

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

The State of South Carolina,
Defendant,)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No. : 2016A05324

v.)

Jason Franklin Defendant,
Defendant.)

RECEIVED

MOTION FOR NEW TRIAL

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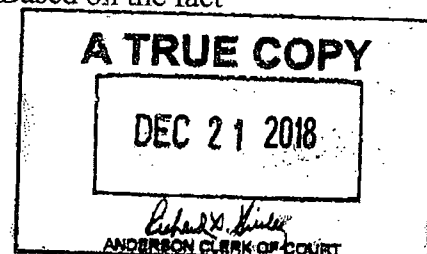
SC Court of Appeals

Jason Franklin Defendant, by counsel, now moves the Court for an order granting a new trial on two or more counts, as explained below. The bases for this relief are as follows:

FACTUAL HISTORY:

On March 28, 2016, Carver Jason Carver (hereinafter referred as Carver) had been working on a transmission at James Gambrell's house, when the latter requested Carver drive Steven Cameron home. Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Defendant's return, Gambrell told him he wished he had a phone because he would have told him to turn around and come back. As a result, Gambrell asked him go back and get Cameron. Neither Gambrell nor Curry shared the issue regarding the missing cocaine. They didn't want to take the chance that Carver would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact



Carver was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Gambrell's statement was made with the implication that Cameron wanted to come back since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit. Therefore, Carver grabbed Gambrell's Buick, which he knew always had keys in it.

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was located. Curry claimed that everything that was found was his, *in Gambrell's house*. Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture flipping cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peaking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop and pointed it directly at Cameron.

Carverfrantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carverstarted toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Defendant, who has reached the car, heard the gunshots. Frightened and confused, Carverdropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Carverto leave the lights off and leave the neighborhood. Unarmed Carverdid not put up any resistance; and, he did as he was told. Curry also offered that should he feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Defendant's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Carverand Curry arrived back at Gambrell's house, Carverwas emotional and still shaken by the events that night. Curry told

Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

9. Q. All right. So you get back to Mr.
10. Gambrell's house?
11. A. (Affirmative nod).
12. Q. What takes place then?
13. A. When I got out, Curry got out behind
14. me. I don't know if he still had the gun on
15. me at the time but he followed me all the way
16. into the house.
17. Q. So he --you say that he got out
18. behind you. Did he slide across the front
19. seat?
20. A. I'm assuming he did. I ain't for
21. sure.
22. Q. Because he was directly behind you?
23. A. Yes, sir, he was behind me.
24. Q. Did you take a chance and look
25. behind you or just keep on walking?
01. A. I looked but I didn't pay that much
02. attention. I was still shocked going in
03. Gambrell's house. I was already in tears at
04. that time too.
05. Q. Mr. Gambrell, he probably keeps his
06. house locked up pretty good, doesn't he?
07. A. Yes, sir.
08. Q. And when you got to the front door,
09. were you able to open it?
10. A. No, sir.
11. Q. How did you get in?
12. A. His nephew came to the door.
13. Q. So he opened the door?
14. A. (Affirmative nod).
15. Q. And you and Mr. Curry go in the
16. house?
17. A. Yes, sir.
18. Q. Did you get past that immediate
19. area?
20. A. (No verbal response).
21. Q. Did you go further than that? Did
22. you go the man cave or ---
23. A. We started back towards the man
24. cave. Then I sat down and Curry came across
25. from me. Once he got on the other side of

01. the little table, he sat down and laid the
02. .38 down. So I'm assuming that he already
03. had it out.
04. Q. So he had the .38?
05. A. Yes, sir.
06. Q. Where was Mr. Gambrell at this
07. point.
08. A. Mr. Gambrell was sitting in his
09. chair and he asked where Cameron was at.
10. That's when Curry was telling him, said 'we
11. got in an argument' and he said it got out of
12. hand. Then he said that he shot him. And I
13. was scared --I was shocked, in tears.
14. Gambrell could see that I was scared, that
15. I'd been crying.
16. Q. What was Mr. Gambrell's reaction?
17. A. Well, Mr. Gambrell and Curry started
18. arguing . I mean, they were getting real
19. loud.
20. Q. Did Mr. Gambrell say anything about
21. the fact that Mr. Cameron was just shot?
22. A. Well, he told him that 'you was just
23. supposed to have went up there and was
24. supposed to have brung him back', all that
25. stuff. That was it.
01. But, uh, Curry --he acted like he didn't
02. just acknowledge it. He acted like, you
03. know.
04. Q. So Curry and Gambrell are now in an
05. argument
06. A. Yes, sir.
07. Q. And the .38 is sitting on the coffee
08. table?
09. A. No, it was in the floor. He'd laid
10. it in the floor.
11. Q. What did you at this point?
12. A. Well, I was already so scared, I
13. just got up and left.
14. Q. Did you say goodbye?
15. A. No sir.

(Exhibit 1 – Motion to Hold Appeal in Abeyance, P. 36).

Defendant's apprehensions were not unfounded. That night, Curry drove past
Defendant's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Defendant's trial that he personally reviewed portions of the video that afternoon.

14. Q. And what did you do when you got
15. inside the residence?
16. A. Obviously because of the nature of
17. the offense and because the cameras were
18. there, we wondered if they were in fact
19. currently recording. They were and, so, we
20. were able to do a very rapid review of some
21. of the footage and were able to discover some
22. evidence that I felt was pertinent to the
23. case.
24. Q. What evidence was that?
25. A. Un, -- again, while we were review-
01. ing the video, and we just kinda of skimming
02. it very fast just to see.

(Exhibit 1- Motion to Hold Appeal in Abeyance P. 40)

The footage was obtained that very day by forensics on scene.

20. Q. Okay. Did you ask that that footage
21. be collected?
22. A. I did, I went to the forensics that
23. was on scene and asked that it be collected
24. for evidence purposes.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.42)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

21. Buick appears, -- well, first, let me ask,

22. how many hours of surveillance footage did
23. you view in this case?
24. A. I can't give you an exact number but
25. hours. We watched it all the day of the
01. incident as well as the following day. So at
02. least thirty-six hours.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 43).

06. Again, on the 30th I spent my entire day
07. reviewing the video.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 45)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 46)

The video was used to identify the vehicle driven by Defendant. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Carver did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Carver gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder.

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason

Defendant's trial.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P.73).

Carver was indicted for Murder. During Defendant's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Carver was convicted of murder on August 25, 2017. Carver moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Carver perfected his appeal. (Exhibit 2- Defendant's Notice of Appeal, September 25, 2017). He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in the Defendant's case. Carver believed that these statements should be explored in depth as they go through the very core of the crime for which Carver was convicted and sentenced to thirty (30) years of imprisonment.

On October 19, 2018, Carver moved to hold his appeal in abeyance based on newly discovered evidence. (Exhibit 1- Defendant's Motion to Hold Appeal in Abeyance, October 19,

2018). On December 10, 2018, the Court of Appeals granted Defendant's motion. (Exhibit 3-Court of Appeals Order Granting Motion to Hold Appeal in Abeyance, December 10, 2018).

ARGUMENTS

I.

NEWLY DISCOVERED EVIDENCE SURFACED THAT WARRANTS THE EXAMINATION AND RE-LITIGATION OF THIS CASE.

The trial of James Milton Gambrell, a co-Carverin the murder case of Steven Cameron, ushered new evidence that was not available during the Defendant's trial. The newly discovered evidence consists of statements by witnesses in the Carvertrial, whom the defense could not have been obtained during his trial since they were inconsistent and false statements.

This case is about the untimely death of Mr. Cameron, who has been gunned down by the State's star witness, Curry. It is a fact that does not escape the Defendant. From the inception of this case, the State relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carvercase, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

14. Q. When you originally spoke to
15. detectives who did you say shot Steven
16. Cameron?
17. A. I didn't.
18. Q. You didn't?
19. A. (Negative gesture).
20. Q. So you're telling us today who shot
21. Steven Cameron?
22. A. Yes, ma'am. It just happened, I
23. didn't mean to shoot him. He was just coming
24. at me. I don't even remember pulling the
25. trigger, it just went—(pause)—I wish I
01. could turn back time, but I can't.
02. Q. Thank you, Mr. Curry. Please answer
03. any questions that Mr. Smith may have for

04. you.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47).

However, in the Gambrell trial, Carver learned that Curry, initially tried to pin the shooting on Defendant. Marzolf, who interviewed Curry, testified to the following:

16. Q. Now, did Mr. Curry, the shooter, admit to you what
17. had happened, or did he deny all knowledge of what had
18. happened?
19. A. He gave me a version of what had happened in which
20. he said that they did go to the house and that Jason
21. Carver was the shooter that night.
22. Q. But didn't Mr. Curry later change his mind and
23. admit that, in fact, he was the shooter?
24. A. Yes, sir, he did.
25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual -- I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 80-81).

Marzolf's statement about not knowing the details of Curry's plea bargain, nor his involvement in the said process is belied by Curry. In his sworn affidavit, Curry specifically stated that Marzolf and Chelsey suggested to reduce his charges to voluntary manslaughter if he pleads guilty and implicates herein Defendant. (Exhibit 4- Affidavit of Woodrow Walter Curry, November 5, 2018).

Second, when Curry was asked what he did after leaving Cameron's house during Carvertrial's, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carverdo
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1 Motion to Hold Appeal in Abeyance, P. 49).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 1-Motion to Hold Appeal in Abeyance, P. 82).

This was not disclosed during Defendant's trial. Out of nowhere, the prosecutor asked Curry if he did anything on the way to Gambrell's. Curry's response was that he called Gambrell. This question was not raised during Defendant's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Gambrell contradicted Curry's claims. In his sworn affidavit, Gambrell categorically denied that Curry called him since Curry had no phone at the time he went to Cameron's house.

(Exhibit 5- Sworn Affidavit of James Milton Gambrell, November 30, 2018).

Third, at the Carvertrial, Curry testified that Gambrell instructed Carverto drive Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I guess he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 50-51).

In his subsequent testimony at Gambrell's trial, his statements implied that Carver voluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working – to begin with, I was out there working on a
19. car. Carver wasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carver got off work, he
23. come over there like he normally did. He went in the
24. house and come back out, him and Steven there, and he
25. took Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.83).

Fourth, Curry, implicated Carver by testifying that Carver had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

15. Q. Did you have a gun when you left
16. Appaloosa Drive?
17. A. Yes.
18. Q. Where did you get that gun?
19. A. Milton Gambrell.
20. Q. Did Jason Carver have a gun when you
21. left Appaloosa Drive?
22. A. Yes.
23. Q. Where did he get that gun?
24. A. It was his.
25. Q. Did you have more than one gun with
01. with you?
02. A. Yes.
03. Q. How many guns did you have?
04. A. Two.
05. Q. Do you remember what kind of guns

06. they were?
07. A. .38 and a .22---.25, I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 52).

However, in the same hearing, Curry stated:

02. Q. And the weapon that you said that
03. you had seen, was that the same weapon that
04. you allege that he had at this time?
05. A. I don't know that he owned one.
06. Q. The one with the sight on it, the
07. one that he allegedly brought out and showed
08. you previous to his incident, you still
09. don't know what that is?
10. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 54).

Gambrell dismissed these contradicting statements of Curry. Gambrell confirmed that Carver did not have a gun on March 28 or 29, 2016. (Exhibit 7-Gambrell Affidavit). Gambrell stated that the only time he saw Carver with a gun in 2015, one year prior to the shooting incident. At that time, Carver was showing his brother's gun to Gambrell. Id.

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q. So you had a chat with Steven
15. Cameron. And after he did not give you any
16. money and he did not give you any drugs, what
17. did you do?
18. A. I don't know, I like turned and he
19. come at me, and I looked down, I didn't know
20. I had the gun but obviously I did—I had
21. it, I mean. Then like, 'oh.' He charged
22. at me and – I don't even remember pulling the
23. trigger but I heard *Pop! Pop!* So—(pause).
24. Q. So you shot Steven Cameron?
25. A. Yeah, I guess.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 55).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08. Q. Why did you do it?
09. A. Because for some reason or another I had done
10. pulled the gun, I guess to intimidate him or whatever,
11. and he charged at me. "What are you going to do, shoot
12. me?" And he charged at me. I don't know what to do.
13. What's he going to do, take the gun and shoot me or
14. what? I don't know. I mean, that's just—
15. Q. Why did you feel the need to try to intimidate
16. him?
17. A. He's bigger than I am.
18. Q. He's bigger than you are?
19. A. A lot bigger than I was.
20. Q. But you just said you were just going to have a
21. conversation with him. Why should him being bigger
22. than you make a difference if you're just going to have
23. a conversation?
24. A. Man, like I said, I was high. I was 150 pounds.
25. I was all drewed up myself, you know I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 84).

Carver believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground; and, announcing "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Carver having a gun. By Carver having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car. Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for

Curry to leave his gun in the car. More importantly, if Curry's testimony were to be believed that Carver brought a gun with him, then Curry would not have felt threatened when Cameron lunged towards him during their exchange of words. It was irrational that Defendant, having a gun with him, did not use the same against Cameron, whether it was just to intimidate or to ensure that the latter complies with Curry's demands. It would have shown unity in action and purpose. But that is not the case at hand. In the instant case, when Carver realized that Curry would not heed his pleas to put the gun down, Carver ran away from the two men, with the intention of leaving Curry behind. That is not the action of a man in agreement with Curry's actions.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When -- Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a -- there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I.*" (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that "*(W)e went in there to return the guns*", Curry tied Carver in with him. Curry

admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

14. Q. Why did you testify in your first trial that you
15. went back to Milt's house and that's when you told him
16. about the shooting when you're testifying in this trial
17. that you called him on the way on your cell phone?
18. Which is the truth?
19. A. I called him on the cell phone.
20. Q. Why is this the first time you're saying this?
21. A. First time I recall being asked.
22. Q. Weren't you asked in the first trial? And,
23. specifically, I'm talking about your codefendant's
24. trial, the other person who was with you, Jason
25. Defendant's trial.
01. A That's 11 months ago, sir. It's hard for me to
02. remember that far back. But, I mean, I told him on the
03. way, you know. When I got there, he smelled the gun.
04. I mean...

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 85).

17. Q. Okay. So the first trial, you testified that
18. after the shooting, you drove back to Milt's house,
19. Mr. Gambrell's, and then you told him inside of his
20. house --
21. A. Uh-huh.
22. Q. -- that you shot the guy.
23. A. I don't recall that, but if you say I did, I did.
24. Q. Do you recall what you told him as to why you shot
25. the poor man, why you shot Mr. Cameron?
01. A. He didn't ask.
02. Q. Didn't you say something like, "Well, things just
03. went crazy and I shot him"?
04. A. No. Like I say, he didn't ask. I told him on the
05. way back over there that he better have been sure that
06. that guy took his dope there because I shot him.

07. Q. You said the way back over there?
08. A. On the way back over there, I called him. He
09. answered the phone. I said, "You better be sure that
10. the man took your dope, Steven took your dope, because
11. I just shot him."
12. Q. Did you tell any of the detectives this, that you
13. called him on the way back over there on your cell
14. phone?
15. A. Sir, I was under the influence. I don't recall
16. speaking there to y'all, to detectives. Are you
17. talking about when I was first arrested?
18. Q. No, sir. When you were interviewed by the police,
19. when you're sitting in Greenville County jail.
20. A. Like I said, when I was first arrested 31 months
21. ago, I was still under the influence of
22. methamphetamines at that time. I went through their
23. drug and alcohol treatment program in Greenville County
24. Detention Center.
25. Q. So you're telling this jury –
01. A. The first time I spoke to a detective, I did not
02. tell them nothing. I can tell you that much. The
03. second time I spoke to them, I don't -- I don't recall
04. what I told them. I mean, I was still, you know, as
05. they told me in drug class, I was still high.
06. Q. My question to you, sir, is: Why are we hearing
07. this story that you called Mr. Gambrell on your cell
08. phone after the shooting before you got back to the
09. house? Why are we hearing this the first time today?
10. A. It's the first time it's been asked.
11. Q. The detectives never asked you the details of what
12. happened?
13. A. Not that I recall.

(Exhibits 1, Motion to Hold Appeal in Abeyance, P. 85& 88-89).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

18. THE COURT: Are you under the influence of
19. any medications, drugs, or alcohol today?
20. MR. CURRY: No, sir.
21. THE COURT: Counsel, are you satisfied that
22. Mr. Curry's competent to plea?
23. MS. BYFORD: I am, Your Honor.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 75).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing carrot" offered by the Defendant. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Defendant's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

- 02. Q. Okay. Well, if your memory was so messed up, why
- 03. should this jury believe anything you have to say today
- 04. about what happened over two years ago?

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 89).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

The crux of the State's case against Carver is Curry's testimony that Carver(1) knew about the missing cocaine; (2) that Carver had his own gun when they drove back to Cameron; and that by driving Curry back to Gambrell's house, Carver approved and supported Curry's actions. Somehow these assumptions show that there was an agreement among Carver, Curry and Gambrell beforehand. That this is a case of drug distribution gone awry. Now that Curry's lies, and misleading statements came to light, it is incumbent for this Court to re-try this case.

On Defendants ACSO and police officers

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

- 20. Q. So when you mentioned that on the first video that
- 21. a neighbor had heard the argument and heard what went

22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had -- during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one -- I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Exhibit 1, Motion to Hold Appeal in Abeyance, PP. 78-79).).

15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you
17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 79).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Carver maintains that this should have been disclosed in the previous trial as this confirms what Carver has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through Defendant's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Defendant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any instances. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 1- Motion to Hold Appeal in

Abeyance, P. 47). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97)

As discussed in the previous section, Marzolf has shown no qualms in offering conflicting testimonies/statements. He testified not having knowledge of, nor even participated in, Curry's plea offer. Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charges.

Carver believed that this information would have helped him formulate his defense.

Carver believes that due to this newly discovered evidence, he is entitled to remedy under Rule 29 SCRCrimP.

II.

CARVER IS ENTITLED TO HAVE THE JUDGMENT AGAINST HIM VACATED DUE TO PROSECUTORIAL MISCONDUCT.

Carver further asserts that he is entitled to move to vacate/set aside judgment by reason of Defendant's misconduct in the handling of this case.

Carver insists that the prosecution abused its discretion in filing different charges against him, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder ¹, and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory

¹ Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargain.

before the fact to a felony. The same prosecutor handled Defendant's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Carver was found guilty not because of what he did, but because of what was suspected he did.

Carver avers that in its zealousness to get a conviction for this case, the prosecution went beyond the boundaries of decency and professionalism.

First, according to the prosecution's star witness, Curry met with the prosecution team, three times. Marzolf was in at least one of these meetings. The prosecution provided no recording of the time they visited Curry to speak to him on his manslaughter deal. Defendant's counsel received two video interviews, but Solicitor withheld the third. Carver was not shown the video of what the prosecution exactly offered Curry. Curry maintained that Marzolf and Ms.

Moore said they would suggest voluntary manslaughter, if he pled guilty and testified against Defendant. (Exhibit 6-Affidavit of Curry).

Second, the State deferred Curry's sentencing for over a year, when the Order specifically stated that it will only be until after Defendant's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carver and then Gambrell. Curry's testimony as to calling Gambrell on the way to the latter's house, a statement which he Curry did not offer at Defendant's trial, is a testament to the extent by which they would go to get a conviction.

Based on Curry's lies, Carver and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the State's evidence in both cases, Carver asserts that the State has no evidence. Curry cannot be considered credible evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of times Curry had talked to the police. There is no question that the State recorded the interview where it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Carver to never call a witness when you do not what know what they will say. They knew what Curry was going to say.

During Defendant's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

- 04. So what happened here is that Milton
- 05. Gambrell, a known drug dealer, Mr. Smith just

06. told you all about that, sent his two “do
07. boys”— that is what Woodrow Curry called
08. himself and Carver on the stand—they were
09. his “do boys.” He sent them in a car that he
10. owned to collect on a drug debt. That is
11. working together for an illegal purpose.
12. That is the hand of one, hand of all.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 56).

But in the Gambrell trial, this was all she stated:

19. In order for James Milton Gambrell to be found
20. guilty of accessory before the fact to murder, he must
21. have the same criminal intent as Woodrow Curry. They
22. must have intended the same thing before the murder was
23. committed. They must have intended for Woodrow Curry
24. to take the money, to take the drugs, or to bring
25. Steven Cameron back to James Gambrell. But James
01. Gambrell is also liable for any criminal act which, in
02. the ordinary course of things, was the natural or
03. probable consequence of the crime that he advised or
04. commanded. So was the murder of Steven Cameron a
05. natural and foreseeable consequence of James Gambrell's
06. order? I submit to you that it was.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 90-91).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Third, Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. The only logical conclusion was that the State dangled Curry's sentencing over his head for him to testify according to its wishes.

Fourth, in prosecuting the case, the State failed to disclose information and/or witnesses that may exculpate the Defendant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

(Rule 3.8(d) of the Rules of Professional Conduct). It failed to do the same. Instead, it fostered and facilitated, Curry, to offer inconsistent and false statements during Carver and Gambrell's respective trials. The State also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect.

Carver had already questioned the State's method of prosecuting its case. The investigation on Defendant's case was completed April or May 2016. The State offered Carver a copy of the discovery in December 2016, which Carver was unable to open. By the State's own admission, what they provided had been faulty.

- 02. SOLICITOR MOORE: Yes, Judge. I cannot
- 03. guarantee that the flash drive will be able
- 04. to play for the jury. We have, as you know,
- 05. had some difficulty with that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 57).

Carver repeatedly requested the discovery materials. These materials had been in the State's possession since the first week of the investigation. On August 9, 2017, two (2) weeks prior to Carver's trial, the State provided discovery, which included 36 hours of video footage, and three supplemental reports. The State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

- 17. THE COURT: I want to know what
- 18. evidence that was delayed to August 9th, that
- 19. kind of delayed delivery that y'all gave to
- 20. the defense. This guy is on trial for murder
- 21. and if he gets found guilty, then he's
- 22. looking at life in prison.
- 23. SOLICITOR MOORE: I understand, Your
- 24. Honor.
- 25. THE COURT: So playing with evidence is
- 01. not satisfactory. I'm not saying that anyone
- 02. is playing with the evidence but I want to
- 03. know why after over a year it's just getting
- 04. to the defense. That's inexcusable and I

05. can't understand how, under any
06. circumstances, that could be. Now, I might
07. just be wrong --and it wouldn't be the first
08. time. But I want an explanation and I want
09. to know what else could be missing. We're
10. not going through this trial, jerking and
11. stopping here and there, because the State,
12. either through its officers or through your
13. office did not bother to give discovery.
14. Okay? So I want to know why.
15. SOLICITOR MOORE: Your Honor, I can
16. assure you that we gave Mr. Smith ---
17. THE COURT: I want to know why --I
18. don't care what you did. I want to know why
19. it just got sent out August 9th of this year.
20. SOLICITOR MOORE: Because I'd just
21. received it, Your Honor.
22. THE COURT: From whom?
23. SOLICITOR MOORE: From Detective Henry.
24. THE COURT: Who is Detective Henry?
25. SOLICITOR MOORE: He is the man who was
01. just testifying.
02. THE COURT: Why, sir, was it not until
03. the 9th of August of this year that you didn't
04. give this information up?
05. OFFICER HENRY: What information?
06. THE COURT: Why did you wait until this
07. year, over a year, to give this information
08. to the Solicitor's Office?
09. OFFICER HENRY: I thought that I had
10. given it to a supervisor at an earlier point
11. in time.
12. THE COURT: You thought you had.
13. OFFICER HENRY: Yes, sir.
14. THE COURT: So it was a case of honest
15. mistake?
16. OFFICER HENRY: Yes, sir. Seriously,
17. yes, sir.
18. THE COURT: If it is a case of honest
19. mistake, I can understand. But if it's a
20. case of a recurring pattern—and the reason
21. why I say that is because this is the second
22. time that I've heard it in this case, in two
23. days. Not from you. Okay.
24. Is there other evidence that was not
25. delivered until late in the game? If so,

01. why?
02. SOLICITOR MOORE: Your Honor, if you
03. will allow me to go through my discovery with
04. Mr. Smith and look at my exhibit list, I can
05. tell you exactly
06. THE COURT: I'll be right back. I want
07. to get this cleared up.
08. SOLICITOR MOORE: Yes, sir.
09. THE COURT: Officer, if it is an honest
10. mistake, it's okay. I'll be right back.
11. Don't anybody leave until I get back.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 58-59).

The trial judge initially found this delay as unacceptable.

06. Q. Why is there such a delay
07. in getting that information?
08. SOLICITOR MOORE: Your Honor, I can only
09. provide to Mr. Smith what I have for myself.
10. THE COURT: That is not an excuse.
11. SOLICITOR MOORE: I understand—
12. THE COURT: That is not acceptable.
13. SOLCITOR MOORE: I understand, Judge.
14. THE COURT: Then there is going to be
15. some consequences for the delay in getting
16. this information to him. The information is
17. going to be suppressed. There's going to be
18. some problems with it, I'm telling you.
19. SOLICITOR MOORE: I understand, Judge.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 62).

The judge went easy on the State and allowed all the information in the record when Officer Henry attested that it was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 60). Instead, the court turned against Defendant's failure to view the 36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 61). The lower court failed to consider that Defendant's counsel is a sole proprietor, whom unlike the

prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this, there was precedence in the police's haphazard handling of evidence in this case.

