- and he specifically testified that he had
13 no involvement with the robbery, that Mr. Alford ran
14 about 40, 45 feet and started to pull up his jacket and
15 reach for a gun.

16 At that point he testified he was in
17 reasonable fear for his life and safety, and he said he
18 couldn't retreat because when he ducked down, he could
19 have got shot. Based on that, we felt we presented
20 enough evidence that the jury could believe -- that would
21 warrant a charge of self-defense.

22 THE COURT: Well, one of the big problems I
23 have with this self-defense argument is he claims he was
24 not shooting at the victim to save his life. He was
25 shooting at the victim to scare him, and he was quite

1 adamant on that point. He was not doing it to defend
2 himself; in other words, to shoot the victim to stop him
3 from shooting him, but he was shooting to scare him.

4 Arguably, he's a really bad shot. I know
5 Ms. Shealy was arguing at one point you were a really
6 good shot, but I would think, under his theory, he was a
7 really bad shot because he was claiming I wasn't aiming
8 at him.

9 MR. GRIMES: It's the use of deadly force
10 that is the key to self-defense, and when he's firing to
11 scare Mr. Alford, that's the use of deadly force, and the
12 reason he was using deadly force is because he was scared
13 that he may be shot.

14 THE COURT: Well, another point is his --
15 first of all, there is no evidence that the victim shot
16 anybody, and there is no evidence that the victim pulled
17 his gun out, or aimed it.

18 His testimony, the best that I've been able
19 to discern, is that he saw the guy pull his shirt up and
20 reach for his weapon, and that is when he started firing
21 off, so he wasn't --

22 MR. GRIMES: I think you're entitled to act
23 on appearances. It would be a reasonable belief that
24 someone was pulling their shirt up, reaching for a gun,
25 that they would take the gun out and attempt to shoot

1 you. I think the law is you don't have to wait for the
2 other person to get the drop on you, would be one of our
3 jury charges that we have requested.

4 THE COURT: What about the no other way to
5 avoid danger element?

6 MR. GRIMES: I think there were two lines of
7 testimony on that point, Your Honor.

8 THE COURT: That would be what?

9 MR. GRIMES: First, I think on direct
10 examination, Mr. Dennis testified that he didn't run
11 because he was scared of Quan and they might shoot and
12 hurt him, and then on cross-examination, he testified
13 that if he ducked down behind the car that Mr. Alford may
14 shoot him there. And by running, if you increase -- if
15 it increases the danger to yourself, you don't have to
16 retreat.

17 THE COURT: Didn't he testify that Mr. Alford
18 was, in fact, running away?

19 MR. GRIMES: Yes, sir. Basically, he
20 testified he's running 40, 45 feet, and he kind of
21 reached around, pulls up his shirt, and went for his gun.
22 So it sounds like a jury can infer that Mr. Alford ran to
23 get away the three guys.

24 THE COURT: If the victim is running in
25 another direction from where you're at, I don't think

1 it's reasonable to believe he's going to commit an
2 offensive act against you.

3 MR. GRIMES: Sure, if he's just running by
4 himself, we wouldn't be having this discussion. But
5 Mr. Dennis testified he stopped, pulled his shirt up, and
6 reached for his gun, and at that point, running is a
7 defensive act to running to maybe get into an offensive
8 position.

9 THE COURT: But is he -- is a reasonable
10 person of the belief he's in imminent danger of death or
11 serious bodily injury when the victim is going in the
12 opposite direction, and, in fact, he shoots him in the
13 back?

14 MR. GRIMES: Well, Mr. Alford himself
15 testifies, when he was shot first in the arm and it
16 happened so fast because he was turning, he doesn't know
17 how he got shot in the back, so it wasn't like he was
18 running away and got hit in the back.

19 THE COURT: What is the state's position on
20 this?

21 MR. FINCH: The state's position is we would
22 be opposed to the self-defense charge. Not only did the
23 defendant do an overt act to bring this upon himself, he
24 could have stayed in the vehicle. He chose to get out of
25 the vehicle. He chose to get out of the vehicle with a

1 pistol in his pocket.

2 We also find the Court's logic that there was
3 no evidence that he thought a robbery was even going to
4 happen, if he was getting out to look at clothes, there
5 would be no reason for him to bring a gun to look at
6 clothes or look at shoes. He chose to get out of the car
7 first; secondly, get out with a weapon; third, fire it at
8 a man who's retreating by his own testimony.

9 He had plenty of opportunity to go in any
10 direction, put his hands up. He had a multitude of
11 opportunities to choose another route other than deadly
12 force. In fact, from his testimony, that a 45 foot run
13 would take at least seven seconds, just as much time for
14 the defendant to get around the corner into the store,
15 anywhere else, or at least yell, I don't want to shoot
16 you. Where are you going? I'm not part of this;
17 anything, he had a multitude of choices.

18 Instead, he chose deadly force. It just
19 wouldn't be reasonable to think that his life -- or that
20 he was in danger of imminent harm or death.

21 THE COURT: All right. I'm not going to give
22 you the self-defense charge, because, first of all, the
23 defendant was responsible, at least in part, for being in
24 the situation where he was at, and that is he was at
25 fault in bringing about the difficulty in that he was --

1 got out of a vehicle, armed with a gun, under
2 circumstances that strongly suggested a robbery was
3 getting ready to take place.

4 Second, the victim was fleeing. That
5 suggests that he was not in imminent danger, and, also,
6 it all goes to the fact that there were other ways to
7 avoid danger in that if the defendant was -- excuse me,
8 the victim was fleeing, then he could have also fled and
9 avoided the situation, so I don't think he's entitled to
10 self-defense charge.

11 All right? What else do you have?

12 MR. GRIMES: Thank you, Your Honor. Our next
13 request would be the lesser included charge of assault
14 and battery of a high and aggravated nature.

15 THE COURT: How do you get there?

16 MR. GRIMES: I believe this occurred under a
17 heat of passion and sudden provocation. As Mr. Dennis
18 testified, he had the gun in his pocket. He wasn't doing
19 anything to provoke difficulties. He was just there as
20 part of the robbery, and as Mr. Alford is running, he
21 turns around pulls his gun out and starts to shoot --
22 excuse me, he starts reaching for his gun.

23 At that point, Mr. Dennis is in fear for his
24 life. He's scared, he's panicky, takes his gun out and
25 starts shooting. He also testified himself he had no ill

1 will toward Mr. Alford. He was shooting to scare him,
2 and that takes away the malice, so I think the evidence
3 supports a charge of assault and battery of a high and
4 aggravated nature.

5 THE COURT: What is the state's position on
6 that?

7 MR. FINCH: State is opposed to the lesser
8 included. I think shooting a gun is not assault and
9 battery of a high and aggravated nature. It implies the
10 malice element, especially shooting five times at a
11 person, by the defendant's testimony, moving away from
12 him.

13 THE COURT: Well, I agree. The fact that a
14 weapon is drawn and people are shooting does away with
15 the lesser argument of -- that gets you down to assault
16 and battery of a high and aggravated nature. I think
17 your argument goes more to whether or not there was ever
18 any intent to commit an assault in the first place, which
19 you're always going to be able to argue that, so -- but
20 it does not get you to the lesser included offense of
21 assault and battery of a high and aggravated nature.

22 He's guilty of assault and battery of a high
23 and aggravated nature or he's guilty of nothing, at least
24 as to assault, assault of a high and aggravated nature,
25 and assault and battery. All right? What else?

1 MR. GRIMES: Did you say guilty of assault
2 and battery of a high and aggravated nature or nothing
3 but --

4 THE COURT: Yeah, he's guilty of assault and
5 battery with intent to kill or nothing. Okay? But it
6 focuses in on -- I think your argument is more towards
7 whether or not he ever committed the element of assault,
8 which is, of course, assault of a high and aggravated
9 nature, assault with intent to kill, or simple assault.
10 But if he's guilty of any sort of assault, it's assault
11 and battery with intent to kill.

12 MR. GRIMES: Not to argue with the Court, I
13 want to preserve -- I don't have the cases with me, but I
14 think there are a lot of cases that say maybe the murder,
15 in self-defense cases, that if someone is shooting at
16 you, that by itself is almost implicit of a voluntary
17 manslaughter charge because it is in a sudden heat of
18 passion and and legal provocation to warrant a lesser
19 included charge.

20 So by now he's getting ready to pull a gun at
21 you, and you think he's getting ready to shoot you, I
22 think that would warrant a lesser included charge of
23 ABHAN.

24 THE COURT: Well, we disagree, but you made
25 your record. What else?

1 MR. GRIMES: We also would argue for a lesser
2 included charge of strong-arm robbery.

3 THE COURT: How do you get there?

4 MR. GRIMES: Basically, the only evidence in
5 this case would be that Quan said, Give us your money and
6 your clothes, and with two guys there, that would be the
7 intimidation. And under the state's theory, Mr. Dennis
8 is going along with it that would be strong-arm robbery,
9 and it wasn't until the gun wasn't used at all to
10 facilitate the robbery at that point.

11 It wasn't until Mr. Alford ran away, under
12 Mr. Dennis's testimony, that he thought he was going to
13 be shot at that he pulled his gun out and used the gun,
14 so therefore we believe he would be warranted the charge
15 of common law robbery, or attempted common law robbery.

16 THE COURT: Okay. What's the state's
17 position?

18 MR. FINCH: The state's position, I'm opposed
19 to the inclusion of strong-arm robbery, not only --
20 Mr. Grimes said there was no -- or the only evidence was
21 that the defendant came out later and Quan said, Give us
22 the money. Mr. Alford 's testimony was that the
23 defendant actually said, Give us the money, while
24 pointing the gun at him.

25 At that time there is also evidence Trevor

1 Gibbs got out of the car with the gun and then something
2 was said, so there is evidence, and on any evidence
3 standard, there is evidence the gun was out, it was
4 presented. The gun is obviously a deadly weapon, and it
5 was there prior to the pronouncement of any sort of
6 robbery.

7 THE COURT: With Mr. Dennis's side of the
8 story, which I have to suppose they believe, you know,
9 there was no -- I'm trying to remember from direct, was
10 there any evidence? Certainly from Mr. Dennis's story,
11 that the gun came out before Quan said, Give us your
12 clothes and your money?

13 MS. SHEALY: Your Honor, I think the
14 strong-arm robbery charge is probably appropriate.

15 THE COURT: Okay. Well, I was kind of
16 leaning towards that, so I'll give them the strong-arm.
17 Okay. What else?

18 MR. GRIMES: We would also argue for the
19 charge of duress.

20 THE COURT: All right. What is the evidence
21 of duress, other than do you believe that Quan and the
22 other fellow were not nice people and they reminded him
23 of bad actors on TV?

24 MR. GRIMES: Good actor on TV, but a bad
25 character. I think you have the reputation of Quan, him

1 being involved in shootings, hearing that he has shot
2 someone before, knowing that, as he says, these are
3 serious people, that I think it's probably hard for him
4 to put into words, but, you know, threats can be
5 communicated some ways besides just verbal, and it's just
6 Mr. Dennis had sort of a feeling from their body
7 language, their demeanor, their past history, you put all
8 that together that he didn't go along with them, that he
9 was going to get seriously hurt, just like the victim
10 thought.

11 THE COURT: But it all existed in his mind.
12 There were no overt acts by anyone that day. Even by his
13 testimony, he said he frowned and they said, Okay. We
14 don't need you.

15 MR. GRIMES: That's what I mean by his body
16 language. Maybe, you know, he didn't say no, I'm not
17 going to do a robbery, he just kind of gave a frown and
18 they understood that as no.

19 THE COURT: Well, they if they backed down
20 just because he frowned, they must not have been too bad.

21 MR. GRIMES: They said, We don't want to use
22 him because he might not be a good person to use.

23 THE COURT: Under his theory of the story, he
24 frowned, suggesting he didn't want to go along with it,
25 and they said, Okay. We don't need you, and he thought

1 he was going to give him a ride back to the store so he
2 could get a beer.

3 MR. GRIMES: Once they're back in the car, he
4 sees the gun, and thought if they have one gun they must
5 have other guns.

6 THE COURT: Nobody said anything to him that
7 gets him involved in this crime, that forces him against
8 his will. That's just the problem with his story, is
9 that it all existed up in his head.

10 There are no overt actions, no overt spoken
11 words. It was all based on his theory of their prior
12 knowledge and his beliefs that, you know, they were like
13 guys he saw on TV.

14 MR. GRIMES: I think you're right. There is
15 probably no overt language or words that would
16 communicate toward him, but you can communicate that kind
17 of stuff in so many ways. I could communicate my
18 feelings in my body language. If I disagree with the
19 Court's ruling, I roll my eyes sometime and judges --
20 some judges would probably yell at me, although there is
21 nothing on the record that would show me doing anything
22 disrespectful.

23 That is one example. If you're at a bar --

24 THE COURT: But he didn't say they cut their
25 eyes at him, they made suggestive or furtive glances.

1 There wasn't any testimony about that, he just said I
2 knew they were mean people. But there wasn't any conduct
3 that day that manifested that, either verbally or
4 nonverbally.

5 MR. GRIMES: I think one thing that
6 manifested, that he said Kaylab, he had that mean look
7 about him, and it's a question, I believe, for the jury
8 to decide. He testified why, and taking it out of the
9 jury's hands, it's a question of reasonableness, and that
10 is a classic jury question, and it may very well -- all
11 the arguments you're stating may very well be, it's not a
12 reasonable defense, but why the jury may find against him
13 on that, but it's still a reasonable belief that he had,
14 that he sincerely held in -- and it explains why he acted
15 that way on that day.

16 THE COURT: All right. What is the state's
17 position on duress?

18 MR. FINCH: Thank you, Your Honor. Our
19 position is we are opposed to the inclusion of a duress
20 charge to the jury. Like you pointed out, the Court has
21 pointed out, there has been no evidence that the
22 testimony of the defendant has met the elements to
23 necessitate or require a duress defense.

24 There was no testimony about any sort of
25 present, imminent emergency arising without his fault on

1 the part of the defendant. There was nothing -- he
2 testified specifically that he had known these guys.
3 This is kind of their reputation. They weren't nice.
4 This wasn't new information. He chose to put himself in
5 that situation. They didn't all of a sudden turn on him
6 or become these rabidly aggressive people even in the
7 past several days. He just heard that maybe some things
8 had been happening and maybe they weren't nice people.
9 Didn't change his choice to spend time with them or to go
10 hang out with them under the tree there.

11 Also, there is no evidence put forth by the
12 defense that that emergency, even if it did exist, would
13 induce a well grounded apprehension of death or serious
14 bodily harm. That was specifically asked specifically by
15 Ms. Shealy, and he never testified he felt threatened of
16 death or serious bodily harm or anybody said they would
17 do any harm to his family.

18 Also, the third element being a reasonable
19 alternative to committing a charged offense, again,
20 myriad opportunities to choose something, to choose
21 another path. When he got a ride to the Kangaroo, his
22 intention was to go home. He could have asked Quan's
23 grandfather to take him home. He could have not walked
24 over to the car. He could not have put the gun in his
25 pocket. He could not have stepped out of the car. He

1 could have run the other way, myriad opportunities, so
2 even if the first two elements exist, the third couldn't
3 be met simply by the sheer volume of opportunities and
4 chances he had to do something other than fire five shots
5 at Mr. Alford, hitting him three times.

6 THE COURT: All right.

7 MR. GRIMES: We're not asking for a duress
8 charge on the ABWIK, only on the attempted armed robbery.

9 THE COURT: I understand, but I still say
10 there is no evidence upon which to base that charge.
11 There is no spoken or nonverbal acts by the codefendants
12 or anyone else to -- that any juror could base a decision
13 that says he was forced into this.

14 He said he knew their background, their
15 character. They were mean. They even reminded him of
16 some bad characters on a TV show, but nothing they did
17 that, say, threatened him to get involved in this
18 robbery.

19 So I'm not going to give you the duress
20 charge, based on the facts. What else you got?

21 MR. GRIMES: We submitted, I think, requested
22 charge number one, testimony of a witness who --

23 THE COURT: I think that is a comment on the
24 evidence, what you have suggested. You know, I charge
25 the jury that they can -- they are the sole judges about

1 credibility and that they can consider whether or not
2 somebody has an interest, a bias, or prejudice in the
3 outcome of the lawsuit, so what I have covers it, and
4 based on that, you can argue that people that testified
5 against him are hoping to get a better sentence or a
6 better deal. You can argue all that, but, you know, for
7 me to tell the jury, well, you can consider whether or
8 not these guys are going to get a lesser sentence, I
9 think that comes too close to the Court commenting on the
10 facts, so for that reason, I didn't give you that charge.

11 MR. GRIMES: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. GRIMES: May I have one moment? The only
14 other thing would be a housekeeping matter. I don't know
15 if the request for charge would be made part of the Court
16 exhibit or should we file that --

17 THE COURT: We'll make them -- the ones that
18 I turned down, the requested charge number one? We can
19 make that a --

20 MR. GRIMES: 1 through 7.

21 THE COURT: We can make those Court's
22 exhibits for you.

23 (Requested jury charge marked for
24 identification as Court's Exhibit 4.)

25 MR. GRIMES: Thank you, Your Honor. I think

1 it included self-defense.

2 THE COURT: Okay. Self-defense is included
3 in there. So you got mere presence and you got
4 strong-arm robbery.

5 MR. GRIMES: Could I ask pretty please that I
6 get an ABHAN?

7 THE COURT: All right. Anything else we need
8 to deal with?

9 MS. SHEALY: Nothing from the state, Your
10 Honor.

11 THE COURT: How long do you think you need,
12 30 minutes?

13 MS. SHEALY: Probably.

14 THE COURT: I'll give you 30 and then 10.
15 I'll give you 30 -- you want to open --

16 MS. SHEALY: I don't want to open on the law,
17 so depends on how long Megan goes.

18 THE COURT: How long do you plan on going?

19 MS. EHRLICH: I think it will be somewhere
20 around 20 minutes.

21 THE COURT: I'll give everybody 30, and if
22 you get to 30 -- if you get to 25, I'll start saying you
23 need to wind it up. Okay? How about that? Because you
24 don't need 30.

25 (In open court, jury present.)

1 THE COURT: All right. Folks, welcome back.
2 We're now going to enter into the final part of the trial
3 where we have the closing arguments by the lawyers, and
4 then I'll charge you on the law and go over the verdict
5 with you.

6 On the closing arguments, it's important to
7 remember these are the lawyers again talking to you about
8 the evidence that you've heard, giving you a little
9 preview on what the law is and how it applies to the
10 facts, but they're basically arguing in an attempt to
11 persuade you to render a verdict on their client's
12 behalf. All right?

13 The lawyers are not testifying. What they're
14 saying is not evidence. They're only going to be talking
15 about the evidence that you've heard. Under our rules,
16 the burden of proof, again, is with the state; however,
17 that means that they get to go last in this case, so you
18 will heard from the defense first and then you will hear
19 from the state. After they're finished, I will then go
20 over the law with you and the verdict, and you will
21 retire to consider your verdict. Okay? So Ms. Ehrlich?

22 MS. EHRLICH: Your Honor, could we approach
23 on one issue?

24 (Discussion held at sidebar.)

25 THE COURT: Okay. Go ahead.

1 MS. EHRLICH: Trevor Gibbs is a
2 self-described hustler. His cousin Quan, also a hustler,
3 and they, along with their cousin Kaylab decided to rob
4 Moses Alford, and they gave Alonza Dennis the gun just in
5 case something went wrong. Why? Because he's
6 expendable.

7 At the beginning of the case, I told you that
8 Alonza Dennis is a simple guy. He bales straw to make do
9 and catches rides to and from where he needs to go. The
10 state wants you to believe that he was so desperate to
11 get high that he decided to rob Moses at the Kangaroo gas
12 station in broad daylight.

13 The problem with that theory are the
14 McClellanville cousins, Quan, Kaylab and Trevor. You
15 heard Alonza testify today that he didn't steal a gun and
16 try to sell it to those guys, that the gun came from
17 them, and they told him to take the gun, that he didn't
18 have a plan to rob Moses and he didn't try to rob Moses,
19 and that when he did fire a gun, he didn't shoot to hit,
20 he shot to scare.

21 Let's talk a little bit about the
22 investigation. It's a pretty one-sided investigation.
23 There were no steps taken to preserve evidence that may
24 have come from the victim, Moses. They did not do a GSR
25 on him. They allowed a friend of his to drive off with

1 his car. At that point, they don't know what caused the
2 shooting, what was in the car, or what role Moses may
3 have played of the lead detective in the case, Detective
4 Lawrence, did very little to document his efforts to find
5 out the truth. He didn't write one supplemental police
6 report about any of his interactions with Alonza Dennis,
7 despite spending hours with him.

8 Maybe Alonza Dennis is expendable to
9 Detective Lawrence too. Now, you heard a lot of testimony
10 about how Alonza was running through the woods, covered
11 in cobwebs, sweating. Yeah, he ran. He was scared,
12 scared out of his mind of what had just happened. He
13 wasn't exactly sure what he did. He knew he had fired a
14 gun, and he knew at some point that he saw Moses reaching
15 for a gun.

