

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

AUG 22 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

MARVIN DONTE BRYAN,

APPELLANT.

APPELLATE CASE NO. 2017-001468  
\_\_\_\_\_

MOTION FOR AN ORDER TO  
RECONSTRUCT THE RECORD OF  
THE BENCH CONFERENCES AT APPELLANT'S TRIAL  
\_\_\_\_\_

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the bench conferences that occurred during Appellant's trial. During the trial, the judge entertained motions, objections, and arguments during bench conferences. However, these bench conferences were not recorded or transcribed by the court reporter. When the transcript of the proceedings was produced, the court reporter, who is now retired, was unable to transcribe the bench conferences. In light of the trial court hearing arguments on motions during the bench conferences and issuing rulings during those

conferences, it is necessary that Appellant have the bench conferences preserved in writing to raise appellate issues presented during those conferences. The legal matters ripe and necessary for appeal exist within those bench conferences.

In accordance with Rule 240(c), SCACR, Counsel submits the following documents to support this motion:

<b>Exhibit Number</b>	<b>Description</b>
#1	Indictment – murder (2017-GS-10-4164)
#2	Indictment – attempted murder (2017-GS-10-4165)
#3	Indictment – attempted murder (2017-GS-10-4166)
#4	Indictment – attempted murder (2017-GS-10-4167)
#5	Cover page of Trial Transcript I dated June 19, 2017 – June 23, 2017 <sup>1</sup>
#6	Index for Trial Transcript I (pages 2-7)
#7	Trial Transcript I page 52
#8	Trial Transcript I pages 665 - 666
#9	Trial Transcript I pages 706 - 707
#10	Affidavit of appellate counsel, Taylor D. Gilliam

In June 2017, a Charleston County grand jury indicted Appellant for murder and three counts of attempted murder. Exhibits #1, #2, #3, #4. The state, represented by E. Culver Kidd, IV and Charles William Patrick, III, called the case to trial on June 19, 2017, before the Honorable Deadra L. Jefferson and a jury. Exhibit #5. Bentley D. Price represented Appellant. Appellant was tried jointly with a co-defendant, Justin Martel Wilson.<sup>2</sup> Mark Andrew Peper represented Wilson. Exhibit #6. At the outset of trial, the judge indicated her preference regarding objections:

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<sup>1</sup> The trial in this matter was transcribed in two separate transcripts: Monday, June 19, 2017 – Friday, June 23, 2017 (Trial Transcript I) and “June 23<sup>rd</sup>, 2017 [through] [t]he morning of June 24<sup>th</sup>, 2017” (Trial Transcript II).

<sup>2</sup> Upon information and belief, Appellate Defender Susan B. Hackett represents Justin Wilson on appeal and is contemporaneously filing a similar motion.

Is there anything else other than the fact that I don't take speaking objections? So if you have an objection, you should be able to tell me succinctly what the objection is, whether it's leading, pitting, relevance, you know the plethora of objections, foundation. And if I need argument, I'll have it at the bench. I always have my bench conferences recorded. And if I need to excuse the jury, I will hear additional argument, but I will rule contemporaneously.

Exhibit #7. The jury found Appellant guilty as charged. Exhibit #8. Judge Jefferson sentenced Appellant to fifty years' imprisonment for murder and thirty years for each count of attempted murder, concurrent with one another. Exhibit #9. On or about June 28, 2017, trial counsel filed and served the notice of appeal.

On August 23, 2017, the Office of Appellate Defense ordered the trial transcript from Heather Landry, Circuit Court Reporter. On February 20, 2018, the transcript was received. On February 22, 2018, undersigned counsel was assigned to represent Appellant. Upon initial review of the transcript, undersigned counsel realized the bench conferences had not been transcribed and that assurances had been given by the trial judge that the bench conferences were being recorded and would be preserved as part of the record. A closer review of the transcript reveals at least thirty-three (33) bench conferences that were not recorded. Exhibit #10.