In failing to submit the video surveillance and required discovery materials within the reglementary period, it is tantamount to the State denying Carver his right to prepare his defense. The delay in providing discovery materials to defense counsel seemed to have become the norm. This issue should have been addressed more sternly especially since the judge, himself, stated he that it was not the first time this issue had arisen in this particular trial.

Fifth, the State's questionable conduct continued during Gambrell's trial, when it deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Carver was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Carver submits that if the State's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

- 07. Q. Did you go over there with the intent to kill
- 08. Mr. Cameron?
- 09. A. No, sir.
- 10. Q. Did anybody tell you to go kill him?
- 11. A. No, sir.
- 12. Q. Did anybody tell you to go beat him up?
- 13. A. No, sir.
- 14. Q. Did anybody tell you to go threaten that you were
- 15. going to beat him up?
- 16. A. No, sir. I was just told to go get the dope or
- 17. get paid for it.
- 18. Q. What does that mean --

19. A. I never intended to --
 20. Q. What does that mean, you were told to steal the
 21. dope from him?
 22. A. No. I was just told to go and retrieve it. He
 23. stole the dope.
 24. Q. What if he refused? What if he said, "I'm not
 25. going to give it to you?" What were you going to do
 01. then?
 02. A. Well, this is where this here seemed to blow out
 03. there. I mean, I didn't have intentions to do nothing.
 04. Q. That's right. Because nobody had instructed you
 05. about that, correct?
 06. A. That's right. I wasn't instructed. Nobody told
 07. me to. I've done said over and over this was never
 08. planned. I never planned to shoot Steven Cameron let
 09. alone kill him. This is something I'm living with.
 10. Nobody told me to do that. I didn't want to do that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 92).

17. Q. Well, isn't it true that what Mr. Gambrell wanted
 18. you to do was to relay the message that he knew
 19. Mr. Cameron had the drugs and that he should either pay
 20. for them or give the drugs back, correct?
 21. A. I don't know what he was thinking.
 22. Q. All right. But you are positive he did not tell
 23. you to go intimidate Mr. Cameron?
 24. A. Right.
 25. Q. He did not tell you to threaten Mr. Cameron in any
 01. way?
 02. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 93).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

02. Q. He also emphasized to you that all he wanted was
 03. for them to let Mr. Cameron know that he had the drugs,
 04. they knew it, and to pay for it, right? Wasn't that
 05. his story?
 06. A. Yes, sir.
 07. Q. Okay. You -- also on that video, at one point I
 08. believe I heard you say that Mr. Cameron -- dope was
 09. found on Mr. Cameron after he was killed?
 10. A. Yes, sir. During the autopsy, they did find some
 11. drugs.

12. Q. Okay. Did you mean in his system?
13. A. No, sir. I mean they found actual drugs on his
14. person.
15. Q. Do you know how much?
16. A. I think in his tennis shoes, I believe. I don't
17. know the exact quantity, sir.
18. Q. Okay. So obviously --
19. A. It was significant, but I don't know exactly what
20. it was.
21. Q. Couldn't have put it there after he was killed, so
22. it was there in his shoes before he was killed,
23. obviously. You don't know how much?
24. A. I don't know exactly, sir.
25. Q. Okay. Did anybody -- were his shoes still on when
01. he was lying there on the porch?
02. A. Yes, sir, I believe so.
03. Q. All right. So nobody, obviously, tried to pull
04. his shoes off to look for anything, correct?
05. A. I would imagine not.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 95).

The foregoing testimonies belied the State's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. Upon examination of Cameron's body, drugs were found inside his shoes. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video surveillance that other individuals entered Cameron's house after his death. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 63).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried

Cameron away, or attempted to commit said acts by any means without authority of law. (S.C. Code Ann. § 16-3-910 (2012)). If we were to believe Curry, as the prosecution so insisted, it was actually Cameron who initiated aggressive behavior by advancing/lunging toward Curry.

The State contends that Gambrell, Curry and Carver planned to commit the felony of murder or kidnapping simply because Curry was armed. Carver had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver possessing a weapon were all speculations by the police.

03. Q. Mr. Carver did not have a gun, did
04. he?
05. A. There were two guns and two---
06. Q. Mr. Carver did not have, did
07. he?
08. A. They had guns. They were given a
09. .38 by Mr. Gambrell and Mr. Curry carried a
10. .25 automatic with him.
11. Q. Where was the .25 carried?
12. A. In a fanny pack, is my understand-
13. ing.
14. Q. Who knew about the .25?
15. A. Mr. Curry knew about it and I know
16. that his wife knew about it, she told me
17. about it as well.
18. Q. So neither of those people are Mr.
19. Gambrell or Mr. Defendant, right?
20. A. No.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 64).

08. Q. When Mr. Gambrell took that gun, Mr.
09. Carver had not returned from Mr. Cameron's
10. yet; had he?
11. A. Mr. Gambrell didn't take the gun,
12. sir. Mr. Curry received the gun from Mr.
13. Gambrell or took it from him.
14. Q. Mr. Curry took it from Mr. Gambrel?
15. A (No verbal response).

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 65).

03. Q. You also learned that the .38 nor
04. any other guns were provided to Jason Defendant;
05. right?
06. A. The gun was provided to Curry and
07. Carver when they were leaving, so I don't
08. know.
09. Q. Which gun was provided to Mr. Curry?
10. A. The .38.
11. Q. Which gun was provided to Mr.
12. Defendant?
13. A. There were no other weapons
14. provided.
15. Q. And Mr. Gambrell told you that it
16. was not provided to him, meaning Mr. Curry
17. (sic); right?
18. A. He said that Mr. Curry took the weapon.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 66).

Proceeding from Defendant's fervent plea for the jury to believe Curry's words, Carver submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

IV.

DEFENDANT'S RIGHT TO DUE PROCESS HAS BEEN VIOLATED BY THE TRIAL JUDGE'S PREJUDICIAL ACTIONS TOWARDS THE CASE.

First, Carver believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as ruling on sustaining when there was no objection.

12. Q. Mr. Curry told you that he left the
13. gun in the car; right?
14. Q. Yes.
15. Q. So we are here today and you're
16. saying that Mr. Carver did what?

17. SOLICITOR MOORE: Uh—
18. THE COURT: Sustained.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 67).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.
11. CROSS EXAMINATION CONTINUED
12. BY MR. SMITH:
13. Q. That weapon was not utilized in this
14. event to our knowledge?
15. SOLICITOR MOORE: Objection, You Honor.
16. THE COURT: Asked and answered. Move forward, please.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 68).

Carver believes that the trial judge showed his bias when he made conclusory statements as below:

06. MR. SMITH: It shows that what they've
07. provided, his statements and things in
08. evidence supports what he said from a non-
09. criminal standpoint. There was no criminal
10. thought in this matter. That's what he says.
11. THE COURT: Well, I'll look at it.
12. Quite frankly, I think you're just wrong. I
13. think that if your client went to go pick up
14. money or drugs, that's a criminal act in and
15. of itself. If you don't think so, then we
16. have a disagreement about that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 69).

06. THE COURT: Well, let me think about
07. that on the hand of one, hand of all. But
08. here are my thoughts on that. First, I don't
09. think that it exculpates your client, the
10. reason being --I think that they had a
11. criminal enterprises regardless of the
12. shooting; that is, 'go get him', go get this

13. man, go get the drugs or go get the money like
14. he said and the other officers testified to.
15. If the jury finds that to be the case, that's
16. a illegal plan or scheme in that they have --
17. the cases are replete with the nexus between
18. drugs and guns, also drugs and violence.
19. So, if you look at the charge of hand of
20 one, hand of all, it says that "if two people
21 join with another to commit an unlawful act
22 then they are responsible for everything done
23 by the other person which happens as a
24 probable or natural consequence of the act(s)
25 in carrying out the common plan or purpose."
01 So therefore -- although I think probably that
02 your client did not know that a gun—that he
03 was going to shoot this fellow, but—the
04 cases recognize the connection between guns,
05 drugs and violence where the plan was illegal
06 and it just spiraled out of hand.
07 So, the jury may believe that he was an
08 innocent bystander, but that's my belief as to
09 why the video of Mr. Gambrell does not
10 exculpate your client. "

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 70).

The preceding statements were replete with prejudice considering Carver disputed any knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Second, Carver avers that he was denied his right to present his witnesses. Carver believes that Mr. Gambrell was key to the whole case, as he would testify that his instruction to Carver was simply to bring Cameron back to his (Gambrell) house. This then would rule out conspiracy or unity in purpose and action. Gambrell was called as a witness on behalf of Defendant. The trial judge advised Gambrell of his rights, particularly his rights against self-incrimination. Gambrell proceeded to narrate the events that transpired on March 28, 2016, which confirmed Defendant's story. When he started to explain about the missing item, his lawyer and the court advised him of

his Fifth Amendment right. After explaining his rights against self-incrimination, and a stern warning of its consequence, the trial judge insisted Gambrell confer with his counsel. At that point, the court ruled that his statements to the court will be stricken from the record.

07. THE COURT: At this point I need to
08. advise you of your rights under the Fifth
09. Amendment of the United States Constitution
10. which says in part that no person can be
11. compelled in a criminal case to be a witness
12. against themselves. Do you understand your
13. rights?

14. WITNESS: Yes, sir.

15. THE COURT: That means that you can't
16. be required to testify against yourself, the
17. State can't require you to, I can't require
18. you to. Nobody can.
19. You have the right to refuse any question
20. asked of you, anything that gives you
21. reasonable cause to believe that the answer,
22. if given, might tend to incriminate you as
23. charged.
24. If you wish to exercise your right under
25. the Fifth Amendment, you will state that to
01. the court. You will say, "I refuse to answer
02. the question because the answer to the
03. question may tend to incriminate me." Do you
04. understand that?

05. WITNESS: Yes, sir.

06. THE COURT: And let me advise you
07. further that your statement is not the final
08. decision as to whether or not your answer to
09. the question would violate the Fifth
10. Amendment. I will ultimately make that
11. decision. Do you understand?

12. WITNESS: Say that again, sir?

13. THE COURT: Just because you exercise
14. your right by saying "I refuse to answer the
15. question because the answer may tend to
16. incriminate me" does not mean that is the end
17. of the inquiry. I will make the final
18. determination as to whether or not you will
19. have to answer the question. Do you
20. understand?

21. WITNESS: Yes, sir.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 2.4).

13. THE COURT. Mr. Phillips, do you have a
14. matter you wish to bring up on the record?
15. MR. PHILLIPS. Yes, sir. I have
16. advised my client not to testify in this
17. case. He originally chose to testify. I
18. am again advising him to exercise his Fifth
19. Amendment right and not to testify in this
20. case from this point forward.
21. THE COURT: Do you wish to honor your
22. attorney's advice, Mr. Gambrell?
23. WITNESS: (No verbal response).
24. THE COURT: In other words, do you want
25. to testify or do you want to exercise your
01. rights under --on your attorney's advice to
02. exercise your rights under the Fifth
03. not to testify?
04. WITNESS: I don't really understand
05. THE COURT: Well, let me tell you this,
06. Mr. Gambrell. Your testimony in this case is
07. being transcribed and it will be obtained by
08. the State and used against you in the
09. upcoming trial against yourself, or it can
10. be, Do you understand that?
11. WITNESS: Yes, sir.
12. THE COURT: Now, your attorney --I
13. gave you your rights under the Fifth
14. Amendment and you told me that you understood
15. them. Is that correct?
16. WITNESS: I am trying to understand
17. them.
18. THE COURT: Well, sir, either you
19. understand them or you don't. You told me
20. that you did. What I told you is that under
21. the Fifth Amendment to the United States
22. Constitution that no person can be compelled
23. to testify against himself in a criminal
24. trial. Do you understand that?
25. WITNESS: Yes, sir.
01. THE COURT: And effectively what you
02. are potentially doing is testifying against
03. yourself because this testimony will be or
04. can be used against you in your trial later,
05. if you continue to testify. Do you

06. understand?

07. WITNESS: (Pause) --yes, sir.

08. THE COURT: Okay, sir. Now, Mr.

09. Phillips, who is your attorney for your

10. criminal charges has just stated that he's

11. advised you not to testify and he's re-

12. advised you not to testify any further. Do

13. you understand that?

14. WITNESS: (No verbal response).

15. THE COURT: Do you understand that, Mr.

16. Gambrell?

17. WITNESS: Yes, sir.

18. THE COURT: Now, you have a right --

19. the only person who can exercise their right

20. under the Fifth Amendment is yourself. It is

21. advisable to listen to an attorney, however

22. the ultimate decision as to whether or not

23. you wish to continue to testify in this

24. proceeding is your decision, yours alone to

25. make.

01. WITNESS: Yes, sir.

02. THE COURT: Okay. You have to make

03. that decision knowing your rights under

04. the Fifth Amendment and also knowing the

05. consequences to you if you continue to

06. testify.

07. That is that --the consequence are that

08. the State can and will obtain the transcript

08. of your testimony and when you are called to

10. trial they can use that against you in the

11. courtroom. Do you understand? In front of

12. the jury?

13. WITNESS: Yes, sir.

14. THE COURT: Now, the question is, do you

15. wish to testify or do you wish to exercise

16. your Fifth Amendment rights and not testify;

17. take your attorney's advice not to testify?

18. WITNESS: (No verbal response).

19. THE COURT: Would you like to speak

20. with your attorney further?

21. WITNESS: Yes, sir.

22. THE COURT: Would you take him in the

23. hallway, Mr. Phillips?

24. (BRIEF RECESS -COUNSEL PHILLIPS AND

25. WITNESS TO CONSULT OUTSIDE COURTROOM)

01. THE COURT: Mr. Phillips, have you had

02. sufficient time to consult with your client?
03. MR. PHILLIPS: Yes, sir. May I ask him a question?
04. THE COURT: Yes, sir.
05. MR. PHILLIPS: Mr. Gambrell, is it
06. your desire to stop your testimony from this
07. point forward?
08. WITNESS: Yes, sir.
09. THE COURT: Very good. I'm going to
11. let him step down. He is relieved of his
12. subpoena.
13. MR. PHILLIPS: Thank you.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 5).

Appellant raises his concerns on the judge's overzealous efforts to explain to Mr. Gambrell about his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in *Webb v. Texas*, 409 S. 95, 98 (1972)—a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence.

More importantly, Appellant questions the propriety of the court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow the Appellant to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege only after the incriminating question has been put. *State v. McGuire*, 272 S.C. 550-551. In short, unlike a Carver(or co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness'

invocation of the privilege. In the instant case, the trial judge did not propound any question upon Gambrell to get by his Sixth Amendment Right.²

Defense subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the bike from Cameron that day. When the defense called the witnesses, neither of them were available to testify. As expected, defense counsel could not track down the witnesses. This was especially true since Mr. Gambrell was no longer an issue to testify. CarverCarver was unable to show to the jury that Gambrell had prevented the boys from going that night because he was concerned of the personality clashes that may have occurred had they gone down there. The Court did not attempt to compel the presence of the witnesses with any significance. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify, was summarily dismissed by the judge. Carverbelieves that The Court had a duty to compel the witnesses who been subpoenaed properly, so as to give Mr. Carver some semblance of equity.

Carveravers that the judge's actions in prohibiting and/or denying his right to call his witnesses (Dequavious and Tykeon), was both arbitrary and capricious.

The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truth lies Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

² The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Washington v. Texas, 388 U.S. 14, 19 (1967).

This was in direct violation of Defendant's Sixth Amendment Rights.

Carver recognizes that a violation of a defendant's Sixth Amendment right to confront a witness or present one is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 315 S.C. 383, 385, 444 S.E. 2d 525, 527 (1994). Error is harmless where it could not reasonably have affected the result of the trial. In Re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003).

Carver submits that Gambrell's, Dequavious' and Tykeon's respective testimonies were critical to the case's outcome. Carver asserts that they will testify to Defendant's motive/intent in returning to Cameron's house. Gambrell will testify to the following: (1) He sent Carver to Cameron with instructions to return the latter to Gambrell's house; (2) He did not give any gun to Curry; (3) He did not inform Carver of the stolen item when the latter drove back to Cameron's; (4) Carver did not have a gun with him on the day of the incident; (5) Curry did not call Gambrell between the time Carver and Curry left his house and the time they returned; and, (6) He did not instruct Curry to kill, rob or sell anything to Cameron. Gambrell's testimony will provide the crucial nexus establishing Defendant's innocence. Dequavious and Tykeon will testify, among other things, to the bike transaction with Cameron, which was witnessed by Defendant.

The trial judge also denied Defendant's attempt to introduce in evidence the audiotape of Gambrell's interview with the ACSO officers as an exception to the hearsay rule. Gambrell can be considered as an unavailable declarant under the doctrine laid down in the State v. Doctor, 413 S.E.2d. 36. The judge insisted that contents of the Gambrell's interview do not exculpate Defendant, nor were they clearly corroborated by evidence that indicates the trustworthiness of

Gambrell's statement. With the new developments in this case, Carver could not have provided evidence that will corroborate the trustworthiness of Gambrell's testimonies because of the lies and conflicting statements that Curry perpetuated.

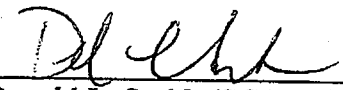
From the foregoing, Plaintiff believed that the trial judge sought, and/or prevented Gambrell from testifying in court. By his actions, he had improperly swayed a witness. The judge's failure to adhere to the neutrality and non-biased work required by his position, tainted the proceeding.

Carver is presently serving a sentence of 30 years for a crime that he did not commit. Carver is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Defendant.

Carver submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

To this end, Carver moves for the re-litigation of this case. Carver further moves for leave to allow the Carver to move to vacate/ set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence and misconduct on the opposing party.

Accordingly, Carver respectfully requests this Honorable Court to suspend and/or hold this appeal in abeyance, pending the resolution of Defendant's motion to vacate.


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Attorney for Defendant

December 20, 2018

EXHIBIT 1
DEFENDANT'S MOTION TO
HOLD APPEAL IN ABEYANCE
October 19, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

RECEIVED

OCT 23 2018

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Jason Franklin Carver,

Appellant.

**APPELLANT'S MOTION TO
HOLD HIS APPEAL IN ABEYANCE**

Appellant hereby moves this Honorable Court to hold in abeyance the above-captioned review of a final order issued by Judge R. Lawton MacIntosh on September 14, 2017. Appellant seeks to suspend said appeal in order to be able to move to vacate or set aside the said judgment based on newly discovered evidence and misconduct of an adverse party. This action is expected to render moot the issues under review by this Court.

This is an appeal for the Appellant's conviction for the killing of Steven Cameron. This case was based on mere suspicion.

FACTUAL HISTORY:

On March 28, 2016, Appellant Jason Carver had been working on a transmission at James Gambrell's house, when the latter requested Appellant drive Steven Cameron home.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

State of South Carolina,
Plaintiff,

vs.

Jason Carver,
Defendant.

IN GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No.: 2016A041020056

CERTIFICATE OF SERVICE

THE UNDERSIGNED person deposes and says that he served a copy of the Defendant's Motion for New Trial, upon the Solicitor's Office, Tenth Judicial Circuit, and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

Date: December 21, 2018


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HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Moore
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624

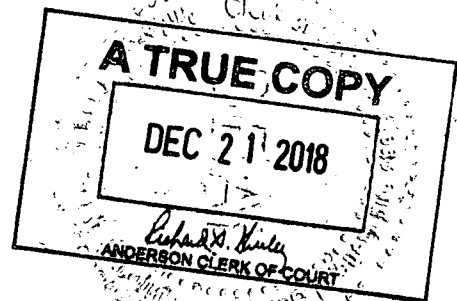




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This is an appeal for the Appellant's conviction for the killing of Steven Cameron. This case was based on mere suspicion.

FACrUAL HISTORY:

On March 28, 2016, Appellant Ja on Carver had been working on a transmission at James Gambrell's house, when the latter requested Appellant drive Steven Cameron home.

Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Carver's return, Gambrell told him he wished he had a phone because they would have told him to turn around and come back. As a result, Gambrell asked Carver to take Curry with him and go back and get Cameron. Neither Gambrell nor Curry shared the secret about the missing cocaine. They didn't want to take the chance that Appellant would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact Appellant was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit in. Therefore, based on what he was told, Carver believed that he was bringing Cameron back, and Curry wanted to go, Carver grabbed Gambrell's Buick, which he knew always had keys in it. However, since

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was

located. Curry claimed that everything that was found-was his, *in Gambrell's house*. Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Jason Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture turning cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peaking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop, and pointed it directly at Cameron.

Carver frantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carver started toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Carver, who has reached the car, heard the gunshots. Frightened and confused, Carver dropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Appellant to leave the lights off and leave the neighborhood. Unarmed Appellant did not put up any resistance; and, he did as he was told. Curry also offered that should Appellant feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Appellant's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Appellant and Curry arrived back at Gambrell's house, Carver was emotional and still shaken by the events that night. Curry told Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

9. Q All right. So you get back to Mr.
10. Gambrell's house?
11. A (Affirmative nod).
12. Q What takes place then?
13. A When I got out, Curry got out behind
14. me. I don't know if he still had the gun on
15. me at the time but he followed me all the way
16. into the house.
17. Q So he --you say that he got out
18. behind you. Did he slide across the front
19. seat?
20. A I'm assuming he did. I ain't for

21. sure.

22. Q. Because he was directly behind you?

23. A. Yes, sir, he was behind me.

24. Q. Did you take a chance and look

25. behind you or just keep on walking?

01. A. I looked but I didn't pay that much

02. attention. I was still shocked going in

03. Gambrell's house. I was already in tears at

04. that time too.

05. Q. Mr. Gambrell, he probably keeps his

06. house locked up pretty good, doesn't he?

07. A. Yes, sir.

08. Q. And when you got to the front door,

09. were you able to open it?

10. A. No, sir.

11. Q. How did you get in?

12. A. His nephew came to the door.

13. Q. So he opened the door?

14. A. (Affirmative nod).

15. Q. And you and Mr. Curry go in the

16. house?

17. A. Yes, sir.

18. Q. Did you get past that immediate

19. area?

20. A. (No verbal response).

21. Q. Did you go further than that? Did

22. you go the man cave or ---

23. A. We started back towards the man

24. cave. Then I sat down and Curry came across

25. from me. Once he got on the other side of

01. the little table, he sat down and laid the

02. .38 down. So I'm assuming that he already

03. had it out.

04. Q. So he had the .38?

05. A. Yes, sir.

06. Q. Where was Mr. Gambrell at this

07. point.

08. A. Mr. Gambrell was sitting in his

09. chair and he asked where Cameron was at.

10. That's when Curry was telling him, said 'we

11. got in an argument' and he said it got out of

12. hand. Then he said that he shot him. And I

13. was scared --I was shocked, in tears.

14. Gambrell could see that I was scared, that

15. I'd been crying.

16. Q. What was Mr. Gambrell's reaction?

17. A. Well, Mr. Gambrell and Curry started
18. arguing . I mean, they were getting real
19. loud.
20. Q. Did Mr. Gambrell say anything about
21. the fact that Mr. Cameron was just shot?
22. A. Well, he told him that 'you was just
23. supposed to have went up there and was
24. supposed to have brung him back', all that
25. stuff. That was it.
01. But, uh, Curry --he acted like he didn't
02. just acknowledge it. He acted like, you
03. know.
04. Q. So Curry and Gambrell are now in an
05. argument
06. A. Yes, sir.
07. Q. And the .38 is sitting on the coffee
08. table?
09. A. No, it was in the floor. He'd laid
10. it in the floor.
11. Q. What did you at this point?
12. A. Well, I was already so scared, I
13. just got up and left.
14. Q. Did you say goodbye?
15. A. No sir.

(Exhibit I A - Carver Trial Trans., Direct Exam Jason Carver, 08/21-25, 2017, P. 542, 9.25 & P. 543.545).

Appellant's apprehensions were not unfounded. That night, Curry drove past Carver's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Carver's trial that he personally reviewed portions of the video that afternoon.

14. Q. And what did you do when you got
15. inside the residence?
16. A. Obviously because of the nature of
17. the offense and because the cameras were

18. there, we wondered if they were in fact
 19. currently recording. They were and, so, we
 20. were able to do a very rapid review of some
 21. of the footage and were able to discover some
 22. evidence that I felt was pertinent to the
 23. case.
 24. Q. What evidence was that?
 25. A. Un, -- again, while we were review-
 01. ing the video, and we just kinda of skimming
 02. it very fast just to see.

(Exhibit 1B - Carver Trial Trans, Direct Exam Eric Russell, P. 245, 16.25 & p. 246, 1.2)

The footage was obtained that very day by forensics on scene.

20. Q. Okay. Did you ask that that footage
 21. be collected?
 22. A. I did, I went to the forensics that
 23. was on scene and asked that it be collected
 24. for evidence purposes.

(Exhibit 1C- Carver Trial Trans., Direct Exam Eric Russell, P. 248, 20.24)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

21. Buick appears, -- well, first, let me ask,
 22. how many hours of surveillance footage did
 23. you view in this case?
 24. A. I can't give you an exact number but
 25. hours. We watched it all the day of the
 01. incident as well as the following day. So at
 02. least thirty-six hours.

(Exhibit 1D- Carver Trial Trans., Direct Exam of Eric Russell, P. 253, 21.25 & p. 254, 1.2)

06. Again on the 30th I spent my entire day
 07. reviewing the video.

(Exhibit 1E - Carver Trial Trans, Cross Exam of Eric Russell, P. 268, 6.7)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit IF-Carver Trial, Direct Exam of Eric Russell, p. 255, 16.19)

The video was used to identify the vehicle driven by Carver. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Appellant did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Appellant gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder:

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(Exhibit 2- Transcript Plea Bargain, Woodrow Curry plea, 8/22/2017, p. 3, 12.17).