16 You also heard testimony from individuals
17 involved with the K-9 unit, that there were about five of
18 those officers tracking him through the woods, along with
19 at least one dog. So running scared. Yeah, he was
20 running, but running scared doesn't mean he is guilty.
21 Sometimes people run because they've gotten in over their
22 head.

23 You heard from Alonza himself today about how
24 everything happened, that at some point he goes to try to
25 hang out with his friend Murray, but on the way, he runs

1 into Quan and Kaylab. They live on the same street, as
2 his friend Murray, and they wave him over. They start
3 talking about a robbery, and Alonza tells us, today, that
4 he didn't want to do it.

5 He also talked about the reputation of these
6 guys, and we know from Trevor their reputation and he
7 doesn't want to just walk away, so he kind of plays it
8 cool with them. He thinks that maybe if I just play
9 along, everything will work out. So he plays along, and
10 I think he said Kaylab, the guy who Moses describes as
11 belligerent, says something about they don't want to use
12 him. They don't want to use him for this robbery, so
13 Alonza is relieved and he leaves and goes to the gas
14 station.

15 He sits under the oak tree. That is where he
16 sits to try to wait for a ride, and that is when he see
17 the blue Crown Victoria pull up. He waves him over. He
18 thinks he's getting a ride, and he gets into the car.
19 That is when someone tells him, there is the gun, and he
20 puts the gun in his pocket.

21 At this point, he also tells us that he
22 didn't want to participate in a robbery, but he does the
23 same thing he did before and just kind of plays like he's
24 going along with it. He's intimidated by the guys. They
25 may not have threatened him outright, but he knows their

1 reputation and he knows that they're drug dealers and
2 they said they have the one gun. He doesn't know if they
3 have the others.

4 We also heard about Quan and Kaylab looking
5 at the clothing, and Alonza gets out of the car with
6 them. And he testified that it was Quan who said, Give
7 me everything. Give me your money, not him. He doesn't
8 put himself participating in the robbery at all. He
9 doesn't say he was pulling a gun, he doesn't say he was a
10 lookout, and he doesn't say he was there to further their
11 criminal activity. He says that they're the ones doing
12 the robbery. They're the ones who lured Moses there.

13 He also told you that he didn't pull a gun at
14 Moses. He says that he only pulled the gun when Moses
15 was running and goes towards his shirt and looks like
16 he's about to pull a gun as well. And Alonza tells us
17 that he shot the gun, that he didn't mean to hit, he
18 didn't mean to hit. He didn't have the malice to try to
19 hit. He had no ill will towards Moses, had not had any
20 run-ins with him before. There was no reason for him to
21 shoot him.

22 That's the point where Alonza runs, and it's
23 understandable. It's a chaotic scene. He's fired a gun
24 at a Kangaroo gas station in McClellanville, and he also
25 knows the other guys that were there.

1 The state questioned why he didn't say
2 anything when he was first arrested, and he told us why.
3 He said he was scared. He didn't want to be labelled a
4 snitch, and a second statement, a week later when
5 Detective Lawrence pulls him out of jail and he says he
6 didn't deny at that point that Kaylab and Quan had been
7 part of planning a robbery. It was their plan to rob
8 Moses Alford, and he explained it to us today that he
9 knew they were already under arrest and Detective
10 Lawrence already knew what happened.

11 The state questioned why he didn't talk about
12 his fear of these guys, and he gave you an explanation:
13 They're all in the same jail, and he doesn't know what
14 they might do.

15 Let's talk a little bit about Moses. There
16 is no question that this guy went through something on
17 June 22. We all hear the 911 call. We all heard about
18 his injuries, but him getting shot by Alonza is more
19 complicated than it appears. Moses is already on edge
20 before he ever gets to the gas station. He's got the gun
21 because he knows the world I live in. He knows that he
22 could be a target and he needs to be prepared, and he
23 describes to us three red flags: One, the guy in the
24 white shirt gets out of the car, goes into the store, is
25 in there 30 seconds, doesn't buy anything. We assume

1 that's Trevor.

2 Then you've got Quan trying to lure Moses to
3 the back roads of McClellanville and away from the store.
4 That's Quan. And then, three, Quan and Kaylab give each
5 other a look that he describes as meaning here we go, and
6 he gets suspicious of that.

7 That tells me that Quan, Kaylab, and Trevor,
8 the McClellanville cousins, are the ones casing out
9 Mr. Alford. You don't hear anything about Alonza. That
10 is when Moses, scared of Quan, scared of Kaylab, gets his
11 nine millimeter out of the car and arms himself.

12 He describes Kaylab at that point as being
13 rough and belligerent, tossing the stuff around like it
14 was his, like he was trying to start something, like he
15 was the agitator. Their looks alone and their actions
16 scared Moses.

17 At this point, Quan wants some type of
18 shirts. Moses is going in the back seat. He's leaning
19 in and he says that he hears the car door and he can see
20 somebody over his shoulder, but he can't really see much,
21 and that is where he says that Alonza had a gun.

22 We're not here today to come into court and
23 call Moses a liar. What we are saying is that he is
24 mistaken. He gave a description of the gun that was
25 being held, and he said the gun was black. The gun was

1 silver. Maybe it's because the gun never got pulled.
2 He's already on edge, the way Quan and Kaylab are acting.
3 He knows that Kaylab is belligerent. He's already extra
4 suspicious, and he panics and starts running, and that is
5 when he goes for a gun, the nine millimeter that he armed
6 himself with based on the actions of the McClellanville
7 cousins.

8 That's when Alonza tells you that he's
9 scared, and he fired what he described as kind of warning
10 shots, and maybe he didn't fire in the air, but he told
11 you that he didn't have any intention on shooting or
12 hitting Moses Alford. He shot in the direction to try to
13 scare him, but not to try to hurt him, not to try to kill
14 him.

15 We also heard that the headlight got hit. He
16 hit the headlight, not Moses, at some point. He wasn't
17 doing any type of deliberate shooting to try to kill
18 Moses Alford. I think it's interesting to think about
19 kind of how Quan was. Quan sounds like a leader. And
20 then Quan, after setting Moses up, luring him into
21 McClellanville, and getting this robbery started,
22 demanding the money, demanding everything, then he wants
23 to act like, I didn't know what was going on. I can't
24 believe those boys did that. Those boys tried to rob
25 him.

1 We all know that Quan was part of it, but
2 then Quan's friend comes up in a truck and tries to get
3 Moses into the truck, and Moses, from his own words,
4 didn't trust those guys, thought something was going to
5 go down, that they were going to lure him out and kill
6 him, finish him off. That is Quan, not Alonza Dennis.

7 He was so scared of Quan that when the EMS
8 trucks are parked across street, because they won't come
9 on to the property until the police cleared the scene,
10 that he won't accept help from Quan. He would rather
11 wait for EMS. There is no question he went through a lot
12 that day, but out of his own words, he said that he
13 wasn't sure about a lot of things at that moment when he
14 talked to Detective Lawrence, that they were forcing him
15 to remember every detail of a three-minute period.

16 Again, not saying he's a liar at all, but he
17 probably is confused, scared of those guys, thought he
18 saw something he didn't, and that is when he ran.

19 Let's talk a little bit more about Alonza.
20 The state wants you to think that he needed a blast so
21 bad he decided to plan this robbery, go out there, rob
22 this guy, shoot him in the middle of McClellanville in
23 broad daylight. He needed the blast so bad, why doesn't
24 he go get it from his codefendants, Trevor Gibbs, drug
25 dealer, Quan, drug dealer?

1 We heard from Trevor. He has testified that
2 he's unemployed, that he was unemployed a year and a half
3 ago. He describes his way of making money as hustling.
4 Selling drugs. That's his way of life, making money in
5 the streets, always working the next game, looking for a
6 way to make money, find the next victim, out maneuver
7 everybody, and in this case, he was robbing Mrs. Alford
8 and now setting Alonza Dennis up to take the fall for it.

9 Trevor is an admitted drug dealer. He told
10 you he sells crack. He told you his cousin, Quan, sells
11 weed, sells crack. He told us that Quan's car has bullet
12 holes in it because he had been shot at three weeks
13 earlier. There are bullet holes already in that car
14 before anything happened at the Kangaroo gas station. He
15 testified that they all avoid the police, and by they, he
16 means him, Quan, Kaylab, McClellanville cousins.

17 Trevor give gave us some story about Alonza
18 trying to sell him a gun, that nobody buys it, but then
19 somehow I guess he missed a step in how -- when he's
20 trying to sell the gun. The gun magically is in Kaylab's
21 hands when they get to the gas station. Maybe that's
22 because that's not how it happened.

23 Trevor didn't give us any testimony about
24 Alonza pulling a gun. He said something about his lips
25 moving, Moses looked shocked and then Moses reaches for a

1 wallet and we know Moses told you he reached for a gun.

2 Trevor didn't do anything to help. Why?

3 Because he knew he was going to get arrested. He waited
4 until he had a deal set up to start giving his side of
5 everything, a side that puts everything on Alonza Dennis,
6 just like they want it. If anything goes wrong, Alonza
7 will go down for this. He's the odd man out. He's
8 expendable. He's had plenty of time, too, to get his
9 story together, hasn't he? This happened in June of
10 2009. He just gave a statement in January of 2011,
11 plenty of time to try to make his statement add up to the
12 victim's statement, plenty of time to talk to his cousins
13 and make sure they're all on the same page, and plenty of
14 time to get everything lined up real nicely for him and
15 real nicely for the state.

16 He didn't testify out of the goodness of his
17 heart because he feels so bad for Moses. This is a guy
18 who doesn't think twice about even breaking his house
19 arrest order. He comes into court. The judge says you
20 are on house arrest. You cannot go anywhere, and what
21 does he do? He starts putting stuff up on Facebook about
22 going to Myrtle Beach, going to midway, going to the
23 strip club. But if he'll break a Court Order to go to a
24 strip club, who knows what he'll do to stay out of
25 prison?

1 And that is who the state chose to work with
2 in this case, same office, that according to Detective
3 Lawrence, has ordered Charleston County sheriff's office
4 not to videotape their interviews. Trevor wants the
5 state to tell a judge how helpful he is. He wants to
6 save himself and save his cousins from spending up to the
7 next 40 years of their lives in prison, prison life where
8 he doesn't have the freedom to be on the streets
9 hustling, he can't get his mom's cooking.

10 He told you how much he loved his family,
11 looked like he might have teared up a little bit at that
12 point. His loyalty is to his blood and his loyalty is to
13 his streets, and he'll do anything to protect them.

14 You heard me ask him if he wanted his charges
15 dismissed, and he said that would be nice. These guys,
16 the McClellanville cousins, they set Moses up. They
17 brought Alonza Dennis there and knew that if anything
18 went wrong they could blame it on him, but Alonza told
19 you he was there but he didn't participate. He didn't
20 pull a gun. He didn't ask for anything. He didn't
21 demand anything. He wasn't a lookout, and he wasn't
22 trying to help them further their criminal activity, and
23 the only reason that he fired a gun was to scare Moses
24 because Moses was going for his gun and he doesn't have
25 any intention to hit him, no intention to try to kill

1 him.

2 Alonza tried to play it cool with these guys,
3 and it probably backfired on him, but now these
4 McClellanville cousins are trying to continue their
5 hustling into the courtroom to get them out of their
6 mess, their robbery. Don't let them hustle you.

7 MS. SHEALY: May it please the Court,
8 Ms. Ehrlich, Mr. Grimes: You don't get to shoot and
9 wonder later what happened. Ms. Ehrlich said maybe
10 Mr. Dennis got in over his head. He jumped into the deep
11 end.

12 You've been sitting here for three days.
13 You've had the opportunity to listen to the witnesses'
14 statements from the witness stand, and the judge is going
15 to tell you it's your role as the jurors to determine who
16 is believable, what is believable, and there are sort of
17 some shortcuts in this case compared to other cases,
18 because we have Mr. Dennis admitting he is the one who
19 used the gun in that parking lot that day and pointed it
20 right at Moses Alford, although he tells you it was to
21 the side and it just happened to hit him.

22 So that part of the typical struggle in a
23 courtroom doesn't exist, but needing a blast, needing
24 that next hit of crack cocaine is a powerful motivator.
25 It's powerful. That is what makes crack so dangerous.

1 That is what makes it so addictive. You want the next
2 hit, and Alonza Dennis, that day, just as Trevor
3 described, he wanted a blast, and he was irritated
4 because his boss hadn't paid him.

5 Isn't it interesting that Trevor knew that
6 his boss hadn't paid him yet? Trevor told us that. And
7 then Mr. Dennis, when I asked him, said, Oh, yeah, I
8 hadn't gotten paid yet. Trevor Gibbs knew that because
9 Alonza Dennis was in that vehicle not once that day, but
10 twice that day.

11 You can almost picture it: Driving out to
12 McClellanville, convenience store on the side, Alonza
13 with his shorts and T-shirt on, come from raking,
14 supposedly, needing that fix.

15 Now, if you believe that he had just gotten
16 that crack pipe when he was over at Quan's, he got his
17 lessons of how to use it, I doubt you believe that. He
18 had it in his pocket, and he didn't have one or two, but
19 three lighters ready for it. I got to get it. And who
20 does he pursue on the first occasion that day, at the
21 convenience store, rolling in to the Kangaroo in that
22 Crown Vic that is souped up, but the local drug dealers.
23 Surely, I can get some stuff from them.

24 And he gets in there and goes, I got this. I
25 stole it last night. I'll sell it to you for \$50. He

1 needs some money. And remember how La Seto tells him,
2 back off? Maybe it was Trevor, I don't remember, but one
3 of the two of them, when he first comes running over to
4 them, says back off. Heck yeah, they're drug dealers and
5 the police are across the street at Bull's Bay. They
6 don't want a little crack addict walking up to their car.
7 They know the heat will be on. He gets in that vehicle
8 with them. He doesn't go to Murray's house, he goes to
9 Quan's, and under that tree, they start talking about the
10 robbery, if you believe one version, or he starts talking
11 about the robbery, if you believe a different version.

12 Because you remember that Trevor indicated
13 that as Quan and Moses are on the phone together, it's
14 Alonza that says, Let me jump, let me jump. I could get
15 that mental image in my head very easily. He thinks I
16 could get some money, or if you believe what he told you
17 today, they had already planned to do it, but who is
18 they? They was Quan and Kaylab, according to Alonza, not
19 Trevor. Trevor was one of the young kids not
20 participating in the conversation.

21 But either way you have it, he had armed
22 robbery on his mind and he wanted money, and he wanted
23 clothing and he wanted drugs. And when you think about
24 it, when you think about it, who is the most likely to do
25 something so crazy in broad daylight on Highway 17 but a

1 crack addict, wanting the next fix. He told you --
2 excuse me.

3 He told them, I got it. I got it last night
4 and I stole it. What did Deputy Caulfield testify to?
5 The gun was reported stolen. He had that armed robbery
6 on his mind. He was excited about it. He was jacked.
7 He was ready to go, and then disappointment, if you
8 believe what he said. Kaylab was like, Whoa, we don't
9 need you. That's according to him.

10 According to Trevor, they were like, We don't
11 want you coming in here talking about robbing someone.
12 Maybe Trevor didn't know what Kaylab and Quan had going
13 on, but any way you look at it, when the vehicle, the
14 Crown Vic, leaves that house, that man is not in the car.
15 He's itching to be involved. He wants to be involved.
16 Armed robbery.

17 And so he catches a ride with Quan's
18 grandfather. He gets himself up to that Kangaroo, and as
19 Trevor told us, he comes up to that car. He gets in that
20 car.

21 Now, Moses often told us, as Trevor told us,
22 that car goes from the pumps to around where Moses is.
23 There is no meandering in the parking lot to pick up
24 Alonza Dennis like he told you. That's ridiculous. They
25 go straight over there, and what is interesting is Trevor

1 and Moses -- let's pause for a second and think about
2 Moses. I bet if we were to ask Moses, he would say put
3 them all in prison. Put them all in prison, so don't you
4 think that if Kaylab and La Seto were out there at the
5 time of the shooting he would be screaming from the
6 mountain tops? But they weren't. They got out to look
7 at the clothes, and I think Kaylab's behavior is
8 suspicious. Rummaging, being rude, getting back in the
9 car. I can see why the red flags were going off, but
10 Trevor tells you the same thing.

11 Kaylab gets out. Kaylab comes back in, but
12 there is some details we do get from Trevor that kind of
13 puts all the pieces together. Kaylab gets back in the
14 car and says, I don't want what he's got. He's got shoes
15 with Spiderman. I guess Kaylab is too cool for that, and
16 what is happening in the back? Alonza, getting kind of
17 fidgety, saying, Give me my gun.

18 Now, if Trevor were here to help Kaylab, he
19 sure as heck wouldn't tell him Kaylab had the gun in the
20 front seat. That makes absolutely no sense that he could
21 come in here and make that up. He doesn't know when
22 Kaylab got that gun. He knows this is the gun that
23 Alonza was showing, and he knows that in the front seat
24 Kaylab hands it back to Alonza when Alonza asks for it.
25 And what does Kaylab say? You're a grown man. Stupid on

1 Kaylab's part. Unfortunately, hugely unfortunate, but he
2 does.

3 La Seto and Kaylab were not out of the car at
4 the same time that Alonza was. Moses tells us that, and
5 Trevor tells us that.

6 Now, you're going to be asked to look at the
7 demeanor and decide the believability of the witnesses.
8 You saw Moses Alford testify, and, as I said before, he
9 wants these guys off the street. If there were any
10 reason to -- in any way La Seto or Kaylab were out at the
11 time that this took place, why wouldn't he say that?
12 Because it didn't happen. That didn't happen. It's just
13 like Trevor said.

14 Alonza starts feeling like the big man. This
15 is my chance. The gun's in here. They're dilly-dallying
16 around. Give me my gun, give me my gun. And he gets out
17 of that vehicle, and he turns this weapon, never had put
18 it in his pocket, he turns this weapon on Moses and
19 starts to shoot.

20 That gun is pulled, and what did Trevor tell
21 us? Again, if Trevor were trying to make up stuff,
22 wouldn't he have said that he heard Alonza say, Give me
23 everything? That would make his story beautiful. But he
24 says he didn't hear that. He could see Alonza's mouth
25 moving. But I'll tell you who didn't: Moses Alford.

1 There is no question that when Moses Alford
2 goes for his weapon, he had absolutely every right to do
3 so, but please don't be mistaken: That doesn't happen
4 until he is being robbed and he has a gun and he's
5 looking down the barrel of it. And I don't want to point
6 this toward y'all, but as a reminder, he wants to make a
7 big deal about this was a black gun.

8 Ladies and gentlemen: He describes it as a
9 small barrel and a smaller caliber perfectly, and,
10 anyway, her client says it's the gun.

11 What is interesting about the statements that
12 are given, I think, show a pattern with Alonza. Alonza
13 is all trying to say just enough to get the heat off of
14 him, just enough to get out of trouble, and so that first
15 time when he tells where he had been earlier in the day,
16 you see Alonza by the last statement, the last sentence
17 of the statement: I got back to McClellanville at about
18 3:30, and next thing I knew, I was under arrest, and I
19 didn't know what happened.

20 He thought that might fly. He didn't know
21 they were going to find the gun. He didn't know that
22 Moses Alford was as bright as he is and could remember
23 the details. And then on the 29th, and you'll have both
24 of these statements back there with you, on the 29th, he
25 knows at that point that others are arrested and I'm

1 arrested.

2 This is his chance with Detective Lawrence.
3 This is my chance to tell my story, and Detective
4 Lawrence gave him state forms. Have at it. Not one
5 time, not one time, not a hint of whoa, I was scared of
6 those guys. I was scared. He doesn't say it once.

7 And the best he can do today -- let me say
8 this: Regarding this statement, though, he notches it up
9 a little bit and does say, I only shot him because I
10 didn't want him to shoot me.

11 Again, telling what he thinks is just enough
12 to keep him out of trouble. So the lights go on, the
13 trial is scheduled, that's not flying, and he takes the
14 stand and now today says, Whoa, those guys are mean.
15 They got bad reputations, so what I'm going to do is
16 pursue them, join them, get in the car, see the gun, take
17 it out, and shoot at that man that I don't have a problem
18 with in the world.

19 Whoa, they're mean. They look bad. I'm not
20 going to run to the left. I'm not going to run to the
21 right to avoid the problem. I'm not going to run through
22 the trees in front of me or behind me. Instead, in this
23 parking lot, at a convenience store, I'm going to take
24 this weapon and I'm going to try to get my money and my
25 clothes.

1 But that wasn't successful. Bam. Five shots
2 towards Moses, and that shot, one of the shots, nails
3 that lamp in the front of the car. He hasn't described
4 to you where people were. Take a look at the pictures
5 when you get back there. The blood trail is exactly,
6 exactly, where Moses Alford tells you it is.

7 He had a total disregard, a total disregard
8 for human life. It was a gun, and his attorney, after I
9 crossed him, was trying to clarify that with him.
10 Mr. Grimes said, now, were you thinking that a -- do you
11 think that a shot up in the air could be a warning shot?
12 Do you think that could be a warning shot?