Undersigned counsel contacted trial counsel regarding this matter. Trial counsel confirmed the bench conferences were very important to Appellant's case and were necessary in order for Appellant to receive meaningful appellate review. Exhibit #10. Further, undersigned counsel's review of the transcript supported trial counsel's assessment of the importance of the bench conferences to the appeal. Exhibit #10.

### ***Error preservation***

“The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal.” State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010)(citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003)). “A contemporaneous objection is required to preserve issues for direct appellate review.” Id. at 38, 698 S.E.2d at 242 (citing State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005)). “Issues not raised and ruled upon in the trial court will not be considered on appeal.” Id. at 38, 698 S.E.2d at 243 (citing Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001)).

An objection made during an off-the-record conference, such as a bench conference, which is not made part of the record, does not preserve the question for review. York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997). Further, an objection must be on a specific ground. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). To preserve an objection for appellate review, it must be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge. State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999).

### ***Reconstruction of the record***

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); see also Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002)(holding

that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; see also China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992). The Court of Appeals held “the party challenging a reconstructed record on appeal [must] demonstrate prejudice flowing from an inadequate record.” Ladson, 373 S.C. at 325, 644 S.E.2d at 273. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review.” Id. at 325, 644 S.E.2d at 274 (internal quotations omitted).

In China, 251 S.C. at 332, 162 S.E.2d at 277, “portions of the stenographic notes of the trial proceedings were lost before they were transcribed by the court reporter.” The appeal concerned the form of a withdrawal for punitive damages, specifically, whether the withdrawal included a withdrawal as to the issue of recklessness on the part of the defendant. Id. The missing portions of the transcript were relevant to this issue. Id. The case was remanded to the trial judge “to settle the case for appeal.” Id. at 333, 251 S.E.2d at 277-278.

After Ladson was convicted of first-degree burglary at the conclusion of a three-day trial, he learned the court reporter could not produce the transcript. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. Ladson moved for a new trial. Id. The state moved for reconstruction. This

Court remanded the case for reconstruction. Id. Ladson's reconstruction hearing occurred more than a year after the trial. Id. This Court explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. Reviewing the transcript of the reconstruction hearing, this Court noted "[i]t was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle." Id. at 321-322, 644 S.E.2d at 271-272. This Court concluded meaningful appellate review was not possible where the testimony of the majority of the witnesses was in summary fashion, the information provided was conclusory, the parties had forgotten about one witness altogether, and there was a dispute whether the defendant testified. Id. at 322, 644 S.E.2d at 272.

After the reconstruction hearing, the Court was "left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term." Id. at 327, 644 S.E.2d at 274. The record before the Court contained only "a few gratuitous references to generic motions and objections" without any information concerning "the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence." Id. The Court refused to speculate. Id. In concluding the record was insufficient for meaningful appellate review, this Court also noted the record "would effectively foreclose any collateral challenge through post-conviction relief or otherwise." Id. at 327, 644 S.E.2d at 275. Thus, this Court concluded, Ladson had demonstrated "clear prejudice." Id.

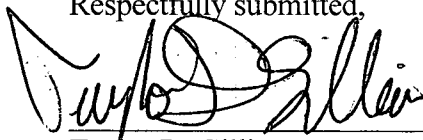
In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette,

375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript."

The bench conferences from Appellant's trial cannot be produced and are no longer available through no fault of Appellant. Trial counsel relied on the assurances provided by the trial judge that the bench conferences were being recorded and would be part of the appellate record. See Benton v. Davis, 248 S.C. 402, 410, 150 S.E.2d 235, 239 (1966)(providing that for an objection to be preserved for appeal, it must appear in the record even if the parties agree the objection was made and ruled upon during an informal conference and that counsel has a duty to preserve the record accordingly). It was during the bench conferences that the trial judge heard and ruled upon objections and motions. In light of South Carolina's error preservation rules, a transcript of what transpired during those bench conferences is necessary in order for an appellate court to rule upon the issues raised and decided during those bench conferences. Therefore, meaningful review of the record below is not possible with the current transcript. Appellant seeks reconstruction of the record to permit meaningful appellate review of his trial.