Appellant was indicted for Murder. During Appellant's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary

manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Appellant was convicted of murder on August 25, 2017. Appellant moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Appellant perfected his appeal. He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in the Carver case. Appellant believed that these statements should be explored in depth as they go through the very core of the crime for which Appellant was convicted and sentenced to thirty (30) years of imprisonment.

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went
22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had – during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one – I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Exhibit 3A- James Gambrell Trial Transcript- Cross Exam. Detective Kreig Marzolf, 9/5/2018, P. 38, 20.25 & P. 39, 1.6).

15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you
17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Exhibit 3A- James Gambrell Trial. Trans., Cross Exam. Marzolf, P. 39, 15.21).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Appellant maintains that this should have been disclosed in the previous trial as this confirms what Appellant has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through Carver's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Appellant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any such instance. (Exhibit 1G- Carver Trial Trans., Cross Exam of Marzolf, P. 321, P. 20.25 & P. 356-357). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 1G). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 4A- Supplementary Report, Marzolf, 2016-05324, 04/13/2016). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 4B- Supplementary Report, Marzolf, 2016-05324, 04/13/2016).

Appellant believed that this information would have helped him formulate his defense.

Respondent relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carver case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

14. Q. When you originally spoke to
15. detectives who did you say shot Steven
16. Cameron?
17. A. I didn't.
18. Q. You didn't?
19. A. (Negative gesture).
20. Q. So you're telling us today who shot
21. Steven Cameron?
22. A. Yes, ma'am. It just happened, I
23. didn't mean to shoot him. He was just coming
24. at me. I don't even remember pulling the
25. trigger, it just went--(pause)-I wish I
01. could turn back time, but I can't.
02. Q. Thank you, Mr. Curry. Please answer
03. any questions that Mr. Smith may have for
04. you.

(Exhibit IG- Jason Carver Trial Trans., Direct Exam Woodrow Curry, 8/21-25/2018, P. 373, 14.25 & P. 374, 1A).

However, in the Gambrell trial, Appellant learned that Curry, initially tried to pin the shooting on Carver. Marzolf, who interviewed Curry, testified to the following:¹

16. Q. Now, did Mr. Curry, the shooter, admit to you what
17. had happened, or did he deny all knowledge of what had
18. happened?
19. A. He gave me a version of what had happened in which
20. he said that they did go to the house and that Jason
21. Carver was the shooter that night.
22. Q. But didn't Mr. Curry later change his mind and
23. admit that, in fact, he was the shooter?
24. A. Yes, sir, he did.

¹ On a side note, Marzolf's statement about not knowing the details of Curry's plea bargain is improbable. They had to have discussed with Curry the consequences of entering a plea. Curry testimony is by no means a surprise confession.

25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual -- I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 3B- James Gambrell Trial Trans., Cross Exam. Marzolf, P. 40, 16.25 & P. 41, 1.15).

Second, when Curry was asked what he did after leaving Cameron's house during the Carver trial, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carver do
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1H- Carver Trial Trans., Direct Exam Curry, P. 371, 3.5).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 3C- James Gambrell Trial Trans., Direct Exam. Curry, P. 53, 9.25).

This was not disclosed during Carver's trial. There was no relevance to the trip home. Out of nowhere, the prosecutor asked him if they "did you do anything on the way to Gambrell's house?" Curry's response was that he called Gambrell. This question was not raised during Carver's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Third, at the Carver trial, Curry testified that Gambrell instructed Appellant to drive Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I guess he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Exhibit II- Carver Trial Trans., Direct Exam. Curry, P. 363, 21.25 & P. 364, 1).

In his subsequent testimony at Gambrell's trial, his statements implied that that Carver voluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working - to begin with, I was out there working on a
19. car. Carver wasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carver got off work, he
23. come over there like he normally did. He went in the
24. house and come back out, him and Steven there, and he
25. took Steven home.

(Exhibit 3D- Gambrell Trial Trans., Cross Exam. Curry, P. 48, 16.25).

Fourth, Curry, implicated Carver by testifying that Appellant had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

15. Q Did you have a gun when you left
16. Appaloosa Drive?
17. A Yes.
18. Q Where did you get that gun?
19. A Milton Gambrell.
20. Q Did Jason Carver have a gun when you
21. left Appaloosa Drive?
22. A Yes.
23. Q Where did he get that gun?
24. A It was his.
25. Q Did you have more than one gun with
01. with you?
02. A Yes.
03. Q How many guns did you have?
04. A Two.
05. Q Do you remember what kind of guns
06. they were?
07. A .38 and a .22-- .25, I mean.

(Exhibit 1J- Carver Trial Trans., Direct Exam. Curry, P. 366, 15.25 & P. 367, 1.7.

However, in the same hearing, Curry stated:

02. Q And the weapon that you said that
03. you had seen, was that the same weapon that
04. you allege that he had at this time?
05. A I don't know that h owned one.
06. Q The one with the sight on it, the
07. one that he allegedly brought out and showed
08. you previous to his incident, you still
09. don't know what that is?
10. A No, sir..

(Exhibit 1K- Carver Trial Trans., Curry, P. 398, 2.10).

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q So you had a chat with Steven
15. Cameron. And after he did not give you any
16. money and he did not give you any drugs, what
17. did you do?
18. A I don't know, I like turned and he

19. come at me, and I looked down, I didn't know
20. I had the gun but obviously I did - I had
21. it, I mean. Then like, 'oh.' He charged
22. at me and - I don't even remember pulling the
23. trigger but I heard *Pop! Pop!* So-(pause).
24. Q. So you shot Steven Cameron?
25. A. Yeah, I guess.

(Exhibit 1L- Carver Trial Trans., Direct Exam. Curry, P. 369, 14.25).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08. Q. Why did you do it?
09. A. Because for some reason or another I had done
10. pulled the gun, I guess to intimidate him or whatever,
11. and he charged at me. "What are you going to do, shoot
12. me?" And he charged at me. I don't know what to do.
13. What's he going to do, take the gun and shoot me or
14. what? I don't know. I mean, that's just -
15. Q. Why did you feel the need to try to intimidate
16. him?
17. A. He's bigger than I am.
18. Q. He's bigger than you are?
19. A. A lot bigger than I was.
20. Q. But you just said you were just going to have a
21. conversation with him. Why should him being bigger
22. than you make a difference if you're just going to have
23. a conversation?
24. A. Man, like I said, I was high. I was 150 pounds.
25. I was all drawn up myself, you know I mean.

(Exhibit 3E- Gambrell Trial Trans., Cross Exam. Curry, P. 63, 9.25).

Appellant believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground and announcing "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Appellant having a gun. By Respondent having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car. Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When - Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a - there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 3C- Gambrell Trial Trans., Cross Exam. Curry, P. 53, 18.25).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carver had a - there, and I.*" (Exhibit 3C). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that "*(W)e went in there to return the guns*", Curry tied Carver in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to

Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

14. Q. Why did you testify in your first trial that you
15. went back to Milt's house and that's when you told him
16. about the shooting when you're testifying in this trial
17. that you called him on the way on your cell phone?
18. Which is the truth?
19. A. I called him on the cell phone.
20. Q. Why is this the first time you're saying this?
21. A. First time I recall being asked.
22. Q. Weren't you asked in the first trial? And,
23. specifically, I'm talking about your codefendant's
24. trial, the other person who was with you, Jason
25. Carver's trial.
01. A. That's 11 months ago, sir. It's hard for me to
02. remember that far back. But, I mean, I told him on the
03. way, you know. When I got there, he smelled the gun.
04. I mean...

(Exhibit 3F- James Gambrell Trial Trans. Curry, P. 58, 14.25 & 59, 1A).

17. Q. Okay. So the first trial, you testified that
18. after the shooting, you drove back to Milt's house,
19. Mr. Gambrell's, and then you told him inside of his
20. house -
21. A. Uh-huh.
22. Q. - that you shot the guy.
23. A. I don't recall that, but if you say I did, I did.
24. Q. Do you recall what you told him as to why you shot
25. the poor man, why you shot Mr. Cameron?
01. A. He didn't ask.
02. Q. Didn't you say something like, "Well, things just
03. went crazy and I shot him"?
04. A. No. Like I say, he didn't ask. I told him on the
05. way back over there that he better have been sure that
06. that guy took his dope there because I shot him.
07. Q. You said the way back over there?
08. A. On the way back over there, I called him. He
09. answered the phone. I said, "You better be sure that
10. the man took your dope, Steven took your dope, because

11. I just shot him."
 12. Q. Did you tell any of the detectives this, that you
 13. called him on the way back over there on your cell
 14. phone?
 15. A. Sir, I was under the influence. I don't recall
 16. speaking there to y'all, to detectives. Are you
 17. talking about when I was first arrested?
 18. Q. No, sir. When you were interviewed by the police,
 19. when you're sitting in Greenville County jail.
 20. A. Like I said, when I was first arrested 31 months
 21. ago, I was still under the influence of
 22. methamphetamines at that time. I went through their
 23. drug and alcohol treatment program in Greenville County
 24. Detention Center.
 25. Q. So you're telling this jury -
 01. A. The first time I spoke to a detective, I did not
 02. tell them nothing. I can tell you that much. The
 03. second time I spoke to them, I don't - I don't recall
 04. what I told them. I mean, I was still, you know, as
 05. they told me in drug class, I was still high.
 06. Q. My question to you, sir, is: Why are we hearing
 07. this story that you called Mr. Gambrell on your cell
 08. phone after the shooting before you got back to the
 09. house? Why are we hearing this the first time today?
 10. A. It's the first time it's been asked.
 11. Q. The detectives never asked you the details of what
 12. happened?
 13. A. Not that I recall.

(Exhibit 3F & 3G- Gambrell Trial Trans., Curry, P. 59, 17.25; P. 60, & P. 61, 1.13).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

18. THE COURT: Are you under the influence of
 19. any medications, drugs, or alcohol today?
 20. MR. CURRY: No, sir.
 21. THE COURT: Counsel, are you satisfied that
 22. Mr. Curry's competent to plea?
 23. MS. BYFORD: I am, Your Honor.

(Exhibit 2B- Plea Bargaining Hearing, Curry, P. 5, 18.23).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing" carrot" offered by the Respondent. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Carver's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

02. Q. Okay. Well, if your memory was so messed up, why
03. should this jury believe anything you have to say today
04. about what happened over two years ago?

E_xhibit 3H - Gambrell Trial Trans., Curry, P. 66, 2.4).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

Appellant believes that due to this newly discovered evidence, he is entitled to remedy under Rule 29 SCRCrimP. Appellant further asserts that he is entitled to move to vacate/set aside judgment by reason of Respondent's misconduct in the handling of this case.

Appellant insists that Respondent abused its discretion in filing different charges against Carver, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder² and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Carver's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the

² Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Appellant was found guilty not because of what he did, but because of what was suspected he did. The State said they were deferring Curry's sentencing until after Appellant's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carver and then Gambrell. Based on Curry's lies, Appellant and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the state's evidence in both cases, Appellant asserts that the State has no evidence. Curry cannot be considered an evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of time Curry had talked to the police. There is no question that the State recorded the interview where

it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Defendant to never call a witness when you do not know what they will say. They knew what Curry was going to say.

During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

04. So what happened here is that Milton
05. Gambrell, a known drug dealer, Mr. Smith just
06. told you all about that, sent his two "do
07. boys"--- that is what Woodrow Curry called
08. himself and Carver on the stand-they were
09. his "do boys." He sent them in a car that he
10. owned to collect on a drug debt. That is
11. working together for an illegal purpose.
12. That is the hand of one, hand of all.

(IM- Carver Trial Trans.-Closing Argument of Chelsea Moore, P. 681, 4.12).

But in the Gambrell trial, this was all she stated:

19. In order for James Milton Gambrell to be found
20. guilty of accessory before the fact to murder, he must
21. have the same criminal intent as Woodrow Curry. They
22. must have intended the same thing before the murder was
23. committed. They must have intended for Woodrow Curry
24. to take the money, to take the drugs, or to bring
25. Steven Cameron back to James Gambrell. But James
01. Gambrell is also liable for any criminal act which, in
02. the ordinary course of things, was the natural or
03. probable consequence of the crime that he advised or
04. commanded. So was the murder of Steven Cameron a
05. natural and foreseeable consequence of James Gambrell's
06. order? I submit to you that it was.

(Exhibit 31- Gambrell Trial Closing Argument of Chelsea Moore, P. 10, 19.25 & 11, 1.6).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. The only logical

conclusion was that Respondent dangled Curry's sentencing over his head for him to testify according to Respondent's wishes.

In prosecuting the case, Respondent failed to disclose information and/or witness that may exculpate the Appellant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). Respondent failed to do the same. Instead, it allowed its star witness, Curry, to offer inconsistent statements during Carver and Gambrell's respective trials. Respondent also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect. This practice violates Rule 3.8(d) of the Rules of Professional Conduct.

Appellant had already questioned Respondent's method of prosecuting his case. The investigation on the Carver case was completed April or May 2016. Respondent offered Carver a copy of the discovery in December 2016, which Appellant was unable to open. By the State's own admission, what they provided had been faulty.

- 02. SOLICITOR MOORE: Yes, Judge. I cannot
- 03. guarantee that the flash drive will be able
- 04. to play for the jury. We have, as you know,
- 05. had some difficulty with that.

(Exhibit IN -Carver Trial, Cross Exam of Eric Russell, p. 274, 2.5)

Appellant repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession since the first week of the investigation. Appellant was provided the materials only a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the Respondent on August 9, 2017, or two (2) weeks prior to Appellant's trial. The

State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

17. THE COURT: I want to know what
18. evidence that was delayed to August 9th, that
19. kind of delayed delivery that y'all gave to
20. the defense. This guy is on trial for murder
21. and if he gets found guilty, then he's
22. looking at life in prison.

23. SOLICITOR MOORE: I understand, Your
24. Honor.

25. THE COURT: So playing with evidence is
01. not satisfactory. I'm not saying that anyone
02. is playing with the evidence but I want to
03. know why after over a year it's just getting
04. to the defense. That's inexcusable and I
05. can't understand how, under any
06. circumstances, that could be. Now, I might
07. just be wrong --and it wouldn't be the first
08. time. But I want an explanation and I want
09. to know what else could be missing. We're
10. not going through this trial, jerking and
11. stopping here and there, because the State,
12. either through its officers or through your
13. office did not bother to give discovery.
14. Okay? So I want to know why.

15. SOLICITOR MOORE: Your Honor, I can
J 6. assure you that we gave Mr. Smith --

17. THE COURT: I want to know why --I
18. don't care what you did. I want to know why
19. it just got sent out August 9th of this year.

20. SOLICITOR MOORE: Because I'd just
21. received it, Your Honor.

22. THE COURT: From whom?

23. SOLICITOR MOORE: From Detective Henry.

24. THE COURT: Who is Detective Henry?

25. SOLICITOR MOORE: He is the man who was
01. just testifying.

02. THE COURT: Why, sir, was it not until
03. the 9th of August of this year that you didn't
04. give this information up?

05. OFFICER HENRY: What information?

06. THE COURT: Why did you wait until this
07. year, over a year, to give this information
08. to the Solicitor's Office?

09. OFFICER HENRY: I thought that I had
 10. given it to a supervisor at an earlier point
 11. in time.
 12. THE COURT: You thought you had.
 13. OFFICER HENRY: Yes, sir.
 14. THE COURT: So it was a case of honest
 15. mistake?
 16. OFFICER HENRY: Yes, sir. Seriously,
 17. yes, sir.
 18. THE COURT: If it is a case of honest
 19. mistake, I can understand. But if it's a
 20. case of a recurring pattern-and the reason
 21. why I say that is because this is the second
 22. time that I've heard it in this case, in two
 23. days. Not from you. Okay.
 24. Is there other evidence that was not
 25. delivered until late in the game? If so,
 01. why?
 02. SOLICITOR MOORE: Your Honor, if you
 03. will allow me to go through my discovery with
 04. Mr. Smith and look at my exhibit list, I can
 05. tell you exactly
 06. THE COURT: I'll be right back. I want
 07. to get this cleared up.
 08. SOLICITOR MOORE: Yes, sir.
 09. THE COURT: Officer, if it is an honest
 10. mistake, it's okay. I'll be right back.
 11. Don't anybody leave until I get back.

(Exhibit 10- Carver Trial Trans., Direct Exam., Patrick Henry, 08/21-25/2017, P. 225, 17.25 & P. 226-228).

The trial judge initially found this delay as unacceptable.

06. Q. Why is there such a delay
 07. in-getting that information?
 08. SOLICITOR MOORE: Your Honor, I can only
 09. provide to Mr. Smith what I have for myself.
 10. THE COURT: That is not an excuse.
 11. SOLICITOR MOORE: I understand-
 12. THE COURT: That is not acceptable.
 13. SOLICITOR MOORE: I understand, Judge.
 14. THE COURT: Then there is going to be
 15. some consequences for the delay in getting
 16. this information to him. The information is
 17. going to be suppressed. There's going to be

18. some problems with it, I'm telling you.
19. SOLICITOR MOORE: I understand, Judge.

Exhibit 1P- Carver Trial Trans., Direct Exam. Henry, P. 224, 6.19).

The judge went easy on the Respondent and allowed all the information in the record when Officer Henry's attested that was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 10- Carver Trial Trans., Direct Exam. Officer Henry, P. 227, 2.23). Instead, the court turned against Appellant's failure to view the 36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 10- Carver Trial Trans., Direct Exam. Officer Henry, P. 228, 19.24). The lower court failed to consider that Appellant's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this is the fact that there was precedence in the police's haphazard handling of evidence in this case.

Respondent's questionable conduct continued during Gambrell's trial, when the State deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Appellant was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Appellant submits that if Respondent's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

07. Q. Did you go over there with the intent to kill
08. Mr. Cameron?
09. A. No, sir.

10. Q. Did anybody tell you to go kill him?
11. A. No, sir.
12. Q. Did anybody tell you to go beat him up?
13. A. No, sir.
14. Q. Did anybody tell you to go threaten that you were
15. going to beat him up?
16. A. No, sir. I was just told to go get the dope or
17. get paid for it.
18. Q. What does that mean -
19. A. I never intended to -
20. Q. What does that mean, you were told to steal the
21. dope from him?
22. A. No. I was just told to go and retrieve it. He
23. stole the dope.
24. Q. What if he refused? What if he said, "I'm not
25. going to give it to you?" What were you going to do
01. then?
02. A. Well, this is where this here seemed to blow out
03. there. I mean, I didn't have intentions to do nothing.
04. Q. That's right. Because nobody had instructed you
05. about that, correct?
06. A. That's right. I wasn't instructed. Nobody told
07. me to. I've done said over and over this was never
08. planned. I never planned to shoot Steven Cameron let
09. alone kill him. This is something I'm living with.
10. Nobody told me to do that. I didn't want to do that.

(Exhibit 3J- Gambrell Trial Trans., Cross Exam. Curry, P. 62, 7.25 & P. 63; 1.10).

17. Q. Well, isn't it true that what Mr. Gambrell wanted
18. you to do was to relay the message that he knew
19. Mr. Cameron had the drugs and that he should either pay
20. for them or give the drugs back, correct?
21. A. I don't know what he was thinking.
22. Q. All right. But you are positive he did not tell
23. you to go intimidate Mr. Cameron?
24. A. Right.
25. Q. He did not tell you to threaten Mr. Cameron in any
01. way?
02. A. No, sir.

(Exhibit 3K- Gambrell Trial Trans., Cross Exam. Curry, P. 68, 17.25 & P. 69, 1.2).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

02. Q. He also emphasized to you that all he wanted was

03. for them to let Mr. Cameron knpw that he had the drugs,
 04. they knew it, and to pay for it, right? Wasn't that
 05. his story?
 06. A Yes, sir.
 07. Q Okay. You – also on that video, at one point I
 08. believe I heard you say that Mr. Cameron – dope was
 09. found on Mr. Cameron after he was killed?
 10. A. Yes, sir. During the autopsy, they did find some
 11. drugs.
 12. Q. Okay. Did you mean in his system?
 13. A. No, sir. I mean they found actual drugs on his
 14. person.
 15. Q. Do you know how much?
 16. A. I think in his tennis shoes, I believe. I don't
 17. know the exact quantity, sir.
 18. Q. Okay. So obviously –
 19. A. It was significant, but I don't know exactly what
 20. it was.
 21. Q. Couldn't have put it there after he was killed, so
 22. it was there in his shoes before he was killed,
 23. obviously. You don't know how much?
 24. A. I don't know exactly, sir.
 25. Q. Okay. Did anybody – were his shoes still on when
 01. he was lying there on the porch?
 02. A. Yes, sir, I believe so.
 03. Q. All right. So nobody, obviously, tried to pull
 04. his shoes off to look for anything, correct?
 05. A. I would imagine not.

(Exhibit 3L- Gambrell Trial Trans., Cross Exam. Curry, P. 42, 2.25).

The foregoing testimonies belied Respondent's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video

surveillance that other individuals entered Cameron's house. (Exhibit 1S - Carver Trial Trans., Cross Exam. Marzolf, P. 318, 5.8).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to commit said acts by any means whatsoever without authority of law. (S.C. Code ann. § 16-3-910 (2012)).

Respondent contends that Gambrell, Curry and Appellant planned to commit the felony of murder or kidnapping by the fact that Curry was armed. Appellant had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver were all speculations by the police.

03. Q. Mr. Carver did not have a gun, did he?
04. he?
05. A. There were two guns and two---
06. Q. Mr. Carver did not have, did he?
07. he?
08. A. They had guns. They were given a
09. 38 by Mr. Gambrell and Mr. Curry carried a
10. 25 automatic with him.
11. Q. Where was the 25 carried?
12. A. In a fanny pack, is my understand-
13. ing.
14. Q. Who knew about the 25?
15. A. Mr. Curry knew about it and I know
16. that his wife knew about it, she told me
17. about it as well.
18. Q. So neither of those people are Mr.
19. Gambrell or Mr. Carver, right?
20. A. No.

(Exhibit IR- Carver Trial Trans., Cross Exam, Marzolf, P. 340, 3.20).

08. Q. When Mr. Gambrell took that gun, Mr.
09. Carver had not returned from Mr. Cameron's
10. yet; had he?

11. A. Mr. Gambrell didn't take the gun,
 17. sir. Mr. Curry received the gun from Mr.
 13. G8.II)brell or took it from him.
 14. Q. Mr. Curry took it from Mr. Gambrel?
 15. A. (No verbal response).

(Exhibit JS- Carver Trial Trans., Cross Exam. Marzolf, P. 341, 8.15).

03. Q. You also learned that the 38 nor
 04. any other guns were provided to Jason Carver;
 05. right?
 06. A. The gun was provided to Curry and
 07. Carver when they were leaving, so I don't
 08. know.
 09. Q. Which gun was provided to Mr. Curry?
 10. A. The .38.
 11. Q. Which gun was provided to Mr.
 12. Carver?
 13. A. There were no other weapons
 14. provided.
 15. Q. And Mr. Gambrell told you that it
 16. was not provided to him, meaning Mr. Curry
 17. (sic); right?
 18. A. He said that Mr. Curry took the weapon.

(Exhibit 1T- Carver Trial Trans. Cross Exam., Marzolf, 345, 3.19).

Proceeding from Respondent's fervent plea for the jury to believe Curry's words, Appellant submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

Finally, Appellant believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as rulings on sustaining when there was no objection.

12. Q. Mr. Curry told you that he left the
 13. gun in the car; right?
 14. Q. Yes.

15. Q. So we are here today and you're
16. saying that Mr. Carver did what?
17. SOLICITOR MOORE: Uh-
18. THE COURT: Sustained.

(Exhibit IU-Carver Trial Tans., Cross Exam. Marzolf, P. 346, 12.18).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.
11. CROSS EXAMINATION CONTINUED
12. BY MR. SMITH:
13. Q. That weapon was not utilized in this
14. event to our knowledge?
15. SOLICITOR MOORE: Objection, Your Honor.
16. THE COURT: Asked and answered. Move forward, please.

(Exhibit IV- Carver Trial Trn s., Cross Exam. Marzolf, P. 351, 6.17).

Appellant believes that the trial judge showed his bias when he made conclusory statements as below:

06. MR. SMITH: It shows that what they've
07. provided, his statements and things in
08. evidence supports what he said from a non-
09. criminal standpoint. There was no criminal
10. thought in this matter. That's what he says.
11. THE COURT: Well, I'll look at it.
12. Quite frankly, I think you're just wrong. I
13. think that if your client went to go pick up
14. money or drugs, that's a criminal act in and
15. of itself. If you don't think so, then we
16. have a disagreement about that.

(Exhibit IW- Carver Trial Trans., P. 496, 6.16).