13 Alonza didn't give him the right answer.
14 Alonza knows that would be a warning shot. You don't get
15 to take a gun and shoot it at someone. I would invite
16 you to look at everything we have, and like I said
17 before, it's not a situation where we have to worry too
18 much about gunshot residue or where he was found, but
19 let's think about the fact that he fled like crazy.

20 He got out of there. What does it say about
21 what happened when he flees when he's worried about
22 himself? But he doesn't flee under this preposterous
23 story he presented today, when Moses Alford is involved.

24 Look at everything. Look at all the
25 evidence, and you will see, like I told you in the

1 opening statement, Moses Alford had planned that day. He
2 was going to go meet with his new driver, head back to
3 Georgetown, stop and maybe sell some T-shirts, and
4 instead, he's on the other end of this barrel. The man,
5 holding a gun, with no regard for human life, a man
6 thinking about himself, what he wanted.

7 He told you, afterwards his adrenaline was
8 pumping. He was getting through those woods, but we
9 found the gun. We found the gunshot residue. We have
10 the projectiles, one coming from the colon and stomach
11 area of Moses Alford.

12 Think about Trevor. When you think about
13 Trevor, recognize this: I'm not nominating Trevor, La
14 Seto, or Kaylab for citizen of the year, make no mistake
15 about it, and each of those guys will face the
16 consequences, but when it comes to Trevor, he's the one
17 guy that nobody says was talking about an armed robbery.

18 And he's the one guy Moses and Alonza can't
19 even identify in the lineup, so yes, Trevor is going to
20 be the one we bring in here. I sure am not bringing in
21 La Seto and Kaylab, but when you evaluate all the
22 evidence, I ask that you do this: Ms. Ehrlich has been
23 using the word expendable. There is only one person,
24 only one person who thought that someone was expendable,
25 and Alonza Dennis was that person. He believed that

1 Moses Alford was just expendable.

2 Thank you very much.

3 THE COURT: Okay, folks. You've heard now
4 the closing arguments, all the evidence, and it's now my
5 duty to charge you on the law that you are to apply to
6 the facts as you find them. You're the finders of the
7 facts in the case, so we will accept whatever you decide
8 are ultimately the facts that you have heard.

9 There is a dispute. You resolve them, and we
10 live with whatever you resolve factually; however, you
11 are bound under the oath that you took at the beginning
12 of the trial to now accept the law as I charge you,
13 whether or not it is the law that you believe it should
14 be or wish it were or were under some misconception about
15 what you think the law should be.

16 Under our laws and the constitution of our
17 state, you and you alone are finders of the facts, and
18 I'm not permitted to indicate to you how I might feel
19 about the facts, so if there something that I've said or
20 done throughout the trial that indicates to you that I
21 have an opinion about the facts of this case, then you
22 should disregard that. You must weigh the evidence
23 entirely and independently on your own and render a
24 verdict based solely on the evidence that you have heard
25 in this trial.

1 Now, I will remind you, the fact that the
2 defendant was arrested, charged, and indicted in this
3 case is not evidence in this case and cannot be
4 considered by you as evidence of guilt in this case, nor
5 does it create any presumption of guilt or any inference
6 of guilt. The documents, the indictments, that I told
7 you about at the beginning of the trial are simply the
8 formal written instruments which contain the charges made
9 against the defendant, and, again, it puts him on notice
10 of what he is to stand trial for and is the formal
11 documents by which this case is brought under the
12 jurisdiction of this Court.

13 So, again, there were three indictments, and
14 the first indictment was 2009 GS-10-1881. This was the
15 charge of attempted armed robbery. Second indictment,
16 2009 GS-10-8108 was for assault and battery with intent
17 to kill, and then the third indictment is 2009
18 GS-10-8112, possession of a firearm during the commission
19 of a violent offense.

20 And I see some of y'all scribbling furiously.
21 You don't have to write that down. I'll give you those
22 things. In fact, I'll give you a copy of my instructions
23 so you don't have to do anything but listen at this
24 point. Each of these indictments contain a separate and
25 a distinct offense, and so you must decide each

1 indictment entirely on the evidence and the applicable
2 law, uninfluenced by your decision as to any other
3 indictment.

4 The defendant may be convicted or acquitted
5 on any or all of the offenses charged, and you will be
6 asked to write a separate verdict of guilty or not guilty
7 on each of the indictments.

8 Now, I will remind you, the defendant has
9 pled not guilty to these indictments and so that
10 therefore casts a burden on the state to prove the
11 defendant is guilty beyond a reasonable doubt. A person
12 charged with a crime in this state is never required to
13 prove himself innocent.

14 Now, this is an important rule of law in this
15 country. A defendant in a criminal trial will always be
16 presumed to be innocent of the crime for which he is
17 indicted, unless and until his guilt has been proven by
18 evidence satisfying you of that guilt beyond a reasonable
19 doubt. Now, this presumption of innocence isn't just a
20 mere legal theory. It's not just a legal phrase. This
21 is a substantial constitutional right to which every
22 defendant is entitled and this presumption of innocence
23 accompanies the defendant from the time he is charged
24 throughout the trial and until you reach a verdict of
25 guilt based upon evidence satisfying you of that guilt

1 beyond a reasonable doubt.

2 And the defendant has a burden of proving,
3 again, beyond a reasonable doubt, so some of you may have
4 served as jurors in civil cases where you were told it's
5 only necessary to prove that a fact is more likely true
6 than not true, also known as the greater weight or the
7 preponderance of the evidence. In a criminal case, the
8 state's proof has to be more powerful than that. It has
9 to be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's guilt.
12 There are very few things in this life that we know with
13 absolute certainty, and in criminal cases, the law does
14 not require that proof that overcomes every possible
15 doubt. If based on your consideration of the evidence
16 you are firmly convinced that the defendant is guilty of
17 the crime charged, then you must find the defendant
18 guilty.

19 On the other hand, if you find that there is
20 a real possibility that the defendant is not guilty, you
21 must then give the defendant that benefit of the doubt
22 and find him not guilty.

23 Now, we have two types of evidence in a
24 trial. There is direct evidence, and there is
25 circumstantial evidence. Direct evidence is the

1 testimony of a person who claims to have actual knowledge
2 of the facts, such as an eyewitness. It is evidence
3 which immediately establishes a fact which is attempted
4 to be proved. Circumstantial evidence is proof of a
5 chain of facts and circumstances which indicate the
6 existence of a fact. It's evidence that immediately
7 establishes collateral facts from which the main fact may
8 be inferred. Circumstantial evidence is therefore based
9 on inference and not on personal knowledge or
10 observation, like direct evidence is. The law makes
11 absolutely no distinction to be given either direct or
12 circumstantial evidence, nor is there any greater degree
13 of certainty required of circumstantial evidence than
14 there is of direct evidence.

15 You should weigh all of the evidence in the
16 case, and after weighing all of the evidence, if you're
17 not convinced of the guilt of the defendant beyond a
18 reasonable doubt, you must then find the defendant not
19 guilty.

20 Now, during the trial, a statement was
21 alleged to have been made by the defendant that was
22 admitted into evidence in this case. And while the Court
23 determined that this statement is admissible, I must now
24 instruct you that you must make the ultimate decision as
25 to whether or not the defendant made this statement, and

1 if the defendant did make the statement, you must
2 determine then whether the statement was made by the
3 defendant voluntarily and of his own free will. This
4 means the statement was not caused by pressure, force,
5 fear, threats, coercion, or intimidation or by hope or
6 promise of leniency or reward of any kind.

7 In determining whether or not the statement
8 was voluntary, you should consider both the
9 characteristics of the defendant and the details of the
10 question. Some of the considerations of the factors that
11 you can consider are such things as the age of the
12 defendant, the defendant's education or lack of
13 education, the defendant's mental ability or capacity,
14 the defendant's IQ or intelligence, the defendant's
15 background and environment, the place and length of
16 detention, the nature of the question, the advice or lack
17 thereof of the defendant of his constitutional rights,
18 including but not limited to the right to remain silent,
19 that any statement could be used against him in a court
20 of law, a right to have a lawyer present and that if he
21 couldn't afford a lawyer, a lawyer would be appointed to
22 represent him without any cost, and that he could stop
23 making a statement at any time.

24 You must carefully consider all of the
25 surrounding circumstances before you give any weight to

1 an alleged statement. The state again has the burden of
2 proving beyond a reasonable doubt that the alleged
3 statement was voluntary. If you determine it was, you
4 may give the statement any further consideration that you
5 deem proper. You must decide what weight, if any, should
6 be given to the alleged statement, and if you determine
7 the alleged statement was not a free and voluntary
8 statement of the defendant, you should not consider the
9 statement at all.

10 Now, as the fact finders, that necessarily
11 means you must determine the credibility of the witnesses
12 who have testified in this case, and credibility simply
13 means believability. It becomes your duty as jurors to
14 analyze and evaluate the evidence and determine what
15 evidence convinces you of its truth. In determining the
16 believability of witnesses who have testified in this
17 case, you may believe one witness over several witnesses
18 or several witnesses over one witness. You may believe
19 part of the testimony of a witness and may reject the
20 remaining part of the testimony of that same witness.
21 You may believe the testimony of a witness in its
22 entirety or reject the testimony of a witness in its
23 entirety.

24 You can consider whether any witness has
25 exhibited to you any interest, bias, prejudice, or other

1 motive in the case, and you can also consider the
2 appearance or manner of a witness while on the witness
3 stand.

4 You also heard evidence that the defendant
5 was convicted of a crime other than the one for which he
6 is on trial. This evidence may be considered by you if
7 you conclude it is true only in deciding whether the
8 defendant's testimony is believable and for no other
9 purpose. You must not consider the defendant's prior
10 record as any evidence of the defendant's guilt of the
11 charges we're trying today. I also explained to you
12 during the trial that our rules of evidence don't
13 ordinarily permit witnesses to testify about opinions or
14 conclusions, but we do make an exception for those
15 witnesses we call expert witnesses, and that's a witness
16 who because of education or experience has become an
17 expert in some art, science, or profession or calling,
18 and they may state an opinion as to relevant, material
19 matter in which the witness claims to be an expert, and
20 they can also state their reasons for that opinion.

21 You should consider any expert witness
22 received in evidence in this case, and, like any other
23 evidence, give it the weight you think it deserves. If
24 you decide the opinion of an expert witness isn't based
25 on sufficient education or experience or if you conclude

1 that the reasons given in support of the opinion aren't
2 sound or that opinion is outweighed by other evidence,
3 you can disregard that opinion entirely.

4 An expert witness's testimony is to be given
5 no further weight than that of any other witnesses simply
6 because that witness is an expert, and, further you're
7 not required to accept an expert witness's opinion, even
8 if it's uncontradicted.

9 Now, the first indictment, what I want to go
10 over with you, charges the defendant with attempted armed
11 robbery. An attempt is an attempt -- is an effort to
12 accomplish a crime which does not succeed. An attempt
13 includes a specific intent to do a particular act, along
14 with an act falling short of the act intended. The state
15 must show more than mere preparation and intent. There
16 has to be some overt act committed in the effort to
17 commit the crime.

18 Intent means intending to result which
19 actually occurs, not accidentally or involuntarily.
20 Intent may be shown by acts and conduct of the defendant
21 and other circumstances from which you naturally and
22 reasonably infer intent. In order to improve this
23 offense, the state must first prove beyond a reasonable
24 doubt that the defendant attempted to take personal
25 property from the person or presence of another person.

1 Property is defined as the -- property is in
2 the presence of a person if it's within the person's
3 reach, inspection, observation, or control so that the
4 person could, if not overcome with violence or prevented
5 by fear, keep possession of the property. The state must
6 also prove beyond a reasonable doubt that the defendant
7 attempted to carry the property away, intending to
8 permanently deprive the owner of the property, and to
9 keep the property for the defendant's own use.

10 The attempt at even a slightest removal of
11 the property or the complete possession of the property,
12 even if for an instant by the defendant is sufficient to
13 show a taking and carrying away of the property. The
14 attempted taking and carrying away of the property must
15 have been done with violence or by putting the owner of
16 the property in fear of violence.

17 And then, finally, the state must prove
18 beyond a reasonable doubt that the defendant was armed
19 with a deadly weapon during the attempted robbery. A
20 deadly weapon is any article, instrument, or substance
21 which is likely to cause death or great bodily harm.
22 Whether an instrument has been used as a deadly weapon
23 depends on the facts and circumstances of the case.
24 Following examples -- the following are examples
25 instruments which may be deadly weapons: Pistol,

1 shotgun, rifle, dirk, dagger, a knife, a slingshot, metal
2 knuckles, or razor. A gun may be a deadly weapon even if
3 it's not operating.

4 Now, if you do not find that the state has
5 met its burden of proving the defendant is guilty of
6 attempted armed robbery, you can consider whether or not
7 the defendant was guilty of the lesser included offense
8 of attempted strong-arm robbery. All right? Attempted
9 strong-arm robbery is the attempted taking of something
10 of value from a person or in the immediate presence of
11 another by violence or intimidation.

12 When determining whether the robbery was
13 committed with intimidation, you should consider -- or
14 you should determine whether an ordinary, reasonable
15 person in the victim's position would feel a threat of
16 bodily harm for the perpetrator's acts. So for you to
17 find the defendant guilty of attempted strong-arm
18 robbery, the state must prove beyond a reasonable doubt
19 that the defendant attempted to take property from the
20 person or the possession -- from the person of another or
21 in his presence.

22 It not only must be the attempt at taking
23 without the consent of the owner, it must be accomplished
24 by violence or by putting the person in fear, and this
25 violence must be actual, personal violence or the threat

1 of it, and the degree of force used is immaterial so long
2 as force or threat of force is actually sufficient to
3 overcome the victim's resistance. This violence or
4 intimidation must either precede or be contemporaneous
5 with the taking.

6 Now, as to the charges of attempted armed
7 robbery and attempted strong-arm robbery, the defendant
8 has raised the defense of mere presence. Mere presence
9 at the scene is not sufficient to prove somebody guilty
10 of a crime. The defendant's presence where a crime is
11 being committed or mere association with the person who
12 commits a crime does not make a defendant an accomplice
13 or an aider or abetter of the person committing the
14 crime. The burden is on the state to prove every element
15 of the crime charged.

16 If you find after reviewing all of the
17 evidence that the state has proved the defendant was only
18 present at the scene of the crime or that they have not
19 proved beyond a reasonable doubt any other participation
20 in the crime, then you must find the defendant not
21 guilty. The law is that presence at the scene of the
22 crime is not sufficient to find somebody guilty.

23 Now, the second indictment that I want to
24 talk to you about is a charge of assault and battery with
25 intent to kill. In order to prove assault and battery

1 with intent to kill, the state must prove beyond a
2 reasonable doubt the defendant committed an unlawful act
3 of a violent nature to the person of another with malice
4 aforethought.

5 An assault occurs when a person unlawfully
6 attempts or offers to commit a violent injury upon
7 another person and had the present ability to complete
8 the attempted injury. An assault is an intentional
9 creation of a reasonable fear of immediate bodily harm.
10 It is not necessary that the attempted injury or harm
11 actually take place.

12 For example, if I walk up to you and we are
13 within arm's reach, I draw back to hit you, that is an
14 assault. A battery is an unlawful touching of another
15 person by a person who has committed the assault. An
16 unlawful touching can be caused by part of the accused's
17 body or by any object the accused puts in motion.

18 The battery is the completion of the assault
19 by using or applying force to another person, however
20 slight, in a rude, angry, or resentful manner without
21 justification for doing so. Using my earlier example, if
22 I carry through on the assault by hitting you, then that
23 is a battery.

24 Now, malice is hatred, ill will, or hostility
25 towards another person. It is the intentional doing of a

1 wrongful act without just cause or excuse and with the
2 intent to inflict an injury or under circumstances that
3 the law will infer an evil attempt.

4 Malice aforethought does not require that
5 malice exists for any particular time before the act is
6 committed, but malice must exist in the mind of the
7 defendant just before and at the time the act is
8 committed. Therefore, there must be a combination of the
9 previous evil intent and the act.

10 Malice aforethought may be expressed or
11 inferred. Using the terms expressed or inferred do not
12 mean different kinds of malice, but merely the manner in
13 which malice is shown to exist. That is, either by
14 direct or by inference from the facts and circumstances
15 which are proved.

16 Express malice is shown when a person speaks
17 words which express hatred or ill will for another or
18 when the person is prepared beforehand to do the act
19 which was later accomplished.

20 For example, lying in wait for a person or
21 any other acts of preparation going to show that the deed
22 that was in the defendant's mind would be expressed
23 malice. Malice can be inferred from conduct showing a
24 total disregard for human life. A deadly weapon, again,
25 is any article, instrument, or substance which is likely

1 to cause death or great bodily harm, and, again, whether
2 an instrument has been used as a deadly weapon depends on
3 the facts and circumstances of the case, and I'll give
4 you the same examples that I did before of deadly
5 weapons: A pistol, a shotgun, a rifle, a dirk, a dagger,
6 a knife, slingshot, metal knuckles, razor, gasoline, fire
7 bomb, Molotov cocktail, light fluid. A gun may be a
8 deadly weapon even if it's not operating.

9 If the facts are proven beyond a reasonable
10 doubt sufficient to raise an inference of malice to your
11 satisfaction, this inference would simply be an
12 evidentiary fact to be considered by you along with other
13 evidence of the case, and you may give it the weight you
14 decide it should receive.

15 A specific intent to kill is not an element
16 of assault and battery with intent to kill, but there
17 must be a general intent to commit serious bodily injury.
18 An intent means intending the result which actually
19 occurs, not accidentally or involuntarily. Intent may be
20 shown by acts or conduct of the defendant or other
21 circumstances from which you may naturally and reasonably
22 infer intent.

23 Evidence of the character of the assault, the
24 character of the instrument used, the manner in which it
25 was used, the purpose to be accomplished, and the

1 resulting wounds or injuries may be considered in
2 determining the intent with which the assault was
3 committed. Intent may be inferred when it is
4 demonstrated that the defendant voluntarily and willfully
5 commits an act, an actual tendency of which is to destroy
6 another's life.

7 The final and third indictment that I want to
8 talk to you about charges the defendant with possession
9 of a weapon during the commission of or attempting to
10 commit a violent crime.

11 The state must prove beyond a reasonable
12 doubt that the defendant was in possession of a firearm
13 or visibly displaced what appeared to be a firearm during
14 the commission of a violent crime. A firearm means any
15 machine gun, automatic rifle, revolver, pistol, or any
16 weapon which is designed to or may be readily converted
17 to expel a projectile.

18 In order to find the defendant guilty of
19 possession of a weapon during the commission of a violent
20 crime, you must first find the defendant guilty of either
21 committing a violent crime or attempting to commit a
22 violent crime, and I charge you that assault and battery
23 with intent to kill and attempt armed robbery are violent
24 crimes.

25 Now, in determining the guilt or innocence of

1 the defendant, you may not consider any possible penalty
2 for a particular crime. Punishment for a crime is a
3 matter for me to determine and should never be considered
4 by you in any way whatsoever in arriving at a fair and
5 impartial verdict as to the guilt or innocence of the
6 defendant. And, finally, your verdict must be unanimous
7 as to each of the indictments.

8 So, Mr. Foreman, this is where you get to
9 earn your pay. There are three charges, and there are
10 four possible verdicts because, you recall, the attempted
11 armed robbery, you could find guilty or not guilty of
12 attempted armed robbery. If you find not guilty of
13 attempted armed robbery, you can consider the lesser
14 included offense of attempted strong-arm robbery.

15 So the verdict has the indictment for
16 attempted armed robbery first. If the jury unanimously
17 determines that the state's met their burden of proof,
18 then you check the block that says guilty of attempted
19 armed robbery. If you find him not guilty, you check
20 that block not guilty, sign it, and date it.

21 If you check not guilty, you can then
22 consider the next possible verdict, which is for
23 attempted strong-arm robbery, and, again, your choices
24 are guilty and not guilty, sign it, and date it.

25 So just to clarify that, if you find the

1 defendant guilty of attempted armed robbery, you don't
2 consider attempted strong-arm robbery. Okay?

3 So the second indictment then is for assault
4 and battery with intent to kill, and your two possible
5 verdicts are guilty of assault and battery with intent to
6 kill or not guilty, so whatever the jury unanimously
7 decides, sign and date it, and then your third and final
8 indictment is the one for possession of a weapon during
9 commission of a violent crime; again, two possible
10 verdicts, guilty and not guilty. Whichever one the jury
11 unanimously decides, you sign it and date it. Once you
12 have reached a verdict on all three, let the foreman or
13 the bailiffs know, and we will come back and receive your
14 verdict.

15 Now, I have given you the charge. I'll send
16 you back. Don't begin your deliberations just yet. I
17 have to give the lawyers the opportunity to say if I
18 misspoke something, and we get the evidence together.
19 When we send the evidence back with the verdict form, the
20 bailiffs will tell you the judge says it's okay to begin
21 deliberations. Just a formality and takes a couple
22 minutes, so don't begin deliberations until just then.
23 And we will also need to separate the two alternates at
24 this time. Okay?