WHEREFORE, Appellant requests an order for the reconstruction of the bench conferences that occurred during Appellant's trial in order to perfect his direct appeal in the case. While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D. Gilliam  
Appellate Defender

Attorney for Appellant

This 22nd day of August, 2018.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

MARVIN DONTE BRYAN,

APPELLANT.

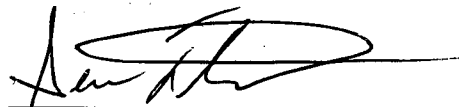
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for an order to reconstruct the record of the bench conferences at appellant's trial in the above referenced case has been served upon opposing counsel, Melody Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Marvin Bryan, #372962, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22<sup>nd</sup> day of August, 2018.

  
Taylor D. Gilliam  
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me  
this 22nd day of August, 2018.

  
(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

# Exhibit #1



ECK/0312875  
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER  
2015-036633

ARREST WARRANT NUMBER  
2015A1010205641

DATE OF ARREST  
01/11/2016

ACTION OF GRAND JURY

**TRUE BILL**

*Foreperson of Grand Jury* 'JUN 13 2017'  
Date:

VERDICT

*Guilty*

*Foreperson of Petit Jury* 6/23/2017  
Date:

DOCKET NO. 2017-GS-10-04164

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JUNE TERM 2017

THE STATE

VS.

MARVIN DONTE BRYAN  
B/M DOB: 06-09-1987

Indictment for

MURDER

SC Code: § 16-03-0010  
CDR Code: 0116

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about November 22, 2015, the defendant, Marvin Donte Bryan, while acting alone or in concert with others, feloniously, willfully and with malice aforethought, did kill and murder Franklin Othell Williams by means of gunshot, and Franklin Othell Williams did die in Charleston as a proximate result thereof on or about November 22, 2015; in violation of §16-3-10 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.

  
\_\_\_\_\_  
CULVER KIDD  
ASSISTANT SOLICITOR

# Exhibit #2

ECK/0312875  
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER  
2015-036633

ARREST WARRANT NUMBER  
2015A1010205638

DATE OF ARREST  
01/11/2016

ACTION OF GRAND JURY

**TRUE BILL**

*Francis Sosa* 'JUN 13 2017  
Foreperson of Grand Jury Date:

VERDICT

*Guilty*

*Carli Smith* 6/23/2017  
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-04165

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JUNE TERM 2017

THE STATE

VS.

MARVIN DONTE BRYAN  
B/M DOB: 06-09-1987

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029  
CDR Code: 3410

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Marvin Donte Bryan, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Adrian Isaac Williams. This is in violation of Section 16-3-29 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.



---

CULVER KIDD  
ASSISTANT SOLICITOR

# Exhibit #3

ECK/0312875  
WITNESSES

DOCKET NO. 2017-GS-10-04166

North Charleston Police Department

The State of South Carolina  
County of Charleston

AGENCY CASE NUMBER  
2015-036633

ARREST WARRANT NUMBER  
2015A1010205639

DATE OF ARREST  
01/11/2016

COURT OF GENERAL SESSIONS  
JUNE TERM 2017

ACTION OF GRAND JURY

THE STATE

VS.

TRUE BILL

MARVIN DONTE BRYAN  
B/M DOB: 06-09-1987

*Foreperson of Grand Jury* JUN 13 2017  
Date:

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029  
CDR Code: 3410

*Guilty*

*Foreperson of Petit Jury* 6/23/17  
Date:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

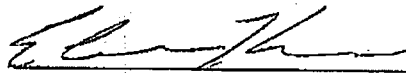
INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Marvin Donte Bryan, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Montez Capers. This is in violation of Section 16-3-29 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.



---

CULVER KIDD  
ASSISTANT SOLICITOR

# Exhibit #4

ECK/0312875  
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER  
2015-036633

ARREST WARRANT NUMBER  
2015A1010205640

DATE OF ARREST  
01/11/2016

ACTION OF GRAND JURY

**TRUE BILL**

*Franklin Scott* JUN 18 2017  
Foreperson of Grand Jury Date:

VERDICT

*Guilty*

*Carol Smith* 6/23/17  
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-04167

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JUNE TERM 2017

THE STATE

VS.