06. THE COURT: Well, let me think about
07. that on the hand of one, hand of all. But
08. here are my thoughts on that. First, I don't
09. think that it exculpates your client, the
10. reason being--I think that they had a

11. criminal enterprises regardless of the
12. shooting; that is, 'go get him', go get this
13. man, go get the drugs or go get the money like
14. he said and the other officers testified to.
15. If the jury finds that to be the case, that's
16. a illegal plan or scheme in that they have --
17. the cases are replete with the nexus between
18. drugs and guns, also drugs and violence.
19. So, if you look at the charge of hand of
20 one, hand of all, it says that "if two people
21 join with another to commit an unlawful act
22 then they are responsible for everything done
23 by the other person which happens as a
24 probable or natural consequence of the act(s)
25 in carrying out the common plan or purpose."
01 So therefore -- although I think probably that
02 your client did not know that a gun-that he
03 was going to shoot this fellow, but-the
04 cases recognize the connection between guns,
05 drugs and violence where the plan was illegal
06 and it just spiraled out of hand.
07 So, the jury may believe that he was an
08 innocent bystander, but that's my belief as to
09 why the video of Mr. Gambrell does not
10 exculpate your client. "

(Exhibit IX- Carver Trial Trans., Redirect Exam., Carver, P. 585, 6.25 & P. 586, 1.10).

The preceding statements were replete with prejudice considering that Appellant disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Appellant is presently serving a sentence of 30 years for a crime that he did not commit. Appellant is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Appellant.

Appellant submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

To this end, Appellant seeks to hold this appeal in abeyance. Appellant further moves for leave to allow the Appellant to move to vacate/ set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence. Under certain circumstances, it is possible that this appeal will become moot; that is if the lower court affirms Appellant's motion and vacates the judgment.

Accordingly, to conserve the resources of the Court and the parties, Appellant respectfully requests this Honorable Court suspend and/or hold this appeal in abeyance, pending the resolution of Appellant's motion to vacate.

October 19, 2018

l>eUk
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EXHIBIT 1

**EXCERPTS OF TRIAL TRANSCRIPT
FOR STATE VS. JASON CARVER**

2016-GS-04-2279

08/21-25/2017

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) COURT OF GENERAL SESSIONS

State of South Carolina,)
v.)
Jason Franklin Carver,) Case No. 16-GS-04-2279
Defendant.)

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on August 21 through August 25th, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Chelsey Lauren Moore, Assistant Solicitor
Scott McElhannan, Assistant Solicitor
10th CIRCUIT SOLICITOR'S OFFICE
Post Office Box 8002
Anderson, South Carolina 29622
---Appearing for State of South Carolina

Donald L. Smith, Esq.
---Appearing for Defendant

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)my Trial of August 21-25, 2017

Testimony of Defendant Jason Carver - Direct Examination

1 shook up, I wasn't doing the speed limit for
2 sure.

3 Q. Were you driving faster or slower?

4 A. I was a little bit faster somewhat
5 because I was shook up, scared. I didn't
6 know was going to happen. I didn't know if
7 he was going to shoot me when we got back to
8 Gambrell's house or not.

9 Q. All right. So you get back to Mr.
10 Gambrell's house?

11 A. (Affirmative nod).

12 Q. What takes place then?

13 A. When I got out, Curry got out behind
14 me. I don't know if he still had the gun on
15 me at the time but he followed me all the way
16 into the house.

17 Q. So he -- you say that he got out
18 behind you. Did he slide across the front
19 seat?

20 A. I'm assuming he did. I ain't for
21 sure.

22 Q. Because he was directly behind you?

23 A. Yes, sir, he was behind me.

24 Q. Did you take a chance and look
25 behind you or just keep on walking?

1 A. I looked but I didn't pay that much
2 attention. I was still shocked going in
3 Gambrell's house. I was already in tears at
4 that time too.

5 Q. Mr. Gambrell, he probably keeps his
6 house locked up pretty good, doesn't he?

7 A. Yes, sir.

8 Q. And when you got to the front door,
9 were you able to open it?

10 A. No, sir.

11 Q. How did you get in?

12 A. His nephew came to the door.

13 Q. So he opened the door?

14 A. (Affirmative nod).

15 Q. And you and Mr. Curry go in the
16 house?

17 A. Yes, sir.

18 Q. Did you get past that immediate
19 area?

20 A. (No verbal response).

21 Q. Did you go further than that? Did
22 you go the man cave or ---

23 A. We started back towards the man
24 cave. Then I sat down and Curry came across
25 from me. Once he got on the other side of

1 the little table, he sat down and laid the
2 .38 down. So I'm assuming that he already
3 had it out.

4 Q. So he had the .38?

5 A. Yes, sir.

6 Q. Where was Mr. Gambrell at this
7 point?

8 A. Mr. Gambrell was sitting in his
9 chair and he asked where Cameron was at.
10 That's when Curry was telling him, said 'we
11 got in an argument' and he said it got out of
12 hand. Then he said that he shot him. And I
13 was scared -- I was shocked, in tears.
14 Gambrell could see that I was scared, that
15 I'd been crying.

16 Q. What was Mr. Gambrell's reaction?

17 A. Well, Mr. Gambrell and Curry started
18 arguing. I mean, they were getting real
19 loud.

20 Q. Did Mr. Gambrell say anything about
21 the fact that Mr. Cameron was just shot?

22 A. Well, he told him that 'you was just
23 supposed to have went up there and was
24 supposed to have brung him back', all that
25 stuff. That was it.

1 But, uh, Curry -- he acted like he didn't
2 just acknowledge it. He acted like, you
3 know.

4 Q. So Curry and Gambrell are now in an
5 argument?

6 A. Yes, sir.

7 Q. And the .38 is sitting on the coffee
8 table?

9 A. No, it was in the floor. He'd laid
10 it in the floor.

11 Q. What did you do at this point?

12 A. Well, I was already so scared, I
13 just got up and left.

14 Q. Did you say goodbye?

15 A. No. No, sir.

16 Q. Did you say, 'can I leave?'

17 A. No, sir.

18 Q. You just left?

19 A. Yes, sir.

20 Q. Where did you go?

21 A. I went to my mom's.

22 Q. Where was your dog at this point?

23 A. My dog was still in the car at the
24 time.

25 Q. Did you go back the normal way? Or

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Testimony of Eric Russell - Direct Examination

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1 as one facing away from the incident
2 location, towards Old Pendleton Road.

3 Q. What did you do when you found
4 those?

5 A. We attempted to contact the
6 residents, however no one answered the door.
7 Shortly after I was approached by Corporal
8 Caleb Wilkinson with the Sheriff's
9 Department, who informed me that he had made
10 contact with an individual. Through a series
11 of phone calls I was able to get Mike Tallyan
12 to arrive and -- he arrived inside the
13 residence.

14 Q. And what did you do when you got
15 inside that residence?

16 A. Obviously because of the nature of
17 the offense and because the cameras were
18 there, we wondered if they were in fact
19 currently recording. They were and, so, we
20 were able to do a very rapid review of some
21 of the footage and were able to discover some
22 evidence that I felt was pertinent to the
23 case.

24 Q. What evidence was that?

25 A. Uh, -- again, while we were review-

1 ing the video, and we just kinda of skimming
2 it very fast just to see.

3 Q. Um-humm.

4 A. I observed a vehicle that pulled
5 into the victim's driveway. The time stamp
6 on the video was approximately two hours off,
7 that was information that we were able to get
8 from Mike Tallyan. But, uh, we were able to
9 look at the victim, identified by the
10 clothing that he was wearing, at approximate-
11 ly 1602 Hours riding his dirt bike towards
12 Old Pendleton.

13 At around 2102 Hours we were able to see
14 what looked like a black vehicle pulling into
15 108 Sterling Bridge Road. It was there a
16 very, very small timeframe. Pulls in, then
17 essentially pulls out. You can see someone
18 walking from the passenger side of that
19 vehicle towards 108.

20 Then at -- I want to say 2130, I believe
21 is the time, you see a white sedan pulling
22 in. I can reference my notes if I need to
23 get the exact timeframe.

24 Q. Okay.

25 A. But -- (upon review), 2130.

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Testimony of Eric Russell - Direct Examination

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1 colored sedan as well as the Buick itself,
2 the white car, uh, -- the timeline I
3 established.

4 Q. Okay. I am going to show you what
5 has been marked as State's Exhibit 10, 10A.
6 Does this car look similar to the car that
7 you saw in that footage?

8 A. It does, yes, ma'am.

9 Q. It does?

10 A. (Affirmative nod).

11 Q. Thank you. So what, if anything,
12 did you do after you observed the footage at
13 Mr. Tallyan's house?

14 A. The lead detective on this case had
15 been determined to be Detective Marzolf. On
16 seeing this information, I approached
17 Detective Marzolf and we determined the
18 necessity to try to locate this vehicle that
19 I felt was involved in this incident.

20 Q. Okay. Did you ask that that footage
21 be collected?

22 A. I did, I went to the forensics that
23 was on scene and asked that it be collected
24 for evidence purposes.

25 Q. And you mentioned that you had

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Testimony of Eric Russell - Direct Examination

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1 vehicle, as it is pulling in the driveway the
2 lights are off. There is some movement at
3 the very top of the video here. That's when
4 you see that the occupants are opening the
5 doors and stepping out of the vehicle.

6 Q. (Video playing) -- can you tell us
7 what is happening now?

8 A. Yes, ma'am. Just before that, you
9 can see the interior lights illuminate in the
10 vehicle. The white vehicle is now reversing
11 from the driveway at 108 with no lights
12 illuminated and it is -- you can see some
13 motion lights come on, headlights are off.

14 Q. To the best of your recollection
15 were those headlights on when they pulled
16 into the driveway?

17 A. Yes, ma'am, they were.

18 Q. Thank you.

19 A. Between the time that the victim
20 returns home and the time that the white
21 Buick appears, -- well, first, let me ask,
22 how many hours of surveillance footage did
23 you view in this case?

24 A. I can't give you an exact number but
25 hours. We watched it all the day of the

1 incident as well as the following day. So at
2 least thirty-six hours.

3 Q. So you saw the victim leave his home
4 on the dirt bike?

5 A. Yes, ma'am.

6 Q. Then you saw him return, obviously?

7 A. Yes, ma'am.

8 Q. In that dark-colored car?

9 A. Yes, ma'am.

10 Q. And did anyone else, between the
11 time that the victim arrived home and the
12 time that the white Buick pulled in the
13 driveway, did anyone else appear to you in
14 this surveillance footage to come to the
15 victim's house?

16 A. In reviewing the video, ma'am,
17 there's no additional activity visible on
18 that camera.

19 Q. Okay. What, if anything, did you do
20 after reviewing that footage?

21 A. Obviously after a detailed time line
22 was established, I told Detective Marzolf
23 that -- there was a time line that I was
24 allowed to assist Detective Marzolf in
25 showing this footage to some of the family of

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Testimony of Eric Russell - Cross Examination

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1 then further meetings where you came together
2 to share what you'd found?

3 A. I can't recall if we did on this
4 case. I know that we did initially and
5 that's where I got my assignment.

6 Again, on the 30th I spent my entire day
7 reviewing the video.

8 As far as the 4th, that's the actual
9 meeting that I had with Detective Marzolf,
10 where I showed the video to the family with
11 the help of Detective Price (phonetic).

12 Q. Detective Russell, you went to
13 Williamston. When did you do that?

14 A. 2010, sir.

15 Q. Why did you leave?

16 A. I was a detective with the Anderson
17 County Sheriff's Office and I took a more
18 supervisory job with the Williamston police
19 department.

20 Q. When you came back from Williamston,
21 why did you leave Williamston?

22 A. I was a Captain and in the latest
23 mayor's election they had a new mayor who
24 replaced the main staff of the police
25 department.

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Testimony of Eric Russell - Direct Examination

1 the victim in regards to possibly identifying
2 this vehicle.

3 Through the course of that, I found a
4 relative that was able to recognize that
5 vehicle as being at a location that he had --
6 that he and Detective Patrick Henry went to
7 on March 30th and observed that location.

8 Q. During the course of your investiga-
9 tion, were you ever able to compare this
10 video footage with video footage or photo-
11 graphs from Investigator Henry?

12 A. Yes, ma'am. When I assisted in
13 showing that to the family, I learned that --
14 up to then, I didn't know that Detective
15 Henry had done that.

16 On April 5th, I was able to get stills
17 from the video taken and make comparisons,
18 and determined that it was the same vehicle.

19 Q. Okay. If you would step off the
20 stand for me, please, and tell me what you
21 see on the screen in Exhibit 14.

22 A. Yes, ma'am. This is the image of
23 the vehicle that arrived at the victim's
24 residence that night.

25 Q. Okay. And I'm showing you State's

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Testimony of Woodrow Curry- Direct Examination

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1 offense, from 2013?

2 A. Yeah, that sounds right.

3 Q. That sounds right?

4 A. (Affirmative nod).

5 Q. Okay. And you say that you're
6 still being held on trafficking charges in
7 Greenville?

8 A. Yes, ma'am.

9 Q. Is everything that you've told us
10 here today the same thing that you told the
11 detective who came to interview you or did
12 your story change a little bit?

13 A. It's the same.

14 Q. When you originally spoke to
15 detectives who did you say shot Steven
16 Cameron?

17 A. I didn't.

18 Q. You didn't?

19 A. (Negative gesture).

20 Q. So you're telling us today who shot
21 Steven Cameron?

22 A. Yes, ma'am. It just happened, I
23 didn't mean to shoot him. He was just coming
24 at me. I don't even remember pulling the
25 trigger, it just went -- (pause) -- I wish I

1 could turn back time, but I can't.

2 Q. Thank you, Mr. Curry. Please answer
3 any questions that Mr. Smith may have for
4 you.

5 A. Okay.

6 THE COURT: Cross-examination.

7 MR. SMITH: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. SMITH:

11 Q. How did Mr. Cameron die?

12 A. I shot him.

13 Q. "I shot him" with what?

14 A. A .22.

15 Q. You reckon it was it a .22?

16 A. Yeah, it was a .22 or a .25. I'm
17 not sure.

18 Q. Why don't you know which one it was?

19 A. It wasn't my gun. It looked like a
20 .22 caliber, it was a small caliber.

21 Q. So you don't know if that was your
22 .25?

23 A. It wasn't mine.

24 Q. It wasn't?

25 A. No, I don't have a gun.

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Testimony of Woodrow Curry- Direct Examination

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1 in the car to turn the headlights off?

2 A. No, ma'am.

3 Q. What did you and Jason Carver do
4 when you left Steven Cameron's house?

5 A. Went back to Milt's.

6 Q. Now, we talked about you being
7 incarcerated in Greenville County.

8 A. Yes, ma'am.

9 Q. What are you incarcerated for?

10 A. Trafficking.

11 Q. Anything else?

12 A. Naw.

13 Q. Were you recently being held on
14 other charges from Anderson County?

15 A. No, ma'am.

16 Q. For this case?

17 A. It was only like two weeks after
18 this happened that Greenville arrested me.

19 Q. Had you been charged with murder in
20 this case?

21 A. They come and told me, uh, I —
22 (affirmative nod). I turned myself in.

23 Q. So yes, you had been charged with
24 murder in this case?

25 A. (Affirmative nod).

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Testimony of Woodrow Curry- Direct Examination

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1 Q. So for a while?

2 A. Yes.

3 Q. All right. Were you with Jason
4 Carver and James Gambrell on the night that
5 I am asking you about?

6 A. (No verbal response) .

7 Q. The night that you are here to talk
8 about today?

9 A. Yes.

10 Q. You were?

11 A. Yes.

12 Q. Where were the three of you?

13 A. I was outside working on a car.
14 Milton Gambrell, he was inside. Jason, he
15 was at work and he'd just got off work and he
16 came over there.

17 Q. Who else was at the house that
18 night? Do you remember?

19 A. My wife, Milton's wife. My stepson,
20 he was there.

21 Q. What were y'all doing?

22 A. Well, at the time -- at the time I
23 was working on a car. I was working on a car
24 and I guess he was in there with them. Then
25 Milton came out there and told Jason to take

1 Steven home.

2 Q. Why did Milt get Jason Carver to
3 take Steven home?

4 A. Because Steven didn't have no way.
5 He'd brought a dirt bike over there, so --
6 (pause) .

7 Q. He's brought a dirt bike -- the
8 victim brought a dirt bike over to Mr.
9 Garnbrell's house?

10 A. Yes.

11 Q. And he sold it while he was there?

12 A. Yes.

13 Q. So he didn't have any way to get
14 home?

15 A. Right.

16 Q. Okay. And do you know in particular
17 why he asked Mr. Carver to take him home?

18 A. I don't know.

19 Q. You just know that he did?

20 A. Yeah. He did stuff like that when
21 he asked him to.

22 Q. Do you remember about what time that
23 they left?

24 A. No, ma'am. I'd say around 6:30 or
25 7:00.

State of South Carolina v Jason Franklin Carver

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Jury Trial of August 21-25, 2017

Testimony of Woodrow Curry- Direct Examination

1 Q. Why were y'all going to Sterling
2 Bridge Road?

3 A. To go retrieve -- Milton had told us
4 that Steven had stolen some drugs and that
5 since Carver knew where his house was for us
6 to go back over there and get either the dope
7 or the money.

8 Q. Can you repeat that one more time.
9 You said Carver knew where his house was.

10 A. Yes, ma'am.

11 Q. Was Carver, to your knowledge, the
12 only person who knew where Steve Cameron
13 lived?

14 A. Yes.

15 Q. Did you have a gun when you left
16 Appaloosa Drive?

17 A. Yes.

18 Q. Where did you get that gun?

19 A. Milton Gambrell.

20 Q. Did Jason Carver have a gun when you
21 left Appaloosa Drive?

22 A. Yes.

23 Q. Where did he get that gun?

24 A. It was his.

25 Q. Did you have more than one gun with

1 you?

2 A. Yes.

3 Q. How many guns did you have?

4 A. Two.

5 Q. Do you remember what kind of guns
6 they were?

7 A. A .38 and a .22 — .25, I mean.

8 Q. Who drove to Sterling Bridge Road
9 that night?

10 A. Uh, — Jason Carver.

11 Q. And you said that was because Jason
12 knew where Steven Cameron lived?

13 A. Yeah.

14 Q. What car did he drive?

15 A. The white Buick.

16 Q. Where did y'all get that car?

17 A. It was his, Milton's.

18 Q. And what happened next, what
19 happened after you left Appaloosa Drive?

20 A. We went over there and knocked on
21 the door. No one came to the door. The door
22 looked like it hadn't been closed. So we
23 just kinda of tapped a little harder and it
24 come open. I didn't know if Steven had
25 opened it or — but all of a sudden he come

State of South Carolina v Jason Franklin Carver

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Jury Trial of August 21-25, 2017

Testimony of Woodrow Curry- Cross Examination

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1 sometimes. He was pretty laid back.

2 Q. And the weapon that you said that
3 you had seen, was that the same weapon that
4 you allege that he had at this time?

5 A. I don't know that he owned one.

6 Q. The one with the sight on it, the
7 one that he allegedly brought out and showed
8 you previous to this incident, you still
9 don't know what that is?

10 A. No, sir.

11 Q. No doubt that the mini bike was sold
12 to Quay?

13 A. No, sir. Yes, sir.

14 Q. And in fact a bill of sale was
15 created?

16 A. Yes, sir.

17 Q. Green Grand Am, is that right?

18 A. Yes, sir.

19 MR. SMITH: I have nothing further,
20 Your Honor.

21 THE COURT: Redirect?

22 SOLICITOR MOORE: No redirect, Your
23 Honor.

24 THE COURT: May this witness be
25 excused?

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Testimony of Woodrow Curry- Direct Examination

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1 Q. Did he give you any drugs?

2 A. No, ma'am.

3 Q. What did he do?

4 A. He denied that he took it. I told
5 him, 'well, Milt says you definitely did.'

6 He said, 'Well, he ---

7 MR. SMITH: Objection as to hearsay.

8 THE COURT: Sustained.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR MOORE:

11 Q. That's okay, stop right here. I am
12 going to ask you another question. Okay?

13 A. (Affirmative nod).

14 Q. So you had a chat with Steven
15 Cameron. And after he did not give you any
16 money and he did not give you any drugs, what
17 did you do?

18 A. I don't know, I like turned and he
19 come at me, and I looked down, I didn't know
20 I had the gun but obviously I did -- I had
21 it, I mean. Then like, 'oh.' He charged at
22 me and -- I don't even remember pulling the
23 trigger but I heard Pop! Pop! So -- (pause).

24 Q. So you shot Steven Cameron?

25 A. Yeah, I guess.

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Jury Trial of August 21-25, 2017

Closing Argument by Solicitor for the State

1 is not titled to Woodrow Curry. It is titled
2 to James Milton Gambrell of 310-B Appaloosa
3 Drive, Greenville, South Carolina.

4 So what happened here is that Milton
5 Gambrell, a known drug dealer, Mr. Smith just
6 told you all about that, sent his two "do
7 boys" -- that is what Woodrow Curry called
8 himself and Carver on the stand -- they were
9 his "do boys." He sent them in a car that he
10 owned to collect on a drug debt. That is
11 working together for an illegal purpose.
12 That is the hand of one, hand of all.

13 Now, you also heard Detective Marzolf.
14 Mr. Smith asked Detective Marzolf what crime
15 they were going to commit. Detective Marzolf
16 said, 'Well, when you're taking someone from
17 one place to another and they don't want to
18 go with you, that's kidnaping.' 'When you
19 point a gun at someone and ask them to give
20 you money for drugs, that's armed robbery.'

21 As I've told you more than once, what
22 they were participating in was drug
23 distribution.

24 Jason Carver knew that. He knew why they
25 were going to this house. Mr. Smith told you

State of South Carolina v Jason Franklin Carver

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Jury Trial of August 21-25, 2017

Testimony of Eric Russell - Cross Examination

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1 entire version is Exhibit 10.

2 SOLICITOR MOORE: Yes, Judge. I cannot
3 guarantee that that flash drive will be able
4 to play for the jury. We have, as you know,
5 had some difficulty with that.

6 Like you said, I don't expect them to
7 want to play the entire twenty-four or forty-
8 eight hours, but if there is any ---

9 THE COURT: Well, we will let ---

10 MS. MOORE: Yes, Your Honor. We will
11 be able to pull from that flash drive as
12 needed but it would take several days,
13 possibly, to extract all the footage from
14 that flash drive onto several disks.

15 THE COURT: All right.

16 SOLICITOR MOORE: Mr. Smith, is this a
17 sufficient place for you to play from?

18 MR. SMITH: Certainly.

19 SOLICITOR MOORE: It is cued at 1343:20
20 and the part that you are asking to show
21 appears at 1344:10. I wanted to give you as
22 much leeway in front of that as possible.

23 MR. SMITH: Yes, ma'am, thank you so
24 much.

25 THE COURT: Are we ready?

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Testimony of Patrick Henry - Direct Examination

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1 gotten to a stage in the trial where I think
2 it's good to break for the afternoon. I want
3 to check with you and the jury to see if
4 there is any reason why you couldn't be here
5 and start the trial at 9:00 in the morning.
6 Is that a problem for anybody? If there is,
7 let me know. Would 9:30 be better? I saw
8 some hesitant faces, that's the only reason
9 that I am asking. Okay, so 9:00 o'clock is
10 fine?

11 FORELADY: Yes, sir, that's fine.

12 THE COURT: Okay. Thank you. If you
13 would, leave your note pads in the jury room.
14 We will see you at 9:00 o'clock in the
15 morning. I hope you all have a nice evening.

16 (JURY OUT @ 4:38 P.M.)

17 THE COURT: I want to know what
18 evidence that was delayed to August 9th, that
19 kind of delayed delivery that y'all gave to
20 the defense. This guy is on trial for murder
21 and if he gets found guilty, then he's
22 looking at life in prison.

23 SOLICITOR MOORE: I understand, Your
24 Honor.

25 THE COURT: So playing with evidence is

1 not satisfactory. I'm not saying that anyone
2 is playing with the evidence but I want to
3 know why after over a year it's just getting
4 to the defense. That's inexcusable and I
5 can't understand how, under any
6 circumstances, that could be. Now, I might
7 just be wrong -- and it wouldn't be the first
8 time. But I want an explanation and I want
9 to know what else could be missing. We're
10 not going through this trial, jerking and
11 stopping here and there, because the State,
12 either through its officers or through your
13 office did not bother to give discovery.
14 Okay? So I want to know why.

15 SOLICITOR MOORE: Your Honor, I can
16 assure you that we gave Mr. Smith ---

17 THE COURT: I want to know why -- I
18 don't care what you did. I want to know why
19 it just got sent out August 9th of this year.

20 SOLICITOR MOORE: Because I'd just
21 received it, Your Honor.

22 THE COURT: From whom?

23 SOLICITOR MOORE: From Detective Henry.

24 THE COURT: Who is Detective Henry?

25 SOLICITOR MOORE: He is the man who was

1 just testifying.

2 THE COURT: Why, sir, was it not until
3 the 9th of August of this year that you didn't
4 give this information up?

5 OFFICER HENRY: What information?

6 THE COURT: Why did you wait until this
7 year, over a year, to give this information
8 to the Solicitor's Office?

9 OFFICER HENRY: I thought that I had
10 given it to a supervisor at an earlier point
11 in time.

12 THE COURT: You thought that you had?

13 OFFICER HENRY: Yes, sir.

14 THE COURT: So it was a case of honest
15 mistake?

16 OFFICER HENRY: Yes, sir. Seriously,
17 yes, sir.

18 THE COURT: If it is a case of honest
19 mistake, I can understand. But if it's a
20 case of a recurring pattern -- and the reason
21 why I say that is because this is the second
22 time that I've heard it in this case, in two
23 days. Not from you. Okay.

24 Is there other evidence that was not
25 delivered until late in the game? If so,

1 why?