25 (In open court, jury not present.)

1 THE COURT: Anything from the state?

2 MS. SHEALY: No, sir.

3 THE COURT: From the defense?

4 MR. GRIMES: I think we have to renew our
5 prior objection.

6 THE COURT: Okay. Anything other than that?

7 MR. GRIMES: No, sir.

8 THE COURT: Any objection to me sending a
9 copy of my written charges back to the jury?

10 MS. SHEALY: No, sir.

11 MS. EHRLICH: No, sir.

12 THE COURT: All right. Let's get these
13 together and we'll send it on back.

14 (At 5:13 p.m., the jury begins
15 deliberations.)

16 THE COURT: Bring the jury back in.

17 (7:48 p.m., in open court, jury present.)

18 THE COURT: All right. Mr. Foreman, I
19 understand the jury has reached a verdict; is that
20 correct?

21 THE FOREPERSON: Yes, Your Honor.

22 THE COURT: And it's unanimous as to all
23 three?

24 THE FOREPERSON: Yes.

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

1 please. Thank you. All right.

2 Verdict as to the charge of attempted armed
3 robbery on indictment 2009 GS-10-8113 is not guilty; on
4 the lesser included of attempted strong-arm robbery, not
5 guilty; on indictment 2009 GS-10-8108, assault and
6 battery with intent to kill, guilty; and on 2009
7 GS-10-8112, possession of a weapon during the commission
8 of a crime, the verdict is guilty.

9 If that is, in fact, your verdict on all
10 three charges, would each of the jurors raise your right
11 hand? All right. Let the record indicate that each of
12 the jurors have raised their right hand indicating that
13 was their verdict.

14 All right, folks. Well, I'm going to thank
15 you for your service in this case and for the week.
16 We're going to start another case tomorrow afternoon, but
17 I'm not going to require that you come back. You've done
18 more than enough service this week, and I always have a
19 great deal of faith in what the jury does, not that I
20 comment on your verdict one way or the other, but that
21 you listened attentively to what we do, and you clearly
22 spent time deliberating.

23 This was not a rushed verdict. By my count
24 you were out for two, three hours, so, you know, people
25 take this job seriously when they get it. I know

1 everybody at the beginning, when you get your service,
2 go, man, this is just not a good time. I would like to
3 do this some other day but not now, but when you get in,
4 it's been my experience jurors take this very seriously
5 and they listen and they follow the instructions and they
6 take their time and they deliberate, and you have given
7 Mr. Dennis a trial, a fair trial, in my opinion.

8 You have, in this country you get the ability
9 to have 12 citizens that don't know you come in, listen
10 to the evidence, and render a verdict, and that is all we
11 could ask, and so you have participated in your
12 government this week. Most of the time people just get
13 the chance to vote and pay taxes, but you are actually
14 participating in the third branch of government this week
15 by being on a jury. As I said, you were judges this
16 week, and so we thank you for your service.

17 Now, all week long I've been telling you you
18 can't talk about the case with anyone. Certainly you can
19 talk to anyone you want to know. Sometimes after the
20 trials you will hear from lawyers or people from their
21 offices asking you questions because they often just want
22 to know how they can do a better job for their next
23 trial, and it is perfectly fine if you talk with them.

24 It is perfectly fine if you don't want to.
25 You just tell them you would rather not and they won't

1 bother you, but if for some reason you have a problem,
2 just let the Court know, but it's okay to talk to anybody
3 about the case now. I know it's late, so I won't keep
4 you here any loner. Thank you again for your service,
5 and, again, you do not have to return tomorrow or the
6 remainder of the week or call the telephone number
7 anymore. So thank you.

8 (Jury dismissed at 7:52 p.m.)

9 THE COURT: Okay. Well, let's go ahead and
10 do sentencing. You said you had a --

11 MR. GRIMES: Your Honor, I guess we have a
12 motion for post-trial motions?

13 THE COURT: Well, sure. Go ahead.

14 MR. GRIMES: We would move for a mistrial
15 based upon the Court's failure to charge self-defense and
16 the lesser included charge of ABHAN. The jury's verdict,
17 it was sort of a split verdict, didn't give Mr. Dennis a
18 fair trial, and we would ask for a new trial based upon
19 that.

20 THE COURT: It is an appealable issue, but in
21 any event, motion is denied. Anything else?

22 MR. GRIMES: We renew our motion for -- we ask
23 for a new trial based upon the motion for directed
24 verdict.

25 THE COURT: All right. Again, denied. All

1 right. Anything else?

2 MR. GRIMES: No, sir.

3 THE COURT: Okay. Madame Solicitor, what
4 would you like to tell me?

5 MS. SHEALY: Your Honor, if I may, I would
6 like to hand up the notice of intention to seek a
7 sentence of life without parole that has been previously
8 served upon the defendant and also the certified
9 convictions from the state of New York regarding his
10 criminal sexual conduct in the first degree.

11 (Defendant's criminal history, New York
12 certificate for conviction on CSC, and notice of state's
13 intention to seek life without parole marked for
14 identification as Court's Exhibit Nos. 5, 6, 7, 8, and
15 9.)

16 MS. SHEALY: Would you like me to tell you
17 the rest of his record? I think we went over it in
18 court, but he does have magistrate level disorderly and
19 trespassing, but in 1984 he also had a criminal sexual
20 conduct charge in the third degree, in addition to the
21 New York conviction for criminal sexual conduct in the
22 first degree.

23 He also has a conviction for failure to
24 register on the sexual offender registry, and then
25 subsequent to that, a grand larceny and the shoplifting.

1 I've asked the victim if he -- I was advised that the
2 victim does not wish to say anything further.

3 THE COURT: Okay. All right. From the
4 defense?

5 MR. GRIMES: First, as to the life without
6 parole issue, at this point all the state has done is
7 just hand up certified convictions. They haven't shown
8 that is a recommendation asking for Mr. Dennis. There
9 are a number of Alonza Dennises. We need more proof for
10 that.

11 Second of all, assuming the Court found there
12 was adequate proof, they haven't shown the way he was
13 convicted under in 1987 New York law meets the elements
14 of what would be a strike offense under South Carolina
15 law.

16 So at this point I don't think they've made
17 an adequate showing to warrant a life without parole
18 sentence in this case.

19 THE COURT: All right. Anything else?

20 MR. GRIMES: And we would also argue that
21 under the facts of this case, seeking life without parole
22 would constitute cruel and unusual punishment.

23 MS. SHEALY: Your Honor, just to address one
24 of those issues, unless I'm interrupting you, am I? Were
25 you finished?

1 MR. GRIMES: Go ahead.

2 MS. SHEALY: I'm sorry. I did seek also the
3 statute from New York that was applicable at the time.

4 THE COURT: Okay.

5 MS. SHEALY: And I have a copy of that.

6 THE COURT: What do you have to say this is
7 the same Mr. Alonza Dennis? Looking for, like, a social
8 security number, anything like that?

9 MS. SHEALY: Well, it does show up, Judge, on
10 his rap sheet, which I can also make a part of the
11 record, and I may have given you my only copy of the
12 paperwork that I handed up, Judge. I would like you to
13 take a look at that.

14 THE COURT: It shows his birth date, [REDACTED]/64.

15 MS. SHEALY: Yes, sir, that is the same birth
16 date.

17 THE COURT: That is the birth date he
18 testified to.

19 MS. SHEALY: And the address, if you'll note.
20 I'll hand up these other two documents, Judge. Judge, I
21 think I might not have handed up -- this is included in
22 that.

23 THE COURT: All right. It looks like he was
24 convicted of rape somewhere between the ages of either
25 under 11 or 13 to 18; is that right?

1 MS. SHEALY: The age of the victim?

2 THE COURT: Right.

3 MS. SHEALY: Yes, Your Honor.

4 THE COURT: And what does that match up to?

5 MR. GRIMES: If it was 13 to 18, that would
6 be criminal sexual conduct third degree.

7 MS. SHEALY: Your Honor, the paperwork
8 actually reflects that the child was ten years old.
9 Forceable rape of a ten-year-old step niece, twice on the
10 same day.

11 THE COURT: So that would be criminal sexual
12 conduct with a minor, victim under the age 11, first
13 degree in this state, which is a strike offense. Most
14 serious. Okay. Anything else?

15 MR. GRIMES: May I just ask the Court
16 permission to submit a brief on the issue? I think there
17 is a U.S. Supreme Court case that may have addressed what
18 underlying court documents can be used for sentencing
19 enhancement purposes.

20 THE COURT: Well, here is what I'll do: I'll
21 go ahead and sentence him today, and you can file a
22 motion to reconsider with a brief if you want to in that
23 regard, but it looks to me like it would fit in as a one
24 strike offense, or a two strike offense under our
25 statutes. Anything else?

1 MR. GRIMES: There is an ipso facto clause.
2 I think our state Supreme Court has rejected our argument
3 that would be preserved and the US Supreme Court would
4 address that issue in the near future.

5 Nothing further, Your Honor.

6 THE COURT: You want to say anything,
7 Mr. Dennis?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Well, on the
10 conviction for assault and battery with intent to kill,
11 the sentence of the Court is that you spend the rest of
12 your natural life in the Department of Corrections. And
13 on the commission of a violent crime, it's five years, or
14 commission of a violent crime with a weapon, five years.

15 All right. Possession of a weapon,
16 commission of a violent crime. Okay. Five years on
17 that. Life without the possibility of parole on the
18 assault and battery with intent to kill. Okay.

19 Well, I want to thank y'all for your service
20 in getting this done this week, and I thought everybody
21 was very professional and handled it well.

22 MS. SHEALY: Thank you, Your Honor.

23 - - -

24 (Whereupon, the proceedings were concluded.)

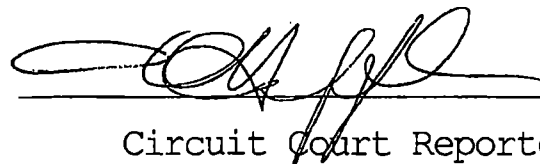
25 - - -

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on March 14-16, 2011.

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

July 17, 2011



A handwritten signature in dark ink, appearing to read 'Amanda K. Haffenden', is written over a horizontal line.

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of McCormick)2014-CP-10-5496
IN THE COURT OF COMMON PLEASALONZA DENNIS #128392)

Full name and prison number (if any) of Applicant:)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 SEP -9 PM 12:21
JULIE L. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Corr. Inst. 386 Redemption McCormick S.C.
29890
2. Name and location of Court which imposed sentence Charleston County
101 Meeting Street, 5th Floor Charleston, SC 29401-2014
3. Name(s) of co-defendant(s) (if any) TRAVOR, KAGLAB, QUAN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) ABWIK; 2009GS1008108

- (b) FIREARM During the Commission 2009GS1008112
- (c) Attempted Armed Robbery 2009GS1008113
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 16, 2011
- (b) LIFE WITH OUT Parole
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Not Guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Judgment conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC court of Appeal
- ii. SC court of Appeal, Rehearing
- iii. SC court of South Carolina, CERTIORARI
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. Denied
- iii. Denied
- (c) the date of each such result:
- i. 4-3-2013
- ii. 5-24-2013
- iii. 8-24-2014
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) COERCION of the officer and testimony of the codependant was not preserved.
- (b) My arrest didn't have any probable cause.
- (c) The victim and codependant testimony didn't prove the guilt of the defendant.

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

- (a) Counsel fail to prepare and preserve the coercion of the officer testimony and the testimony of the codependant saying CRACK
- (b) Counsel fail to prepare and investigate the victim's testimony saying one thing and codependant say the other.
- (c) Counsel fail to prepare and investigate my arrest for probable cause.

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
- i. SC court of Appeal
- ii. SC court for Rehearing
- iii. SC court Supreme for Certiorari
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Appeal SC court of
- ii. Rehearing SC court for
- iii. Certiorari SC court Supreme for

iv. _____

(c) the disposition thereof:

i. Appeal

ii. Rehearing

iii. Certiorari

iv. _____

(d) the date of each such disposition:

i. 4-3-2013

ii. 5-24-2013

iii. 8-24-2014

iv. _____

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

i. _____

ii. N/A

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

- (a) Ineffective Assistance, COERCION AND COERCEMENT ^{WAS NOT PRESERVE} statement
 (b) No probable cause for my arrest
 (c) Counsel fail to investigate and prepared the defendant -
And victim testimony

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

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

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

- (a) the name and address of each attorney who represented you:
 i. Mr. Grimes, Andrew 101 Meeting 5th Floor
Charleston, S.C 29401-2314
 ii. Ms. Megan Elrich 101 Meeting 5th Floor
Charleston, SC, 29401-2214
 iii. Ms. LAnelle Durant Appellate P.O. Office Box
11589 Columbia, South Carolina 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. My Trial: Mr. Grimes, Andrew
My Trial: Ms. Megan Elrich
 ii. My Trial: Ms. Megan Elrich
 iii. My Appeal: Ms. LAnelle Durant

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

NEW TRIAL OR VACATED

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of MCCORMICK)

VERIFICATION

I, ALONZA DENNIS #128392, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alonza Dennis

SWORN to and subscribed before me this 03
day of Sept, 2014.

J. Franklen (L.S.)
Notary Public

My Commission Expires: 12/16/2019

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

I, ALONZA DENNIS #128392, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

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

Alonza Dennis
Applicant

SWORN or affirmed to and subscribed before me this
03 day of Sept, 2014.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5496
	)	
Alonza Dennis, #128392,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 9, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 2009 term of the Charleston County Grand Jury for assault and battery with intent to kill (ABWIK) (2009-GS-10-8108), attempted armed robbery (2009-GS-10-8113), and possession of a weapon during the commission of a violent crime (2009-GS-10-8112). The Applicant was represented by Andrew Grimes, Esquire, and Megan Ehrlich, Esquire.

On March 16, 2011, the Applicant proceeded to trial and was found guilty of ABWIK and possession of a weapon. The Applicant was acquitted of attempted armed robbery. The Applicant was sentenced by the Honorable Roger M. Young, Sr., to confinement for a period of five years for possession of a weapon and life without parole for ABWIK. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Lanelle Durant, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Alonza, No. 5111 (S.C. Ct. App. April 3, 2013). The Supreme Court denied the Applicant's Petition for Writ of Certiorari on August 21, 2014. The Remittitur was issued on August 27, 2014.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to prepare and preserve the coercion of the officer's testimony and the testimony of the co-defendant.
 - b. Counsel failed to prepare and investigate the victim's testimony saying one thing and the co-defendant's saying the other.
 - c. Counsel failed to prepare and investigate my arrest for probable cause.
 - d. Coercion of the officer and testimony of the co-defendant was not preserved.
2. My arrest did not have any probable cause.
3. The victim and the co-defendant's testimony did not prove the guilt of the defendant.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent construes the Applicant's remaining claims to be claims regarding the sufficiency of the State's evidence against the Applicant. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. ' 17-27-

20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

V.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and that the remaining allegations be summarily dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: ALP
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2014-CP-10-5496

ALONZA DENNIS, #128392,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

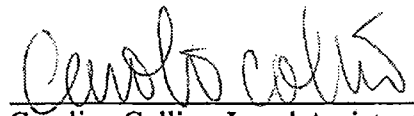
STATE OF SOUTH CAROLINA,

Respondent.

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

Rodney Duane Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, South Carolina 29405

DATED this the 27th day of April, 2015.



Caroline Collins, Legal Assistant
For Respondent

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1 MS. OLIVE: May it please the Court, Your Honor.
2 This is Alonza Dennis, 2014-CP-10-5496. Mr. Dennis was
3 indicted in October of 2009 for assault and battery with
4 intent to kill and attempted armed robbery and possession of
5 a weapon during the commission of a violent crime. He was
6 represented by Andrew Grimes and Megan Ehrlich on those
7 charges.

8 On March 16th, 2011, he proceeded to trial where he
9 was found guilty of the assault and battery with intent to
10 kill and possession of a weapon. He was acquitted of
11 attempted armed robbery. He was sentenced by Judge Roger
12 Young to confinement for a period of five years for the
13 possession of a weapon and life without patrol for the
14 assault and battery with intent to kill. And those are to be
15 served concurrently.

16 He filed a timely notice of appeal. His appeal was
17 perfected by LaNelle DuRant of the Office of Appellate
18 Defense. Conviction and sentences were affirmed in a
19 published opinion by the Court of Appeals dated April 3rd,
20 2013. The Supreme Court denied his petition for a tertiary
21 on August 21st, 2014. The remittitur was returned on August
22 27th, 2014.

23 He filed this application for post-conviction relief
24 on September 19th, 2014, alleging several grounds of
25 ineffective assistance of counsel. He also alleged that his

1 arrest did not have probable cause and that the victim and
2 co-defendants' testimony did not prove the guilt of the
3 defendant.

4 The State would move to dismiss those -- his
5 paragraphs number 2 and 3 in our return, because those last
6 two allegations --

7 THE COURT: Any objections to that?

8 MR. DAVIS: Just to be clear --

9 MS. OLIVE: Two and three is listed in the State's
10 return, Your Honor, as I just said, that his arrest did not
11 have probable cause and that the victim and co-defendants'
12 testimony did not prove the guilt of the defendant. Those
13 are not post-conviction relief issues, but rather are direct
14 appeal issues.

15 THE COURT: Any objection to that?

16 MR. DAVIS: No, Your Honor. It would come out in
17 the narrative. Those connect back to the ineffective --

18 THE COURT: All right.

19 MS. OLIVE: And Mr. Dennis is present in the
20 courtroom today and represented by Rodney Davis. I will turn
21 it over to Mr. Davis.

22 THE COURT: Mr. Davis.

23 MR. DAVIS: Thank you very much. The final thing on
24 behalf of what the State put on the record, obviously, the
25 attempted armed robbery was a not-guilty verdict. So that

1 charge is gone.

2 As we have done earlier today, in a moment, I'm
3 going to ask you just to put a brief thing on the record.
4 The unique thing about Mr. Dennis is, his sentence, because
5 his prior record is a life without parole sentence and the
6 five-year sentence on the weapon charge is a mandatory
7 five-year sentence, so he, in effect, has gotten the maximum
8 sentence on both. So the risk of being successful going back
9 is a return to exactly where he is. There's no exposure to
10 more time.

11 But even given that, I've talked to him about it,
12 but if you can briefly on the record, and then we are
13 prepared to go forward.

14 THE COURT: All right. Mr. Dennis, I just want to
15 explain to you that if you win your post-conviction relief
16 hearing today, that you will simply start over again. Do you
17 understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. I think that's all I need to
20 say.

21 MR. DAVIS: Thank you. We would call Megan Ehrlich
22 to the stand as our first witness.

23 MEGAN EHRLICH,
24 having been duly sworn, testifies as follows:

25 THE CLERK: For the record, if you will please state

1 your name, spelling your last name.

2 THE WITNESS: My name is Megan Ehrlich. Last name
3 is E-h-r-l-i-c-h.

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. Ms. Ehrlich, were you one of the two attorneys that
7 represented Mr. Dennis on these charges back on 2011 at
8 trial?

9 A. I was.

10 Q. And just for the record, is it fair that the lead
11 attorney or the first chair was Andrew Grimes?

12 A. Actually, I was the first chair, but Andrew was an
13 active second chair.

14 Q. And forgive me for --

15 A. He did Mr. Dennis's testimony and some of the
16 significant pretrial testimony.

17 Q. So when we see a lot of the pretrial, the first
18 major portion of the transcript on the pretrial motions,
19 Mr. Grimes handled those, but y'all worked together on the
20 case?

21 A. We did.

22 Q. And Mr. Grimes has, since this trial date, has
23 passed away?

24 A. That's correct.

25 Q. If you -- and the judge, of course, has the entire

1 transcript as part of the record. That is some 600 pages,
2 but could you just start out first and talk to the judge
3 about the plans to deal with the questioning, three different
4 times law enforcement questioned Mr. Dennis.

5 A. The plan?

6 Q. What was the strategy?

7 A. We were challenging the admissibility of the
8 statement. He was detained on a trespassing charge. And I
9 can't remember the exact timing. I would have to look at the
10 transcript. But I believe on the 22nd, maybe of June 2009,
11 they questioned him with regard to the allegations in this
12 case. And then they questioned him again on the 29th. And
13 that was -- all the questioning was done by Detective
14 Lawrence. And we were looking at whether or not Mr. Dennis
15 understood what he was doing when he spoke to them, and also
16 the fact that they had questioned him multiple times and
17 looking at the admissibility of that.

18 Q. There were other detectives involved in this case,
19 but is it fair to call Detective Lawrence the lead detective?

20 A. I would say Detective Lawrence was called the lead
21 detective. Whether or not he did what a lead detective
22 should do, I don't know. There were other detectives
23 involved, but he clearly was the main person kind of driving
24 the force in this case.

25 Q. And each time that Mr. Dennis was talked to by

1 police, Mr. Lawrence, Detective Lawrence would have been
2 involved in that process, right?

3 A. He definitely was involved on the 22nd and the 29th.
4 I cannot remember if he was involved when he was initially
5 detained for the trespassing.