MARVIN DONTE BRYAN  
B/M DOB: 06-09-1987

Indictment for

**ATTEMPTED MURDER**

SC Code: § 16-03-0029  
CDR Code: 3410

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

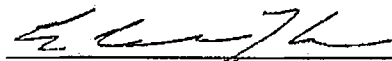
INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Marvin Donte Bryan, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Quran Khalif Allen. This is in violation of Section 16-3-29 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.



**CULVER KIDD**  
ASSISTANT SOLICITOR

# Exhibit #5

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
COUNTY OF CHARLESTON ) CASE NO.: 2017-GS-10-4160, 4161,  
 ) 4162, 4163 (Wilson);  
 ) 2017-GS-10-4161, 4165,  
 ) 4166, 4167 (Bryan)

STATE OF SOUTH CAROLINA )  
 )  
 ) v. )  
 )  
JUSTIN MARTEL WILSON AND )  
MARVIN DONTE BRYAN )  
 )

TRANSCRIPT OF RECORD

**ORIGINAL**

Monday, June 19 , 2017 - Friday, June 23, 2017

COMMENCING AT:  
Charleston County Courthouse  
Charleston, South Carolina  
Before The Honorable Deadra L. Jefferson, Judge

APPEARANCES:

For the State of South Carolina:  
Assistant Solicitor E. Culver Kidd, IV, Esquire  
Assistant Solicitor Charles William Patrick, III  
Ninth Circuit Solicitor's Office  
O.T. Wallace Building  
101 Meeting Street  
Charleston, South Carolina 29401

For the Defendant Justin Martel Wilson:  
Mark Andrew Peper, Esquire  
The Peper Law Firm, PA  
548 Savannah Highway  
Charleston, South Carolina 29407

For the Defendant Marvin Donte Bryan:  
Bentley D. Price, Esquire  
Bentley Price Law Firm  
78 Ashley Point Drive, Suite 103  
Charleston, South Carolina 29407-6401

Heather R. Landry, CVR  
Official Court Reporter

# Exhibit #6

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(No witnesses were presented.)

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DEFENSE EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
	(None entered for either defendant.)	

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# Exhibit #7

1 to go through all the foundation for each of those exhibits  
2 when you've agreed on them. Okay? Can y'all work on that,  
3 or have y'all worked on that in advance?

4 AST. SOL. PATRICK: Yes, Your Honor.

5 THE COURT: Okay. All right. Is there anything else  
6 other than the fact that I don't take speaking objections?  
7 So if you have an objection, you should be able to tell me  
8 succinctly what that objection is, whether it's leading,  
9 pitting, relevance, you know the plethora of objections,  
10 foundation. And if I need argument, I'll have it at the  
11 bench. I always have my bench conferences recorded. And if  
12 I need to excuse the jury, I will hear additional argument,  
13 but I will rule contemporaneously. All right. Yes, sir?

14 MR. PEPER: Thank you, Judge. May it please the Court?  
15 You asked us earlier last week for Mr. Price and I maybe get  
16 together and offer you some guidance as to the order. We've  
17 done so if you want to take note of that.

18 THE COURT: Perfect. Yes. I assumed by the way y'all  
19 were sitting ---

20 MR. PEPER: Right.

21 THE COURT: --- that Mr. Price was going to go first  
22 and you were going to go second.

23 MR. PEPER: That's correct.

24 THE COURT: If y'all switch up, it doesn't matter.  
25 I'll just say counsel proceed. And whichever one of y'all

# Exhibit #8

1 search yourself and decide whether this is something you can  
2 tolerate. And if not, then I would ask that you excuse  
3 yourself, but I expect the order and the decorum the Court  
4 to be observed. And I thank every one in attendance in  
5 advance.

6 (The jury enters the courtroom at 3:01 p.m.)

7 VERDICT OF THE JURY

8 THE COURT: Madame Forelady, is it correct that the  
9 jury has reached a verdict?

10 FOREPERSON: Yes ma'am.

11 THE COURT: If you would give the verdict forms to the  
12 bailiffs for me, please.

13 (Brief pause.)