2 SOLICITOR MOORE: Your Honor, if you
3 will allow me to go through my discovery with
4 Mr. Smith and look at my exhibit list, I can
5 tell you exactly ---

6 THE COURT: I'll be right back. I want
7 to get this cleared up.

8 SOLICITOR MOORE: Yes, sir.

9 THE COURT: Officer, if it is an honest
10 mistake, it's okay. I'll be right back.
11 Don't anybody leave until I get back.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Please be seated. Miss
15 Moore, have y'all identified any evidence out
16 there that is late or recently received that
17 was given to the defendant in this matter?

18 SOLICITOR MOORE: Your Honor, we ---

19 THE COURT: First, let me -- I'm giving
20 them a hard time. You received it on the 9th,
21 it is now the 22nd and you told me that you
22 haven't listened to it. That's unacceptable
23 as well. You have an obligation. So that
24 cuts both ways. Go ahead.

25 SOLICITOR MOORE: Your Honor, in terms

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Testimony of Patrick Henry - Direct Examination

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1 SOLICITOR MOORE: Yes, Your Honor.

2 THE COURT: And what was the date that
3 this event took place?

4 SOLICITOR MOORE: I believe that he said
5 that he drove to that car March 30th of 2016.

6 THE COURT: Why is there such a delay
7 in getting that information?

8 SOLICITOR MOORE: Your Honor, I can only
9 provide to Mr. Smith what I have for myself.

10 THE COURT: That is not an excuse.

11 SOLICITOR MOORE: I understand ---

12 THE COURT: That is not acceptable.

13 SOLICITOR MOORE: I understand, Judge.

14 THE COURT: Then there is going to be
15 some consequences for the delay in getting
16 this information to him. The information is
17 going to be suppressed. There's going to be
18 some problems with it, I'm telling you.

19 SOLICITOR MOORE: I understand, Judge.

20 THE COURT: Have you listened to this
21 tape yet?

22 MR. SMITH: I have not.

23 THE COURT: Bring the jury in, please.

24 (JURY IN @ 4:36 P.M.)

25 THE COURT: Madam Forelady, we've

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Jury Trial of August 21-25, 2017

Testimony of Danny Barton - Cross Examination

1 concerned that they left the scene at 900
2 Hours and did not call law enforcement until
3 1345."

4 Q. Speak up, please.

5 A. (Reading): "Erica said that she
6 was concerned that they left the scene at
7 0900 but they didn't call law enforcement
8 until 1345."

9 Q. Could you read that next sentence?

10 A. (Reading): "Erica told me that
11 Christopher did not go to the decedent's
12 funeral and stated that that weekend
13 Christopher was pulled over by law
14 enforcement. She stated that the police
15 (inaudible reading) -- Ericka said
16 Christopher ran from the scene because he was
17 going to get some marijuana."

18 Q. With regard to this particular
19 paragraph, is it your understanding that two
20 people were on the porch at 900, or four
21 hours and forty-five minutes prior to the
22 police arrival?

23 A. I got information from Erica Cameron
24 that said that but in viewing the video
25 footage, no.

State of South Carolina v Jason Franklin Carver

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)my Trial of August 21-25, 2017

Testimony of Danny Barton - Cross Examination

1 Q. Did Mr. Gambrell say that?

2 A. No, sir.

3 Q. Mr. Carver did not have a gun, did
4 he?

5 A. There were two guns and two ---

6 Q. Mr. Carver did not have a gun, did
7 he?

8 A. They had guns. They were given a
9 .38 by Mr. Gambrell and Mr. Curry carried a
10 .25 automatic with him.

11 Q. Where was the .25 carried?

12 A. In a fanny pack, is my understand-
13 ing.

14 Q. Who knew about the .25?

15 A. Mr. Curry knew about it and I know
16 that his wife knew about it, she told me
17 about it as well.

18 Q. So neither of those people are Mr.
19 Gambrell or Mr. Carver, right?

20 A. No.

21 Q. Was it a .380 or a .38?

22 A. It was a .38 revolver, sir.

23 Q. A .38 revolver.

24 A. (Affirmative nod) .

25 Q. That was Mr. Gambrell's gun?

State of South Carolina v Jason Franklin Carver
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Testimony of Danny Barton - Cross Examination

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1 A. Yes, sir.

2 Q. Mr. Gambrell told you he — that the
3 gun was taken and that he told him to put it
4 down, right?

5 A. Uh — (no verbal response).

6 Q. 'You don't need a gun.'

7 A. That is what Mr. Gambrell says.

8 Q. When Mr. Gambrell took that gun, Mr.
9 Carver had not returned from Mr. Cameron's
10 yet; had he?

11 A. Mr. Gambrell didn't take the gun,
12 sir. Mr. Curry received the gun from Mr.
13 Gambrell or took it from him.

14 Q. Mr. Curry took it from Mr. Gambrell?

15 A. (No verbal response).

16 Q. When he did that, Mr. Carver was not
17 there. He was at Mr. Cameron's house?

18 A. I am not sure about that.

19 Q. Well, you just talked about how long
20 a trip it is, presumably both ways.

21 A. Yes, sir.

22 Q. There was just enough time for Mr.
23 Carver to get up there and get back,
24 according to your own calculation. Right?

25 A. Ten to fifteen minutes. It could be

State of South Carolina v Jason Franklin Carver

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]my Trial of August 21-25, 2017

Testimony of Danny Barton - Cross Examination

1 taken?

2 A. Yes, sir.

3 Q. You also learned that the .38 nor
4 any other guns were provided to Jason Carver;
5 right?

6 A. The gun was provided to Curry and
7 Carver when they were leaving, so I don't
8 know.

9 Q. Which gun was provided to Mr. Curry?

10 A. The .38.

11 Q. Which gun was provided to Mr.
12 Carver?

13 A. There were no other weapons
14 provided.

15 Q. And Mr. Gambrell told you that it
16 was not provided to him, meaning Mr. Curry
17 (sic); right?

18 A. He said that Mr. Curry took the
19 weapon.

20 Q. But there is no doubt that Mr.
21 Carver did not have a gun?

22 A. There were two guns in the car and
23 two suspects. I don't know if Mr. Curry had
24 a gun in his hand in the car and may have
25 handed it to Mr. Carver or — I don't know

State of South Carolina v Jason Franklin Carver

Case No. 16-GS-04-2279

Jury Trial of August 21-25, 2017

Testimony of Danny Barton - Cross Examination

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1 any of what transpired inside that vehicle
2 on the way to that house.

3 Q. So you're assuming that he did?

4 A. No, sir. I am just saying that
5 there were two guns and there were two guys
6 in the car.

7 Q. But nobody knows that that .25 —
8 there is no evidence, no one to say that
9 anyone knew about the .25 other than Curry?

10 A. There is nothing to say that he
11 didn't. I just don't know.

12 Q. Mr. Curry told you that he left the
13 gun in the car; right?

14 A. Yes.

15 Q. So we are here today and you're
16 saying that Mr. Carver did what?

17 SOLICITOR MOORE: Uh, ---

18 THE COURT: Sustained.

19 SOLICITOR MOORE: Thank you, Judge.

20 CROSS EXAMINATION CONTINUED

21 BY MR. SMITH:

22 Q. Mr. Carver is charged with murder,
23 right?

24 A. Yes, sir.

25 Q. And that is based on what?

State of South Carolina v Jason Franklin Carver

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Jury Trial of August 21-25, 2017

Testimony of Danny Barton - Cross Examination

1 A. Yes, sir.

2 Q. Now, is it your understanding that
3 Mr. Carver was a witness to Mr. Curry
4 shooting Mr. Cameron?

5 A. Yes, sir.

6 Q. Mr. Gambrell was aware of the
7 pistol, the .38 being picked up?

8 SOLICITOR MOORE: Objection, Your Honor.

9 THE COURT: Sustained.

10 SOLICITOR MOORE: Thank you.

11 CROSS EXAMINATION CONTINUED

12 BY MR. SMITH:

13 Q. That weapon was not utilized in this
14 event to our knowledge?

15 SOLICITOR MOORE: Objection, Your Honor.

16 THE COURT: Asked and answered. Move
17 forward, please.

18 CROSS EXAMINATION CONTINUED

19 BY MR. SMITH:

20 Q. The reports that you created were
21 based on your interviews; right?

22 A. Yes, sir, — well, my interviews and
23 reports from other investigators and
24 witnesses throughout the course of the case.

25 Q. Do you believe that your reports

State of South Carolina v Jason Franklin Carver

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jury Trial of August 21-25, 2017

Testimony of Milton Gambrell - Incamera Examination

1 THE COURT: So what about the statement
2 besides impeaching what Ms. Curry said, that
3 her husband didn't threaten her or didn't do
4 these things — what does it do to show that
5 this guy is innocent?

6 MR. SMITH: It shows that what they've
7 provided, his statements and things in
8 evidence supports what he said from a non-
9 criminal standpoint. There was no criminal
10 thought in this matter. That's what he says.

11 THE COURT: Well, I'll look at it.
12 Quite frankly, I think you're just wrong. I
13 think that if your client went to go pick up
14 money or drugs, that's a criminal act in and
15 of itself. If you don't think so, then we
16 have a disagreement about that.

17 MR. SMITH: Yes, sir.

18 THE COURT: Okay. Let's go ahead and
19 view that. What were you going to say?

20 SOLICITOR MOORE: Your Honor, I was just
21 going to say that if it might take time,
22 Detective Marzolf can give a summary of his
23 interview with James Gambrell.

24 THE COURT: He wants to see it live,
25 and I'll be glad for you to pass it up but I

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Jury Trial of August 21-25, 2017

Testimony of Defendant Jason Carver - Redirect Examination

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1 being the hand of all, statements given by
2 police are not what we just witnessed. Not
3 having an ability to place that before the
4 jury when a man's life is at stake is
5 prejudicial.

6 THE COURT: Well, let me think about
7 that on the hand of one, hand of all. But
8 here is my thoughts on that. First, I don't
9 think that it exculpates your client, the
10 reason being -- I think that they had a
11 criminal enterprises regardless of the
12 shooting; that is, 'go get him', go get this
13 man, go get the drugs or go get the money like
14 he said and the other officers testified to.
15 If the jury finds that to be the case, that's
16 a illegal plan or scheme in that they have --
17 the cases are replete with the nexus between
18 drugs and guns, also drugs and violence.

19 So if you look at the charge of hand of
20 one, hand of all, it says that "if two people
21 join with another to commit an unlawful act
22 then they are responsible for everything done
23 by the other person which happens as a
24 probable or natural consequence of the act(s)
25 in carrying out the common plan or purpose."

EXHIBIT 2
EXCERPTS OF TRANSCRIPT
OF WOODROW CURRY'S
PLEA BARGAINING HEARING
08/22/2017

STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2017-GS-04-01648
Woodrow Walter Curry.	)	
	)	
Defendants	)	

ORIGINAL TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 22, 2017, before The Honorable R. Lawton McIntosh, in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Chelsey Lauren Moore, Esq.,
Appearing for The State.

Elizabeth Jennings Byford, Esq.,
Appearing for The Defendant.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

State of South Carolina v. Woodrow Walter Curry
Case No. 2017-GS-04-01648
Hearing of August 22, 2017
Before The Honorable R Lawton McIntosh

3

P R O C E E D I N G S

1:23 P.M.

MS. MOORE: Good afternoon, Judge. I think we do have one guilty plea.

THE COURT: One guilty plea?

MS. MOORE: Yes, Your Honor.

THE COURT: Okay.

MS. MOORE: Woodrow Curry.

(DEFENDANT AND HIS ATTORNEY FORWARD.)

MS. MOORE: May it please The Court.

THE COURT: Yes, ma'am.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(WHEREUPON, WOODROW WALTER CURRY WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

THE COURT: All right, you are Woodrow Walter Curry?

MR. CURRY: (Inaudible.)

THE COURT: Mr. Curry, I need you to speak up louder, okay sir?

MR. CURRY: Yes, sir.

State of South Carolina v. Woodrow Walter Cuny
Case No. 2017-GS-04-01648
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Before The Honorable R Lawton McIntosh

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1 MR. CURRY: Yes, sir.

2 THE COURT: And what they are -- The State is
3 telling me is that they intend to defer your
4 sentencing until after the trial of Mr. Carver,
5 who we just picked a jury on; is that correct?
6 You understand that?

7 MR. CURRY: (Nod.)

8 THE COURT: If you would give me verbal
9 responses so we can have it for the record, okay?

10 MR. CURRY: Yes, sir.

11 THE COURT: But you do understand that you
12 could get up to thirty (30) years in prison?
13 That's the point I'm trying to make.

14 MR. CURRY: Yes, sir.

15 THE COURT: Knowing that do you still want to
16 go forward with your plea?

17 MR. CURRY: Yes, sir.

18 THE COURT: Are you under the influence of
19 any medications, drugs, or alcohol today?

20 MR. CURRY: No, sir.

21 THE COURT: Counsel, are you satisfied that
22 Mr. Curry's competent to plea?

23 MS. BYFORD: I am, Your Honor.

24 THE COURT: Now, Mr. Curry, do you understand
25 that you have a right to a jury trial on this

EXHIBIT 3

**EXCERPTS OF TRIAL TRANSCRIPT
FOR STATE VS. JAMES GAMBRELL
2016-GS-04-02312 & GS-04-02234**

09/05/2018

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina,)
5)
6 -vs-) 2016-GS-04-02312
7 James Milton Gambrell,) 2016-GS-04-02234
8 Defendant.) September 5, 2018
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

The Honorable R. Scott Sprouse, Judge;
and a jury.

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

Chelsey L. Moore, Esquire
Michael Scott McElhannon, Esquire
Assistant Solicitors
Tenth Judicial Circuit
Attorneys for the State

Robert Newton, Jr., Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, -CRR, CRC
Circuit Court Reporter

1 A I didn't know Mr. Cameron. I believe that there
2 was some domestic violence and things like that in the
3 home, but I don't know personally.

4 Q All right. Also in the video, first of all, of
5 course, you know and the jury knows you're under oath
6 and you're sworn to tell the truth and you're telling
7 the truth now.

8 A Yes, sir.

9 Q But when you're giving the interview, isn't it
10 true that you, police officers, are not bound to tell
11 the truth. I mean, you're free to lie. I'm not saying
12 there's anything wrong with that, but when you're
13 interviewing a subject, you're free to tell him all
14 kinds of lies to get him to give a confession; isn't
15 that true?

16 A I don't have to be truthful with a suspect, that's
17 true.

18 Q And that's perfectly legal?

19 A Yes, sir.

20 Q So when you mentioned that on the first video that
21 a neighbor had heard the argument and heard what went
22 on down that night, that just was not true, correct?

23 A Actually, that was true. We had -- during the
24 neighborhood canvass, it's my understanding that one of
25 the detectives talked with a neighbor who overheard an

1 argument and the words "dirt bike" were mentioned
2 during the argument.-

3 Q Did they hear gunshots?

4 A No one -- I don't recall. I don't recall if
5 somebody heard gunshots or not. I know that they
6 talked to several people in the neighborhood.

7 Q Did this person call the police?

8 A No, sir.

9 Q Do you know this person's name?

10 A Not off the top of my head, sir. I could probably
11 find it in my file.

12 Q Isn't it possible they were referring to some
13 other argument at some other time involving other
14 people?

15 A All I know is what, you know, what the detective
16 that was told to canvass told me, which was that, you
17 know, somebody had overheard an argument involving the
18 words "dirt bike."

19 Q But no gunshots?

20 A I don't recall if they had heard gunshots or not,
21 sir. I don't want to tell you the wrong thing.

22 Q All right. You mentioned when -- oh, did you
23 interview Woodrow Curry, the shooter, when you were
24 still investigating this case?

25 A Yes. He was interviewed by Detective Mitchell

1 very briefly at Greenville County when he was first
2 arrested, and then later on, I did interview him.

3 Q And where was that interview at?

4 A That was at the Greenville County sheriff's
5 office.

6 Q Greenville County. Was he under arrest at that
7 time for something else?

8 A Yes, sir, he was.

9 Q What was he under arrest for?

10 A Drug possession.

11 Q Possession? It wasn't a trafficking?

12 A It was some type of drug offense.

13 Q But he was being held there because he couldn't
14 make bond at that time?

15 A Yes, sir.

16 Q Now, did Mr. Curry, the shooter, admit to you what
17 had happened, or did he deny all knowledge of what had
18 happened?

19 A He gave me a version of what had happened in which
20 he said that they did go to the house and that Jason
21 Carver was the shooter that night.

22 Q But didn't Mr. Curry later change his mind and
23 admit that, in fact, he was the shooter?

24 A Yes, sir, he did.

25 Q But at the time he was lying about that to you,

1 correct?

2 A Yes, sir.

3 Q Do you know when he changed his mind about that,
4 decided to admit he was the shooter?

5 A Sometime after he had been charged.

6 Q Charged by you?

7 A Yes, sir.

8 Q With these crimes?

9 And to your knowledge, was that part of a plea
10 agreement with him?

11 A I don't know what the actual -- I know he's agreed
12 to testify.

13 Q As a matter of fact, he's here today, isn't he,
14 ready to testify?

15 A I believe so.

16 MR. NEWTON: May I beg the court's indulgence for
17 a moment.

18 Q Now, I don't mean to, certainly not insulting my
19 client, but he's sometimes hard to understand on the
20 video, what he's saying?

21 A Yes, sir, he is.

22 Q But just to be clear, he denied giving either of
23 those two people a gun, right? Isn't what he told you
24 is that the person doing the shooting took the gun out
25 of his house?

1 mean -- I don't know why I get them confused. Carver
2 there, he was shortly there behind me there, jumped in
3 the car and we left.

4 Q So you and Carver drove away?

5 A Yes, ma'am.

6 Q Where did you go?

7 A Back to -- back to Mr. Gambrell's, Appaloosa
8 Drive.

9 Q Okay. Did you do anything on the way to
10 Mr. Gambrell's house?

11 A Yes, ma'am. I called him there and told him
12 that he better be sure that Steven got that dope. I
13 mean, I just shot him.

14 Q You called Milt and told him that?

15 A Yes, ma'am.

16 Q And what happened when you got back to Appaloosa
17 Drive?

18 A When -- Carver went in before me there, but we
19 went in there and trying to give Milt there the guns
20 there. And, I mean, Carver had a -- there, and I
21 turned around and left there. I told him I was going
22 home; I was done for the night.

23 Q Okay. What did you do with the gun when you got
24 back to Mr. Gambrell's house?

25 A I gave them back to Mr. Gambrell.

1 Q Okay. And were you with James Gambrell on the
2 night of March 28, 2016?

3 A Yes, ma'am.

4 Q Where were you?

5 A Appaloosa Drive, out there working on a car.

6 Q Okay. Who else was there?

7 A At the time there is just me -- me, him, his wife,
8 my wife, my stepson. Jason come over after he got off
9 work, Jason Carver.

10 Q Okay. And when you say "me and him," you mean you
11 and James Gambrell?

12 A Yes, ma'am.

13 Q Okay. So you and Mr. Gambrell and Jason Carver
14 were all at Appaloosa Drive that night?

15 A Yes, ma'am.

16 Q What were y'all doing?

17 A Well, I mean, like I say, I was out there
18 working -- to begin with, I was out there working on a
19 car. Carver wasn't even there yet. I was working on a
20 car there, and they was in the house. Steven had come
21 over with a dirt bike, and he was in the house.

22 And then later on, when Carver got off work, he
23 come over there like he normally did. He went in the
24 house and come back out, him and Steven there, and he
25 took Steven home.

1 Q That's right. Because nobody had instructed you
2 about that, correct?

3 A That's right. I wasn't instructed. Nobody told
4 me to. I've done said over and over this was never
5 planned. I never planned to shoot Steven Cameron let
6 alone kill him. This is something I'm living with.
7 Nobody told me to do that. I didn't want to do that.

8 Q Why did you do it?

9 A Because for some reason or another I had done
10 pulled the gun, I guess to intimidate him or whatever,
11 and he charged at me. "What are you going to do, shoot
12 me?" And he charged at me. I don't know what to do.
13 What's he going to do, take the gun and shoot me or
14 what? I don't know. I mean, that's just --

15 Q Why did you feel the need to try to intimidate
16 him?

17 A He's bigger than I am.

18 Q He's bigger than you are?

19 A A lot bigger than I was.

20 Q But you just said you were just going to have a
21 conversation with him. Why should him being bigger
22 than you make a difference if you're just going to have
23 a conversation?

24 A Man, like I said, I was high. I was 150 pounds.
25 I was all drawed up myself, you know I mean.

1 Q You didn't ever share anything?

2 A Steven bought his own. He had his money there.
3 He had his own. He smoked big-time.

4 Q Okay. So you hung out with him and got high with
5 him, didn't you?

6 A He hung out over there, yes, sir, and we got high.

7 Q So you did know him?

8 A Uh-huh. About five times, yes, sir.

9 Q Do you have a cell phone or did you have a cell
10 phone at the time?

11 A Yes, sir.

12 Q You did?

13 A Yes, sir.

14 Q Why did you testify in your first trial that you
15 went back to Milt's house and that's when you told him
16 about the shooting when you're testifying in this trial
17 that you called him on the way on your cell phone?
18 Which is the truth?

19 A I called him on the cell phone.

20 Q Why is this the first time you're saying this?

21 A First time I recall being asked.

22 Q Weren't you asked in the first trial? And,
23 specifically, I'm talking about your codefendant's
24 trial, the other person who was with you, Jason
25 Carver's trial.

1 A That's 11 months ago, sir. It's hard for me to
2 remember that far back. But, I mean, I told him on the
3 way, you know. When I got there, he smelled the gun.
4 I mean...

5 Q You're saying you can't remember the truth because
6 it was 11 months ago when you testified in the other
7 trial?

8 A No, sir. That's not what I'm saying.

9 Q What are you saying?

10 A I'm saying there is -- you have me twisted up here
11 and I may be misunderstood. You know what I'm saying?

12 Q The question is simple, sir --

13 A I make a mistake.

14 Q Your first trial when you testified that --

15 A 11 months ago, yes, sir.

16 Yes, sir.

17 Q Okay. So the first trial, you testified that
18 after the shooting, you drove back to Milt's house,
19 Mr. Gambrell's, and then you told him inside of his
20 house --

21 A Uh-huh.

22 Q -- that you shot the guy.

23 A I don't recall that, but if you say I did, I did.

24 Q Do you recall what you told him as to why you shot
25 the poor man, why you shot Mr. Cameron?

1 A He didn't ask.

2 Q Didn't you say something like, "Well, things just
3 went crazy and I shot him"?

4 A No. Like I say, he didn't ask. I told him on the
5 way back over there that he better have been sure that
6 that guy took his dope there because I shot him.

7 Q You said the way back over there?

8 A On the way back over there, I called him. He
9 answered the phone. I said, "You better be sure that
10 the man took your dope, Steven took your dope, because
11 I just shot him."

12 Q Did you tell any of the detectives this, that you
13 called him on the way back over there on your cell
14 phone?

15 A Sir, I was under the influence. I don't recall
16 speaking there to y'all, to detectives. Are you
17 talking about when I was first arrested?

18 Q No, sir. When you were interviewed by the police,
19 when you're sitting in Greenville County jail.

20 A Like I said, when I was first arrested 31 months
21 ago, I was still under the influence of
22 methamphetamines at that time. I went through their
23 drug and alcohol treatment program in Greenville County
24 Detention Center.

25 Q So you're telling this jury --

1 A The first time I spoke to a detective, I did not
2 tell them nothing. I can tell you that much. The
3 second time I spoke to them, I don't -- I don't recall
4 what I told them. I mean, I was still, you know, as
5 they told me in drug class, I was still high.

6 Q My question to you, sir, is: Why are we hearing
7 this story that you called Mr. Gambrell on your cell
8 phone after the shooting before you got back to the
9 house? Why are we hearing this the first time today?

10 A It's the first time it's been asked.

11 Q The detectives never asked you the details of what
12 happened?

13 A Not that I recall.

14 Q The lawyers in the first trial didn't ask you what
15 happened?

16 A They never asked me whether I called Mr. Gambrell.

17 Q Sir, what kind of gun did you use to kill
18 Mr. Cameron with?

19 A A .22 or a .25, I think. It was small caliber.

20 Q What did you do with it afterwards?

21 A I gave it back to Mr. Gambrell.

22 Q Are you sure about that?

23 A Yes, sir.

24 Q You didn't keep it?

25 A No, sir. What would I want to keep it for?

1 A Yes, sir. It happened almost 31 months ago.

2 Q Okay. Well, if your memory was so messed up, why
3 should this jury believe anything you have to say today
4 about what happened over two years ago?

5 A I'm just telling the truth as I remember it.

6 Q Is your memory good enough to remember what
7 happened or not?

8 A I think it is. I have to live with this here all
9 the time. I live that night over a lot.

10 Q Okay.

11 A I wake up with it. I have flashbacks from it.

12 Q What do you remember? I mean, you said he charged
13 you.

14 A Yes, sir.

15 Q How far away was he standing from you when he
16 charged you?

17 A Probably from here to the corner of where she's
18 sitting at, that corner. He was at the front door; I
19 was at the steps. We were about that far apart.

20 Q Why did he charge you?

21 A I guess, I mean, I don't know. I'm sure he was
22 high, too, but I guess he did feel intimidated, you
23 know. Like I said, he said, "What are you going to do,
24 shoot me?" And he charged at me. I didn't think
25 about -- I didn't think about it there. I just -- I

1 And so, ladies and gentlemen, I submit to you that
2 a murder was committed, that Woodrow Curry committed
3 the murder of Steven Cameron. And so, ladies and
4 gentlemen, we have proven, I submit to you, the State
5 has proven beyond a reasonable doubt each of those
6 elements: That James Gambrell urged, advised, or in
7 some way aided Woodrow Curry to commit an armed
8 robbery, to commit a drug distribution, or to commit a
9 kidnapping, that James Gambrell was not present when
10 the crime was committed, and that one of James
11 Gambrell's codefendants, Woodrow Curry, actually killed
12 Steven Cameron with malice aforethought.