6 Q. For Judge Seals, Mr. Dennis did not implicate
7 himself each of those three times, correct?

8 A. Correct.

9 Q. Can you characterize the first statement that
10 Mr. Dennis would have given the police when he was first
11 questioned about this shooting?

12 A. Do you know what page on the transcript it is? That
13 will help me out.

14 Q. Sure. Let me rephrase it like this.

15 A. I mean, he didn't implicate himself.

16 Q. Do you recall that the first statement would have
17 been relatively brief and trying to distance himself from any
18 involvement? Do you recall it that way, if I characterize it
19 that way?

20 A. Sure.

21 Q. It's the ones you recall on the 22nd and the 29th
22 that were harmful to Mr. Dennis; is that accurate?

23 A. Yes.

24 Q. And just for everyone, I can at least do this. For
25 everyone's reference, Detective Lawrence's pretrial testimony

1 during the suppression or during the *Denno* part begins on
2 page 75 and runs to page 108, 107. Although Mr. Grimes
3 handled the questioning of the witness, you were involved in
4 the preparation for the strategy of the pretrial motions?

5 A. Yes.

6 Q. And what was the strategy at trying to suppress the
7 damaging statements that Mr. Dennis had given?

8 A. The fact that they used the -- they detained him.
9 He said he didn't want to talk to them. Then they talked to
10 him again. And this is after he's already said, I don't want
11 to talk to you at all. And so they didn't honor his invoking
12 his right to remain silent initially. That was one of our
13 arguments. And I believe that that was our main argument.

14 I don't know that we did much argument about
15 coercion, but the fact that he had invoked and then they kept
16 questioning him and wouldn't let it go.

17 Q. And while there's a short gap between the
18 questioning when detained and the sentencing, there's a week
19 gap between the second and third statement?

20 A. Yes, there's a seven-day gap.

21 Q. Officer -- excuse me. Detective Lawrence testified.
22 Detective Cook testified about the statement. Do you recall
23 that?

24 A. Yes. And I think there was also Detective Casale
25 who maybe was involved.

1 Q. He also did as well?

2 A. But Cook and Lawrence were the main ones.

3 MR. DAVIS: Judge, so you know, Detective Casale
4 begins on page 38. That's rather preliminary. I think most
5 of what our arguments would be would deal with Detective
6 Lawrence and Detective Cook.

7 BY MR. DAVIS:

8 Q. None of these statements were audio or video
9 recorded, correct?

10 A. Right. No statement at all were recorded in this
11 case.

12 Q. Including by co-defendants or accuser?

13 A. They didn't record co-defendants. They didn't
14 record witnesses. They didn't record the accuser in the
15 case. There was no audio recording or anything. They didn't
16 record. They did identifications at one point, none of that
17 is recorded.

18 Q. It's fair to characterize Detective Cook and
19 Detective Lawrence as explaining the process the same way,
20 the process of obtaining the statements? Their testimony was
21 consistent with each other?

22 A. Sure.

23 Q. There is no in-depth report from Detective Lawrence
24 about the taking of the statements; is that correct?

25 A. That's correct.

1 Q. Similarly, Detective Cook made no supplemental
2 report, if he was not the lead detective, substantiating the
3 process of which those statements were taken?

4 A. That's correct.

5 Q. Mr. Dennis testified on his behalf at trial, right?

6 A. You are talking about pretrial or during the trial?
7 He testified at both.

8 Q. Right. I was going to say it was both, right?

9 A. Yeah.

10 Q. So the ultimatum for the judge to suppress the
11 statements or not came down to credibility of the detectives
12 versus Mr. Dennis's recollection of how the statements took
13 place, correct?

14 A. Yes.

15 Q. The trial lasted from March 14th to March 16th,
16 2011?

17 A. That's correct.

18 Q. What information pertaining to Detective Lawrence
19 did you receive following this trial?

20 A. Some time in 2014, we were made aware that Detective
21 Lawrence had been fired by the Sheriff's Office. That caused
22 Mr. Grimes and I to kind of think about Mr. Dennis. We
23 remembered how crucial Detective Lawrence's testimony had
24 been to convicting Mr. Dennis. And so we requested his
25 personnel file to get more information about it. We had

1 heard rumors about what had happened, but we wanted to get
2 more information for ourselves.

3 Q. And you have reviewed his entire personnel file?

4 A. I have.

5 Q. Some almost 500 pages; do you recall?

6 A. I don't remember how many pages it is. I have it
7 here. I mean, it's this big.

8 Q. In a review of that file, are there incidents that
9 go to Detective Lawrence's credibility that predate the trial
10 date of March 14th, 2011?

11 A. Yes.

12 Q. Are there incidents in that file dealing with
13 Detective Lawrence's credibility that predate Mr. Dennis's
14 arrest date of June of 2009?

15 A. In my opinion, yes.

16 Q. Can you tell the judge about those things?

17 A. Judge, forgive me. I'm looking at notes I took. I
18 know that in -- so Mr. Dennis was arrested in 2009. There
19 was an incident in 2007 where he was tasked to investigate a
20 missing child, a child that was reported missing, maybe by
21 the parents. And he was sent out -- he was supposed to talk
22 to the parents, and lied and said he had, when he had not.
23 And that was an issue.

24 There was an issue that, in my opinion, would impact
25 more -- there was a 2008 case where he was suspended in May

1 of 2009, which would have occurred right before Mr. Dennis
2 was arrested, where he was involved in some sort of incident
3 where a car almost hit his car. It was off-duty. And he
4 responded quite inappropriately by firing shots in the
5 direction of that car. And he called it in, but when he
6 initially called it in, he didn't report that he fired shots.
7 He got in trouble again for use of force.

8 And, in my opinion, there was an argument to be made
9 that, because he first called in and reported something and
10 lied, I would call it a lie that he didn't tell dispatch he
11 fired a gun, that that would go towards his level of honesty.

12 There were some other incidents that he got written
13 up for, one in 2007 involving a domestic dispute with him and
14 another woman. I don't know that would have been something
15 that I could have brought up or tried to bring up.

16 And there was a 2003 incident where he didn't
17 respond maybe appropriately in a domestic, where he wasn't
18 involved as far as being a victim or a suspect. And I don't
19 know that that would have been involved.

20 But I did have concerns about that use of force and
21 not telling dispatch that he had fired shots initially and
22 also lying about talking to parents about a child that's
23 missing and saying you did your job.

24 There was also an evaluation where his investigation
25 skills were marked a 2.5 out of 4, which I would have also

1 tried to potentially bring up at trial. That range is
2 marginal under Charleston County Sheriff's Office evaluation
3 period. And I probably would have tried to bring that up.
4 And that's just things that predate Mr. Dennis's arrest.

5 Q. How is it that you came in to custody of his
6 personnel file?

7 A. We did a FOIA request to the Charleston County
8 Sheriff's Office.

9 Q. And, again, that was in 2014?

10 A. I believe it was. Right. We did a Freedom of
11 Information Act request on July 31st of 2014 asking for a
12 copy of his personnel file.

13 Q. What caused you to request it under FOIA, though?
14 What information came to light to you?

15 A. He was fired. And the information we were getting
16 was that he was having a sexual relationship with a suspect's
17 mother in a homicide where he was the detective, on top of
18 the fact that there was that inappropriate relationship. He
19 had been questioned about it and found to be untruthful about
20 the timeline that he gave as far as when he had been involved
21 in this woman. I think they thought that there was some sort
22 of collusion between the two to lie and cover up that they
23 had been having an ongoing relationship while he was the lead
24 detective in the homicide case.

25 Q. How did you find out about that information?

1 A. I can't remember if it was on the news or if it was
2 a rumor or probably both. I mean, it's the courthouse.
3 People talk. I don't know exactly. I know it hit the news.
4 And I don't know if we heard details through courtroom talk
5 or -- I don't know. I can't really recall that. He was
6 fired for that, for lying.

7 Q. Was there some notification from the solicitor's
8 office to public defender's office?

9 A. Even that, I can't really remember. I think the
10 homicide case involved had one of our lawyers maybe involved
11 in it. So I think it was just common knowledge. I don't
12 know if there was an official -- I can't remember if we
13 got -- sometimes we will get an official notice from Scarlett
14 Wilson through Ashley Pennington, our chief defender, that
15 says so-and-so was fired for dishonesty. I don't remember if
16 we got that or not.

17 THE COURT: Is this something you didn't know about
18 at the time of trial?

19 THE WITNESS: I did not know about any of this at
20 the time of trial. The trial would have been in 2011. And
21 the incident that caused him to get fired, I think was some
22 time in 2014. But there were other issues that predated our
23 trial and his arrest that I did not know about.

24 BY MR. DAVIS:

25 Q. I don't expect a litany of the exact questions, but

1 if you can express to the judge, had you had that
2 information, you've talked about incidents since '03, '07,
3 '08, if you had that information dealing with Detective
4 Lawrence's credibility, how might you have handled the
5 suppression hearing with that additional information?

6 A. I think it changes things if I'm able to better
7 challenge an officer's credibility. I think an officer walks
8 into court and there's kind of an understanding that this
9 person is going to tell the truth by nature of what they do
10 for a living. And being able to challenge not only his
11 ability to tell the truth, but his thoroughness in his
12 investigation, and even potentially how he would have treated
13 Mr. Dennis during an interrogation I think would have been
14 different knowing what I know now.

15 They didn't record his statements. They could have
16 recorded the statements. And I think I brought that out in
17 trial, that they had an option to record the statements, but
18 they didn't. But the choice to not record was blamed by
19 Lawrence on the solicitor's office, which I don't think was
20 true. But I think knowing that he had problems as a
21 detective better strengthens my argument that you are up to
22 no good when you didn't report that statement.

23 THE COURT: But the defendant did not implicate
24 himself in any of those statements; is that right?

25 THE WITNESS: He puts himself present at least in

1 the second statement.

2 THE COURT: But doesn't admit to the crime?

3 THE WITNESS: He doesn't admit to being part of a
4 robbery. And, quite frankly, I'm fuzzy on if he admitted to
5 firing the gun or not. I think he did, but I can't quite
6 recall. I think he said he fired the gun after the victim
7 produced a gun.

8 MR. DAVIS: Judge, 600 pages, we will let you
9 review. As an officer of the court, that is the summary of
10 it, is that they did not obtain a self-defense charge in
11 closing, but the testimony was elicited at trial which was
12 consistent with the worst of the statements of law
13 enforcement, was that after the accuser displayed a weapon in
14 his waistband, that Mr. Dennis said he fired at that point,
15 generally fired. That would be the summary of it. I
16 certainly trust you to check the record, but that's why I
17 proffered what the testimony was at trial.

18 BY MR. DAVIS:

19 Q. Just for a second, we've talked in preparation for
20 this hearing. One of the things I asked you about, fair
21 enough you have this information against Detective Lawrence
22 that you could have, should have arguably used if it had been
23 revealed to you beforehand. But we've got Detective Cook
24 indicating he's there when these statements are taken. How
25 would this extra ammunition against Detective Lawrence have

1 been used, even though there's a second witness to this?

2 A. I think the argument can be made that Cook doesn't
3 write a report, which is convenient, in my opinion, in this
4 case that he just goes kind of based on what Lawrence is
5 saying happened. And if you look at the transcript,
6 especially in the pretrial, there's a lot of "if I recall"
7 kind of answers from Cook, or "if I could recall correctly",
8 things like that that he says that makes me think he's kind
9 of just going based on what Lawrence had said.

10 Had I known Lawrence had problems, I probably would
11 have also requested Cook's personnel file to see if Cook had
12 any sort of issues, because just the whole case, the
13 discovery was just nothing.

14 THE COURT: Were the witnesses sequestered at trial?

15 THE WITNESS: I believe they were. I can't
16 remember, but I don't know what conversations could have
17 occurred in preparation for trial. I mean, the officers
18 would have met with Ms. Shealy. Ms. Shealy is probably their
19 top prosecutor. I know she would have met with them. I
20 don't know what discussions Cook and Lawrence could have had
21 in preparation for the case. I think it's hard to say that
22 Cook could remember every little detail about an
23 interrogation two years after the fact without writing
24 anything down in a report. I don't know if that answers
25 your question. Sorry.

1 BY MR. DAVIS:

2 Q. No, it does. It does. Let me piggyback on that on
3 what the judge was asking you about. Do you have the
4 actual -- Mr. Dennis's case file with you as well, not just
5 Detective Lawrence's?

6 A. I have it over there, the box.

7 Q. That's fine. You held up Detective Lawrence's
8 personnel file.

9 A. Right.

10 Q. Rather than comparing size-wise the number of
11 sheets, you've got law enforcement detectives that don't do
12 hardly any reports in this case, right?

13 A. Right.

14 Q. We do have gunshot residue and an officer that
15 retained that, right?

16 A. Right.

17 Q. There were allegedly four defendants, correct?

18 A. Right.

19 Q. Including Mr. Dennis?

20 A. Right. It was Mr. Dennis and then three cousins,
21 three -- a group of three that were all related.

22 Q. Of those three, who provided evidence against
23 Mr. Dennis?

24 A. At the trial, it was Trevor Gibbs. And Trevor Gibbs
25 was the only one who didn't give a statement to law

1 enforcement.

2 Q. The other two cousins gave statements almost
3 immediately after being arrested; is that right? Do you
4 recall that?

5 A. I believe so.

6 Q. But they were not witnesses at this trial?

7 A. No.

8 Q. The witness at this trial gave a statement almost 18
9 months after arrest that conformed with what had been
10 revealed in discovery; is that fair?

11 A. Sure.

12 Q. So one cooperating co-defendant?

13 A. Right.

14 Q. Accuser identifies Mr. Dennis from a photo array?

15 A. Down at the hospital by Detective Lawrence.

16 Q. By Detective Lawrence? There was gunshot residue on
17 Mr. Dennis's hand?

18 A. Yes. I can't remember if it was a particle
19 consistent --

20 Q. And then Mr. Dennis's statements?

21 A. Right.

22 Q. That's the case, is that fair, quick summary of the
23 the State's presentation?

24 A. Right. There's a lot of kind of lay witnesses that
25 see the accuser on the ground or people that see Mr. Dennis

1 maybe running, nothing to do with the meat of what happened
2 that would have caused the shooting to occur, outside of
3 those people you've already talked about.

4 Q. Of the five people on the scene, only two were
5 present at trial, the accuser -- I'm sorry, three of the
6 five, three of the five: The accuser, Mr. Dennis, and the
7 co-defendant, Trevor --

8 A. Gibbs.

9 Q. -- Gibbs, correct?

10 A. Right.

11 MR. DAVIS: Your Honor, if I could have just a
12 moment.

13 BY MR. DAVIS:

14 Q. You mentioned it earlier in your testimony that
15 there was also the potential argument that the statement from
16 Mr. Dennis was coerced. Can you talk to Judge Seals a little
17 bit more about that issue?

18 A. How Lawrence would have affected that?

19 Q. Yes.

20 A. I mean, if Lawrence has a history of publicly
21 threatening people, because there was also a write-up in his
22 personnel file where he, outside of preliminary hearing
23 court, was cursing at family or maybe a suspect related to a
24 case. He got written up for that. He's firing a gun at
25 somebody after his car gets hit. I just think that there was

1 stuff in that file that showed -- I liked Detective Lawrence.
2 I mean, you meet him and you like him. He's kind of a
3 charming guy. And it's hard to think of him acting that way
4 unless you've seen it or unless you know it. And I think it
5 would have been hard to paint him in his true light without
6 knowing that information. I mean, he comes across great.

7 But if you can -- I think confronted with some of
8 his prior behavior, you would have seen little bit more of
9 him. He did a lot of editorializing during the trial of Mr.
10 Dennis's truthfulness. He kept commenting on how he could
11 say he was deceitful and he was evading me and things like
12 that that we kept objecting to. But, still, having an
13 officer who comes across well without being able to really
14 attack his credibility, I think hurt Mr. Dennis, not just
15 with his statement, but just overall.

16 I mean, it's hard to attack a police officer's
17 credibility. People automatically are going to think better
18 of them. I think that's just the way it is. He, in
19 particular, can come across very well. And I think that
20 helped the State's case.

21 MR. DAVIS: Judge, you can see in the pretrial
22 transcript, pretrial portion, Mr. Grimes did object multiple
23 times to Detective Lawrence's characterization of
24 Mr. Dennis's evading or truthfulness. And that's clear in
25 the record.

1 BY MR. DAVIS:

2 Q. Just to get this on our record today, if you had
3 been able to use his personnel file and confronted him about
4 particular incidents, cursing the family after a preliminary
5 hearing, certainly at trial, if you had asked him about that
6 and he had admitted to it, how could you have used that in
7 closing, or during the pretrial suppression motion?

8 A. I mean, I think if he had admittedly in public acts
9 one way, my argument in closing or in pretrial is, what does
10 he do in private? What does he do in an interrogation room
11 when the camera isn't rolling, when there aren't witnesses?
12 Of course, he had to admit he did that. There were witnesses
13 there.

14 Q. And, more importantly, had he denied it --

15 A. I would have confronted him with the personnel file.

16 Q. Do you recall Mr. Dennis, in preparation for the
17 trial, in talking with him and then at trial, talking about
18 feeling threatened that law enforcement might turn this into
19 a federal case or federal crime?

20 A. Right, which Detective Lawrence denied. So his
21 credibility as far as making threats and charging or sending
22 Mr. Dennis to federal court was hard to challenge. I mean,
23 he denied making the statement. And I think -- I can't
24 remember if Cook denied it too. But Cook, again, couldn't
25 recall anything. It was kind of like, "I don't recall", or

1 "if I can recall".

2 Q. Do you recall the closest to even admitting that
3 that phrase was used, was that perhaps Mr. Dennis overheard
4 that -- the officers talking in the hallway? Do you recall
5 that in testimony?

6 A. Right, which I mean, you might as well have just
7 threatened him face-to-face if you are going to say that
8 right outside the room. But I think they tried to act like
9 he didn't hear it. I think even that gave some credibility
10 towards Mr. Dennis. And if I could attack Lawrence's
11 credibility better, maybe that helps.

12 Q. Mr. Dennis has a couple more issues I want to get
13 your input on. Do you recall reviewing Moses Arnold's
14 statement about how this event played out prior to going to
15 trial?

16 A. I'm sure we did.

17 Q. And, similarly, you would have reviewed any
18 information that Trevor Gibbs gave in his statement about how
19 the incident happened?

20 A. Right. Because Trevor's stuff would have come out
21 late. So that would have been something that we would have
22 been talking to Mr. Dennis about as we were preparing him for
23 trial. I can't remember exactly when he decided to proffer.

24 Q. Do you recall the accuser's statement talking about
25 the first shot in his arm and then the second shot in his

1 leg? Do you recall that; or if the record reflects that,
2 would that surprise you?

3 A. It doesn't surprise me. I just can't remember the
4 details of the injuries.

5 Q. Do you recall in Mr. Gibbs's statement, he talked
6 about the first shot missing Moses, the victim, and the
7 second shot striking the vehicle's headlight; do you recall
8 that?

9 A. I definitely remember the testimony about the
10 headlight being hit. I cannot -- if it's in the record, I'm
11 sure that happened.

12 Q. Well, then contrasting with his statement, this is
13 Trevor Gibbs's statement at trial, do you recall, or would it
14 surprise you if the transcript at trial, they talked about
15 the first shot hitting the headlight and then the remaining
16 shots coming after that, which is different than what
17 information he gave to the police?

18 A. It doesn't surprise me if that's what's in the
19 transcript. But I think the statement -- I don't think he
20 ever gave a statement to the police, that I can remember. I
21 think he gave a statement just to the solicitor's office
22 maybe.

23 Q. Fair enough. Do you remember -- I said Arnold
24 earlier. I apologize, Moses Alford. Do you remember
25 Mr. Alford talking about -- or not being able to be sure

1 whether it was a black gun or a chrome gun when he is first
2 talked to after his injuries?

3 A. I don't remember that.

4 Q. Do you recall that when Mr. Dennis was apprehended,
5 that there was a weapon seized?

6 A. I want to say that the weapon was seized later, but
7 I could be wrong on that.

8 Q. Do you recall that weapon seized was, in fact, a
9 chrome handgun?

10 A. I believe so.

11 Q. That would have been provided to you in discovery,
12 description, photographs, that sort of thing?

13 A. Right.

14 Q. Again, it wasn't until over a year after Mr. Dennis
15 was arrested that Mr. Gibbs talked to the State, probably the
16 solicitor's office, not law enforcement, right?

17 A. Right.

18 Q. And it's at that time he identifies the gun as being
19 a chrome gun late in the game; do you recall that?

20 A. I believe so, yes.

21 Q. One final issue that Mr. Dennis wants to focus on.

22 I will start and kind of let you go. When he first was
23 detained by, I believe it was a canine unit, maybe the SWAT
24 team as well; when he was first detained and taken to
25 custody, he was not charged with ABWIK possession of a weapon

1 during a violent crime and armed robbery, was he?