14 THE COURT: Please stand for the announcement of the  
15 verdicts. You may proceed.

16 THE CLERK: The verdict forms in the matter of the  
17 State of South Carolina versus Marvin Donte Bryan as to  
18 indictment number 2017-GS-10-4164, we the jury unanimously  
19 find the defendant guilty of murder, signed by the  
20 foreperson of the jury on 23 June 2017. Ladies and  
21 gentlemen of the jury, if this was your, please raise your  
22 right hand.

23 (Jurors comply.)

24 Thank you. Please let the record reflect that all 12  
25 jurors raised their right hand. As to indictment number

1 2017-GS-10-4165, we the jury find, unanimously find, the  
2 defendant guilty of attempted murder as to Adrian Isaac  
3 Williams, signed by the foreperson of the jury on 23 June of  
4 2017. Ladies and gentlemen of the jury, if this is your  
5 verdict, please raise your right hand.

6 (Jurors comply.)

7 Thank you. Let the record reflect that all 12 jurors  
8 raised their right hand. As to indictment number  
9 2017-GS-10-4166, we the jury unanimously find the defendant  
10 guilty of attempted murder as Montez Capers, signed by the  
11 foreperson of the jury on 23 June 2017. Ladies and  
12 gentlemen of the jury, if this was your verdict, please  
13 raise your right hand.

14 (Jurors comply.)

15 Thank you. Please let the record reflect that all 12  
16 jurors raised their right hand. As to indictment number  
17 2017-GS-10-4167, we the jury unanimously find the defendant  
18 guilty of attempted murder as to Quran Kaleith Allen, signed  
19 by the foreperson of the jury on June 23, 2017. Ladies and  
20 gentlemen of the jury, if this was your verdict, please  
21 raise your right hand.

22 (Jurors comply.)

23 Thank you. Please let the record reflect that all 12  
24 jurors raised their right hand. The verdict forms in the  
25 matter of Justin Martel Wilson as to indictment

# Exhibit #9

1 MR. PRICE: I do. I do.

2 THE COURT: I just need some clarity just in terms of  
3 what you're requesting because I don't want you later to say  
4 I didn't consider it. I can't consider what I haven't been  
5 told. And are the young mean here? You get them now, if  
6 you'd like, and bring them in.

7 (Confirmation that probation is not available.)

8 We can deal with it on Monday morning if you want  
9 before I -- I qualify the jury on Monday. But we have a  
10 window of time while roll call is going on that we can deal  
11 with it. And then that way probation, the agent, can be  
12 notified to be here if they desire. And we can do it that  
13 way. Otherwise, it would be delayed and he runs the risk of  
14 not getting any credit for any time especially if a warrant  
15 has not yet been served regarding it. Because I don't know  
16 what his performance was on probation, and this conviction  
17 may well be the trigger of a revocation proceeding.

18 MR. PRICE: Yes, ma'am.

19 THE COURT: Okay. When would they be transported? Are  
20 they going to hold them over the weekend, or do they  
21 transport them on the weekend? Once they're sentenced.

22 BAILIFF: I can't answer that. But I understand it's  
23 usually once they get convicted, if they get convicted for  
24 life, they get rid of them as soon as possible.

25 THE COURT: On each of the offenses that being murder

1 for each defendant, Marvin Donte Bryan -- well, I guess I  
2 better do these separately -- Marvin Donte Bryan  
3 2017-GS-10-4164, the offense of murder, you're sentenced to  
4 the State Department of Corrections for a period of 50  
5 years. You'll get credit for any time that you have served  
6 to be calculated and applied by the Department of  
7 Corrections. On each count of attempted murder, you're  
8 sentenced to the State Department of Correction for a period  
9 of 30 years. Each of those sentences, likewise, to run  
10 concurrent with one another. And you'll get credit for any  
11 that you've served to be calculated an applied by the  
12 Department of Corrections. Those indictments respectively  
13 are 2017-GS-10-4165, 4166, and 4167. And as if we've already  
14 observed, you have pending probation violation, and I think  
15 that would be for the 2014 PWID crack conviction for which  
16 you received, as I recall, nine year suspended on some  
17 period of probation. Which I think would've ended prior to  
18 this proceeding, but they probably have some level of  
19 warrant outstanding probably based on you alleged to have  
20 had a gun. But we'll have to figure that out on Monday.  
21 And I would ask if you all could be kind enough to see what  
22 I would need to do to let the County Detention Center know  
23 that we need to have him transported on Monday for the  
24 purposes of his probation, and not to be transported to  
25 Department of Corrections prior to that time. Are were able

# Exhibit #10

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF APPEALS  
INDICTMENT NUMBERS:  
2017-GS-10-4164; -4165; -4166; -4167;

APPELLATE CASE NO. 2017-001468

STATE OF SOUTH CAROLINA, )  
Respondent, )

v. )

MARVIN DONTE BRYAN, )  
Appellant. )

AFFIDAVIT OF TAYLOR D. GILLIAM

**RECEIVED**


AUG 22 2018

SC Court of Appeals

PERSONALLY appeared before me, Taylor D. Gilliam, who being duly sworn, deposes and says:

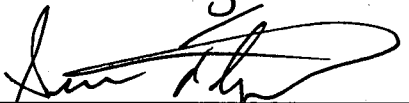
1. I am licensed to practice law in the State of South Carolina. I graduated from the University of South Carolina School of Law in 2014. I became a member of the South Carolina Bar on November 17, 2014. I currently practice law with the Office of Appellate Defense as an Appellate Defender. I have been an Appellate Defender since June 2, 2016.
2. The Office of Appellate Defense represents individuals, who have been convicted of crimes and cannot afford legal counsel, when appealing those convictions and sentences. The Office also represents indigent individuals who require representation concerning the appeal of a post-conviction relief matter.
3. On June 23, 2017, Appellant was convicted of numerous charges. On that date, the Honorable Deadra Jefferson, who presided over his trial, sentenced him to fifty years' imprisonment. On June 28, 2017, Appellant, through counsel, filed and served a notice of appeal. In light of Appellant's indigency, the Office of Appellate Defense took over Appellant's appeal.
4. On August 23, 2017, the Office of Appellate Defense ordered the trial transcript from Heather Landry, Circuit Court Reporter. On February 20, 2018, the transcript was received.
5. On February 22, 2018, I was assigned to represent Appellant. Upon initial review of the transcript, I realized the bench conferences had not been transcribed although assurances had been given that bench conferences were being recorded and would be preserved as part of the record.

6. At the outset of trial, the judge notified counsel that she would not accept speaking objections and directed the attorneys to approach the bench after providing a succinct reason for objecting. The trial judge assured counsel that she always has her bench conferences recorded.
7. I contacted trial counsel regarding this matter. On August 20, 2018 trial counsel confirmed the bench conferences were very important to Appellant's case and were necessary in order for Appellant to received meaningful appellate review.
8. I have reviewed the transcript, and I have found no fewer than thirty-three (33) bench conferences that were not transcribed. Further, it appears the matters discussed during the bench conferences involved significant legal issues with potential for appellate review. It appears the judge heard objections and arguments on the objections during bench conferences. It also appears the judge ruled on the objections during the bench conferences. Therefore, the substance of the bench conferences is necessary for appellate review purposes.



Taylor D. Gilliam

SWORN TO before me this 22  
day of August, 2018.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

August 22, 2018

RECEIVED

AUG 22 2018

SC Court of Appeals

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Re: State v. Marvin Donte Bryan, Appellate Case No. 2017-001468

Dear Ms. Kitchings,

Please find enclosed the original and six copies of appellant's motion for an order to reconstruct the record of the bench conferences at appellant's trial in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Taylor D. Gilliam  
Appellate Defender

TDG/smf

Enclosure

cc: Melody J. Brown, Esquire (w/ enclosure)  
Marvin Donte Bryan #372962 (w/ enclosure)