13 Now, the question remains is how do you get from
14 James Gambrell advising, urging, or in some way aiding
15 them to commit an armed robbery to finding him guilty
16 of accessory before the fact to murder? He very
17 expressly said in his statement he's not a murderer.
18 So how do you get there?

19 In order for James Milton Gambrell to be found
20 guilty of accessory before the fact to murder, he must
21 have the same criminal intent as Woodrow Curry. They
22 must have intended the same thing before the murder was
23 committed. They must have intended for Woodrow Curry
24 to take the money, to take the drugs, or to bring
25 Steven Cameron back to James Gambrell. But James

1 This is the evidence that we know: Woodrow Curry
2 was high. Woodrow Curry was armed. James Gambrell 11
3 knew that Woodrow Curry was armed. And whether you
4 Gambrell is also liable for any criminal act which, in
5 the ordinary course of things, was the natural or
6 probable consequence of the crime that he advised or
7 commanded. So was the murder of Steven Cameron a
8 natural and foreseeable consequence of James Gambrell's
9 order? I submit to you that it was.

10 This is the evidence that we know: Woodrow Curry
11 was high. Woodrow Curry was armed. James Gambrell
12 knew that Woodrow Curry was armed. And whether you
13 believe Woodrow Curry or whether you believe James
14 Gambrell, he knew it one way or the other. According
15 to James Gambrell, he said, "I told him to leave the
16 gun, but, you know, he didn't listen to me." Woodrow
17 Curry says, "No, he gave me that gun."

18 But it doesn't matter. In this instance, it
19 doesn't matter because James Gambrell knew that Woodrow
20 Curry was high and he knew that he was armed and he
21 sent him there to get the drugs or the money or bring
22 Steven Cameron back to him.

23 This was a drug transaction. And accidents happen
24 in the drug trade. I submit to you that this was not
25 only a foreseeable consequence, it was the most likely
26 outcome. What would Mr. Gambrell have expected? He
27 talks on his interview about how Steven Cameron was
28 crying. \$750 of cocaine he did every day. So he said,

1 Q Didn't you have this gun before that, sir, the .25
2 caliber?

3 A No, sir.

4 Q Did you go over there with the intent to kill
5 Mr. Cameron?

6 A No, sir.

7 Q Did anybody tell you to go kill him?

8 A No, sir.

9 Q Did anybody tell you to go beat him up?

10 A No, sir.

11 Q Did anybody tell you to go threaten that you were
12 going to beat him up?

13 A No, sir. I was just told to go get the dope or
14 get paid for it.

15 Q What does that mean --

16 A I never intended to --

17 Q What does that mean, you were told to steal the
18 dope from him?

19 A No. I was just told to go and retrieve it. He
20 stole the dope.

21 Q What if he refused? What if he said, "I'm not
22 going to give it to you?" What were you going to do
23 then?

24 A Well, this is where this here seemed to blow out
25 there. I mean, I didn't have intentions to do nothing.

1 didn't even think of it; it escalated too fast.

2 Q Escalated on whose part, sir?

3 A Sir, like I said, he came out all aggressive
4 there. I mean, I don't know. I ain't thinking there
5 about clearly, you know, to call him. You know, I wish
6 a million times that everybody had suggested it. I
7 wouldn't be sitting here today and I wouldn't be in
8 these chains and I wouldn't be going to prison.

9 Q Just to be clear, did Mr. Gambrell give you orders
10 to go take by force drugs or money from this guy?

11 A At the time, no, sir.

12 Q Just want to be sure. It's an important point.
13 Your testimony under oath is you were given no such
14 instructions by Mr. Gambrell?

15 A I was just given the instructions to go get it
16 back. That's all.

17 Q Well, isn't it true that what Mr. Gambrell wanted
18 you to do was to relay the message that he knew
19 Mr. Cameron had the drugs and that he should either pay
20 for them or give the drugs back, correct?

21 A I don't know what he was thinking.

22 Q All right. But you are positive he did not tell
23 you to go intimidate Mr. Cameron?

24 A Right.

25 Q He did not tell you to threaten Mr. Cameron in any

1 way?

2 A No, sir.

3 Q That's just something that happened for whatever
4 reason on that porch, according to you.

5 Mr. Gambrell was upset, isn't it true, when he
6 found out you had killed Mr. Cameron; isn't that true?

7 A I don't know. He was still getting high.

8 Q I'm sorry?

9 A He was still drinking, still getting high.

10 Q He was drunk at the time?

11 A He was drinking. He drank beer but he don't get
12 drunk. I ain't very seldom seen him drunk. He drinks
13 all day and not get drunk.

14 Q Well, sir, you just testified he didn't want you
15 to do all that stuff. What did he do, pat you on the
16 back and say "good job" when you got back to his house?

17 A Sir, I just said he didn't tell me to go over
18 there and do that.

19 Q Okay. You had no instructions from anybody to go
20 do it; it was just something that happened between you
21 and Mr. Cameron?

22 A Right.

23 MR. NEWTON: No further questions.

24 THE COURT: Anything further from this witness?

25 MS. MOORE: Nothing further, Your Honor.

1 A Yes, sir.

2 Q He also emphasized to you that all he wanted was
3 for them to let Mr. Cameron know that he had the drugs,
4 they knew it, and to pay for it, right? Wasn't that
5 his story?

6 A Yes, sir.

7 Q Okay. You -- also on that video, at one point I
8 believe I heard you say that Mr. Cameron -- dope was
9 found on Mr. Cameron after he was killed?

10 A Yes, sir. During the autopsy, they did find some
11 drugs.

12 Q Okay. Did you mean in his system?

13 A No, sir. I mean they found actual drugs on his
14 person.

15 Q Do you know how much?

16 A I think in his tennis shoes, I believe. I don't
17 know the exact quantity, sir.

18 Q Okay. So obviously --

19 A It was significant, but I don't know exactly what
20 it was.

21 Q Couldn't have put it there after he was killed, so
22 it was there in his shoes before he was killed,
23 obviously. You don't know how much?

24 A I don't know exactly, sir.

25 Q Okay. Did anybody -- were his shoes still on when

EXHIBIT 4
SUPPLEMENTARY REPORT OF
DETECTIVE KREIG MARZOLF
04/13/2016

EXHIBIT 4A

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

NCC

2,0,1,6,-,0,5,3,2,4,

INC.	ENTD.
N	N

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL

☒ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 43 OF 43 PAGES

1900-1930 left mother's house to meet Steven's mother at 108 Sterling Bridge

1930-1940 dropped off her son and her niece at her sister Christina's house

1945 arrived at 108 Sterling Bridge, Steven was not at home. Her mother and Steven's mother were with her.

Took the TVs and Xboxes to keep Steven from pawning them.

2023 sent a text to her sister, and left to go back to her sister's house to pick up the kids with her mom

2030-2035 arrived at Christina's house

2045-2100 left Christina's house with her mother, her son, and her niece (Marissa Moore)

2105-2110 stopped at the Spinx station across from Greenville Memorial Hospital near the CVS. Marissa went

inside to pay for the gas and buy a Gatorade

2115 left the Spinx

2145 they arrived at her mother's residence in Fountain Inn where they all stayed for the rest of the night

Tuesday

0730-0735 left her mother's house for work

0750-0755 arrived at work, clocked in and stayed there until she received the call about Steven's death around

1400

See video for further information.

On 3/30/16, I conducted a video recorded interview with Erica Marie Cameron, Steven Cameron's sister. She told me that her mother Patricia White and her brother Steven Cameron used to live out at Heritage Trace, and while they were living there Steven was kidnapped over a drug debt. Erica advised me that after Steven got his settlement sometime around December 2015 she heard from her brother Christopher Cameron that Steven's neighbors were "feeding him drugs". She called and talked to Regina when she heard about that, and she stated that the neighbor's name was Andre. Erica said that about three months prior to this incident, she threw her mother Patricia out of her house for pawning Erica's property and using drugs. Erica also told me that there was a history of domestic violence between Regina and Steven, and she said that Steven has been violent in the past. She also advised me that her brother Christopher Cameron has "had some rage issues". Erica stated that Christopher got Steven back on drugs after Steven completed rehab. She said that Steven had given their brother Daniel marijuana to sell at school, and Daniel "got busted". Erica also claimed that Patricia Palm who is the person who found Steven dead originally found him at 10am but waited to report it. She said that Palm's sons, Timothy and Jonathan use meth. Erica said that there was a woman named "Dee" who is one of Steven's neighbors, and Dee's son, who is a blonde heavyset white male, saw the whole incident. Erica said that Dee's son won't talk about the incident because he was outside smoking marijuana when he witnessed it. Erica said that Ryan Banks, Steven's daughter Alyssa's ex-boyfriend, stole a four wheeler from Steven once. She said that the four wheeler was found at the home of Banks' drug dealer. Erica told me that Christopher Cameron's girlfriend Angie told Erica that she was the last

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☒ YES ☐ NO

☒ ACTIVE ☐ ADJ. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☒ ARRESTED TRANSFER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR TRANSFER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION

3. ☐ EXTRADITION DENIED

4. ☐ VICTIM DECLINES COOPERATION

5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)
MARZOLF, K

DATE
04/13/16

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

FOLLOW-UP INVESTIGATION ☒ YES ☐ NO ☐ MARZOLF, K

03/30/16

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,1,6,-,0,5,3,2,4,

NCTC

INQ.	ENTD.
N	N

☐ ORIGINAL
REPORT

☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY

☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 48 of _____ PAGES.

NARRATIVE

-0645-0650 drove Christopher to work off of Hwy 123
-0700 arrived at Chris' place of employment and she left to go back home
-0710-0715 arrived at Patricia Palm's house
-0745-0810 left Palm's residence to go home
-0750-0815 arrived at home
-1115-1215 went to convenience store to get cigarettes and beer (probably the Sunoco)
-1120-1220 left store to go home
-1125-1235 arrived at home
-1700-1800 left home to pick up Chris from work
-1710-1815 left with Chris for home
-1720-1830 arrived at home and stayed there
-1720-1830 Chris' coworker William came to their residence
-1820-1930 William left
-2130-2200 went to bed

3/29/16

-0600 woke up at home
-0645-0650 left to take Chris to work
-0700 got to Chris' workplace
-0710-0715 got home and went back to bed
-1300-1500 woke up because Patricia Palm called about Steven dying

See video for further information.

On 3/31/16, I conducted a video recorded interview with Christopher Cameron at the Anderson County Sheriff's Office. He told me that his brother Steven had a crack cocaine habit. He stated that Steven liked to buy his crack at a house behind Bell's gas station close to Adam's Scrapyard. He said that he would find drug paraphernalia in Steven's house like baggies with white powder. He said that Steven has tried to make crack cocaine before. Chris stated that the black guy who lived to the left of Steven (facing the house from the roadway) did drugs with Steven and took him to the crack dealer. Christopher said that about a month ago Steven "jumped on" his daughter Alyssa and left bruises on her. He also said that two to three weeks ago he went to Steven's house, and Steven was pushing him and punched him twice. Chris said that Steven wanted him and Angie to take him to pawn things, and Steven had a \$16,000 dirt bike he wanted to pawn. Chris told me that he thinks that Steven wanted to trade the dirt bike for drugs. He said that before Steven got his settlement money, he would get

ADMINISTRATIVE

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☒ YES ☐ NO

☒ ACTIVE ☐ ADM. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION

3. ☐ EXTRADITION DENIED4. ☐ VICTIM DECLINES COOPERATION5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

MARZOLF, K.

04/13/16

FOLLOWUP INVESTIGATION

☒ YES☐ NO

OFFICER MARZOLF, K.

03/30/16

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

RECEIVED
OCT 23 2018
SC Court of Appeals

State of South Carolina,

Respondent,

v.

Jason Franklin Carver,

Appellant.

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion to Hold his Appeal in Abeyance, and Proof of Service of same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, at 100 S. Main Street, Anderson SC 29624, and South Carolina Attorney General Honorable Alan McCrory Wilson and Assistant Deputy Attorney General Samuel Marion Bailey at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on October 19, 2018.

October 19, 2018



Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

EXHIBIT 2

NOTICE OF APPEAL

September 25, 2017

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

Case Number: 2016A0410200556

State of South Carolina,
v.

Respondent,

Jason Franklin Carver,

Appellant.

NOTICE OF APPEAL

Appellant Jason Franklin Carver appeals the jury verdict rendered in the trial of this matter on August 25, 2017, and the denials of motions pled by Defendant on September 14, 2015, by the Honorable R. Lawton McIntosh, who issued his Order on September 15, 2017.

September 25, 2017



Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
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Telephone: (864) 642-9284
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Other Counsel:
Chelsey L. Moore
Assistant Solicitor for the
Tenth Judicial Circuit
P O Box 8002
Anderson SC 29622

RECEIVED

SEP 28 2017

S.C. SUPREME COURT

FORM 7
PROOF OF SERVICE
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 28 2017

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

S.C. SUPREME COURT

R. Lawton McIntosh, Judge

Case Number: 2016A0410200556

State of South Carolina,

Respondent,

v.

Jason Franklin Carver,

Appellant.

PROOF OF SERVICE
NOTICE OF APPEAL

I certify that I have served a Form 1, Form 7, Form 8, Form 9, Form 11, Explanation of Appeal and Order appealed, upon The Honorable Daniel Shearouse, Clerk of Court South Carolina Supreme Court; PO Box 11330, Columbia SC 29211, The Honorable Richard Shirley, Anderson County Clerk of Court, PO Box 8002, Anderson SC 29622 and Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, 100 S. Main Street, Anderson SC 29624 by depositing a copies in the United States Mail, postage prepaid, on September 25, 2017.

September 25, 2017



Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

FORM 8
LETTER TO THE SUPREME COURT CLERK OF COURT
NOTICE OF APPEAL

RECEIVED

September 25, 2017

SEP 28 2017

S.C. SUPREME COURT

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia SC 29211

RE: State v. Jason Franklin Carver
Case Number: 2016A0410200556

Dear Mr. Shearouse:

Please find enclosed the following:

- (1) Form 1-Notice of Appeal;
- (2) Explanation of Appeal;
- (3) Form 11-Letter Ordering Transcript;
- (4) Form 9-Letter to Lower Court;
- (5) Order appealed
- (6) Form 7-Proof of Service for the same.

Sincerely,



Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: The Honorable Richard Shirley, Anderson County Clerk of Court
Chelsey L. Moore, Assistant Solicitor Tenth Judicial Circuit

EXHIBIT 3

SOUTH CAROLINA COURT OF APPEALS ORDER GRANTING MOTION TO HOLD APPEAL IN ABEYANCE

December 10, 2018

The South Carolina Court of Appeals

The State, Respondent,

v.

Jason Franklin Carver, Appellant.

Appellate Case No. 2017-002011

ORDER

Appellant has filed a motion to hold this appeal in abeyance and grant Appellant leave to file a motion "to vacate/set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence." Respondent filed a return, explaining it does not oppose the motion. After careful consideration, Appellant's motion is granted, and this appeal shall be held in abeyance pending the circuit court's resolution of this matter. Appellant shall provide proof that he has filed the motion within twenty days of the date of this order, and shall thereafter provide this court with status updates every thirty days.


FOR THE COURT

Columbia, South Carolina

cc:

The Honorable R. Lawton McIntosh
The Honorable Richard Shirley
Donald Loren Smith, Esquire
Chelsey Lauren Moore, Esquire
Alan McCrory Wilson, Esquire
Samuel Marion Bailey, Esquire

FILED

December 10, 2018

EXHIBIT 4

AFFIDAVIT OF WOODROW CURRY

November 5, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina,)
vs.)
Jason Franklin Carver,)
Defendant,)
_____)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF WOODROW WALTER CURRY

Personally, appeared before me, Woodrow Walter Curry, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

After JASON CARVER'S CONVICTION, Greenville dropped drug charges, AND ~~HE~~ WAS MOVED TO Anderson. W.C.

MARZOLF AND Chelsey said they would suggest voluntary manslaughter. If he testified against CARVER, if ~~he~~ no penalty. They also said it would look better if I testified against CARVER. FOR GAMBRELL said, ~~he~~ WAS OFFERED the fact that Chelsey would have no problem suggesting 15 years provided GAMBRELL WAS CONVICTED. However, neither of them spoke up when sentenced to 28 years. W.C.

Woodrow Curry

Signature of Affiant

Officer Driffin

Printed Name of Witness

ORC. 

Signature of Witness

SWORN before me this 5th day
of November 2018.

Donald C Smith

Notary Public for South Carolina

My Commission Expires: 11/18/2024

EXHIBIT 5

AFFIDAVIT OF
JAMES MILTON GAMBRELL

November 30, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
State of South Carolina,)
)
vs.)
)
Jason Franklin Carver,)
Defendant,)
_____)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF JAMES MILTON GAMBRELL

Personally, appeared before me, James Milton Gambrell, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

WOODROW CHERRY DID NOT HAVE A PHONE
AT THE TIME HE SHOT STEVEN CAMERON. JG

WOODROW CHERRY DID NOT CALL ME BETWEEN
THE TIME HE LEFT MY HOUSE WITH JASON CARVER,
AND THE TIME THEY RETURNED. JG

JASON CARVER DID NOT HAVE A GUN ON MARCH 28th OR 2nd
2018. JG

THE ONLY GUN THAT I SAW JASON WITH WAS HIS
BROTHER'S GUN, APPROXIMATELY ONE YEAR BEFORE
THE INCIDENT, NO LONGER. JG

Anthony W. Evans
Printed Name of Witness

James Milton Gambrell
James Milton Gambrell
[Signature]
Signature of Witness

SWORN before me this 30th day
of November 2018.

Donald L. Smith
Donald L. Smith
Notary Public for South Carolina
My Commission Expires: November 18, 2024

EXHIBIT 6
EXCERPTS OF TRIAL TRANSCRIPT
FOR STATE VS. JASON CARVER
2016-GS-04-2279
08/21-25/2017

State of South Carolina v Jason Franklin Carver

474

Case No. 16-GS-04-2279

Jury Trial of August 21-25, 2017

Testimony of Milton Gambrell - Direct Examination

1 been called as a witness in this case. It is
2 my understanding that you are also a co-
3 defendant along with Mr. Carver and Mr. Curry
4 as to the incident in March of 2016. Is that
5 correct?

6 WITNESS: Yes, sir.

7 THE COURT: At this point I need to
8 advise you of your rights under the Fifth
9 Amendment of the United States Constitution
10 which says in part that no person can be
11 compelled in a criminal case to be a witness
12 against themself. Do you understand your
13 rights?

14 WITNESS: Yes, sir.

15 THE COURT: That means that you can't
16 be required to testify against yourself, the
17 State can't require you to, I can't require
18 you to. Nobody can.

19 You have the right to refuse any question
20 asked of you, anything that gives you
21 reasonable cause to believe that the answer,
22 if given, might tend to incriminate you as
23 charged.

24 If you wish to exercise your right under
25 the Fifth Amendment, you will state that to

State of South Carolina v Jason Franklin Carver

Case No. 16-GS-04-2279

Jury Trial of August 21-25, 2017

Testimony of Milton Gambrell - Direct Examination

475

1 the court. You will say, "I refuse to answer
2 the question because the answer to the
3 question may tend to incriminate me." Do you
4 understand that?

5 WITNESS: Yes, sir.

6 THE COURT: And let me advise you
7 further that your statement is not the final
8 decision as to whether or not your answer to
9 the question would violate the Fifth
10 Amendment. I will ultimately make that
11 decision. Do you understand?

12 WITNESS: Say that again, sir?

13 THE COURT: Just because you exercise
14 your right by saying "I refuse to answer the
15 question because the answer may tend to
16 incriminate me" does not mean that is the end
17 of the inquiry. I will make the final
18 determination as to whether or not you will
19 have to answer the question. Do you
20 understand?

21 WITNESS: Yes, sir.

22 THE COURT: Now, Mr. Phillips, let me
23 ask you this. I think that I know the answer
24 before we get started.

25 MR. PHILLIPS: Yes, sir?

1 THE COURT: Has -- do you represent Mr.
2 Gambrell in the criminal charges?

3 MR. PHILLIPS: Yes.

4 THE COURT: And you've gone over his
5 rights and the Fifth Amendment; is that
6 correct?

7 MR. PHILLIPS: Yes.

8 THE COURT: Does your client intend to
9 testify in this case?

10 MR. PHILLIPS: I don't believe so.

11 THE COURT: So you are not positive?

12 MR. PHILLIPS: I am ninety percent
13 sure but I ---

14 THE COURT: Then, Mr. Smith, you may
15 examine Mr. Gambrell.

16 MR. SMITH: Yes, sir, may it please the
17 Court?

18 THE COURT: Yes, sir.

19 JAMES MILTON GAMBRELL, having been sworn
20 to tell the truth, and nothing but the truth,
21 testified as follows:

22 INCAMERA EXAMINATION

23 BY MR. SMITH:

24 Q. Mr. Gambrell, how old are you?

25 A. Fifty-eight.

1. Q. Because you couldn't talk to him by
2 phone?

3 A. (Negative gesture), couldn't talk to
4 him.

5 Q. So the only purpose was to go tell
6 him that 'we know ...' ---

7 SOLICITOR MOORE: Your Honor, objection.

8 THE COURT: I sustain that objection.
9 Just one second. Mr. Phillips -- for the
10 record, William Phillips represents Mr.
11 Gambrell. If counsel could come up here.

12 (OFF RECORD BENCH CONFERENCE)

13 THE COURT: Mr. Phillips, do you have a
14 matter to bring up on the record?

15 MR. PHILLIPS: Yes, sir. I have
16 advised my client not to testify in this
17 case. He originally chose to testify. I
18 am again advising him to exercise his Fifth
19 Amendment right and not to testify in this
20 case from this point forward.

21 THE COURT: Do you wish to honor your
22 attorney's advice, Mr. Gambrell?

23 WITNESS: (No verbal response).

24 THE COURT: In other words, do you want
25 to testify or do you want to exercise your

1 rights under -- on your attorney's advice to
2 exercise your rights under the Fifth
3 Amendment not to testify?

4 WITNESS: I don't really understand.

5 THE COURT: Well, let me tell you this,
6 Mr. Gambrell. Your testimony in this case is
7 being transcribed and it will be obtained by
8 the State and used against you in the
9 upcoming trial against yourself, or it can
10 be. Do you understand that?

11 WITNESS: Yes, sir.

12 THE COURT: Now, your attorney -- I
13 gave you your rights under the Fifth
14 Amendment and you told me that you understood
15 them. Is that correct?

16 WITNESS: I am trying to understand
17 them.

18 THE COURT: Well, sir, either you
19 understand them or you don't. You told me
20 that you did. What I told you is that under
21 the Fifth Amendment to the United States
22 Constitution that no person can be compelled
23 to testify against himself in a criminal
24 trial. Do you understand that?

25 WITNESS: Yes, sir.

1 THE COURT: And effectively what you
2 are potentially doing is testifying against
3 yourself because this testimony will be or
4 can be used against you in your trial later,
5 if you continue to testify. Do you
6 understand?

7 WITNESS: (Pause) -- yes, sir.

8 THE COURT: Okay, sir. Now, Mr.
9 Phillips, who is your attorney for your
10 criminal charges has just stated that he's
11 advised you not to testify and he's re-
12 advised you not to testify any further. Do
13 you understand that?

14 WITNESS: (No verbal response).

15 THE COURT: Do you understand that, Mr.
16 Gambrell?

17 WITNESS: Yes, sir.

18 THE COURT: Now, you have a right --
19 the only person who can exercise their right
20 under the Fifth Amendment is yourself. It is
21 advisable to listen to an attorney, however
22 the ultimate decision as to whether or not
23 you wish to continue to testify in this
24 proceeding is your decision, yours alone to
25 make.

1 WITNESS: Yes, sir.

2 THE COURT: Okay. You have to make
3 that decision knowing your rights under the
4 Fifth Amendment and also knowing the
5 consequences to you if you continue to
6 testify.

7 That is that -- the consequence are that
8 the State can and will obtain the transcript
9 of your testimony and when you are called to
10 trial they can use that against you in the
11 courtroom. Do you understand? In front of
12 the jury?

13 WITNESS: Yes, sir.

14 THE COURT: Now the question is, do you
15 wish to testify or do you wish to exercise
16 your Fifth Amendment rights and not testify;
17 take your attorney's advice not to testify?

18 WITNESS: (No verbal response).

19 THE COURT: Would you like to speak
20 with your attorney further?

21 WITNESS: Yes, sir.

22 THE COURT: Would you take him in the
23 hallway, Mr. Phillips?

24 (BRIEF RECESS - COUNSEL PHILLIPS AND
25 WITNESS TO CONSULT OUTSIDE COURTROOM)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
The State of South Carolina,)
Defendant,)
v.)
Jason Franklin Carver,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No. : 2016A05324

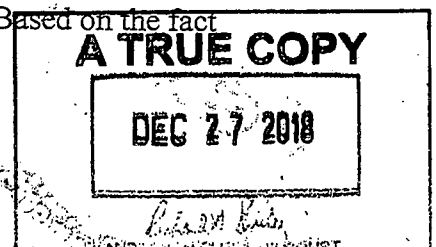
**AMENDED
MOTION FOR NEW TRIAL**

Jason Franklin Carver, by counsel, now moves the Court for an order granting a new trial on two or more counts, as explained below. The bases for this relief are as follows:

FACTUAL HISTORY:

On March 28, 2016, Defendant Jason Carver (hereinafter referred as Carver) had been working on a transmission at James Gambrell's house, when the latter requested Carver drive Steven Cameron home. Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Carver's return, Gambrell told him he wished he had a phone because he would have told him to turn around and come back. As a result, Gambrell asked him to go back and get Cameron. Neither Gambrell nor Curry shared the issue regarding the missing cocaine. They didn't want to take the chance that Carver would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact



Carver was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Gambrell's statement was made with implication that Cameron wanted to come back since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit.