2 A. No. He was charged with trespassing on someone's
3 property.

4 Q. Can you talk to the judge? Some of this is in the
5 record.

6 A. Can you tell me what pages we are on the record, so
7 I don't misstate anything.

8 Q. Give me a moment on that.

9 A. What I can remember off the top of my head, he was
10 found on someone's property. There is no proof that he
11 wasn't allowed to be on the property. There wasn't a
12 no-trespassing sign. But they charged him with trespassing
13 anyway. If there's more detail you are looking for, let me
14 know what pages in the transcript.

15 Q. Two final things, the photo identification by Mr.
16 Alford would have been done using Mr. Dennis's booking photo?

17 A. I think so, yes.

18 MR. DAVIS: And, Your Honor, final thing I've got
19 before I stop direct examination, I am not entirely sure how
20 you might want to handle this. Megan certainly testified
21 about the entirety of that personnel file. I can tell the
22 Court it's close to -- it's 500-some pages. I did not print
23 out the entire thing to try to move the entire thing into
24 evidence. It was a FOIA request that she received which she
25 has given to me electronically. If the testimony is

1 sufficient, I'm not trying to make a mountain out of a mole
2 hill. On the other hand, I do have it electronically. I can
3 offer to provide it to both the Attorney General's Office and
4 your office, you know, little later today so you have it in
5 its entirety.

6 We are not in front of a jury. So any evidentiary
7 ruling you would have to rule whether it is admitted or not,
8 I would be happy, rather than print out 1,000 pages, provide
9 it electronically later today.

10 THE COURT: Has she already testified to everything
11 that's relevant from that file, for the most part?

12 MR. DAVIS: I believe so. If you will allow me to
13 go through the cross and see if there's anything more to
14 raise after cross, but I think we've probably covered what we
15 need to.

16 THE COURT: Then I don't need it, unless you need
17 it.

18 MS. OLIVE: No, Your Honor. I would object to the
19 admission of the entire file anyway for the purpose of this
20 hearing.

21 THE COURT: I've got all I need. Thank you.

22 MR. DAVIS: That's all the questions we have at this
23 point.

24 THE COURT: Cross.

25 CROSS-EXAMINATION

1 BY MS. OLIVE:

2 Q. Thank you, Your Honor. May it please the Court.
3 When we get down to it, you have no knowledge of this at the
4 time of the trial, right?

5 A. Right.

6 Q. And, in fact, had no knowledge of this until 2014.
7 And you said the FOIA request was made in July of 2014.
8 Mr. Dennis was tried in March of 2011, so three years later.

9 A. You are talking just specifically about the issues
10 with Detective Lawrence, right?

11 Q. Yes.

12 A. Yes, that's when we found out about all that.

13 Q. So there was nothing at the time that put you on
14 notice -- well, you had no knowledge at the time that there
15 was anything contained in his personnel file that you could
16 impeach him with?

17 A. No.

18 Q. And do you even know for certain that you could have
19 used those things in his personnel file to impeach him at
20 trial, because they are not convictions, right?

21 A. I mean, don't know if -- nothing is for certain. It
22 would have depended on a judge's ruling. I think I would
23 have got some leeway on some of the issues, though.
24 Especially -- if I had decided maybe to challenge some of the
25 parts of the investigation more, I could have at least used

1 some of the stuff about him maybe not scoring as well and how
2 he did his job. I would have been able to use that
3 definitely. I think there's a chance I could have used some
4 of the issues with dishonesty, but I don't know.

5 Q. But, again, these are not convictions, correct?
6 These are just notations in his personnel file?

7 A. Right. He didn't have any convictions that I'm
8 aware of.

9 Q. And you really can't say one way or another whether
10 that would have had any effect on his credibility in the eyes
11 of the jury?

12 MR. DAVIS: Objection, Your Honor. Calls for
13 speculation.

14 THE COURT: Sustained.

15 BY MS. OLIVE:

16 Q. Would he not have been free to deny these things?
17 These aren't convictions. Can you even impeach him based on
18 what's contained in his personnel file? Would that have been
19 admissible if he had denied that these things had occurred?

20 A. I think if the judge allowed me to get into it and
21 he denied any of the issues, I think I could have impeached
22 him with his file.

23 Q. But, again, Detective Cook was part of these
24 investigations. I mean, Detective Cook was present when
25 these statements were given, correct?

1 A. I know he was for the second statement. I can't
2 even remember honestly for the first one. He may not have
3 been in there. I know he was in there for the Miranda
4 warnings, but I don't recall if he was in there for the first
5 statement. I can look in the transcript.

6 Q. I believe his testimony starts on page 54, Detective
7 Cook's does.

8 A. I think for the first interview he said that he was
9 busy with something else maybe and walked out after the
10 Miranda. And I think he was present for the second
11 interview.

12 Q. Is the second interview the interview in which
13 Mr. Dennis stated -- indicated that he was present at the
14 scene?

15 A. Yes.

16 Q. So Mr. Cook still could have testified concerning
17 the voluntariness of that statement?

18 A. Yes.

19 Q. Okay. Because he was present?

20 A. To my knowledge, yes, as far as he says.

21 MS. OLIVE: Beg the Court's indulgence, Your Honor.

22 THE COURT: How many statements did he give, did you
23 say, three?

24 THE WITNESS: He gave two written statements. And I
25 think he invoked his right to remain silent when they tried

1 to question him the first time.

2 THE COURT: And Cook was present both times, is that
3 what you said?

4 THE WITNESS: Cook was present for the two written
5 statements. For the Miranda warnings, only for the first --
6 for the second. So he's detained. Declines to give a
7 statement. The second time they try to talk to him, Cook is
8 present for the Miranda warnings, but not for the statement.
9 And then there's the third interview a week later where Cook
10 is present for Miranda and testified that he was present for
11 the interview.

12 And his testimony would have been based on his
13 memory, because I don't believe there was any police reports
14 or supplementals kind of documenting it.

15 MS. OLIVE: And, Your Honor, the testimony
16 concerning the 29th was on page 68, starts on page 68 of the
17 transcript, just for your reference.

18 BY MS. OLIVE:

19 Q. Additionally, if you had questioned him about these
20 incidents and he didn't deny them, he would still have had an
21 opportunity to explain them, right?

22 A. Could you kind of clarify?

23 Q. He would have had an opportunity to explain, give
24 any sort of explanation there might be for any of these
25 things in his personnel file, such as the notation that he

1 didn't talk to the victim's parents? He would have had an
2 opportunity to explain maybe -- he would have had an
3 opportunity to explain whatever it was --

4 A. Ma'am, I'm sure on redirect, the State would have
5 tried to kind of rehabilitate him on that. I don't know how
6 far we would have gotten into that on cross. I guess that
7 would depend on how he answered the questions. But I'm sure
8 Ms. Shealy would have tried to address it in redirect.

9 Q. Do you normally retain the personnel files for
10 detectives in your trials?

11 A. I do it much more frequently since Detective
12 Lawrence's situation.

13 Q. But at the time, did you?

14 A. At the time, no.

15 Q. It was not a regular practice of yours to obtain
16 personnel files for the detectives in your case?

17 A. Did I do it in every case? No. It was not
18 something I would do in every case. Is it something I do
19 more frequently now? Obviously, yes, based on what we found
20 out about Lawrence.

21 Q. But, again, nothing you knew at the time gave you a
22 reason to obtain his personnel file prior to trial?

23 A. No.

24 Q. And the victim in this case did testify?

25 A. Yes.

1 Q. And he did identify Mr. Dennis?

2 A. He did.

3 Q. And even after obtaining this file, there's no
4 evidence showing that Mr. -- no actual evidence showing that
5 anything he did in this case -- that he did anything untoward
6 in the investigation of this case, is there?

7 A. I mean, I don't know.

8 Q. To your knowledge.

9 A. We didn't further -- I would have no way of knowing
10 what he actually did or didn't do.

11 Q. Okay.

12 A. I mean, I don't know.

13 Q. As far as anything having to do with Trevor Gibbs's
14 statement, that that's just pure speculation? We have no
15 idea?

16 A. I mean, nobody has come forward and said in the
17 Alonza Dennis case, Detective Lawrence made me say this.
18 Nothing like that happened.

19 Q. Did you see any reason to challenge his arrest?

20 A. I mean, I think we did try to challenge it pretrial,
21 or at least Mr. Grimes did to a certain extent. I mean, I
22 don't know. There was still a potential issue because they
23 did supposedly Mirandize him before he started giving
24 statements. So, yeah, we saw a reason to. And I know it was
25 important to Mr. Dennis, so we did our best to try to

1 challenge that.

2 MS. OLIVE: Thank you. That's all the questions I
3 have.

4 THE COURT: Redirect?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: You may step down. Thank you.

7 MR. DAVIS: I would call Alonza Dennis as to the
8 stand.

9 ALONZA DENNIS,
10 having been duly sworn, testifies as follows:

11 THE CLERK: For the record, if you will please state
12 your name, spelling your last name.

13 THE WITNESS: Alonza Dennis, D-e-n-n-i-s.

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q. Mr. Dennis, good afternoon.

17 A. How are you doing?

18 Q. Doing all right, sir. Thank you. Mr. Dennis, how
19 old are you?

20 A. I'm 52.

21 Q. All right. And how far did you go in school?

22 A. 10th grade.

23 Q. Was that at Lincoln High School?

24 A. Yes, sir.

25 Q. That's up in McClellanville?

1 A. Yes, sir.

2 Q. You didn't finish up, did you?

3 A. No, sir.

4 Q. You haven't gotten your GED, have you?

5 A. No, sir.

6 Q. You got family in the area?

7 A. Yes, sir.

8 Q. What kind of work were you doing before you got
9 locked up?

10 A. Well, I was working at a car shop and doing
11 landscaping and little electricity, yes, sir.

12 Q. All right. Now, you filed your post-conviction
13 relief application. You got some complaints about the way
14 your trial was handled, right?

15 A. Yes, sir.

16 Q. I want to review some things that we have talked
17 about that you wanted to talk to the judge about. One of the
18 things that you had complained about was potential coercion
19 against you in giving the statement. Do you recall
20 complaining about that?

21 A. Yes, sir.

22 Q. Okay. From your recollection, what is it that you
23 want Judge Seals to understand about how law enforcement
24 coerced you about your statement?

25 A. Yes, sir. My counselor was ineffective on not

1 receiving a ruling on the coercion, because the coercion was
2 not preserved correctly in the defendant's appeal. When the
3 officer, Detective Lawrence, came to the county jail on the
4 29th of June, taking the defendant to a trespassing hearing
5 for a ticket that the defendant was arrested for on the 22nd
6 for a seven-day period, or the 29th, coercion to the
7 defendant that his co-defendant told him that the defendant
8 didn't shoot and that the -- and at the time, Detective
9 Lawrence told the defendant that he would see to it that the
10 defendant case be picked up by the feds if the defendant did
11 not cooperate with him, Detective Lawrence. So I, the
12 defendant, cooperate with the Detective Lawrence making the
13 statement because the defendant was scared.

14 Also, in the first statement they asked me to make
15 on the 22nd, I, the defendant, did not want to make one.

16 Also, the co-defendant's argument about the crack
17 pipe was not preserved correctly in the defendant's appeal
18 for a ruling.

19 This is why my lawyer prejudiced me of a better
20 outcome of the failure to investigate.

21 Q. You've taken some notes to prepare for today,
22 right?

23 A. Yes, sir.

24 Q. If you will, I want you to talk to me and the judge
25 for a second. Okay?

1 A. Yes, sir.

2 Q. On the 29th, Detective Lawrence came to get you from
3 the jail, right?

4 A. Yes, sir.

5 Q. Put those notes down for a second, Mr. Dennis.

6 On the 29th, Detective Lawrence came and got you
7 from the county jail, right?

8 A. Yes, sir.

9 Q. And he was taking you to another courthouse on this
10 whole trespass charge; is that right?

11 A. Yes, sir.

12 Q. Who was in the car with you and him? Anybody else?

13 A. It was just me and him.

14 Q. All right. And now during that drive, it's just you
15 and him. Tell the judge again what is it, he's leaning on
16 you because your co-defendant said what?

17 A. My co-defendant already told him that I did the
18 shooting. And he was telling me, well, cooperate or he going
19 to let the feds pick up my case.

20 Q. Now, you've talked to your attorneys about that,
21 right?

22 A. Yes, sir.

23 Q. You told them about it? And you testified at trial.
24 You were at your trial, right?

25 A. Yes, sir.

1 Q. And do you remember they talked about that a little
2 bit, but there was some confusion about whether he denied
3 saying that to you directly. Detective Lawrence denied
4 saying that to you directly, didn't he?

5 A. Yes, sir.

6 Q. And there was some talk about maybe you had
7 overheard him talking in the hallway about the federal case;
8 do you remember that?

9 A. Yes, sir.

10 Q. But he was never put on the spot about this car
11 ride, was he?

12 A. No, sir.

13 Q. Your attorneys didn't push him about being in the
14 car with just you and him?

15 A. Right.

16 Q. That's one of the complaints you had about the way
17 they handled it, right?

18 A. Yes, sir.

19 Q. I'm going to skip now to what we had talked about,
20 number three, which ties right in here. Why was Detective
21 Lawrence taking you to another court, not to this courthouse,
22 not the big court? What was he taking you to the other court
23 for?

24 A. He was taking me to the courthouse for a trespassing
25 ticket that he had wrote.

1 Q. You have a problem with that, don't you?

2 A. Yes, sir.

3 Q. Tell Judge Seals when you were first caught --

4 A. Arrested.

5 Q. -- who was that? Was that Detective Lawrence or was
6 that somebody else?

7 A. It was the SWAT team.

8 Q. And also a canine unit, being a dog and police
9 officer and some other folks?

10 A. Yes, sir.

11 Q. Not Detective Lawrence?

12 A. Not Detective Lawrence.

13 Q. All right. So they physically got ahold of you,
14 right?

15 A. Yes, sir.

16 Q. Who were you then turned over to?

17 A. I was turned over to Mr. Duban.

18 Q. Duban?

19 A. Duban.

20 Q. And do you recall a conversation with Mr. Duban?
21 What did he tell you?

22 A. He told me at that time --

23 Q. Do you remember without looking at your notes?

24 A. Right. He told me that I was not being arrested. I
25 was being detained for questioning.

1 Q. Did he use the word "trespass"?

2 A. No, sir.

3 Q. Did he use the word assault and battery with intent
4 to kill?

5 A. No, sir.

6 Q. Or armed robbery?

7 A. No, sir.

8 Q. At what point then did Detective Lawrence come on
9 scene?

10 A. Detective Lawrence came on the scene that night.
11 They took me to the station and questioned me, asked me --
12 they was questioning me again.

13 Q. Let's pause right there. So the judge will
14 understand, they take you to the Sheriff's Office?

15 A. Yes, sir.

16 Q. And that would have been Duban or those first folks,
17 right?

18 A. Yes, sir.

19 Q. At the station, Detective Lawrence comes in and
20 talks to you?

21 A. Detective Lawrence came in to talk to me.

22 Q. Couple of things there. Did you tell him you did or
23 did not want to talk to him?

24 A. I told him -- at that time, I told him I didn't want
25 to talk to him.

1 Q. Right. Is this now the first time you are hearing
2 about trespassing, when Detective Lawrence comes in and
3 starts talking to you?

4 A. This is the first time I heard it.

5 Q. Now, can you tell the judge how Detective Lawrence
6 explained about this trespass? What do you remember being
7 informed about the trespass charge?

8 A. I was not informed of notice, no-trespassing signs
9 around the public place of the premises or any or signature
10 of the victim.

11 Q. Hold on just a second so the judge will understand.
12 Were you ever told not to be on that property where they
13 caught you?

14 A. No, sir.

15 Q. Was there any posting on that property not to be
16 there?

17 A. No, sir.

18 Q. Was there any document that law enforcement had with
19 the property owner's signature saying not to be there?

20 A. No, sir.

21 Q. But, yet, Detective Lawrence was telling you they
22 were holding you for trespass?

23 A. He said I don't have anything on you for the assault
24 and battery tonight, but I have -- I'm going to arrest you
25 for a trespassing.

1 Q. And they held you overnight?

2 A. Right.

3 Q. And it's next day you get charged with the three
4 warrants?

5 A. The three warrants because he told me that night at
6 that time, he said, I'm also going to take a photo lineup to
7 the victim, because he's sedated tonight. But in the
8 morning, I'm going to take a photo lineup, two of you, and if
9 he picks you up, I'm going to arrests you tomorrow on the
10 charge.

11 Q. He didn't have enough to charge you with the battery
12 that evening?

13 A. No, sir.

14 Q. So he needed to do it next day?

15 A. Yes, sir.

16 Q. Did Detective Lawrence come back to you about the
17 whole showing of the photos to Mr. Alford?

18 A. No. When he came back, he called county jail and
19 they arrested me.

20 Q. Okay. And, again, just so judge understands,
21 Detective Lawrence wasn't out there where they got you?

22 A. No, sir, he didn't know anything about it.

23 Q. And, yet, he's telling you they are going to hold
24 you on a trespass anyway, even though they don't have
25 anything?

1 A. Right.

2 Q. Last thing, last thing you wanted to talk about to
3 the judge here, you were at your three-day trial; you
4 testified, right?

5 A. Yes, sir.

6 Q. Prior to that, your attorneys give you discovery;
7 you could look through the evidence, right?

8 A. Yes, sir.

9 Q. And you've reviewed that back then and you've
10 reviewed it before coming forward today, right?

11 A. Yes, sir.

12 Q. Can you tell the judge what you recall about Mr.
13 Alford's statement on the gunshots? What do you want the
14 judge to know about that?

15 A. My counsel was ineffective by not discovering that
16 the co-defendant and victim's statement was telling
17 discrepancies in the two statements. The victim was saying
18 he was shot twice, the first time in his arm and the second
19 time in his leg.

20 The victim is also saying that the gun was black in
21 his Rule 5. And in his transcript, the victim said that he
22 thought he said that the gun was chrome or black. This is --
23 I mean, this shows that the victim does not show the gun
24 color. The co-defendant is saying --

25 Q. Let me pause you right here as to Mr. Alford. So

1 you are picking up differences just in his statement to the
2 police and what he testified at trial, right?

3 A. Yes, sir.

4 Q. Do you feel your attorneys handled that right, or
5 should they have dug into that some more?

6 A. I think they should have dug into it.

7 Q. That is just to Mr. Alford himself?

8 A. Yes, sir.

9 Q. What is it about Mr. Gibbs? He talked -- had some
10 things he wanted to complain as well?

11 A. He complained about the co-defendant saying that the
12 first bullet hit the victim first, and the second bullet hit
13 the car headlight. In the transcript, the co-defendant said
14 that the first shot went through the car headlight.

15 Q. Is there anything about the description of the
16 gun?

17 A. Yeah. The co-defendant's description of the gun is
18 chrome, a chrome gun.

19 Q. Now, do you think your attorneys handled the way he
20 gave his statement versus what he testified at trial all
21 right, or do you think they should have dug deeper?

22 A. I think they should have dug deeper.

23 Q. As far as Mr. Alford's statements about the shots
24 and color of the gun and compared to Mr. Gibbs's statement
25 about the shots and color of the gun, do you think there was

1 enough questions about how those didn't match up, or do you
2 think your lawyer should have asked more questions?

3 A. I think that it should have been -- asked little
4 more. They should have brought it up better, because it
5 would have made a difference.

6 MR. DAVIS: Your Honor, if I can have just a moment.
7 Mr. Dennis, thank you for answering my questions. The
8 attorney general may have some questions.

9 THE COURT: Cross.

10 MS. OLIVE: Thank you, Your Honor. May it please
11 the Court.

12 CROSS-EXAMINATION

13 BY MS. OLIVE:

14 Q. Mr. Dennis, you did have an opportunity to testify
15 during the pretrial hearing in which your lawyers challenged
16 the admissibility of your statements?

17 A. Yes, ma'am.

18 MS. OLIVE: That's all the questions I have.

19 THE COURT: Anything further?

20 MR. DAVIS: No, that would be the applicant's
21 presentation.

22 THE COURT: Does the State wish to call any
23 witnesses?

24 MS. OLIVE: Your Honor, the State would call Megan
25 Ehrlich back to the stand.

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MEGAN EHRLICH,

having been previously sworn, testifies as follows:.

DIRECT EXAMINATION

BY MS. OLIVE:

Q. Ms. Ehrlich, do you feel that you all raised the coercion element of the -- during the suppression motion prior to trial?

A. I know we raised it, because we brought up the issue about threatening federal charges.

Q. Based on the facts as they were at the time, do you feel that you had a strong argument for coercion?

A. I think it could have been stronger had we had more to support the allegation of the threat for federal charges. And there were no allegations of physical abuse or threats of harm to Mr. Dennis.

Q. Based on what information you did have, you made the argument with what information you had?

A. Right.

Q. What did you do to prepare for cross-examining the witnesses in this case?

A. I would have looked at prior records. I would have looked at statements that were given to police, looked at any inconsistencies for Trevor Gibbs. I remember specifically with him, he had a Facebook page. He had been out on bond. And I found out that he had violated his house arrest. So I

1 brought that up. There's very little to cross the victim on.
2 He didn't have a record, from what I recall, and didn't have
3 much of a social media presence that we could use anything
4 from.