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was located. Curry claimed that everything that was found-was his, *in Gambrell's house*. Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture flipping cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peeking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop and pointed it directly at Cameron.

Carver frantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carver started toward the car, intending to leave Curry behind.

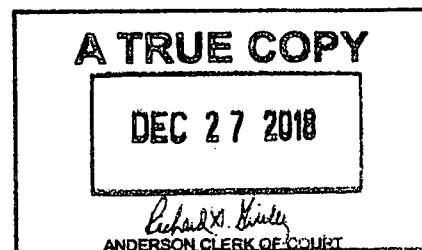
In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Carver, who has reached the car, heard the gunshots. Frightened and confused, Carver dropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Carver to leave the lights off and leave the neighborhood. Unarmed, Carver did not put up any resistance; and, he did as he was told. Curry also offered that should he feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Carver's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Carver and Curry arrived back at Gambrell's house, Carver was emotional and still shaken by the events that night. Curry told

Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

9. Q. All right. So you get back to Mr.
10. Gambrell's house?
11. A. (Affirmative nod).
12. Q. What takes place then?
13. A. When I got out, Curry got out behind
14. me. I don't know if he still had the gun on
15. me at the time but he followed me all the way
16. into the house.
17. Q. So he --you say that he got out
18. behind you. Did he slide across the front
19. seat?
20. A. I'm assuming he did. I ain't for
21. sure.
22. Q. Because he was directly behind you?
23. A. Yes, sir, he was behind me.
24. Q. Did you take a chance and look
25. behind you or just keep on walking?
01. A. I looked but I didn't pay that much
02. attention. I was still shocked going in
03. Gambrell's house. I was already in tears at
04. that time too.
05. Q. Mr. Gambrell, he probably keeps his
06. house locked up pretty good, doesn't he?
07. A. Yes, sir.
08. Q. And when you got to the front door,
09. were you able to open it?
10. A. No, sir.
11. Q. How did you get in?
12. A. His nephew came to the door.
13. Q. So he opened the door?
14. A. (Affirmative nod).
15. Q. And you and Mr. Curry go in the
16. house?
17. A. Yes, sir.
18. Q. Did you get past that immediate
19. area?
20. A. (No verbal response).
21. Q. Did you go further than that? Did
22. you go the man cave or ---
23. A. We started back towards the man
24. cave. Then I sat down and Curry came across
25. from me. Once he got on the other side of



01. the little table, he sat down and laid the
02. .38 down. So I'm assuming that he already
03. had it out.
04. Q. So he had the .38?
05. A. Yes, sir.
06. Q. Where was Mr. Gambrell at this
07. point.
08. A. Mr. Gambrell was sitting in his
09. chair and he asked where Cameron was at.
10. That's when Curry was telling him, said 'we
11. got in an argument' and he said it got out of
12. hand. Then he said that he shot him. And I
13. was scared --I was shocked, in tears.
14. Gambrell could see that I was scared, that
15. I'd been crying.
16. Q. What was Mr. Gambrell's reaction?
17. A. Well, Mr. Gambrell and Curry started
18. arguing. I mean, they were getting real
19. loud.
20. Q. Did Mr. Gambrell say anything about
21. the fact that Mr. Cameron was just shot?
22. A. Well, he told him that 'you was just
23. supposed to have went up there and was
24. supposed to have brung him back', all that
25. stuff. That was it.
01. But, uh, Curry --he acted like he didn't
02. just acknowledge it. He acted like, you
03. know.
04. Q. So Curry and Gambrell are now in an
05. argument
06. A. Yes, sir.
07. Q. And the .38 is sitting on the coffee
08. table?
09. A. No, it was in the floor. He'd laid
10. it in the floor.
11. Q. What did you at this point?
12. A. Well, I was already so scared, I
13. just got up and left.
14. Q. Did you say goodbye?
15. A. No, no sir.

(Exhibit 1 – Motion to Hold Appeal in Abeyance, PP. 36-39).

Carver's apprehensions were not unfounded. That night, Curry drove past Carver's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Carver's trial that he personally reviewed portions of the video that afternoon.

14. Q. And what did you do when you got
15. inside the residence?
16. A. Obviously because of the nature of
17. the offense and because the cameras were
18. there, we wondered if they were in fact
19. currently recording. They were and, so, we
20. were able to do a very rapid review of some
21. of the footage and were able to discover some
22. evidence that I felt was pertinent to the
23. case.
24. Q. What evidence was that?
25. A. Un, -- again, while we were review-
01. ing the video, and we just kinda of skimming
02. it very fast just to see.

(Exhibit 1- Motion to Hold Appeal in Abeyance P. 40)

The footage was obtained that very day by forensics on scene.

20. Q. Okay. Did you ask that that footage
21. be collected?
22. A. I did, I went to the forensics that
23. was on scene and asked that it be collected
24. for evidence purposes.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.42)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

21. Buick appears, -- well, first, let me ask,

22. how many hours of surveillance footage did
23. you view in this case?
24. A. I can't give you an exact number but
25. hours. We watched it all the day of the
01. incident as well as the following day. So at
02. least thirty-six hours.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 43).

06. Again, on the 30th I spent my entire day
07. reviewing the video.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 45)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 46)

The video was used to identify the vehicle driven by Carver. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Carver did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Carver gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder.

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason

Carver's trial.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P.74).

Carver was indicted for Murder. During Carver's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Carver was convicted of murder on August 25, 2017. Carver moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Carver perfected his appeal. (Exhibit 2- Carver's Notice of Appeal, September 25, 2017). He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in Carver's case. He believed that these statements should be explored in depth as they go through the very core of the crime for which Carver was convicted and sentenced to thirty (30) years of imprisonment.

On October 19, 2018, Carver moved to hold his appeal in abeyance based on newly discovered evidence. (Exhibit 1- Carver's Motion to Hold Appeal in Abeyance, October 19,

2018, P.1). On December 10, 2018, the Court of Appeals granted Carver's motion. (Exhibit 3-Court of Appeals Order Granting Motion to Hold Appeal in Abeyance, December 10, 2018).

ARGUMENTS

I.

NEWLY DISCOVERED EVIDENCE SURFACED THAT WARRANTS THE EXAMINATION AND RE-LITIGATION OF THIS CASE.

The trial of James Milton Gambrell in the murder case of Steven Cameron, ushered new evidence that was not available during Carver's trial. The newly discovered evidence consists of statements by witnesses in the Carver trial, whom the defense could not have been obtained during his trial since they were inconsistent and false statements.

This case is about the untimely death of Mr. Cameron, who has been gunned down by the State's star witness, Curry. It is a fact that does not escape Carver. From the inception of this case, the State relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carver case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

14. Q. When you originally spoke to
15. detectives who did you say shot Steven
16. Cameron?
17. A. I didn't.
18. Q. You didn't?
19. A. (Negative gesture).
20. Q. So you're telling us today who shot
21. Steven Cameron?
22. A. Yes, ma'am. It just happened, I
23. didn't mean to shoot him. He was just coming
24. at me. I don't even remember pulling the
25. trigger, it just went—(pause)—I wish I
01. could turn back time, but I can't.
02. Q. Thank you, Mr. Curry. Please answer

03. any questions that Mr. Smith may have for
04. you.

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 47-48).

However, in the Gambrell trial, Carver learned that Curry, initially tried to pin the shooting on Carver. Marzolf, who interviewed Curry, testified to the following:

16. Q. Now, did Mr. Curry, the shooter, admit to you what
17. had happened, or did he deny all knowledge of what had
18. happened?
19. A. He gave me a version of what had happened in which
20. he said that they did go to the house and that Jason
21. Carver was the shooter that night.
22. Q. But didn't Mr. Curry later change his mind and
23. admit that, in fact, he was the shooter?
24. A. Yes, sir, he did.
25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual -- I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 80-81).

Marzolf's statement about not knowing the details of Curry's plea bargain, nor his involvement in the said process is belied by Curry. In his sworn affidavit, Curry specifically stated that Marzolf and Chelsey suggested to reduce his charges to voluntary manslaughter if he pleads guilty and implicates Carver. (Exhibit 4- Affidavit of Woodrow Walter Curry, November 5, 2018).

Second, when Curry was asked what he did after leaving Cameron's house during Carver trial's, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carver do
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1 Motion to Hold Appeal in Abeyance, P. 49).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

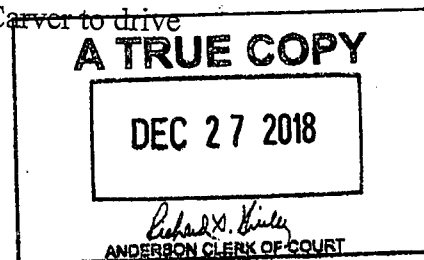
09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 1-Motion to Hold Appeal in Abeyance, P. 82).

This was not disclosed during Carver's trial. Out of nowhere, the prosecutor asked Curry if he did anything on the way to Gambrell's. Curry's response was that he called Gambrell. This question was not raised during Carver's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Gambrell contradicted Curry's claims. In his sworn affidavit, Gambrell categorically denied that Curry called him since Curry had no phone at the time he went to Cameron's house. (Exhibit 5- Sworn Affidavit of James Milton Gambrell, November 30, 2018). Gambrell's and Curry's respective phone records on the night of the incident will disprove Curry's statements.

Third, at the Carver trial, Curry testified that Gambrell instructed Carver to drive



Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I guess he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 50-51).

In his subsequent testimony at Gambrell's trial, his statements implied that Carver voluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working – to begin with, I was out there working on a
19. car. Carver wasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carver got off work, he
23. come over there like he normally did. He went in the
24. house and come back out, him and Steven there, and he
25. took Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.83).

Fourth, Curry, implicated Carver by testifying that Carver had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

15. Q. Did you have a gun when you left
16. Appaloosa Drive?
17. A. Yes.
18. Q. Where did you get that gun?
19. A. Milton Gambrell.
20. Q. Did Jason Carver have a gun when you
21. left Appaloosa Drive?
22. A. Yes.
23. Q. Where did he get that gun?
24. A. It was his.
25. Q. Did you have more than one gun with
01. with you?
02. A. Yes.
03. Q. How many guns did you have?

04. A. Two.
 05. Q. Do you remember what kind of guns
 06. they were?
 07. A. .38 and a .22--25, I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 52-53).

However, in the same hearing, Curry stated:

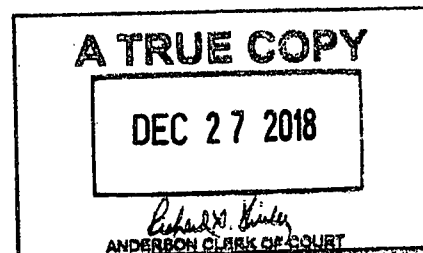
02. Q. And the weapon that you said that
 03. you had seen, was that the same weapon that
 04. you allege that he had at this time?
 05. A. I don't know that he owned one.
 06. Q. The one with the sight on it, the
 07. one that he allegedly brought out and showed
 08. you previous to his incident, you still
 09. don't know what that is?
 10. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 54).

Gambrell dismissed these contradicting statements of Curry. Gambrell confirmed that Carver did not have a gun on March 28 or 29, 2016. (Exhibit 7-Gambrell Affidavit). Gambrell stated that the only time he saw Carver with a gun was in 2015, one year prior to the shooting incident. At that time, Carver was showing his brother's gun to Gambrell. Id.

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q. So you had a chat with Steven
 15. Cameron. And after he did not give you any
 16. money and he did not give you any drugs, what
 17. did you do?
 18. A. I don't know, I like turned and he
 19. come at me, and I looked down, I didn't know
 20. I had the gun but obviously I did—I had
 21. it, I mean. Then like, 'oh.' He charged
 22. at me and — I don't even remember pulling the
 23. trigger but I heard *Pop! Pop!* So—(pause).
 24. Q. So you shot Steven Cameron?



25. A. Yeah, I guess.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 55).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08. Q. Why did you do it?
09. A. Because for some reason or another I had done
10. pulled the gun, I guess to intimidate him or whatever,
11. and he charged at me. "What are you going to do, shoot
12. me?" And he charged at me. I don't know what to do.
13. What's he going to do, take the gun and shoot me or
14. what? I don't know. I mean, that's just—
15. Q. Why did you feel the need to try to intimidate
16. him?
17. A. He's bigger than I am.
18. Q. He's bigger than you are?
19. A. A lot bigger than I was.
20. Q. But you just said you were just going to have a
21. conversation with him. Why should him being bigger
22. than you make a difference if you're just going to have
23. a conversation?
24. A. Man, like I said, I was high. I was 150 pounds.
25. I was all drewed up myself, you know I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 84).

Carver believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground and announcing, "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Carver having a gun. By Carver having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car.

Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car. More importantly, if Curry's testimony were to be believed that Carver brought a gun with him, then Curry would not have felt threatened when Cameron lunged towards him during their exchange of words. It was irrational that Carver, having a gun with him, did not use the same against Cameron, whether it was just to intimidate or to ensure that the latter complies with Curry's demands. It would have shown unity in action and purpose. But that is not the case at hand. In the instant case, when Carver realized that Curry would not heed his pleas to put the gun down, Carver ran away from the two men, with the intention of leaving Curry behind. That is not the action of a man in agreement with Curry's actions.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When -- Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a -- there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I...*" (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In

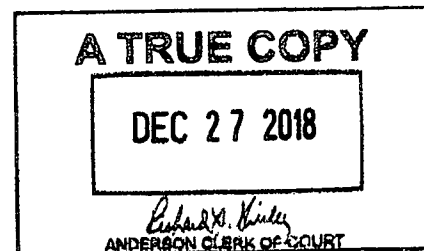
testifying that "(W)e went in there to return the guns", Curry tied Carver in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

14. Q. Why did you testify in your first trial that you
15. went back to Milt's house and that's when you told him
16. about the shooting when you're testifying in this trial
17. that you called him on the way on your cell phone?
18. Which is the truth?
19. A. I called him on the cell phone.
20. Q. Why is this the first time you're saying this?
21. A. First time I recall being asked.
22. Q. Weren't you asked in the first trial? And,
23. specifically, I'm talking about your codefendant's
24. trial, the other person who was with you, Jason
25. Carver's trial.
01. A. That's 11 months ago, sir. It's hard for me to
02. remember that far back. But, I mean, I told him on the
03. way, you know. When I got there, he smelled the gun.
04. I mean...

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 85-86).

17. Q. Okay. So the first trial, you testified that
18. after the shooting, you drove back to Milt's house,
19. Mr. Gambrell's, and then you told him inside of his
20. house --
21. A. Uh-huh.
22. Q. -- that you shot the guy.
23. A. I don't recall that, but if you say I did, I did.
24. Q. Do you recall what you told him as to why you shot
25. the poor man, why you shot Mr. Cameron?
01. A. He didn't ask.
02. Q. Didn't you say something like, "Well, things just
03. went crazy and I shot him"?
04. A. No. Like I say, he didn't ask. I told him on the



05. way back over there that he better have been sure that
 06. that guy took his dope there because I shot him.
 07. Q. You said the way back over there?
 08. A. On the way back over there, I called him. He
 09. answered the phone. I said, "You better be sure that
 10. the man took your dope, Steven took your dope, because
 11. I just shot him."
 12. Q. Did you tell any of the detectives this, that you
 13. called him on the way back over there on your cell
 14. phone?
 15. A. Sir, I was under the influence. I don't recall
 16. speaking there to y'all, to detectives. Are you
 17. talking about when I was first arrested?
 18. Q. No, sir. When you were interviewed by the police,
 19. when you're sitting in Greenville County jail.
 20. A. Like I said, when I was first arrested 31 months
 21. ago, I was still under the influence of
 22. methamphetamines at that time. I went through their
 23. drug and alcohol treatment program in Greenville County
 24. Detention Center.
 25. Q. So you're telling this jury –
 01. A. The first time I spoke to a detective, I did not
 02. tell them nothing. I can tell you that much. The
 03. second time I spoke to them, I don't -- I don't recall
 04. what I told them. I mean, I was still, you know, as
 05. they told me in drug class, I was still high.
 06. Q. My question to you, sir, is: Why are we hearing
 07. this story that you called Mr. Gambrell on your cell
 08. phone after the shooting before you got back to the
 09. house? Why are we hearing this the first time today?
 10. A. It's the first time it's been asked.
 11. Q. The detectives never asked you the details of what
 12. happened?
 13. A. Not that I recall.

(Exhibits 1, Motion to Hold Appeal in Abeyance, P. 86-88).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

18. THE COURT: Are you under the influence of
 19. any medications, drugs, or alcohol today?
 20. MR. CURRY: No, sir.
 21. THE COURT: Counsel, are you satisfied that
 22. Mr. Curry's competent to plea?

23. MS. BYFORD: I am, Your Honor.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 75).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing" carrot" offered by the State. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Carver's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

02. Q. Okay. Well, if your memory was so messed up, why
03. should this jury believe anything you have to say today
04. about what happened over two years ago?

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 89).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

The crux of the State's case against Carver is Curry's testimony that Carver: (1) knew about the missing cocaine; (2) had his own gun when they drove back to Cameron; and that by driving Curry back to Gambrell's house, Carver approved and supported Curry's actions. According to the State, these assumptions show that there was an agreement among Carver, Curry and Gambrell beforehand. That this is a case of drug distribution gone awry. Now that Curry's lies, and misleading statements came to light, it is incumbent for this Court to re-try this case.

On ACSO and police officers

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went
22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had -- during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one -- I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Exhibit 1, Motion to Hold Appeal in Abeyance, PP. 78-79).

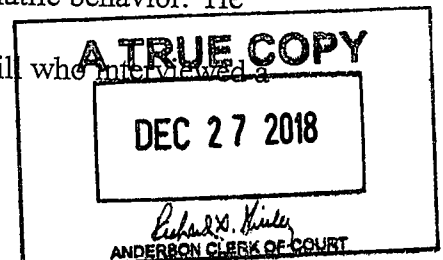
15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you
17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 79).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Carver maintains that this should have been disclosed in the previous trial as this confirms what he has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through his lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Carver's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any such instance. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a



neighbor who recounted the Cameron's volatile behavior. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97)

As discussed in the previous section, Marzolf has shown no qualms in offering conflicting testimonies/statements. He testified not having knowledge of, nor even participated in, Curry's plea-bargaining deal. Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charges.

Carver believes that this information would have helped him formulate his defense.

Carver asserts that due to this newly discovered evidence which are not available during his trial, he is entitled to remedy under Rule 29 SCRCrimP.

II.

CARVER IS ENTITLED TO HAVE THE JUDGMENT AGAINST HIM VACATED DUE TO PROSECUTORIAL MISCONDUCT.

Carver further asserts that he is entitled to new trial and motion to vacate and/or set aside judgment by reason of the State's misconduct in the handling of this case.

Carver insists that the prosecution abused its discretion in filing different charges against him, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder ¹,

¹ Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Carver's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

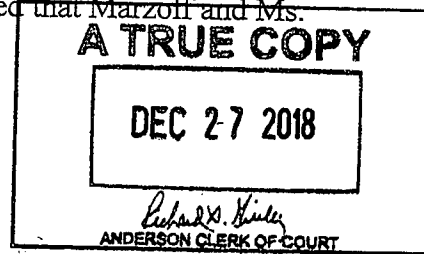
Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Carver was found guilty not because of what he did, but because of what was suspected he did.

Carver avers that in its zealousness to get a conviction for this case, the prosecution went beyond the boundaries of decency and professionalism.

First, according to the prosecution's star witness. Curry met with the prosecution team, three times. Marzolf was in at least one of these meetings. The prosecution provided no recording of the time they visited Curry to speak to him on his manslaughter deal. Carver's counsel received two video interviews, but Solicitor withheld the third. Carver was not shown the video of what the prosecution exactly offered Curry. Curry maintained that Marzolf and Ms.



Moore would reduce his charges to voluntary manslaughter, if he pled guilty and testified against Carver. (Exhibit 6-Affidavit of Curry).

Second, the State deferred Curry's sentencing for over a year, when the Order specifically stated that it will only be until after Carver's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carver and then Gambrell. Curry's testimony as to calling Gambrell on the way to the latter's house, a statement which Curry did not offer at Carver's trial, is a testament to the extent by which they would go to get a conviction.

Based on Curry's lies, Carver and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the State's evidence in both cases, Carver asserts that the State has no evidence. Curry cannot be considered credible evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of times Curry had talked to the police. There is no question that the State recorded the interview where it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Carver to never call a witness when you do not know what they will say. They knew what Curry was going to say.

During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

- 04. So what happened here is that Milton
- 05. Gambrell, a known drug dealer, Mr. Smith just

06. told you all about that, sent his two "do
07. boys"--- that is what Woodrow Curry called
08. himself and Carver on the stand—they were
09. his "do boys." He sent them in a car that he
10. owned to collect on a drug debt. That is
11. working together for an illegal purpose.
12. That is the hand of one, hand of all.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 56).

But in the Gambrell trial, this was all she stated:

19. In order for James Milton Gambrell to be found
20. guilty of accessory before the fact to murder, he must
21. have the same criminal intent as Woodrow Curry. They
22. must have intended the same thing before the murder was
23. committed. They must have intended for Woodrow Curry
24. to take the money, to take the drugs, or to bring
25. Steven Cameron back to James Gambrell. But James
01. Gambrell is also liable for any criminal act which, in
02. the ordinary course of things, was the natural or
03. probable consequence of the crime that he advised or
04. commanded. So was the murder of Steven Cameron a
05. natural and foreseeable consequence of James Gambrell's
06. order? I submit to you that it was.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 90-91).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Third, Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. This piece of information only came to light after the Gambrell trial, where Curry was called a witness. The only logical conclusion was that the State dangled Curry's sentencing over his head for him to testify according to its wishes.

Fourth, in prosecuting the case, the State failed to disclose information and/or witness that may exculpate Carver. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to

the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). It failed to do the same. Instead, it allowed its star witness, Curry, to offer inconsistent and false statements during Carver and Gambrell's respective trials. The State also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect.

Carver had already questioned the State's method of prosecuting its case. The investigation on Carver's case was completed April or May 2016. The State offered Carver a copy of the discovery in December 2016, which Carver was unable to open. By the State's own admission, what they provided had been faulty.

- 02. SOLICITOR MOORE: Yes, Judge. I cannot
- 03. guarantee that the flash drive will be able
- 04. to play for the jury. We have, as you know,
- 05. had some difficulty with that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 57).

Carver repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession since the first week of the investigation. Carver was provided the materials only a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the State on August 9, 2017, or two (2) weeks prior to Carver's trial. The State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

- 17. THE COURT: I want to know what
- 18. evidence that was delayed to August 9th, that
- 19. kind of delayed delivery that y'all gave to
- 20. the defense. This guy is on trial for murder
- 21. and if he gets found guilty, then he's
- 22. looking at life in prison.
- 23. SOLICITOR MOORE: I understand, Your

24. Honor.

25. THE COURT: So playing with evidence is
01. not satisfactory. I'm not saying that anyone
02. is playing with the evidence but I want to
03. know why after over a year it's just getting
04. to the defense. That's inexcusable and I
05. can't understand how, under any
06. circumstances, that could be. Now, I might
07. just be wrong --and it wouldn't be the first
08. time. But I want an explanation and I want
09. to know what else could be missing. We're
10. not going through this trial, jerking and
11. stopping here and there, because the State,
12. either through its officers or through your
13. office did not bother to give discovery.
14. Okay? So I want to know why.

15. SOLICITOR MOORE: Your Honor, I can
16. assure you that we gave Mr. Smith ---

17. THE COURT: I want to know why --I
18. don't care what you did. I want to know why
19. it just got sent out August 9th of this year.

20. SOLICITOR MOORE: Because I'd just
21. received it, Your Honor.

22. THE COURT: From whom?

23. SOLICITOR MOORE: From Detective Henry.

24. THE COURT: Who is Detective Henry?

25. SOLICITOR MOORE: He is the man who was
01. just testifying.

02. THE COURT: Why, sir, was it not until
03. the 9th of August of this year that you didn't
04. give this information up?

05. OFFICER HENRY: What information?

06. THE COURT: Why did you wait until this
07. year, over a year, to give this information
08. to the Solicitor's Office?

09. OFFICER HENRY: I thought that I had
10. given it to a supervisor at an earlier point
11. in time.

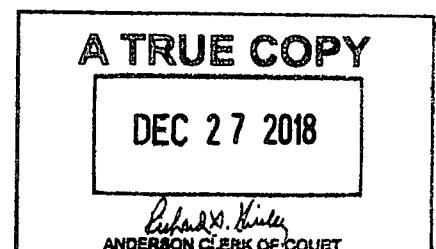
12. THE COURT: You thought you had.