5 As far as preparing cross on, there wasn't much of a
6 cross that was done on a lot of the lay witnesses that just
7 saw things at the store. For the detectives, I focused
8 mainly on the lack of follow-up investigation, the fact that
9 they didn't document their work and reports. But there
10 wasn't -- this is one of those cases where the paper
11 discovery is very thin, which makes it in some way difficult
12 to prepare for a cross.

13 Q. Did you question those witnesses, specifically the
14 victim and Mr. Gibbs, on any inconsistencies in their
15 statements?

16 A. I would have to look at the actual testimony. For
17 Trevor Gibbs, he didn't have a prior statement. So I
18 couldn't attack an inconsistent statement if he never gave a
19 statement to begin with in the first place. So for him, you
20 know, he was a -- we found out that he was a drug dealer,
21 that he hung out with these other guys that were the
22 co-defendants, that he had a bias towards them.

23 So as far as inconsistent statements with him, I
24 have not as much to go on as I did with maybe some of the
25 other witnesses. But even the victim I think was relatively

1 consistent.

2 Q. Would you have cross-examined the victim on any
3 inconsistencies between his direct examination testimony at
4 trial and the statements that he gave?

5 A. I would have tried. I'm sure I wasn't perfect.

6 Q. Ms. Ehrlich, just by way of background, how many
7 years have you been practicing law?

8 A. I've been practicing since 2006.

9 Q. And what percentage of your practice has been
10 criminal?

11 A. It's all criminal.

12 Q. What was your overall strategy in this case?

13 A. The overall strategy was, I mean, based on we knew
14 the statement at that time was coming in and that Mr. Dennis
15 had put himself on the scene. I think from his testimony,
16 and no disrespect to him, but he comes across how he comes
17 across, as somebody who could be easily manipulated into a
18 situation. So in this case, we have three cousins that were
19 all younger from McClellanville. And the argument was that
20 they had kind of used Mr. Dennis as a throw-away person. He
21 was older, a little bit more simple, and somebody that they
22 could take advantage of and that they put him in a bad spot.

23 We tried to get a self-defense charge as far as the
24 shooting. And I think we did get a mere presence charge, but
25 he was there. Our position was, this guy wasn't part of any

1 robbery. He was in a really bad spot with these younger,
2 scary guys. And when things got out of hand, he tried to
3 protect himself the best he could. And that was kind of what
4 our theory was in the case.

5 Q. And you said you did ask for a self-defense charge,
6 but, ultimately, that was denied?

7 A. Right. We didn't get self-defense, which I think
8 hurt. And we also asked for the old ABHAN charge, which we
9 didn't get, which probably hurt him.

10 MS. OLIVE: Beg the Court's indulgence.

11 That's all the questions I have. Thank you.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q. Piggybacking on the general defense of the case, the
16 strategy of the case, if you had been successful at blocking
17 Mr. Dennis's statement, how might that have influenced your
18 advice to him about testifying or not?

19 A. That's a difficult question. If the statement
20 wasn't coming in, I think to get his side of the story out,
21 he still potentially has to testify. But even if the
22 statement is suppressed, they can cross-examine him on
23 inconsistent statements of the statements that would have
24 been inadmissible otherwise.

25 So I don't know that I would have taken a strong

1 position with him about, you really need to testify or you
2 shouldn't testify. I think I would have tried to best to
3 explain to him the pros and cons. My typical advice with him
4 is, if you want your story out and it's not going to come out
5 through your statement, then you would have to get up there.
6 But you have to look at the pros and cons and what you can
7 add to the statement or what you can add to the case that's
8 going to help you or hurt you.

9 So I think Mr. Grimes and I would have spent a
10 significant amount of time with him trying to make sure he
11 understood that.

12 Q. But under the circumstances of the trial back in
13 2011, his statement is coming in. So to fill out that
14 narrative, he almost certainly has to make the statement?

15 A. To be able to really explain things, he has to
16 testify. And to me, clearly, the jury believed some of what
17 he had to say, because they acquitted him of being part of
18 the robbery, which kind of brings us all back to what impact
19 did Detective Lawrence's credibility have on their belief of
20 the rest of the case if they believed Mr. Dennis on at least
21 something. Because he testified, I wasn't there to do a
22 robbery.

23 Q. If his statement was not coming in, then you have to
24 analyze his testimony or not with the variety of factors.
25 One you've already talked about and I've got on the record

1 earlier. He did not finish his education?

2 A. Right.

3 Q. So his ability to present his story and deal with
4 cross-examination would have been a factor, correct?

5 A. It would have, yeah.

6 Q. With his statement not coming in, Mr. Alford and
7 Mr. Gibbs would have testified, though, that he was at the
8 scene, correct? You had two eyewitnesses?

9 A. Right.

10 Q. But if the statement was not coming in -- had not
11 come in, the person who gave the photo array to Mr. Alford
12 was Detective Lawrence?

13 A. Right. He was the one who interviewed Mr. Alford to
14 begin with. I mean, the case clearly becomes more
15 complicated once we know more about Detective Lawrence.

16 Q. So then less becomes the credibility of the
17 detective and the defendant's statement as it does two
18 eyewitnesses?

19 A. Right.

20 Q. How significantly ahead of the trial date did the
21 State serve the life without patrol notice; do you recall?

22 A. I have that in the rest of my file. If I can get my
23 file real quick, I can -- I believe it was in February.

24 THE WITNESS: Your Honor, may I step down to get my
25 file?

1 THE COURT: You can.

2 A. My notes indicate back on February 4th of 2011, he
3 rejected a plea offer in front of Judge Jefferson. And he
4 was served with LWOP, I believe, the same day.

5 I think it was one of those situations where the
6 State made a plea offer and indicated that if it wasn't going
7 to be accepted the same day, they would go ahead and serve
8 him with notice of the intent to seek life.

9 Q. I'm going to go back to what I think was on cross
10 last time. But it wasn't, at the time in 2011, your normal
11 policy to obtain law enforcement personnel files, but that
12 has become more frequent now? Is that your testimony?

13 A. Yes.

14 MS. OLIVE: Your Honor, I would object. That goes
15 beyond the scope of the cross-examination testimony.

16 THE COURT: Sustained.

17 BY MR. DAVIS:

18 Q. I will tie it in. With this being a life without
19 parole case, if you had that now, would it be your practice
20 to obtain personnel files?

21 A. Yes.

22 Q. Finally, if Mr. Dennis's statement did not come in,
23 do you think that would have increased the likelihood of
24 either the self-defense or the assault and battery of a high
25 and aggravated nature charge?

1 MS. OLIVE: Objection. Calls for speculation.

2 THE COURT: What was your question again?

3 MR. DAVIS: If Mr. Dennis's statement had been
4 blocked, would it have increased the chances for a
5 self-defense and/or ABHAN charge?

6 THE COURT: Sustained.

7 BY MR. DAVIS:

8 Q. Without his statement coming in, would that have
9 provided you more arguments in closing?

10 A. I think it would have depended on whether or not he
11 testified. Had he testified, I think he would have still had
12 to testify to get any possibility of a self-defense charge.
13 The ABHAN, I don't know. I think for the self-defense claim,
14 his testimony would have been necessary.

15 Q. Without his statement coming in, and if he had not
16 testified, there was an argument that the identification is
17 wrong?

18 A. Right.

19 MR. DAVIS: Thank you, Your Honor. No other
20 questions.

21 THE COURT: Anything further from the State?

22 MS. OLIVE: Nothing further from the State.

23 THE COURT: Any other witnesses?

24 MS. OLIVE: No other witnesses from the State.

25 THE COURT: Thank you. You have a good day.

1 MR. DAVIS: I don't mean to interrupt. Would you
2 hear a brief summary? This is a convoluted thing. If that
3 would be appropriate, if you would be all right.

4 THE COURT: That would be fine.

5 MR. DAVIS: Judge, if any case proves the point,
6 this is the one that proves the devil is in the details.
7 There are several valid points I'm sure the State is going to
8 make in a moment, most notably being the time frame of when
9 Detective Lawrence was fired and when the file became
10 available to Ms. Ehrlich. We understand that.

11 But she's testified about that, that there are
12 incidents that predate this trial, predate this arrest. She
13 certainly had access. It was a FOIA request that was not
14 provided through Rule 5 or discovery. Just because it wasn't
15 her practice and just because she didn't do it in other
16 cases, doesn't mean she should not have in this one. She
17 said she's learned a lesson from this.

18 The example that popped in my head was for someone
19 to not wear a seatbelt and be in a severe wreck and realize,
20 my gosh, I should have probably worn my seatbelt. You can
21 point out when they originally didn't, that was a problem.
22 They may have been a very careful driver.

23 And I have great respect for Megan. I don't think I
24 have to say that on the record for her to know that. But we
25 are here trying to get success for Mr. Dennis.

1 And so my quick argument to the time frame of that
2 is, it did not come through discovery Rule 5. It was a FOIA
3 request that could have been done, especially with this being
4 a life without parole case, based on prior record. So it
5 comes with a notice of a few months out that, you know, those
6 are done, life without parole, pull out all the stops. So
7 she could have, should have, we would argue.

8 The threat of Detective Lawrence's credibility
9 touches on so many things in this case. I am not going to
10 belabor the point. I appreciate your patience on the record.
11 But I will allow you to review the record. You've handled
12 plenty of cases, but it's not just about Detective Lawrence's
13 credibility. It's not just about his credibility as to the
14 two statements and the first communication of his rights and
15 then the two statements. It's not just that. It does
16 permeate all the other things in this case.

17 The most obviously one I want to highlight is the
18 issue about a mention of this case going federal, becoming a
19 federal case. You will see in the record how that -- the
20 testimony about that on the record. You certainly heard
21 testimony here today. Even in the light most favorable to
22 the State, if it was overheard from in the hallway, the way
23 that Detective Lawrence handled that testimony on the stand,
24 without his credibility being tested the way it could have,
25 should have been, calls that into question.

1 The fact that Mr. Dennis talks about this car ride
2 by himself, that was one of the things I highlighted earlier,
3 certainly, and Ms. Ehrlich testified about it, the
4 statements, which are not recorded audio or visually or
5 video-wise, but they could have been. Even if a second
6 detective is in there, the credibility permeating from
7 Detective Lawrence does effect everything else. But in this
8 instance, we have Detective Lawrence taking Mr. Dennis to
9 court for this trumped-up trespass charge. And that also
10 permeates this case, and is talking to him by himself. That
11 wasn't addressed as appropriately as it could have been and
12 should have been at the time and, certainly, when you add in
13 what is found out through his personnel file.

14 We would argue that had Mr. Grimes, Ms. Ehrlich,
15 handled the case more thoroughly, and again, the underlying
16 issue is dealing with the -- had they handled it more
17 thoroughly, even three issues that Mr. Dennis wants to talk
18 about to you directly, that either outcome would have been
19 different. I will certainly argue to you that outcome would
20 have been different. Could have been not guilty on the two
21 charges he was being convicted of. As Ms. Ehrlich points
22 out, the jury certainly believed some of the defense
23 presentation, because he was found not guilty of armed
24 robbery. That's crucial. Remember that.

25 THE COURT: Well, either they believed him or they

1 didn't put up enough evidence to get a conviction.

2 MR. DAVIS: True. Fair enough. Judge, fair enough.
3 Very good point. Certainly. And I would argue, though, that
4 shows that the presentation of the evidence on the three
5 charges certainly was lacking as to one. If you are not
6 convinced the jury, given the extra information, extra
7 evidence, extra effort by Mr. Dennis's attorney, would have
8 found him not guilty, I think we met our burden. If there's
9 some question they would have hung up -- and because a hung
10 jury is not an acquittal. It's a do-over, but certainly not
11 a conviction. So I would argue that if we can show it would
12 have been a mistrial or not guilty, we met our burden as to
13 either one.

14 And, again, I will point out that certainly all 12
15 were unanimously not guilty from the State on one charge.

16 The final thing, Judge, I'm sure you will review the
17 transcript thoroughly. I will point out one small section.
18 It's an argument by -- sorry, by Mr. Grimes, page 122 through
19 125. It's the argument to suppress the statement. And I
20 will simply ask you to review that. And then realize how
21 more significant his argument would have been if and when you
22 add in information that was testified today that would --
23 that was found in Detective Lawrence's personnel file and
24 could have, should have been used at that time. Thank you.

25 THE COURT: Let me hear from the State.

1 MS. OLIVE: Thank you, Your Honor. It's the State's
2 position that Mr. Dennis had shown neither deficiency nor
3 prejudice in this case. There's been absolutely no showing
4 that Ms. Ehrlich, his trial counsel, was ineffective.
5 There's no deficiency. We have to look at what she knew at
6 the time. There's been no testimony presented today that
7 would provide -- no testimony presented today that Ms.
8 Ehrlich had any reason to obtain Mr. Lawrence's personnel
9 file prior to trial. She had no knowledge of any wrongdoing
10 on his behalf at that time.

11 And even the statements today concerning any
12 wrongdoing on behalf of Detective Lawrence had been very
13 vague, and don't really -- there's been really no proof that
14 they touch on his credibility. And really hasn't been shown
15 that he could have been effectively impeached with those
16 things contained in his personnel file.

17 Mr. Davis stated that she could have and should have
18 obtained his personnel file. But, again, it's the State's
19 position that she testified that that was not something that
20 was a practice of hers to obtain personnel file of a
21 detective on a case. And, again, there's been no testimony
22 today to show that she had any knowledge at the time of trial
23 or prior to trial that would have put her on notice that that
24 would be something that she would need to look into. In
25 fact, the concerns about Detective Lawrence did not come to

1 light until three years after trial. And even then, there's
2 still been no testimony that he did anything untoward with
3 regard to this case.

4 It's just pure speculation at this point as to what
5 any result of an impeachment of Detective Lawrence would have
6 produced in this trial, and pure speculation as to any sort
7 of effect that had on the investigation of the case. There's
8 been no evidence that he did anything wrong in this case and
9 in the investigation of this case.

10 Furthermore, it's our position there's no prejudice
11 because there were two eyewitnesses who testified at trial.
12 There was no evidence of coercion. There was no evidence
13 with regard to the statements that Mr. Dennis made that would
14 rise to the level of coercion such that they would have been
15 suppressed based on any sort of coercion.

16 So, Your Honor, it's our position that there's been
17 no deficiency and no prejudice shown in this case.

18 THE COURT: okay. I will take a look at it, think
19 about it, and let you know.

20 (Whereupon, proceedings are adjourned.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Alonza Dennis, #128392)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-10-5496

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

Rodney D. Davis, Bar No.

Address: Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Megan Harrigan Jameson, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

Phone: _____ Fax: _____

E-mail: _____ Other: _____

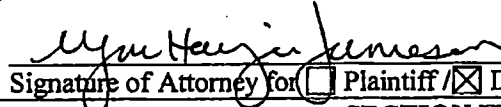
☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)☒ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)**SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____

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

November 21, 2017

Date submitted

SECTION III: Motion Fee☐ **PAID - AMOUNT: \$** _____**EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ 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, SCRCP)☐ 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: \$** _____

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Alonza Dennis, SCDC # 128392,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-5496

ORDER OF DISMISSAL

FILED
2017 DEC 13 AM 9:34
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed September 9, 2014, by Alonza Dennis (Applicant). Respondent made its Return on April 27, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On October 5, 2009, a Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill ("ABWIK" or "ABIK"), attempted armed robbery, and possession of a firearm during a crime of violence. Andrew Grimes, Esquire, and Megan Ehrlich, Esquire, both of the Charleston County Public Defender's Office, represented Applicant.

Assistant Solicitors Jennifer Shealy and Timmy Finch of the Ninth Circuit Solicitor's Office prosecuted the case.

On March 14, 2011, Applicant proceeded to a jury trial in the Charleston County Court of General Sessions before the Honorable Roger M. Young, Sr., circuit court judge. On March 16, 2011, the jury returned a verdict of guilty on the ABWIK charge, guilty on the possession of a firearm during a crime of violence charge, and not guilty on the attempted armed robbery charge. Judge Young sentenced Applicant to the mandatory sentence of life without the possibility of parole based upon a prior conviction in the State of New York for rape in the first degree.

On March 25, 2011, Applicant filed a Motion to Reconsider the Sentence. However, on May 11, 2011, Judge Young issued an Order denying the Motion to Reconsider.

On May 17, 2011, Applicant filed a Notice of Appeal and an appeal was perfected on his behalf by Appellate Defender LaNelle C. Durant of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant argued “the trial court erred in (1) admitting testimony that he offered to sell a purportedly stolen gun to buy crack cocaine shortly before the shooting; (2) refusing to charge the jury on assault and battery of a high and aggravated nature (ABHAN); (3) sentencing him to life without parole (LWOP); and (4) admitting his two written statements into evidence.” State v. Dennis, 402 S.C. 627, 631, 742

S.E.2d 21, 23–24 (Ct. App. 2013). Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. Id. Applicant's subsequent petition for rehearing and petition for certiorari to the South Carolina Supreme Court were denied. The Remittitur was returned to the circuit court on August 27, 2014.

EVIDENCE PRESENTED AT TRIAL¹

The Shooting

On June 22, 2009, Applicant fired five shots at Moses Alford. (Tr. p. 182.) Out of the five shots, three of the bullets hit Alford.

Earlier that day, Applicant went to the home of La Seto Gibson ("Quan"). Quan's cousins, Kaylab Wright and Trevor Gibbs, were also at Quan's house. (Tr. pp. 224-225.) Quan called Alford to see if he could purchase some clothes.² (Tr. pp. 166-167; Tr. p. 225.) Alford agreed to meet Quan at the Kangaroo gas station in McClellanville. (Tr. p. 168.)

According to Gibbs, Applicant wanted to rob Alford; however, Quan, Wright, and Gibbs left Applicant at Quan's house because they did not want to be involved in a robbery. (Tr. pp. 229-230.) Quan's grandfather drove Applicant to the Kangaroo where Quan, Wright, and Gibbs were located. Applicant got into Quan's car. Quan and Wright got out of Quan's car and went to Alford's car to look at the clothing. (Tr. p. 177.) Wright returned to Quan's car because he did not like any of the clothes. (Tr. p. 234.)

At some point, Wright took Applicant's gun from him. Applicant wanted his gun back. (Tr. p. 235.) Wright gave Applicant his gun back and told Applicant to not do anything stupid.

(Tr. pp. 235-236.) Upon Applicant's request, Wright let Applicant out of the car. (Tr. p. 236.)

While Alford was looking in the back seat of the car for an article of clothing, Applicant approached Alford's car.³ (Tr. pp. 179-181.) Applicant pointed a gun at Alford and said, "Give

¹ This factual recitation comes from the Initial Brief of Respondent filed in Applicant's direct appeal.

² Alford owned his own clothing business in Georgetown, but he would occasionally bring clothes to customers. (Tr. pp. 162-163.)

³ Alford later identified Applicant in a photo lineup as the man that shot him. (Tr. p. 181.)

me everything.” (Tr. pp. 180-182.) When Alford reached for his gun,⁴ Applicant shot Alford in the arm, leg, and back. (Tr. p. 182; Tr. p. 480.) At trial, Applicant testified he did not intend to kill Alford; he just wanted to scare Alford. (Tr. p. 484; Tr. p. 508.) However, Applicant testified he shot to the side of Alford instead of shooting in the air. (Tr. p. 507.) After Applicant shot Alford, Applicant ran into the woods. (Tr. p. 184.)

On the day of the shooting, Peggy Owen testified she saw Applicant hide behind a car in her driveway, and Applicant ran away when the police got close. (Tr. p. 293-294.) Shortly thereafter, a canine unit found Applicant. (Tr. p. 311.) The police found a crack pipe in Applicant’s pocket. (Tr. p. 492; Tr. p. 549.)

Two days after the shooting, the police found the gun Applicant used to shoot Alford in a drainage pipe near Owen’s house. (Tr. pp. 295-297; Tr. pp. 334-337.) At trial, Investigator Kathy Kjellman testified that no shell casings were found at the scene of the shooting. (Tr. p. 363.) However, revolvers do not eject shell casings. Moreover, the gun found in the drainage pipe near Owen’s house was a revolver.

During Applicant’s direct examination, Applicant’s trial counsel elicited Applicant’s prior conviction for grand larceny. (Tr. p. 464.)

The Stolen Gun / Crack Use

According to Gibbs, on the day of the shooting, Applicant tried to sell him a revolver. (Tr. pp. 212-213; Tr. pp. 225-229.) Applicant told Gibbs he stole the revolver, and he needed to sell the gun in order to get another “blast” (i.e. crack). (Tr. p. 228.)

⁴ Alford carried two guns in his car for protection. (Tr. pp. 171-172.) Alford had a concealed weapons permit for both guns.

Applicant's trial counsel argued: "When [Applicant] woke up on the morning of June 22, [Applicant] didn't have a gun. [Applicant] didn't have a plan to rob anyone, and he certainly didn't have plans of shooting anyone." (Tr. p. 150.) Additionally, Applicant's trial counsel argued that Applicant's co-defendants provided Applicant with the gun. (Tr. p. 152.) Moreover, Applicant's trial counsel argued that Quan, Wright, and Gibbs told Applicant to grab the gun in the back seat right before the robbery. (Tr. p. 152.)