13. OFFICER HENRY: Yes, sir.

14. THE COURT: So it was a case of honest
15. mistake?

16. OFFICER HENRY: Yes, sir. Seriously,
17. yes, sir.

18. THE COURT: If it is a case of honest
19. mistake, I can understand. But if it's a



20. case of a recurring pattern—and the reason
 21. why I say that is because this is the second
 22. time that I've heard it in this case, in two
 23. days. Not from you. Okay.
 24. Is there other evidence that was not
 25. delivered until late in the game? If so,
 01. why?
 02. SOLICITOR MOORE: Your Honor, if you
 03. will allow me to go through my discovery with
 04. Mr. Smith and look at my exhibit list, I can
 05. tell you exactly
 06. THE COURT: I'll be right back. I want
 07. to get this cleared up.
 08. SOLICITOR MOORE: Yes, sir.
 09. THE COURT: Officer, if it is an honest
 10. mistake, it's okay. I'll be right back.
 11. Don't anybody leave until I get back.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 58-61).

The trial judge initially found this delay as unacceptable.

06. Q. Why is there such a delay
 07. in getting that information?
 08. SOLICITOR MOORE: Your Honor, I can only
 09. provide to Mr. Smith what I have for myself.
 10. THE COURT: That is not an excuse.
 11. SOLICITOR MOORE: I understand—
 12. THE COURT: That is not acceptable.
 13. SOLICITOR MOORE: I understand, Judge.
 14. THE COURT: Then there is going to be
 15. some consequences for the delay in getting
 16. this information to him. The information is
 17. going to be suppressed. There's going to be
 18. some problems with it, I'm telling you.
 19. SOLICITOR MOORE: I understand, Judge.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 62).

The judge went easy on the State and allowed all the information in the record when Officer Henry attested that it was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 60). Instead, the court turned against Carver's failure to view the

36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 61). The lower court failed to consider that Carver's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this is the fact that there was precedence in the police's haphazard handling of evidence in this case.

In failing to submit the video surveillance and required discovery materials within the reglementary period, it is tantamount to the State denying Carver his right to prepare for his defense, considering that this was not the first instance it happened in this case alone. The delay in providing discovery materials to defense counsel seemed to have become the norm. This issue should have been addressed more sternly.

Fifth, the State's questionable conduct continued during Gambrell's trial, when it deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Carver was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Carver submits that if the State's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

- 04. Q. Did you go over there with the intent to kill
- 05. Mr. Cameron?
- 06. A. No, sir.
- 07. Q. Did anybody tell you to go kill him?
- 08. A. No, sir.
- 09. Q. Did anybody tell you to go beat him up?

10. A. No, sir.
11. Q. Did anybody tell you to go threaten that you were
12. going to beat him up?
13. A. No, sir. I was just told to go get the dope or
14. get paid for it.
15. Q. What does that mean --
16. A. I never intended to --
17. Q. What does that mean, you were told to steal the
18. dope from him?
19. A. No. I was just told to go and retrieve it. He
20. stole the dope.
21. Q. What if he refused? What if he said, "I'm not
22. going to give it to you?" What were you going to do
23. then?
24. A. Well, this is where this here seemed to blow out
25. there. I mean, I didn't have intentions to do nothing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 92).

17. Q. Well, isn't it true that what Mr. Gambrell wanted
18. you to do was to relay the message that he knew
19. Mr. Cameron had the drugs and that he should either pay
20. for them or give the drugs back, correct?
21. A. I don't know what he was thinking.
22. Q. All right. But you are positive he did not tell
23. you to go intimidate Mr. Cameron?
24. A. Right.
25. Q. He did not tell you to threaten Mr. Cameron in any
01. way?
02. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 94).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

02. Q. He also emphasized to you that all he wanted was
03. for them to let Mr. Cameron know that he had the drugs,
04. they knew it, and to pay for it, right? Wasn't that
05. his story?
06. A. Yes, sir.
07. Q. Okay. You -- also on that video, at one point I
08. believe I heard you say that Mr. Cameron -- dope was
09. found on Mr. Cameron after he was killed?
10. A. Yes, sir. During the autopsy, they did find some
11. drugs.
12. Q. Okay. Did you mean in his system?

13. A. No, sir. I mean they found actual drugs on his
14. person.
15. Q. Do you know how much?
16. A. I think in his tennis shoes, I believe. I don't
17. know the exact quantity, sir.
18. Q. Okay. So obviously --
19. A. It was significant, but I don't know exactly what
20. it was.
21. Q. Couldn't have put it there after he was killed, so
22. it was there in his shoes before he was killed,
23. obviously. You don't know how much?
24. A. I don't know exactly, sir.
25. Q. Okay. Did anybody -- were his shoes still on when
01. he was lying there on the porch?
02. A. Yes, sir, I believe so.
03. Q. All right. So nobody, obviously, tried to pull
04. his shoes off to look for anything, correct?
05. A. I would imagine not.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 95).

The foregoing testimonies belied the State's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. Upon examination of Cameron's body, drugs were found inside his shoes. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video surveillance that other individuals entered Cameron's house. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 63).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to commit said acts by any means whatsoever without authority of

law. (S.C. Code Ann. § 16-3-910 (2012)). If we were to believe Curry, as the prosecution so insisted, it was actually Cameron who initiated aggressive behavior by advancing/lunging toward Curry. (Exhibit – Motion to Hold Appeal in Abeyance1, P. 84, 9.14).

The State contends that Gambrell, Curry and Carver planned to commit the felony of murder or kidnapping simply because Curry was armed. Carver had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver were all speculations by the police.

03. Q. Mr. Carver did not have a gun, did
04. he?
05. A. There were two guns and two---
06. Q. Mr. Carver did not have, did
07. he?
08. A. They had guns. They were given a
09. .38 by Mr. Gambrell and Mr. Curry carried a
10. .25 automatic with him.
11. Q. Where was the .25 carried?
12. A. In a fanny pack, is my understand-
13. ing.
14. Q. Who knew about the .25?
15. A. Mr. Curry knew about it and I know
16. that his wife knew about it, she told me
17. about it as well.
18. Q. So neither of those people are Mr.
19. Gambrell or Mr. Carver, right?
20. A. No.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 64).

08. Q. When Mr. Gambrell took that gun, Mr.
09. Carver had not returned from Mr. Cameron's
10. yet; had he?
11. A. Mr. Gambrell didn't take the gun,
12. sir. Mr. Curry received the gun from Mr.
13. Gambrell or took it from him.
14. Q. Mr. Curry took it from Mr. Gambrel?
15. A (No verbal response).

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 65).

03. Q. You also learned that the .38 nor
04. any other guns were provided to Jason Carver;
05. right?
06. A. The gun was provided to Curry and
07. Carver when they were leaving, so I don't
08. know.
09. Q. Which gun was provided to Mr. Curry?
10. A. The .38.
11. Q. Which gun was provided to Mr.
12. Carver?
13. A. There were no other weapons
14. provided.
15. Q. And Mr. Gambrell told you that it
16. was not provided to him, meaning Mr. Curry
17. (sic); right?
18. A. He said that Mr. Curry took the weapon.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 66).

Proceeding from the State's fervent plea for the jury to believe Curry's words, Carver submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

The aforementioned evidence was discovered by Carver after his trial. Despite exercise of due diligence, counsel for defense could not and would not have discovered the lies and misrepresentation that Curry divulged during Gambrell's trial. The State's efforts to conceal important information deterred Carver from preparing for a comprehensive defense. The newly-discovered evidence is not merely cumulative nor impeaching, as it goes to the very essence of the elements of the crime of murder for which Carver was convicted. Some of the newly-discovered evidence such as statements stating that Carver had no gun at the day of the incident; that he had no prior knowledge of the stolen item before returning to Cameron's house showed

that there is no conspiracy, no agreement to commit a crime, and no criminal intent on the part of Carver. He did not commit murder as he did not shot Cameron. Carver cannot be convicted under the accomplice liability theory because there is no agreement to commit murder, robbery, kidnapping or any crime.

**IV.
CARVER'S RIGHT TO DUE PROCESS HAS BEEN VIOLATED
BY THE TRIAL JUDGE'S PREJUDICIAL ACTIONS TOWARDS THE CASE.**

First, Carver believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as ruling on sustaining when there was no objection.

- 12. Q. Mr. Curry told you that he left the
- 13. gun in the car; right?
- 14. Q. Yes.
- 15. Q. So we are here today and you're
- 16. saying that Mr. Carver did what?
- 17. SOLICITOR MOORE: Uh—
- 18. THE COURT: Sustained.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 67).

Or sustained an objection that has no grounds:

- 06. Q. Mr. Gambrell was aware of the
- 07. pistol, the .38 being picked up?
- 08. SOLICITOR MOORE: Objection, Your Honor.
- 09. THE COURT: Sustained.
- 10. SOLICITOR MOORE: Thank you.
- 11. CROSS EXAMINATION CONTINUED
- 12. BY MR. SMITH:
- 13. Q. That weapon was not utilized in this
- 14. event to our knowledge?
- 15. SOLICITOR MOORE: Objection, You Honor.
- 16. THE COURT: Asked and answered. Move forward, please.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 68).

Carver believes that the trial judge showed his bias when he made conclusory

statements as below:

06. MR. SMITH: It shows that what they've
07. provided, his statements and things in
08. evidence supports what he said from a non-
09. criminal standpoint. There was no criminal
10. thought in this matter. That's what he says.
11. THE COURT: Well, I'll look at it.
12. Quite frankly, I think you're just wrong. I
13. think that if your client went to go pick up
14. money or drugs, that's a criminal act in and
15. of itself. If you don't think so, then we
16. have a disagreement about that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 69).

06. THE COURT: Well, let me think about
07. that on the hand of one, hand of all. But
08. here are my thoughts on that. First, I don't
09. think that it exculpates your client, the
10. reason being --I think that they had a
11. criminal enterprises regardless of the
12. shooting; that is, 'go get him', go get this
13. man, go get the drugs or go get the money like
14. he said and the other officers testified to.
15. If the jury finds that to be the case, that's
16. a illegal plan or scheme in that they have --
17. the cases are replete with the nexus between
18. drugs and guns, also drugs and violence.
19. So, if you look at the charge of hand of
20. one, hand of all, it says that "if two people
21. join with another to commit an unlawful act
22. then they are responsible for everything done
23. by the other person which happens as a
24. probable or natural consequence of the act(s)
25. in carrying out the common plan or purpose."
01. So therefore -- although I think probably that
02. your client did not know that a gun—that he
03. was going to shoot this fellow, but—the
04. cases recognize the connection between guns,
05. drugs and violence where the plan was illegal
06. and it just spiraled out of hand.
07. So, the jury may believe that he was an
08. innocent bystander, but that's my belief as to
09. why the video of Mr. Gambrell does not
10. exculpate your client. “

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 70).

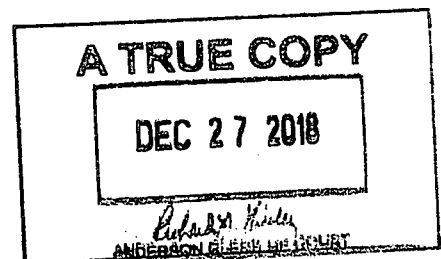
The preceding statements were replete with prejudice considering that Carver disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Second, Carver avers that he was denied his right to present his witnesses. Carver believes that Mr. Gambrell was key to the whole case, as he would testify that his instruction to Carver was simply to bring Cameron back to his (Gambrell) house. This then would rule out conspiracy or unity in purpose and action. Gambrell was called as a witness on behalf of Carver. The trial judge advised Gambrell of his rights, particularly his rights against self-incrimination. Gambrell proceeded to narrate the events that transpired on March 28, 2016, which confirmed Carver's story. When he started to explain about the missing item, his lawyer and the court advised him of his Fifth Amendment right. After explaining his rights against self-incrimination, and a stern warning of its consequence, the trial judge insisted Gambrell confer with his counsel. At that point, the court ruled that his statements to the court will be stricken from the record.

07. THE COURT: At this point I need to
08. advise you of your rights under the Fifth
09. Amendment of the United States Constitution
10. which says in part that no person can be
11. compelled in a criminal case to be a witness
12. against himself. Do you understand your
13. rights?

14. WITNESS: Yes, sir.

15. THE COURT: That means that you can't
16. be required to testify against yourself, the
17. State can't require you to, I can't require
18. you to. Nobody can.
19. You have the right to refuse any question
20. asked of you, anything that gives you
21. reasonable cause to believe that the answer,
22. if given, might tend to incriminate you as
23. charged.



24. If you wish to exercise your right under
 25. the Fifth Amendment, you will state that to
 01. the court. You will say, "I refuse to answer
 02. the question because the answer to the
 03. question may tend to incriminate me." Do you
 04. understand that?
 05. WITNESS: Yes, sir.
 06. THE COURT: And let me advise you
 07. further that your statement is not the final
 08. decision as to whether or not your answer to
 09. the question would violate the Fifth
 10. Amendment. I will ultimately make that
 11. decision. Do you understand?
 12. WITNESS: Say that again, sir?
 13. THE COURT: Just because you exercise
 14. your right by saying "I refuse to answer the
 15. question because the answer may tend to
 16. incriminate me" does not mean that is the end
 17. of the inquiry. I will make the final
 18. determination as to whether or not you will
 19. have to answer the question. Do you
 20. understand?
 21. WITNESS: Yes, sir.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 2.4).

13. THE COURT. Mr. Phillips, do you have a
 14. matter you wish to bring up on the record?
 15. MR. PHILLIPS. Yes, sir. I have
 16. advised my client not to testify in this
 17. case. He originally chose to testify. I
 18. am again advising him to exercise his Fifth
 19. Amendment right and not to testify in this
 20. case from this point forward.
 21. THE COURT: Do you wish to honor your
 22. attorney's advice, Mr. Gambrell?
 23. WITNESS: (No verbal response).
 24. THE COURT: In other words, do you want
 25. to testify or do you want to exercise your
 01. rights under --on your attorney's advice to
 02. exercise your rights under the Fifth
 03. not to testify?
 04. WITNESS: I don't really understand
 05. THE COURT: Well, let me tell you this,
 06. Mr. Gambrell. Your testimony in this case is

07. being transcribed and it will be obtained by
08. the State and used against you in the
09. upcoming trial against yourself, or it can
10. be, Do you understand that?
11. WITNESS: Yes, sir.
12. THE COURT: Now, your attorney --I
13. gave you your rights under the Fifth
14. Amendment and you told me that you understood
15. them. Is that correct?
16. WITNESS: I am trying to understand
17. them.
18. THE COURT: Well, sir, either you
19. understand them or you don't. You told me
20. that you did. What I told you is that under
21. the Fifth Amendment to the United States
22. Constitution that no person can be compelled
23. to testify against himself in a criminal
24. trial. Do you understand that?
25. WITNESS: Yes, sir.
01. THE COURT: And effectively what you
02. are potentially doing is testifying against
03. yourself because this testimony will be or
04. can be used against you in your trial later,
05. if you continue to testify. Do you
06. understand?
07. WITNESS: (Pause) --yes, sir.
08. THE COURT: Okay, sir. Now, Mr.
09. Phillips, who is your attorney for your
10. criminal charges has just stated that he's
11. advised you not to testify and he's re-
12. advised you not to testify any further. Do
13. you understand that?
14. WITNESS: (No verbal response).
15. THE COURT: Do you understand that, Mr.
16. Gambrell?
17. WITNESS: Yes, sir.
18. THE COURT: Now, you have a right --
19. the only person who can exercise their right
20. under the Fifth Amendment is yourself. It is
21. advisable to listen to an attorney, however
22. the ultimate decision as to whether or not
23. you wish to continue to testify in this
24. proceeding is your decision, yours alone to
25. make.
01. WITNESS: Yes, sir.
02. THE COURT: Okay. You have to make

03. that decision knowing your rights under
 04. the Fifth Amendment and also knowing the
 05. consequences to you if you continue to
 06. testify.
 07. That is that --the consequence are that
 08. the State can and will obtain the transcript
 08. of your testimony and when you are called to
 10. trial they can use that against you in the
 11. courtroom. Do you understand? In front of
 12. the jury?
 13. WITNESS: Yes, sir.
 14. THE COURT: Now, the question is, do you
 15. wish to testify or do you wish to exercise
 16. your Fifth Amendment rights and not testify;
 17. take your attorney's advice not to testify?
 18. WITNESS: (No verbal response).
 19. THE COURT: Would you like to speak
 20. with your attorney further?
 21. WITNESS: Yes, sir.
 22. THE COURT: Would you take him in the
 23. hallway, Mr. Phillips?
 24. (BRIEF RECESS -COUNSEL PHILLIPS AND
 25. WITNESS TO CONSULT OUTSIDE COURTROOM)

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, PP. 5-8).

Carver raises his concerns on the judge's overzealous efforts to explain to Mr. Gambrell about his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in *Webb v. Texas*, 409 S. 95, 98 (1972)- a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence.

More importantly, Carver questions the propriety of the court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow Carver to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege

only after the incriminating question has been put. *State v. McGuire*, 272 S.C. 550-551. In short, unlike Carver (or a co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness' invocation of the privilege. In the instant case, the trial judge did not propound any question upon Gambrell to get by his Sixth Amendment Right.²

Defense subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the bike from Cameron that day. When the defense called the witnesses, neither of them were available to testify. As expected, defense counsel could not track down the witnesses. This was especially true since Mr. Gambrell was no longer an issue to testify. Carver was unable to show to the jury that Gambrell had prevented the boys from going that night because he was concerned of the personality clashes that may have occurred had they gone down there. The Court did not attempt to compel the presence of the witnesses with any significance. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify, was summarily dismissed by the judge. Carver believes that the Court had a duty to compel the witnesses who been subpoenaed properly, so as to give Mr. Carver some semblance of equity.

² The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Carver avers that the judge's actions in prohibiting and/or denying his right to call his witnesses (Dequavious and Tykeon), was both arbitrary and capricious.

The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truth lies Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

This was in direct violation of Carver's Sixth Amendment Rights.

Carver recognizes that a violation of a defendant's Sixth Amendment right to confront a witness or present one is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 315 S.C. 383, 385, 444 S.E. 2d 525, 527 (1994). Error is harmless where it could not reasonably have affected the result of the trial. In Re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003).

Carver submits that Gambrell's, Dequavious' and Tykeon's respective testimonies were critical to the case's outcome. Carver asserts that they will testify to his motive/intent in returning to Cameron's house. Gambrell will testify to the following: (1) He sent Carver to Cameron with instructions to return the latter to Gambrell's house; (2) He did not give any gun to Curry; (3) He did not inform Carver of the stolen item when the latter drove back to Cameron's; (4) Carver did not have a gun with him on the day of the incident; (5) Curry did not call Gambrell between the time Carver and Curry left his house and the time they returned; and, (6) He did not instruct Curry to kill, rob or sell anything to Cameron. Gambrell's testimony will

provide the crucial nexus establishing Carver's innocence. Dequavious and Tykeon will testify, among other things, to the bike transaction with Cameron, which was witnessed by Carver.

The trial judge also denied Carver's attempt to introduce in evidence the audiotape of Gambrell's interview with the ACSO officers as an exception to the hearsay rule. Gambrell can be considered as an unavailable declarant under the doctrine laid down in the State v. Doctor, 413 S.E.2d. 36. The judge insisted that contents of the Gambrell's interview do not exculpate Carver, nor were they clearly corroborated by evidence that indicates the trustworthiness of Gambrell's statement. With the new developments in this case, Carver could not have provided evidence that will corroborate the trustworthiness of Gambrell's testimonies because of the lies and conflicting statements that Curry perpetuated.

From the foregoing, Plaintiff believed that the trial judge sought, and/or prevented Gambrell from testifying in court. By his actions, he had improperly swayed a witness. The judge's failure to adhere to the neutrality and non-biased work required by his position, tainted the proceeding.

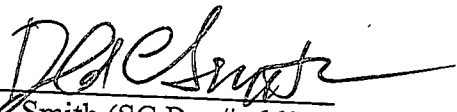
Carver is presently serving a sentence of thirty (30) years for a crime that he did not commit. Carver is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Carver.

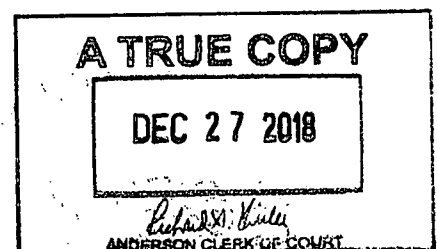
Carver submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

Accordingly, Carver respectfully requests this Honorable Court to grant new trial on this case to allow Carver to present the newly discovered evidence to a jury of his peers.

{SIGNATURE TO FOLLOW}

December 27, 2018


Donald L. Smith (SC Bar #: 6699)
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attorneydonaldsmith@gmail.com
Attorney for Defendant



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

State of South Carolina,
Plaintiff,

vs.

Jason Carver,
Defendant.

IN GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No.: 2016A041020056

CERTIFICATE OF SERVICE

THE UNDERSIGNED person deposes and says that he served a copy of Defendant's Amended Motion for New Trial, upon the Solicitor's Office, Tenth Judicial Circuit, by and through Assistant Solicitor Chelsey Moore and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

Date: December 27, 2018



Donald L. Smith
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Moore
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624

Diane Greenway
12.27.18

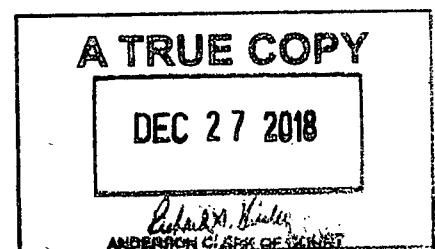


EXHIBIT 1

Pages 90-91

1 And so, ladies and gentlemen, I submit to you that
2 a murder was committed, that Woodrow Curry committed
3 the murder of Steven Cameron. And so, ladies and
4 gentlemen, we have proven, I submit to you, the State
5 has proven beyond a reasonable doubt each of those
6 elements: That James Gambrell urged, advised, or in
7 some way aided Woodrow Curry to commit an armed
8 robbery, to commit a drug distribution, or to commit a
9 kidnapping, that James Gambrell was not present when
10 the crime was committed, and that one of James
11 Gambrell's codefendants, Woodrow Curry, actually killed
12 Steven Cameron with malice aforethought.

13 Now, the question remains is how do you get from
14 James Gambrell advising, urging, or in some way aiding
15 them to commit an armed robbery to finding him guilty
16 of accessory before the fact to murder? He very
17 expressly said in his statement he's not a murderer.
18 So how do you get there?

19 In order for James Milton Gambrell to be found
20 guilty of accessory before the fact to murder, he must
21 have the same criminal intent as Woodrow Curry. They
22 must have intended the same thing before the murder was
23 committed. They must have intended for Woodrow Curry
24 to take the money, to take the drugs, or to bring
25 Steven Cameron back to James Gambrell. But James

1 Gambrell is also liable for any criminal act which, in
2 the ordinary course of things, was the natural or
3 probable consequence of the crime that he advised or
4 commanded. So was the murder of Steven Cameron a
5 natural and foreseeable consequence of James Gambrell's
6 order? I submit to you that it was.

7 This is the evidence that we know: Woodrow Curry
8 was high. Woodrow Curry was armed. James Gambrell
9 knew that Woodrow Curry was armed. And whether you
10 believe Woodrow Curry or whether you believe James
11 Gambrell, he knew it one way or the other. According
12 to James Gambrell, he said, "I told him to leave the
13 gun, but, you know, he didn't listen to me." Woodrow
14 Curry says, "No, he gave me that gun."

15 But it doesn't matter. In this instance, it
16 doesn't matter because James Gambrell knew that Woodrow
17 Curry was high and he knew that he was armed and he
18 sent him there to get the drugs or the money or bring
19 Steven Cameron back to him.

20 This was a drug transaction. And accidents happen
21 in the drug trade. I submit to you that this was not
22 only a foreseeable consequence, it was the most likely
23 outcome. What would Mr. Gambrell have expected? He
24 talks on his interview about how Steven Cameron was
25 crying. \$750 of cocaine he did every day. So he said,

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011
C.A. No: 2016A041020056

RECEIVED
DEC 31 2018
SC Court of Appeals

State of South Carolina,

Respondent,

v.

Jason Franklin Carver,

Appellant.

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion for New Trial with Exhibits, Amended Motion for New Trial, and Proof of Service of same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, at 100 S. Main Street, Anderson SC 29624, and South Carolina Attorney General Honorable Alan McCrory Wilson and Assistant Attorney General Samuel Marion Bailey at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on December 28, 2018.

December 28, 2018


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attorneydonaldsmith@gmail.com
Attorney for Appellant

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING MOTION TO HOLD APPEAL IN ABEYANCE

December 28, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

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DEC 31 2018

SC Court of Appeals

RE: The State v. Jason Franklin Carver
Appellate Case No.: 2017-002011
Trial Court Case No.: 2016A041020056

Dear Ms. Kitchings:

Pursuant to this Honorable Court's Order, dated December 10, 2018, please find enclosed a copy of the following materials, which I have filed in the lower court:

- (1) One copy of Appellant's Motion for New Trial, with Exhibits;
- (2) One copy of Appellant's Amended Motion for New Trial;
- (3) Proof of Service for same.

Sincerely,



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

cc:

Mr. Alan McCrory Wilson, Esquire, South Carolina Attorney General
Mr. Samuel Marion Bailey, Esquire, Assistant Attorney General
Ms. Chelsey L. Moore, Esquire, Assistant Solicitor for the Tenth Judicial Circuit

Attorney Office of Donald Smith
122 N. Main Street
Anderson, SC 29621

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DEC 31 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211



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