Applicant's trial counsel objected to Gibbs' testimony regarding the stolen gun and drug use. Regarding Applicant's drug use, Applicant's trial counsel argued the testimony was more prejudicial than probative. (Tr. p. 213.) In addition, Applicant's trial counsel argued motive was not an element of the crime, and the testimony regarding Applicant's drug use went to Applicant's character. (Tr. p. 214.) With respect to the testimony regarding Applicant stealing a gun, Applicant's trial counsel argued the testimony was more prejudicial than probative.

After hearing all arguments, the trial judge held the testimony regarding the stolen gun was probative to rebut Applicant's trial counsel's contention that Applicant did not have a gun on the morning of the shooting. (Tr. p. 215.) Furthermore, the trial judge held the testimony regarding Applicant's need for crack was admissible to establish motive.

The Statements

After the canine unit found Applicant, the police brought Applicant back to the Kangaroo. (Tr. pp. 40-41.) At that time, Applicant was under arrest for trespassing. (Tr. pp. 78-79.) Detective Wagner conducted a gun residue test on Applicant, and Detective Albert Casale

read Applicant his rights under Miranda.⁵ (Tr. pp. 41-43; Tr. p. 47.) According to Detective Casale, Applicant cooperated and did not seem to be confused or intoxicated. (Tr. p. 45; Tr. p. 48.) Detective Casale told Applicant that if Applicant wanted to talk to the police, then he needed to sign the waiver form. (Tr. p. 47.) Applicant told Detective Casale that he did not really want to talk "at that time."⁶ (Tr. p. 48; Tr. pp. 51-52.) At that point, Detective Casale secured Applicant in the car and informed Applicant that Detective Charles Lawrence would speak to Applicant later that day. (Tr. pp. 47-48; Tr. pp. 52-53.) Thereafter, Deputy Robert Thornley transported Applicant to the police headquarters. (Tr. p. 271.)

Approximately five to six hours after Detective Casale advised Applicant of his rights at the Kangaroo station, Detective Kip Cooke advised Applicant of his rights at the police headquarters. (Tr. p. 55; Tr. p. 57; Tr. p. 129.) While Detective Cooke was advising Applicant of his rights, Detective Lawrence came into the room. (Tr. p. 57.) Applicant signed the waiver of rights form. (Tr. p. 61.) Detective Casale left the room in order to work on another case.

At 9:04 p.m. Detective Lawrence began the interview. (Tr. p. 91.) Neither Detective Cooke nor Detective Lawrence knew that Applicant told Detective Casale that he did not want to talk "at that time." (Tr. p. 67; Tr. pp. 99-100.) Furthermore, Applicant never told Detective Lawrence he did not want to talk. (Tr. pp. 81-82.) Moreover, Applicant never asked for an attorney. (Tr. p. 62; Tr. p. 82.)

⁵ Miranda v. Arizona, 384 U.S. 436 (1996); see State v. Lynch, 375 S.C. 628, 633 n. 5, 654 S.E.2d 292, 295 n. 5 (Ct. App. 2007) ("The well-known Miranda rights are that the accused must be informed of: the right to remain silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney.") (citations omitted).

⁶ Applicant did not request an attorney.

During the interview, Detective Lawrence did not make any promises or threats. (Tr. p. 82.) Applicant made a statement essentially denying any involvement in the robbery. Applicant stated he did not know why he was under arrest. The interview lasted approximately two hours. (Tr. p. 81.)

On June 29, 2009, after learning new developments in the case, Detective Lawrence decided to interview Applicant again. (Tr. pp. 84-85.) Detective Lawrence transported Applicant to the police headquarters and read Applicant his Miranda rights. (Tr. p. 84; Tr. p. 86.) Applicant signed the acknowledgment and waiver of rights form. (Tr. pp. 87-89.) Detective Lawrence did not make any threats or promises. (Tr. p. 89; Tr. p. 381.) Although Applicant claimed Detective Lawrence told him that if the federal authorities picked up his case it would be hard on him, Detective Lawrence testified he never threatened to turn over Applicant's case to the federal authorities. (Tr. pp. 82-83; Tr. pp. 111-112.) However, Detective Lawrence did inform Applicant that Alford identified Applicant as the shooter. (Tr. p. 90.) At that point, Applicant made a statement. (Tr. pp. 90-91.)

According to Applicant's June 29th statement, Quan, Wright, and Gibbs wanted to rob someone, and they wanted Applicant to be involved. (Tr. p. 106.) However, before the robbery took place, they told Applicant that they did not need him. Quan, Wright, and Gibbs left Quan's house, and Quan's grandfather gave Applicant a ride to the Kangaroo. Applicant saw Quan, Wright, and Gibbs at the Kangaroo. They "forced" Applicant into Quan's car. They told Applicant to get the gun and rob Alford. Someone told Alford to give "us" your money. At that point, Alford went for his gun as he attempted to run away from Applicant. Applicant admitted he shot Alford; however, Applicant claimed he only shot Alford to keep Alford from shooting

him. Applicant's testimony at trial was largely consistent with his June 29th statement. (Tr. pp. 467-485.) However, at trial, Applicant admitted no one threatened or forced him to rob and shoot Alford; Applicant was just scared of Quan, Wright, and Gibbs. (Tr. pp. 504-505; Tr. p. 509; Tr. p. 514.)

The Jury Charges

At the close of the evidence, Applicant's trial counsel asked the trial judge to instruct the jury on assault and battery of a high and aggravated nature (ABHAN). (Tr. p. 543.) Applicant argued Applicant shot the victim under a heat of passion and sudden provocation, and Applicant did not do anything to provoke the difficulties. Moreover, Applicant claimed Applicant had no ill will toward Alford. (Tr. p. 543-544.) In addition, Applicant argued that in murder cases, voluntary manslaughter was given as a jury instruction in heat of passion cases as a lesser-included offense of murder. (Tr. p. 545.) Therefore, Applicant claimed the evidence supported a charge of ABHAN as a lesser-included offense of ABWIK. Ultimately, the trial judge denied Applicant's request and refused to charge ABHAN. (Tr. p. 544.)

The Sentencing

During sentencing, Applicant argued that he should not be sentenced to LWOP because the State did not prove the New York conviction met the elements of what would be considered a most serious offense under South Carolina law. (Tr. p. 600.) However, the State provided a signed and sealed Certificate of Disposition Indictment that stated Applicant was convicted of "Rape 1st Degree PL 130.35 03 BF," which was the equivalent of South Carolina's criminal sexual conduct with a minor offense ("CSC with a minor"). (Tr. p. 602.) Furthermore, the State provided a rap sheet and paperwork, which stated Applicant forcibly raped his ten year old step-

niece, twice on same day. (Tr. pp. 601-602.) After hearing the arguments, the trial judge sentenced Applicant to life without parole. (Tr. p. 603.) Applicant filed a Motion to Reconsider the Sentence accompanied with a Memorandum of Law in Support of Motion to Reconsider. The trial judge denied Applicant's Motion to Reconsider the Sentence.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. Ineffective assistance of counsel.
 - a. Counsel failed to prepare and preserve the coercion of the officer's testimony and the testimony of the co-defendant.
 - b. Counsel failed to prepare and investigate the victim's testimony saying one thing and the co-defendant's saying the other.
 - c. Counsel failed to prepare and investigate my arrest for probable cause.
2. My arrest did not have any probable cause.
3. The victim and the co-defendant's testimony did not prove the guilt of the defendant.

In its Return, the State moved to dismiss the allegations regarding his arrest and lack of evidence to establish his guilt as non-cognizable grounds for relief pursuant to the post-conviction relief act. See S.C. Code Ann. § 17-27-20(a)(6) (2003) ("Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat the conviction or sentence is otherwise subject

to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."). At the start of the evidentiary hearing, Respondent renewed its motion

to dismiss these two grounds for relief. Applicant stated he had no objection to the State's motion to dismiss. Therefore, this Court finds these allegations must be denied and dismissed.

Additionally, Applicant proceeded forward on an allegation that counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file and impeach him with the file.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, trial counsel Megan Ehrlich testified. She testified she was the lead attorney handling Applicant's case and had assistance from Andrew Grimes, a fellow public defender who has since passed away. (PCR Tr.6). She testified Applicant was questioned by law enforcement three separate times, including June 22, 2009, and seven days later on June 29, 2009. (PCR Tr. 7, 9, 31). She testified the lead detective handling this case was Detective Lawrence, who was present when Applicant gave at least two of his statements. (PCR Tr. 7-8). She testified the defense tried to suppress these statements and Grimes handled the pre-trial motion to suppress hearing. (PCR Tr. 7-9). She testified the defense theory for why these statements should be suppressed was that Applicant initially said he did not want to speak to law enforcement and law enforcement continued to question him. (PCR Tr. 9, 31-32). She testified that three different detectives were involved in the questioning of Applicant and none of his

statements were recorded. (PCR Tr. 10). She testified law enforcement did not do a report

pertaining to any of Applicant's statements. (PCR Tr. 10-11). She testified defense counsel

argued Applicant's statements were coerced, but that there was no allegation of physical abuse or

threats of harm to Applicant. (PCR Tr. 47). Trial counsel testified Applicant testified at the

~~motion to suppress hearing and during trial (PCR Tr. 11). She testified the trial court denied the~~

motion to suppress and the statements were introduced at trial. (PCR Tr. 11).

Trial counsel testified that three years after Applicant's trial, in 2014, she was made aware that Detective Lawrence was fired from the Sheriff's Office for having a sexual relationship with a suspect's mother in a homicide investigation. (PCR Tr. 11, 13). She testified this made her think of Applicant's case and how crucial Detective Lawrence's testimony had been in Applicant's case. (PCR Tr. 11). She testified she sought and obtained a copy of Detective Lawrence's personnel file pursuant to a Freedom of Information Act (FIOA) request. (PCR Tr. 11-12, 14). She testified Detective Lawrence's personnel file was quite large and contained numerous instances that she could have used to attack his credibility, including lying about speaking with parents in a missing child investigation, shooting at another vehicle that almost hit his car while he was off-duty, and circumstances surrounding a domestic dispute. (PCR Tr. 13-16, 21-23). She testified the personnel file also revealed Detective Lawrence's investigative skills were marked as 2.5 out of 4 on an evaluation. (PCR Tr. 13-4). She testified she was not aware of any of this information at the time of Applicant's trial in 2011 and had not reason to suspect Detective Lawrence was untruthful or did not perform his job adequately at the time of Applicant's trial. (PCR Tr. 15, 22, 29). She testified if she had known Detective Lawrence had all of these issues before trial, she also would have requested the personnel file for Detective Cook to try to attack the validity of Applicant's statements further. (PCR Tr. 17-18). She elaborated that Detective Cook did not prepare a report of his interrogation of Applicant and was testifying from memory of events that transpired more than two years earlier. (PCR Tr. 18). She testified it was not her standard practice at the time of Applicant's trial to obtain the personnel files of detectives who worked on her clients' cases, but she does this more frequently now. (PCR Tr. 33, 53).

Trial counsel testified the case involved Applicant and three cousins, who were younger than Applicant and appeared to be more sophisticated and could manipulate Applicant. (PCR Tr. 19, 49). She testified two cousins gave statements to law enforcement immediately after they were arrested, but the third cousin, Trevor Gibbs, did not initially provide a statement but testified at trial. (PCR Tr. 19-21). She testified the victim identified Applicant as the shooter from a photo array and that Applicant's hand tested positive for gunshot residue. (PCR Tr. 20).

Trial counsel testified there were some minor inconsistencies between the victim's statement and testimony and that provided by Gibbs, including the location of the first few shots and the color of Applicant's gun, but no major inconsistencies. (PCR Tr. 24-26, 48-49). She testified she reviewed the statements given to law enforcement and highlighted any inconsistencies in preparation for cross-examination. (PCR Tr. 47). She testified he also investigated Gibbs and was able to determine he had violated his house arrest. (PCR Tr. 48). She testified she was not able to find any much information to use for cross-examination of the victim. (PCR Tr. 48).

Counsel testified Applicant was originally arrested for trespassing and was not charged with the three offenses for which he was indicted until the following day. (PCR Tr. 26-27). She testified there was no proof that Applicant was not allowed to be on the property or had otherwise been put on trespass notice. (PCR Tr. 27). She testified there was also an allegation that Detective Lawrence had threatened Applicant by mentioning within Applicant's earshot that the case might become federal if Applicant did not cooperate with law enforcement, which defense counsel raised to the trial court. (PCR Tr. 23-24, 47). She testified she requested jury instructions on self-defense and ABHAN, but both were denied by the trial court. (PCR Tr. 50).

Trial counsel testified she and Grimes spent a significant amount of time with Applicant explaining the advantages and disadvantages of testifying at trial. (PCR Tr. 50-51). She testified that Applicant needed to testify to explain his version of events to the jury, particular once the motion to suppress his statement was denied. (PCR Tr. 51).

Next, Applicant testified on his own behalf and stated he has a tenth grade education. (PCR Tr. 35-36). Applicant testified he believes he was coerced into giving a statement to law enforcement and his attorneys should have moved for suppression on that ground. (PCR Tr. 36-39). He elaborated that Detective Lawrence said his case would be handed over to federal authorities if he did not cooperate and he only provided a statement because he was scared. (PCR Tr. 37). He testified Detective Lawrence made this statement after he was arrested for trespassing, but before he had been charged with any of the more serious charges for which he was ultimately indicted. (PCR Tr. 39). He testified Detective Lawrence was questioned about this and denied making such a statement. (PCR Tr. 38-39). Applicant testified he was apprehended by a SWAT team with a canine unit and was originally told he was not under arrest but was being detained for questioning. (PCR Tr. 40). He testified he originally told law enforcement he did not want to talk. (PCR Tr. 41). He testified it was not until he said he did not want to talk that Detective Lawrence told him he was under arrest for trespassing. (PCR Tr. 42).

Applicant testified he was not on trespass notice and otherwise had not been told not to be on the property where he was apprehended. (PCR Tr. 42).

Applicant testified there were discrepancies between the testimony of the victim and Gibbs and that his attorneys should have discovered this and used it to his benefit. (PCR Tr. 44-45). Applicant testified at both the pre-trial motions hearing and at trial. (PCR Tr. 38, 46).

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 hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume 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. 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: Counsel failed to prepare and preserve arguments that his statements should be suppressed based on coercive tactics of law enforcement

Applicant asserts trial counsel was ineffective for failing to prepare and argue his statements should be suppressed based on the coercive tactics of law enforcement. Particularly, Applicant asserts trial counsel should have argued Detective Lawrence's references within Applicant's earshot that his case could become federal if he did not cooperate with law enforcement induced his June 29th statement, and therefore was inadmissible due to coercion. At trial, Applicant testified Detective Lawrence told him that if the federal authorities picked up his case it would be hard on him; in contrast, Detective Lawrence testified he never threatened to turn over Applicant's case to the federal authorities. (Tr. pp. 82-83; Tr. pp. 111-112.) During the

~~motion to suppress hearing, trial counsel argued the statement should be suppressed; in part,~~

based on Applicant's claims that Detective Lawrence threatened to turn his case over to federal authorities if he did not assist law enforcement. (Tr. pp. 124-25, 129). Despite this, Applicant argues trial counsel could have done more to argue for suppression based on coercion.

A review of the record shows that trial counsel questioned Applicant and law enforcement regarding coercion and threats to Applicant, particularly regarding handing his case over to federal authorities if he did not cooperate. After making these arguments, the trial court denied Applicant's motion to suppress these statements. This Court finds Applicant properly argued for suppression of Applicant's statements and therefore, did not perform deficiently. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Counsel failed to prepare and investigate the victim's testimony saying one thing and the co-defendant's saying the other.

Applicant asserts trial counsel was ineffective for failing to investigate into discrepancies between the statements and testimony provided by co-defendant Gibbs and the victim. Specifically, Applicant contends there were inconsistencies between the description of Applicant's gun and the location of the bullets fired from the gun. Counsel testified she was aware of these minor discrepancies and highlighted them to the jury. The record supports counsel's testimony. During closing arguments, trial counsel highlighted these inconsistencies. See Tr. 561-62. Moreover, both witnesses were thoroughly cross-examined by counsel during trial. This Court finds trial counsel performed proficiently in handling the statements and testimony of both Gibbs and the victim. ~~This Court finds Applicant has failed to meet his requisite burden of proof and this allegation is denied and dismissed with prejudice.~~

Allegation: Counsel failed to prepare and investigate an argument surrounding Applicant's arrest

Applicant asserts trial counsel was ineffective for failing to properly investigate the facts surrounding his arrest. However, a review of the record reveals counsel questioned multiple witnesses regarding the validity of Applicant's arrest, how it impacted his statements to law

enforcement, and argued his arrest was improper. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file and impeach him with said file.

Applicant asserts trial counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file, which he asserts would have provided pivotal information that could have been used to impeach him and attack his credibility. The majority of testimony presented at the evidentiary hearing focused on this allegation. Counsel testified she obtained a copy of Detective Lawrence's personnel file after she became aware that Detective Lawrence was fired from the Sheriff's Office for having a sexual relationship with a suspect's mother in a homicide investigation. She testified she requested and received a copy of his personnel file pursuant to a FIOA request, which was not part of her standard practice. She testified the file contained several items that she could use to impeach his credibility and that she would have used this information to Applicant's benefit if she had the information prior to his trial. However, she testified she was not aware of any of this information at the time of Applicant's trial in 2011 and had no reason to suspect Detective Lawrence was untruthful or did not perform his job adequately at the time of Applicant's trial. This Court agrees and finds trial counsel performed adequately based on the available information she had at the time of Applicant's trial. Moreover, Applicant has not established Detective Lawrence's role in Applicant's case involved anything unprofessional or dishonest. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof. This allegation is denied and dismissed with prejudice.

CONCLUSION

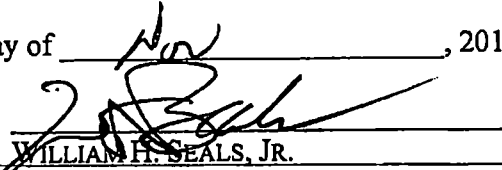
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides 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.

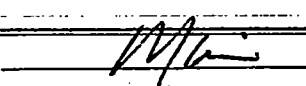
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 11 day of Nov, 2017.


WILLIAM H. SEALS, JR.

Presiding Judge
Ninth Judicial Circuit

, South Carolina

JKS20090603715

WITNESSES

CHARLES LAWRENCE
Charleston County Sheriff

AGENCY CASE NUMBER

2009012231B

ARREST WARRANT NUMBER

K607022

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: OCT 15 2009

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1008112

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

ALONZA DENNIS
DOB:
B/M

Indictment for
Possession of a Firearm During the
Commission of a Violent Crime

FILED

10/13/2009 9:43:31 AM
JULIE J. ARMSTRONG
CLERK OF COURT

09-3785-2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

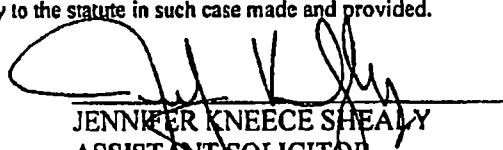
INDICTMENT

At a Court of General Sessions, convened on October 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about June 22, 2009, the Defendant, ALONZA DENNIS, did possess a firearm or visibly display what appeared to be a knife during the commission, or attempted commission, of Assault and Battery with Intent to Kill and Attempted Armed Robbery, both a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS20090603715

WITNESSES

CHARLES LAWRENCE
Charleston County Sheriff

AGENCY CASE NUMBER

2009012231B

ARREST WARRANT NUMBER

K607021

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: OCT 5 2009

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1008108

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

ALONZA DENNIS

DOB:

H/M

Indictment for

Assault and Battery with Intent to Kill

FILED

10/13/2009 9:43:31 AM

JULIE J. ARMSTRONG

CLERK OF COURT

09-3785-1

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery with Intent to Kill

That in Charleston County, South Carolina, on or about June 22, 2009, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Moses Alford, to wit: the Defendant did shoot the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS20090603715

WITNESSES

CHARLES LAWRENCE
Charleston County Sheriff

AGENCY CASE NUMBER

2009012231B

ARREST WARRANT NUMBER

K607023

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

OCT 05 2009

VERDICT

[Signature]
JUL 21 2009

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1008113

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

ALONZA DENNIS
DOB:
B/M

Indictment for
Attempted Armed Robbery

FILED

10/13/2009 9:43:31 AM
JULIE J. ARMSTRONG
CLERK OF COURT

09-3785-3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

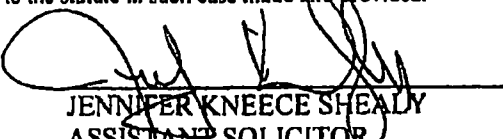
INDICTMENT

At a Court of General Sessions, convened on October 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Attempted Armed Robbery

That on or about June 22, 2009, in Charleston County, South Carolina, while a [REDACTED] South Carolina, the Defendant, ALONZA DENNIS, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Moses Alford with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR