

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Michael G. Nettles, Circuit Court Judge

TYRUS RASHAWN WOODRUFF,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001838

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5) 2015-GS-42-3881-3884
6 Tavaris Jaquez Dewberry,) 2015-GS-42-3859-3863
7 Tyrus Rashawn Woodruff,)
8 Defendants.) February 21, 2017
9) Spartanburg, South Carolina
10

11 B E F O R E :
12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13

14 A P P E A R A N C E S :
15 BARRY JOE BARNETTE, ESQUIRE
16 SPENSER HOLLORAN SMITH, ESQUIRE
17 PAUL KRESWELL NEELY, ESQUIRE
18 CLAY T. ALLEN, ESQUIRE
19 SUZANNE H. WHITE, ESQUIRE
20 Attorneys for Defendant Woodruff
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22 MICHAEL DAVID MORIN, ESQUIRE
23 Attorney for Defendant Dewberry
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25

Linda D. Moffitt
Circuit Court Reporter

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG 16 PM 2:44
M. HOPE BLACKLEY

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MURRAY BRANDON LETTERMAN (SW) In-camera

Direct examination by Mr. Barnette

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1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-1	One fired 9mm cartridge case	
4	S-2	One fired bullet	
5	S-3	One fired 9mm cartridge case	
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21	S-19	Photograph	
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23	S-21	Photograph	
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1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-24	Photograph	
4	S-25	Photograph	
5	S-26	Photograph	
6	S-27	Photograph	
7	S-28	Photograph	
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1 (Proceedings February 21, 2017)

2 THE COURT: Are we ready to bring the jury around?

3 MR. BARNETTE: The state's ready, Your Honor.

4 MR. MORIN: Mr. Dewberry is ready.

5 MR. NEELY: Mr. Woodruff is ready.

6 THE COURT: All right. Bring them around.

7 (The following takes place in the presence of the jury
8 venire.)

9 THE COURT: Good afternoon, ladies and gentlemen.

10 We are ready to begin with jury selection in the next
11 case that's going to require some of your participation.
12 And this is a criminal case, not a civil case.

13 We have two persons charged with five separate and
14 distinct criminal offenses. Those two people are being
15 tried together. The state claims that they acted together
16 in the commission of these crimes. Those are allegations
17 that each of the defendants deny.

18 But the state has accused Tavaris Jaquez Dewberry and
19 Tyrus Rashawn Woodruff in separate indictments with the
20 crimes of burglary in the first degree, attempted murder,
21 three separate counts of armed robbery. And Mr. Woodruff
22 is also charged with an additional offense of possession of
23 a firearm or a knife during the commission of a violent
24 crime.

25 Now, the state alleges by way of these indictments

Jury qualification

1 that each of the defendants did here in Spartanburg County
2 on or about July the 14th of 2015 wilfully and
3 intentionally enter a dwelling that was occupied by Marlon
4 Shermaine Davis which was located at [REDACTED] Country Club Road
5 here in Spartanburg County; that they entered that dwelling
6 without consent and with the intent to commit a crime
7 therein and either in effecting entry or while in the
8 dwelling or in immediate flight therefrom each, or a
9 participant in the common enterprise, was armed with a
10 deadly weapon or caused physical injury to some other
11 person who was not a participant in the crime, or used or
12 threatened the use of a dangerous instrument, or displayed
13 what appeared to be a knife, pistol, revolver, rifle,
14 shotgun, machine gun or other firearm, and/or the burglary
15 occurred in the nighttime.

16 The state also alleges that each of the defendants did
17 commit the crime of attempted murder in that each did, with
18 intent to kill, attempt to kill one Marlon Shermaine Davis
19 with malice aforethought by shooting Mr. Davis with a
20 firearm.

21 And they allege that Mr. Woodruff did possess that
22 firearm during the commission of the violent crime, that
23 violent crime being the attempted murder of Marlon
24 Shermaine Davis.

25 And each of the defendants are charged in three

1 separate indictments with the crimes of armed robbery, the
2 state alleging that each of the defendants did here in
3 Spartanburg County on July the 14th of 2015 while armed
4 with a deadly weapon or while alleging either by action or
5 words that he was armed with -- while using a
6 representation of a deadly weapon or some object which a
7 person present during the commission of the robbery
8 reasonably believed to be a deadly weapon, and that each
9 did take, steal and carry away property from the person or
10 presence of Marlon Shermaine Davis, M.D. [REDACTED]
11 and A.R. [REDACTED] through the use of force, violence or
12 intimidation and with the intent to deprive each of those
13 persons of use and possession of their property.

14 Now, as to those allegations and as to each of those
15 charges each of the defendants have entered a plea of not
16 guilty.

17 A plea of not guilty places upon the state the burden
18 of proving the allegations that they have made against each
19 of these defendants contained in the indictments, the
20 burden of proving each of the essential elements of the
21 crimes that are alleged against each of these separate
22 defendants; and therefore the burden is upon the state to
23 establish each of the defendant's guilt to the satisfaction
24 of 12 jurors beyond a reasonable doubt before any verdict
25 of guilty could be returned as to either of the defendants

1 and as to any of the charges.

2 And therefore we're going to be selecting 12 of you.
3 There'll be 12 primary jurors, and we'll select one or two
4 alternates.

5 The purpose of your participation of course is to
6 listen to the testimony, to consider the evidence
7 introduced during the trial of the case, to determine what
8 you believe to be the facts as they relate to these
9 allegations.

10 Once you decide those facts, you'll apply the law that
11 I will have provided you, and you will determine whether or
12 not a defendant's guilt as to a particular charge has been
13 proven beyond a reasonable doubt. And if it has as to that
14 charge, then your verdict would be guilty. And if it has
15 not been proven as to that defendant or a particular
16 charge, then your verdict would be not guilty.

17 Now, before we begin with that jury selection I've got
18 some folks that I'm going to introduce to you. I'll
19 introduce the defendants; I'll introduce the purported
20 victims; I'll introduce the lawyers involved in the trial
21 of the case; I'll introduce any potential witness that
22 might be called during the trial of the case.

23 And of course the purpose of these introductions is to
24 find out if you have any connection to anybody involved in
25 the case by blood or by marriage, do you attend church with

1 any of these folks, did you go to school with any of these
2 folks, or do you work at the same place of employment with
3 any of these folks, do you socialize with any of these
4 folks, or do you have any connection, have you met them,
5 have you run into them somewhere, been introduced to them,
6 do you know them in any fashion.

7 And that same would apply to any members of their
8 respective families. If you happen to know one of their
9 family members, I need to also know that.

10 Then after I introduce those folks to you and you
11 respond to that question about any connections, I'll have
12 some additional questions to ask you in order to determine
13 your ability to be fair and impartial if selected as a
14 juror in the case.

15 So, first of all, as I told you, the two persons who
16 are charged in these separate indictments are Tavaris
17 Jaquez Dewberry.

18 Mr. Dewberry, if you will, please stand and face the
19 jury panel.

20 (Whereupon, the defendant stood.)

21 THE COURT: Okay. Be seated.

22 And Tyrus Rashawn Woodruff.

23 (Whereupon, the defendant stood.)

24 THE COURT: Mr. Dewberry is represented by Michael
25 Morin. That's his lawyer. He'll be assisting him in the

1 trial.

2 (Whereupon, Mr. Morin stood.)

3 THE COURT: The defendant Mr. Woodruff is represented
4 by Paul Neely who is an assistant public defender in the
5 Seventh Judicial Circuit Public Defender's Office.

6 And seated next to Mr. Neely is Clay Allen who is the
7 public defender for the Seventh Judicial Circuit.

8 (Whereupon, Mr. Neely and Mr. Allen stood.)

9 THE COURT: The persons who are alleged to be the
10 victims as set forth in each of these indictments are
11 Marion [sic] Shermaine Davis, Marion [sic] Lashawn Davis
12 and A.R. [REDACTED]

13 (Whereupon, the victims stood.)

14 THE COURT: Additionally, the following persons are
15 potential witnesses. It doesn't mean that all of these
16 witnesses will actually be called to testify, but they do
17 have some knowledge about the case. And so they might be
18 needed for some purpose. And so I'm going to recite all of
19 them in the event they all were to testify. But some may
20 not.

21 But the list of witnesses include Deputy Lanford with
22 the Spartanburg County Sheriff's Department; Deputy Brown,
23 Chaney Brown, with the Spartanburg County Sheriff's
24 Department; Investigator Brandon Letterman with the
25 Spartanburg County Sheriff's Department; Investigator Shane

1 Nix with the sheriff's department; Deanna Burgess with the
2 sheriff's department; Matt Davis with the sheriff's
3 department; William Gary with the sheriff's department;
4 Lorin Williams with the sheriff's department; Jason Bryant
5 with the sheriff's department; John Hudson with the
6 sheriff's department; Bobby Duncan with the sheriff's
7 department; Bobby Turner with the sheriff's department;
8 James Rhodes with the sheriff's department; Robert Taylor
9 with the sheriff's department; Tim Davis with the sheriff's
10 department; William Schall with the sheriff's department;
11 Robert Rosenberg with the sheriff's department; Angela
12 Nelson with the sheriff's department; Mike Jones with the
13 sheriff's department; Dr. Hurd, H-U-R-D, a physician at
14 Spartanburg Regional Medical Center; John David Wren, a
15 physician, Spartanburg Regional Medical Center; Chad Smith
16 from the state law enforcement division; Doris Yarborough,
17 state law enforcement division; Amy Stephens, state law
18 enforcement division; Beverly Robinson, a resident of
19 Spartanburg.

20 We have Robert Gilleo, a resident of Roebuck, South
21 Carolina, Spartanburg County; Harold Gene Cleveland,
22 Spartanburg resident; Danelta Renee Dewberry, Spartanburg
23 resident; Aaliyha Young, a Spartanburg resident; Xavier
24 Martin, a Spartanburg resident, Justin Williams, a
25 Spartanburg resident; Keith Lee with 9-1-1.

1 MR. BARNETTE: Your Honor, that's supposed to be
2 Justine Williams. I'm sorry. You said Justin Williams.
3 It's supposed to be Justine.

4 THE COURT: Justine Williams, a resident of
5 Spartanburg; Brittany Scruggs, employed at the department
6 of probation, pardon and parole services; Courtney Burgess
7 with the sheriff's department; Marilyn Roman with the
8 sheriff's department; Deanna Burgess with the sheriff's
9 department; Jennifer Aycock, state law enforcement
10 division; Tyler Sturkie, state law enforcement division;
11 Aquaviuous Ray; Taylor Dawkins; Christina Booker; Iesha
12 Ferguson.

13 Are there any other witnesses --

14 MR. BARNETTE: No, sir.

15 THE COURT: -- potentially by the state?

16 MR. BARNETTE: None from the state, Your Honor.

17 THE COURT: By the Defendant Dewberry?

18 MR. MORIN: None by Mr. Dewberry.

19 THE COURT: Defendant Woodruff?

20 MR. NEELY: None, Your Honor.

21 THE COURT: All right. Does any juror know anybody
22 who's just been identified?

23 I need to know if you know anybody that's been
24 identified, any members of their families. And I also need
25 to know -- obviously, some of these folks who are with the

1 public defender's office -- Mr. Barnette is the -- I need
2 to introduce Mr. Barnette, the solicitor for the Seventh
3 Judicial Circuit; Spenser Smith, an assistant circuit
4 solicitor for the Seventh Judicial Circuit.

5 (Whereupon, Mr. Barnette and Mr. Smith stood.)

6 THE COURT: So I need to know not only do you know
7 folks who have been introduced, but do you know anybody
8 else who are members of their respective families or
9 anybody else employed in the circuit public defender's
10 office or the circuit solicitor's office?

11 All right. Ma'am, I'm going to start with you if
12 you'll give me your name and your number, please, and then
13 I'll jump the aisle. But tell me how that question relates
14 to you.

15 JUROR NO. 41: Heather Dorsey, No. 41. I was
16 coworkers with Marilyn Roman and went to high school with
17 Jason Bryant.

18 THE COURT: And would either of those connections have
19 any bearing upon your decision in this case if you were
20 selected as a juror?

21 JUROR NO. 41: No, sir.

22 THE COURT: All right. Thank you. You may be seated.
23 Yes, sir.

24 JUROR NO. 39: Tony Dill, Juror No. 39. I know
25 Detective Lorin Williams, county sheriff's office.

Jury qualification

1 THE COURT: And how do know him?

2 JUROR NO. 39: My children went to school with him and
3 I'm a friend with his mother and father.

4 THE COURT: All right. Would that connection have any
5 bearing on your decision?

6 JUROR NO. 39: No, sir.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 131: Janet Skinner, Juror No. 131. And I
10 do know someone that works in the solicitor's office.

11 THE COURT: All right. Would that have any bearing in
12 your decision?

13 JUROR NO. 131: No.

14 THE COURT: Thank you. Be seated.

15 All right. Next row.

16 JUROR NO. 31: Adam Craft, Juror No. 31. I know
17 Officer Williams. He's a family friend. And I had
18 dealings with the solicitor's office when I worked with the
19 Greer Police Department.

20 THE COURT: All right. Is there anything about those
21 connections that would have any bearing on your decision?

22 JUROR NO. 31: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, sir.

25 JUROR NO. 3: Gerod Allison, Juror 3. I know Marlon

1 Davis and his wife. They've been friends with me for quite
2 a while.

3 THE COURT: And is there anything about that
4 connection that would have any bearing in your decision in
5 the case?

6 JUROR NO. 3: No, sir.

7 THE COURT: Thank you. Be seated.
8 Yes, ma'am.

9 JUROR NO. 92: Jaquasia Martin-Hull, Juror No. 92.
10 Aquaviuous Ray is my cousin.

11 THE COURT: Is your husband?

12 JUROR NO. 92: My cousin.

13 THE COURT: Your cousin. All right. We'll excuse you
14 from service in this case. Okay. But don't leave yet.

15 Juror 92 is excused.

16 Yes, sir.

17 JUROR NO. 96: Patrick McDonnell, Juror 96. I went to
18 high school with Michael Morin.

19 THE COURT: And is there anything about that fact that
20 would interfere with your ability to be fair?

21 JUROR NO. 96: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 77: Lajanielle Jones, Juror 77. I know
25 Ms. Iesha Ferguson. We were coworkers.

1 THE COURT: You know Ms. Ferguson how?

2 JUROR NO. 77: She was a coworker.

3 THE COURT: Okay. Is there anything about that
4 connection that would have any bearing in your decision?

5 JUROR NO. 77: No, sir.

6 THE COURT: Thank you. Be seated.

7 Yes, sir.

8 JUROR NO. 97: Parnell McEntyre, Juror 97. I went to
9 school with Lorin Williams.

10 THE COURT: And would that have any bearing in your
11 decision if selected?

12 JUROR NO. 97: No, sir.

13 THE COURT: Thank you. Be seated.

14 Anyone else need to respond to a question about
15 connection with any of the potential witnesses or lawyers
16 or their respective agencies?

17 (No response.)

18 THE COURT: I'm to going ask you a couple of questions
19 about yourselves, as well as any members of your immediate
20 family. And I'm going to define an immediate family member
21 as a parent or a spouse or a child or a sibling -- parent,
22 spouse, child or sibling.

23 I need to know if you or any members of your immediate
24 families have ever been the victim of any type of violent
25 crime -- and I'll list some of those for you in a minute --

1 or have you or one of those immediate family members ever
2 been accused of having committed any type of violent crime?

3 Included in the definition of violent crime would be
4 murder, manslaughter, burglary, attempted murder, armed
5 robbery, assault and battery, or assault with intent to
6 kill, aggravated assault and battery, criminal domestic
7 violence of a high and aggravated nature, armed robbery, or
8 any other similar type of an offense that might be
9 characterized as a violent offense.

10 Have you or any members of your immediate family ever
11 been the victim of such an offense or have you ever -- you
12 or a family member ever been accused of having committed
13 those types of offenses? If so, I would ask that you
14 please stand.

15 Now, as you stand, you can respond to the question
16 where you are. If you don't want to respond to the
17 question where you are, feel free to step down here, and
18 we'll discuss it as privately as we can.

19 But if you don't come down here I'll just assume you
20 don't mind responding to the question where you are.

21 I'll start with you, and I'll need your name and
22 number again, please.

23 JUROR NO. 119: Raymond Ritchings, 119.

24 THE COURT: All right. How does that question relate
25 to you?

1 JUROR NO. 119: I was a victim on a burglary.

2 THE COURT: All right. And has that case been
3 resolved?

4 JUROR NO. 119: Yes, sir.

5 THE COURT: Is it over or pending?

6 JUROR NO. 119: Yes, sir. It was over years ago.

7 THE COURT: And was that in Spartanburg County or
8 outside of Spartanburg County?

9 JUROR NO. 119: Spartanburg County.

10 THE COURT: All right. And is there anything about
11 that experience that would impair your ability to be fair
12 in this case --

13 JUROR NO. 119: No, sir.

14 THE COURT: -- wherein you say you know someone is
15 accused of having committed the crime of burglary?

16 JUROR NO. 119: Say that again, please.

17 THE COURT: I said would that -- would your personal
18 experience of having been the victim of a burglary have any
19 bearing upon your decision in this case wherein you know
20 that someone is accused of having committed that crime?

21 JUROR NO. 119: No, sir.

22 THE COURT: Okay. Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 41: Heather Dorsey, No. 41.

25 THE COURT: All right. How does that question relate

1 to you?

2 JUROR NO. 41: Victim of felony C.D.V. high and
3 aggravated.

4 THE COURT: And is there anything about that
5 experience that would have any bearing upon your decision
6 in this case?

7 JUROR NO. 41: No, sir.

8 THE COURT: Thank you. Be seated.

9 Yes, sir.

10 JUROR NO. 85: David Kucinski, No. 85. And my little
11 brother 40 years ago or 30 years ago was involved in a
12 robbery, I guess you'd say.

13 THE COURT: And he was the victim or he was a
14 perpetrator?

15 JUROR NO. 85: Perpetrator.

16 THE COURT: Or accused. All right. Is there anything
17 about that fact that would impair your ability to be fair
18 in this case?

19 JUROR NO. 85: No.

20 THE COURT: Thank you. Be seated.

21 Yes, sir.

22 JUROR NO. 38: Matthew Dezern, Juror 38. Pled guilty
23 to assault and battery.

24 THE COURT: All right. And is there anything about
25 that fact that would impair your judgment in this case?

Jury qualification

1 JUROR NO. 38: No.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 10: Jennifer Barbare, Juror No. 10. Back
5 in 1988 my mother was murdered.

6 THE COURT: And was that case resolved? I mean,
7 somebody was charged and that case resolved?

8 JUROR NO. 10: Oh, yeah. It's done.

9 THE COURT: Okay. Is there anything about that fact
10 that would interfere with your ability to be fair in this
11 case wherein someone is accused of attempted murder?

12 JUROR NO. 10: No, sir.

13 THE COURT: Okay. Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 39: Tony Dill, Juror 39. I have a son
16 that's a convicted felon, and he's incarcerated now in
17 Spartanburg County.

18 THE COURT: And is there anything about that fact that
19 would interfere with your ability to be fair in this case?

20 JUROR NO. 39: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 79: Joann Kearney, Juror 79. Victim of a
24 home burglary.

25 THE COURT: And was someone charged?

1 JUROR NO. 79: No.

2 THE COURT: So the case was never resolved.

3 JUROR NO. 79: Never taken to court.

4 THE COURT: All right. Is there anything about that
5 fact that would interfere with your ability to be fair in
6 this case?

7 JUROR NO. 79: No, sir.

8 THE COURT: Thank you. Be seated.

9 Is any member of the jury panel related by blood or
10 marriage to any type of law enforcement officer?

11 And let's just include in that if you yourself have
12 been employed as a law enforcement officer in any capacity
13 at any time -- civilian or military -- let me know that
14 too. And also let me know if you have any family member
15 who is now or has been employed as any type of law
16 enforcement officer.

17 That's with any department -- sheriff's department,
18 municipal law enforcement agency, probation and parole,
19 county detention, state department of corrections, federal
20 bureau of investigation, state law enforcement division,
21 any type of law enforcement agency, civilian or military.

22 All right. They're all on the left side.

23 Okay. Yes, ma'am.

24 JUROR NO. 10: Jennifer Barbare, Juror No. 10. My
25 brother is working for Laurens County Sheriff's Office.

Jury qualification

1 THE COURT: All right. Thank you. Be seated.

2 Yes, sir.

3 JUROR NO. 31: Adam Craft, Juror No. 31. I worked for
4 the Greer Police Department for seven years.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR NO. 5: Mark Alwine, Juror No. 5. I worked for
8 the South Carolina Highway Patrol for about a year and I
9 worked for the Landrum Police Department as an officer for
10 a year and stayed on for two years as a reserve officer. I
11 left in 2000.

12 THE COURT: All right. Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 134: Kenneth Smith, Juror 134. I had two
15 uncles and a cousin which was an officer.

16 THE COURT: All right. Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 138: Shawna Stalvey, Juror 138. My
19 brother-in-law and my sister-in-law are both in Florida law
20 enforcement.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 77: Lajanielle Jones, Juror 77. My
24 father's a retired correctional officer.

25 THE COURT: All right. Thank you. Be seated.

1 JUROR NO. 25: Angie Cleveland, Juror 25. I had a
2 cousin who is a retired chief of the police department in
3 Mauldin.

4 THE COURT: All right. Thank you, ma'am. You may be
5 seated.

6 Has any member of the jury panel ever been called to
7 testify as a witness in a criminal case, whether it be you
8 were called by the state or called by defense counsel?
9 Have you ever been called to testify as a witness in a
10 criminal case? If so, please stand.

11 All right.

12 JUROR NO. 119: Raymond Ritchings, 119. I was called
13 to do -- testify in the burglary of my home.

14 THE COURT: Okay. Thank you. Be seated.

15 Anybody else?

16 (No response.)

17 THE COURT: Does any member of the jury panel belong
18 to any type of organization or do you contribute time or
19 money to any type of organization that might be described
20 or characterized as law enforcement support or victims
21 advocacy groups or support?

22 Those might include mothers against drunk drivers,
23 citizens against violent crime, the honorary sheriffs'
24 association, the fraternal order of police, a neighborhood
25 watch organization, a rape crisis, safe homes, any type of

1 organizations that might be described as supporting law
2 enforcement or victims of crime or persons in those
3 categories. If you belong to any such organizations or you
4 contribute time or money to any such organization, I would
5 ask that you please stand.

6 (No response.)

7 THE COURT: None responding.

8 All right. I told you what the allegations are, the
9 charges that have been made against each of these two
10 defendants. I've told you where the state claims that
11 these offenses did occur and the nature of the offenses.
12 I've also listed the witnesses for you, or at least the
13 potential witnesses, and introduced the lawyers to you.

14 Is there anything about the nature of the charges or
15 anything you've seen or heard up to this point that would
16 interfere in any way with your ability to be fair and
17 impartial if you were selected to serve as a juror in this
18 case? If you have any reason whatsoever why you think you
19 could not be fair and impartial in this particular case, I
20 would ask that you please stand.

21 (No response.)

22 THE COURT: None responding.

23 Any other questions requested by the state?

24 MR. BARNETTE: None from the state, Your Honor.

25 THE COURT: By the defendant?

1 MR. MORIN: None from Mr. Dewberry.

2 MR. NEELY: Eleven through fourteen of Defendant
3 Woodruff's voir dire, Your Honor.

4 THE COURT: All right. Those requests are declined.

5 (Defendant's Request for voir dire questions marked
6 Court's Exhibit No. 1.)

7 THE COURT: All right. We're going to select a jury.

8 And, as I told you earlier, juries in criminal cases
9 are selected differently than they are in civil cases.

10 The computer's still going to prepare a list from all
11 of your names. And once that list is prepared at random
12 your names will be called in the order that they appear on
13 the list.

14 When your name is called you'll be asked to come
15 forward. You'll come -- the bailiff will be out there in a
16 minute. But you'll just come towards me about three steps
17 past those desks where the lawyers are seated.

18 If you're close to the center aisle, just come up the
19 center aisle. If you're towards the outside wall, you can
20 come around that rail and, you know, then come to the
21 center aisle.

22 But each side has an opportunity to have you excused
23 from serving in this case, or they may all agree to have
24 you seated for service in the case.

25 If anyone asks that you be excused, you simply go back

Jury qualification

1 and have a seat where you are now. Or I guess you'll be on
2 that back row back there actually.

3 So if anybody asks that you be excused, just go back
4 to the back row and have a seat. If all agree to have you
5 seated for service in the case, you'll be having a seat in
6 that jury box to your right and to my left.

7 So please come forward as your name is called, and
8 you'll be instructed if you have been excused from serving
9 or accepted for service in the case.

10 (Whereupon, a jury was impaneled.)

11 THE COURT: Those who were selected, I'll ask you to
12 please go with the bailiff to a jury room. And I'll bring
13 you back shortly.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Are there any matters that need to be
17 addressed regarding jury selection by the state?

18 MR. BARNETTE: None from the state, Your Honor.

19 THE COURT: By the Defendant Dewberry?

20 MR. MORIN: None from Mr. Dewberry.

21 THE COURT: Defendant Woodruff?

22 MR. NEELY: Your Honor, I would just ask that the
23 defendant's voir dire be made part of -- be made a court's
24 exhibit. Other than that, no, sir.

25 (Exhibit previously marked.)

1 (Whereupon, the remaining members of the jury venire
2 were excused.)

3 THE COURT: All right. What matters do we have to
4 address prior to the jury being sworn?

5 MR. MORIN: Your Honor, Mr. Dewberry has the issue
6 regarding what, if any, identification was made or tainted
7 during a meeting between the victim and the solicitor's
8 office last June.

9 MR. NEELY: Mr. Woodruff will be joining in on that
10 motion, Your Honor.

11 MR. BARNETTE: Your Honor, we have the people
12 available for that. May we approach the bench for a
13 second?

14 THE COURT: Yes.

15 (Bench conference held off the record.)

16 THE COURT: We're going to take ten minutes.

17 (Whereupon, a recess was taken.)

18 THE COURT: Bring the jury, please.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Ladies and gentlemen, I've got some
22 matters that I need to address before we can actually start
23 the trial of the case, and so we're going to do that this
24 afternoon. We'll begin with the trial the first thing in
25 the morning at 9:30. So you're going to be excused right

1 now. You're going to be asked to report back to the jury
2 room at 9:30 in the morning.

3 Understand and keep in mind that during the trial and
4 as you are excused for this afternoon you can't talk about
5 the case with anybody. You can't go home and discuss it.
6 You can't tell anybody what it's about or what you're
7 doing. You can't even discuss it among yourselves, that is
8 with your fellow jurors, until you are involved in jury
9 deliberations. And that won't occur until the end of the
10 trial after all of the evidence has been received and I've
11 instructed you on the law that's applicable in the case.

12 So no discussions about the case during the overnight
13 recess or when you return in the morning.

14 Also, you can't conduct any research or do your own
15 investigation into anything that relates to the case. You
16 can't read newspapers; you can't watch T.V.; you can't
17 listen to the radio; you can't go on the internet; you
18 can't find out anything about the case or the circumstances
19 that relate to it.

20 You've got to base your decision upon what you see and
21 hear during the trial. You're not permitted to supplement
22 your knowledge by considering extraneous information or
23 information obtained outside of the courtroom. So no
24 discussions; no research; no investigation.

25 And I don't know if there's going to be anything on

1 television, radio or newspaper. But if there is, avoid it.
2 You can't watch it; you can't listen to it; you can't read
3 it about it until the trial is over.

4 Do have a good evening. Please report to your jury
5 room in the morning at 9:30, 9:30 in the morning. Have a
6 good evening.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: Okay. What's the first matter to address?

10 MR. MORIN: Your Honor, at this time Mr. Dewberry
11 would like to call Mr. Tom Smith to the stand regarding an
12 interview he gave with some of the parties.

13 THOMAS N. SMITH, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. MORIN

16 Q Mr. Smith, would you state your name for the Court?

17 A Thomas N. Smith.

18 Q You are employed with the solicitor's office?

19 A Yes, sir. As an investigator.

20 Q And on June 27th of 2016 you had the occasion to
21 interview some of the family in relation to this burglary on
22 July of '15, is that correct?

23 A Yes, sir.

24 Q Now, I received a report that you have a copy of.
25 That's your report?

1 A Yes, sir.

2 Q I need to ask you a few quick questions about it. It
3 says in the report that you primarily reviewed lineups.

4 A Yes, sir.

5 Q During this meeting did you have any lineups in your
6 possession?

7 A No, sir.

8 Q Do you recall who was present at this meeting?

9 A It was Detective Gregory; and there was the two young
10 men; Iesha; and the father who was shot.

11 Q Okay. So the victims and Ms. Iesha Ferguson -- I
12 believe is her name -- were all present. And they were all
13 in the conference room?

14 A Yes, sir.

15 Q But there were no photo lineups.

16 A No, sir.

17 Q You just discussed what the witnesses saw.

18 A Discussed how they were identifying each individual.

19 Q Okay. And Iesha explained what the nicknames were and
20 identified the driver.

21 A Correct.

22 Q M.D. [REDACTED] said he could identify the shooter.

23 A Correct.

24 Q And that was the gist of the entire meeting.

25 A Yes, sir.

1 MR. MORIN: That's all the questions I have, Your
2 Honor.

3 CROSS-EXAMINATION

4 BY MS. WHITE

5 Q Detective Smith, I'm Suzanne White on behalf of the
6 public defender's office.

7 Quick question. You indicated that both of the
8 gentlemen, the young gentlemen, were in there. Does that
9 include the young Mr. M.D. [REDACTED]

10 A I don't recall who else was there. I remember talking
11 to two subjects. There may have been another lady there,
12 but I don't recall.

13 Q Okay. And during that meeting did you discuss if
14 anybody had identified Mr. Tyrus Woodruff?

15 A I don't recall if Mr. Woodruff was identified in
16 person by any of them, because I was getting confused at
17 who was who because they were using nicknames. And when
18 Iesha, the young lady Iesha, was able to give us -- was
19 able to clarify who was who -- but I don't recall who
20 picked out who.

21 Q Okay. So the name Tyrus Woodruff, you don't recall,
22 was mentioned during that meeting?

23 A The only Woodruff I know of is Boota [sic].

24 Q Boota. And who discussed Boota?

25 A I don't recall.

1 Q Okay. So during that meeting someone -- whether it was
2 a gentleman or a female, you don't -- you don't recall if it
3 was either a male or female?

4 A No. I would have got the Woodruff and the Boota in my
5 report connected by Iesha.

6 Q So you believe Ms. Iesha Ferguson is the one that
7 referenced Boota?

8 A But she didn't I.D. anybody.

9 Q Right.

10 A She was just giving us the name or getting the -- from
11 what I recall, giving us the name of the person and who
12 they were, the nickname and then who it corresponds to.

13 Q Okay. And when you said she didn't identify anybody --

14 A That I recall. Well, she could identify the driver.
15 And the way I -- I took it that she identified him is she
16 was surprised to see him driving a vehicle because she
17 thought he was paralyzed and couldn't figure out how he was
18 driving.

19 Q Okay. I guess my question is if she didn't identify
20 anybody that she brought up the name Boota or Mr. Woodruff,
21 that came up in conversation?

22 A Now, all of the names we probably had ahead of time,
23 but the nicknames, I didn't know who they belonged to. So
24 when people are talking, I can't figure out who is who.

25 So she clarified Ray is Quaray, Dewberry is Teechie,

1 Martin is L.B. and Woodruff is Boota. And that's all I know
2 about Woodruff and Boota.

3 Q Just to clarify then, you had the names presented of
4 gentlemen that had been arrested on this case, is that
5 right?

6 A I knew them at one time, yes.

7 Q Okay. And so in your discussions with these folks you
8 were asking them to identify the names you were giving them
9 by a street name or a nickname?

10 A I wasn't really asking them to identify them. I was
11 reviewing how the officers, how the police department,
12 identified them. Used a lineup, yeah. How do you know the
13 guy? Stuff like that. That -- that would have been the
14 gist of it.

15 It got too confusing for me. That's when Iesha started
16 clarifying everything and that -- it lasted about 20 or 30
17 minutes.

18 Q Okay. So the names that were brought up in that
19 meeting were brought from the police, from the
20 investigation.

21 A Correct.

22 Q Okay. Thank you. That's all I have.

23 MR. MORIN: Your Honor, I don't have any other
24 questions.

25 MR. BARNETTE: Just one clarification.

1 CROSS-EXAMINATION

2 BY MR. BARNETTE

3 Q The issue was basically identifying -- no lineups were
4 there.

5 A No.

6 Q There was no lineups shown or anything like that.

7 A No, sir.

8 Q It was just that these people was identified different
9 ways, but they was using nicknames. And you was trying to
10 make sure the nickname -- figure out who belonged to the
11 nicknames.

12 A Correct.

13 MR. MORIN: I have no further questions.

14 THE COURT: Step down.

15 MR. MORIN: Your Honor, based on this testimony I
16 don't have a motion regarding identification as it doesn't
17 involve any lineups or other identification. I don't
18 believe they have violated Biggers.

19 THE COURT: Okay. And you're aware of somebody who is
20 going to identify Mr. Dewberry?

21 MR. MORIN: There's an indication that someone may.
22 But to my knowledge at this point they have not.

23 THE COURT: Okay. But it had nothing to do with any
24 police --

25 MR. MORIN: No, sir.

1 THE COURT: -- participation in identifying
2 Mr. Dewberry.

3 MR. MORIN: That's correct, Your Honor.

4 THE COURT: Okay. All right. What's the next motion?

5 MR. MORIN: That was the only motion I have, Your
6 Honor. The rest of them are Mr. --

7 MS. WHITE: Your Honor, if we could make argument, in
8 this situation we would argue that any identification of
9 Mr. Tyrus Woodruff would be the result of they're the
10 ones -- the police in this situation brought the name of
11 Tyrus Woodruff to the victims. They're the ones that
12 presented that name initially to them as someone that was a
13 suspect, someone that they had arrested, essentially,
14 someone that they alleged had already committed this crime.
15 Mr. Woodruff had not been identified by any of the victims
16 at the time.

17 THE COURT: Are you requesting a Biggers hearing?

18 MR. BARNETTE: Your Honor, if I could respond very
19 briefly, I think what -- and I know she hasn't really been
20 involved in the case.

21 The arrest occurred on July the 14th of 2015. This
22 happened well after that. The names are already in and the
23 warrant's been signed. They've actually probably been
24 indicted by then. I don't think she understands that this
25 was not --

1 THE COURT: You're talking about the conversation with
2 Mr. Smith?

3 MR. BARNETTE: Yes. That happened well after the
4 arrest.

5 THE COURT: Okay.

6 MS. WHITE: And, Your Honor, maybe we were clarifying
7 as to indicate at the bench that we were asking for a Neil
8 vs. Biggers hearing in regards to M.D. [REDACTED]
9 identification.

10 THE COURT: Which M.D. [REDACTED]

11 MS. WHITE: Young M.D. [REDACTED]

12 THE COURT: Okay.

13 MS. WHITE: That's the best --

14 THE COURT: Is it M.D. [REDACTED] -- that's M.D. [REDACTED]
15 Davis?

16 MR. BARNETTE: Yes, sir. He's here, and I understood
17 that was going to be the Biggers hearing. What I just
18 wanted to make sure, I think her argument was based -- I
19 just wanted to make sure she understood what the time
20 period was.

21 THE COURT: M.D. [REDACTED] did identify someone?

22 MR. BARNETTE: Yes, sir, yes, sir. We do have a
23 lineup here.

24 THE COURT: And who did he identify?

25 MR. BARNETTE: He identified Mr. Woodruff.

1 THE COURT: And that was from a lineup?

2 MR. BARNETTE: Yes, sir. This was right after. As a
3 matter of fact, it was on the same day, July 14th of 2015.

4 THE COURT: Okay. All right. And --

5 MR. BARNETTE: Mr. Smith's interview -- that's why I
6 wanted to make sure she understood this was, I mean, months
7 after all of this.

8 THE COURT: Am I understanding that the defense
9 contends that there may have been some unduly suggestive
10 police procedure that led to the identification of Mr.
11 Woodruff by M.D. ?

12 MS. WHITE: Yes, sir, Your Honor, I believe. And
13 Mr. Neely and I were conferring, and he may be the best to
14 speak on this in regards to specifics as to M.D.
15 identification regarding the photos that were in the lineup
16 as dreads.

17 THE COURT: Well, I'm asking both of you. Whichever
18 one has the information is what I want to know.

19 MR. BARNETTE: I'll let him and then I'll respond.

20 MR. NEELY: I believe it's --

21 THE COURT: Do you understand what my question was?

22 MR. NEELY: Yes, sir, I do. And we are requesting a
23 separate hearing on the identification of Mr. Woodruff by

24 M.D.

25 THE COURT: Okay.

1 MR. BARNETTE: Your Honor, what we might want to do is
2 take care of the one issue that Mr. Morin brought up and
3 then go into their issue. It's two separate things.

4 THE COURT: Well, I understand, but I thought that
5 issue was already resolved.

6 MR. BARNETTE: I hope it is. I don't know.

7 THE COURT: Well, Mr. Morin had that issue. I don't
8 think Mr. Neely had that issue with Mr. Morin.

9 MR. BARNETTE: Well, he had joined in their motion.
10 That's the reason I wanted to make sure that it was clear.

11 THE COURT: Oh, well.

12 MR. NEELY: And based on the testimony, Your Honor, I
13 don't believe we have a motion on that issue either.

14 THE COURT: Okay. Good.

15 MR. NEELY: So that's --

16 THE COURT: Now we'll proceed with the Biggers hearing
17 as it relates to any unduly suggestive police procedures
18 employed when M.D. [REDACTED] identified Mr. Woodruff from a
19 lineup supplied by the police department.

20 MR. BARNETTE: Let me make sure this is clear on the
21 record too, Your Honor. There are two [REDACTED].
22 There's the dad and --

23 THE COURT: This is M.D. [REDACTED]

24 MR. BARNETTE: Right. This will be the son that will
25 be testifying. He's the one that they did the lineup with.

1 Your Honor, can I mark this as Court's Exhibit 1?
2 I'll share that with...

3 (Lineup and voluntary statement marked Court's
4 Exhibit 2.)

5 MR. BARNETTE: Your Honor, I'd like to call M.D.
6 the son.

7 M.D. having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BARNETTE

10 Q M.D., if you would, pull that mic close to you --
11 I know you are soft-spoken -- so the defense and everybody
12 can hear you.

13 A This one?

14 Q Yes, sir. Speak into that.

15 Give me your full name for the record, please.

16 A My name is M.D.

17 Q And, M.D., where do you live at, sir?

18 A Country Club Road.

19 Q And who lives with you there, sir?

20 A My mother and my father and my sister and my niece.

21 Q Back on July 14th of 2015 was you living there, sir?

22 A Yes, sir.

23 Q And where was you going to school at the time?

24 A I was going to Spartanburg High School.

25 Q Okay. And was you on the football team?

M.D. [REDACTED] (In-camera)
Direct examination by Mr. Barnette

- 1 A Yes, sir.
- 2 Q And earlier that morning had you went to workouts?
- 3 A Yes, sir. I did.
- 4 Q And what time was workouts that morning?
- 5 A Workouts was about 6:30 or 7:00.
- 6 Q Okay. And did you work out that morning?
- 7 A Yes, sir, I did.
- 8 Q And did you come back to your house that morning?
- 9 A Yes, sir.
- 10 Q And when you came back did you have a friend come over
- 11 later?
- 12 A Yeah. He came over about an hour later.
- 13 Q Okay. And who is that friend?
- 14 A It was A.R. [REDACTED]
- 15 Q And did your sister also come over?
- 16 THE COURT: Excuse me just a minute. Who was the
- 17 friend?
- 18 MR. BARNETTE: A.R. [REDACTED]
- 19 THE WITNESS: A.R. [REDACTED]
- 20 Q And your sister, had she worked earlier that night and
- 21 day?
- 22 A Yes, sir. She always have worked third shift, so she
- 23 would, like, beat us home.
- 24 Q And about what time did she get there, do you remember?
- 25 Was it later that morning before noon?

1 A Yeah. It would have to be later that morning. I
2 can't remember the exact time.

3 Q And your dad was at the house there?

4 A Yes, sir.

5 Q Okay. And around noon, if you would, tell the judge
6 what happened.

7 A Around noon I had just got out of the shower, about to
8 start folding up clothes. And my friend came over, because
9 we was about to play the game in the midst of that.

10 And then all I know is my dad came to my room saying
11 I'm about to go to work. So I's like all right, cool, be
12 safe or whatever.

13 And so after that, about five minutes later, I heard a
14 lot of yelling. So I thought he was on the phone, because
15 that's when he's on the phone, he normally talks loud. So I
16 was, like, I ain't going to pay it no attention.

17 So it just kept getting louder. So I was, like, hold
18 up, this ain't right. So I stepped outta the room. When I
19 stepped outta the room all I seen was somebody pointing.
20 And they was like go back in the room. Then it was, like,
21 nah, come out, come out.

22 Q When you're saying pointing, what are you talking about
23 pointing?

24 A Pointing a gun.

25 Q Okay.

1 A And so when I came out, by the time I came out the
2 second time, boom. I step out. He was right there to my
3 temple. So I'm, like, okay, what's going on.

4 So after that we walked up the hallway. He was, like,
5 get on the ground, get on the ground. I got on the ground.
6 He ripped my headphones outta my ear because he thought I
7 was on the phone.

8 So after that he just kept saying where the money at,
9 where the money at.

10 By that time he went back to the room, and that's when
11 my friend A.R. was brought into a separate room, which was
12 the kitchen where my dad was.

13 After that he went back in the room, roundshot the
14 whole room.

15 So he came back and didn't find anything. He was,
16 like, so y'all think we playing, where the money at, where
17 the money at. So we was, like, man, we told y'all multiple
18 times ain't nothing in here.

19 So he was, like, nah, they's something here. So we
20 was, like, all right, find it, it's yours. So they -- they
21 just kept going on at the mouth, whatever. So by that time
22 he came back to me.

23 Q Okay. And this was the man that had the gun to you?

24 A The man that had the gun to me. He was, like, get up,
25 big boy, you're going to take me to the stash. I's, like,

1 all right.

2 So I'm walking down the hallway trying to think of a
3 stash that we had, but we had nothing. So first thing to
4 click in my mind was, boom, your sister is in here, go in
5 the room with her and let them know the females is here,
6 don't do nothing stupid.

7 So once I bust in the room with my sister, I'm, like,
8 get up, get up, this is not no game. She thought we was
9 playing because she was asleep and just got off from the
10 third shift. She was, like, man, stop playing, stop
11 playing.

12 By that time I was on the ground looking at him the
13 whole time.

14 And then after that he was, like, give me the pink
15 iphone, give me that pink iphone. And then --

16 Q When you're talking a pink iphone, you're talking
17 about --

18 A Talking about my sister's phone.

19 Q Okay.

20 A She was, like, nah, nah, man, stop playing.

21 So about five minutes after that I heard somebody else
22 come in the room. I mean, not in the room but in the house.
23 And they was, like, man, we gotta go, we gotta go.

24 Q And was this a different -- how many people actually
25 came in the house? How many different voices did you hear?

1 A I heard three different voices.

2 Q Okay.

3 A And so by that time he ran back up the hall. And by
4 the time he was up the hall I actually heard three shots.

5 My first instinct was to get outta the house and go to
6 the front of the house. So by that time I made it to the
7 front of the house. All I could see was my dad holding
8 hisself up. So that was my first instinct, was to go hold
9 him up and keep him alive until the ambulance get there.
10 Then whatever happens after that happens.

11 Q Later on did the sheriff's department talk to you about
12 what happened?

13 A Yeah.

14 Q And did they show you three different lineups?

15 A Yes, sir.

16 Q One of those lineups, was you able to pick the man that
17 put the gun to your head and led you back in the room and
18 put you on the floor?

19 A Most definitely.

20 Q Let me show you Court's Exhibit 2. Was this a lineup
21 that was shown to you? I'll show you. Was this the lineup
22 that was shown to you?

23 A Yes, sir.

24 Q And was that shown to you by Sergeant Letterman?

25 A Yes, sir.

1 Q And did he suggest anything to you or tell anything
2 about this?

3 A Nah. He didn't say anything about it. He was just,
4 like, if you can identify somebody in this picture, I mean,
5 in this lineup, then identify them.

6 Q And did you identify --

7 A And that's exactly what I did.

8 Q And did you identify the person that did the -- or had
9 the gun to your head?

10 A Yeah.

11 Q And which number was that, sir?

12 A No. 5.

13 Q And did you initial -- did you sign that was who you
14 picked out and so forth?

15 A Uh-huh.

16 Q Okay. And on -- that was on page two of the Court's
17 Exhibit 2. And did you sign the front of this after that?

18 A Yes, sir.

19 Q And was that the one? And they said was the tall one
20 who had the gun pointed at me?

21 A Uh-huh.

22 Q And is that your signature where you identified him?

23 A Yes, sir.

24 Q Now, was you shown two other lineups and was you able
25 to pick anybody out of those lineups?

1 A Nah.

2 Q Okay. So this is the guy you spent the most time with.

3 A Yeah.

4 Q And that was the person that did this to you.

5 A Yeah.

6 Q And do you see the person in the courtroom today that
7 did this to you?

8 A Most definitely.

9 Q And who is that, sir?

10 A Right there.

11 Q What's he -- what shirt is he wearing?

12 A The blue one.

13 Q Blue shirt. Is he wearing -- where is he seated at,
14 sir? If you would, point him out. Okay.

15 MR. BARNETTE: Your Honor, I would say the defendant
16 [sic] has identified the defendant Tyrus Woodruff in this
17 case.

18 THE COURT: Is he the black male seated at the table
19 with glasses or without glasses?

20 Q Is he wearing glasses or --

21 A Wearing glasses.

22 Q Wearing glasses?

23 THE COURT: Okay. Let the record reflect the witness
24 has identified Mr. Woodruff.

25 Q And you had done that based off what you remember and

1 everything, is that right, sir?

2 A Uh-huh.

3 MR. BARNETTE: One moment, Your Honor, please.

4 (Pause.)

5 Q Please answer any questions the defense may have for
6 you, sir, or the judge.

7 CROSS-EXAMINATION

8 BY MR. NEELY

9 Q M.D., how old were you at the time of this event?

10 A I was 17.

11 Q You were 17 at the time?

12 A Um.

13 Q Senior in high school?

14 A Yeah, no. Going in senior year.

15 Q About to start your senior year?

16 A Yeah.

17 Q What time did you come home from practice?

18 A About 7:30 or 8:00 o'clock.

19 Q What time did you hop in the shower?

20 A About 8:30 or 9:00, because I was doing laundry at
21 that time.

22 Q What time did these gentlemen come in your house?

23 A See, that's what I don't remember. I don't know what
24 time it happened or anything. I just know I was fresh
25 outta the shower about to fold clothes and put them in the

1 attic.

2 Q And which room in your house are you folding clothes
3 in?

4 A My room.

5 Q Your room. How many rooms are in your house?

6 A They's three rooms in the house.

7 Q When you heard your dad shouting, you came out of your
8 room to check?

9 A Yeah. It was like I peeked out because how our house
10 is made, it's like two doors that separate the living room
11 and the kitchen. But they was both open. And when they're
12 both open you can see into the kitchen and the living room
13 at the same time. So I just peeped outta my room like
14 that, and that's when I seen them.

15 Q When you saw them, you went back in your room?

16 A Yeah. He was, like, who is that, go back in the room.
17 Then he was, like, nay, come out, come out.

18 Q Did he have a gun pointed at you?

19 A Yeah, he did.

20 Q When you -- when you had that gun pointed at you, what
21 was running through your head?

22 A I can't even tell you that.

23 Q Well, I'm asking you. What -- what was running through
24 your head?

25 A A million things. A million.

1 Q Such as?

2 A Such as what to do or look at them and see if they got
3 masks on and...

4 Q Were you fearful for your life?

5 A Oh, nah, nah.

6 Q A guy pointed a gun at you and you weren't fearful for
7 your life.

8 A I mean, people would be scared. But as soon as it
9 happens to you, it's, like, if you pull it, you pull it.

10 If you don't, he don't.

11 Q Your sister was in the house.

12 A Uh-huh.

13 Q She was asleep.

14 A Uh-huh.

15 Q Were you scared for her?

16 A Yeah, I was scared for her because, you know, you got
17 three people in the house, two people pointing guns, which
18 don't -- wasn't nobody else in the house. What if they
19 would've killed all three of us -- me, A.R. and my dad?
20 And that leaves two witnesses. Well, one witness in the
21 house.

22 Q So what you're thinking about was what would happen if
23 they did kill y'all.

24 A Yeah. Pretty much.

25 Q And the man with the gun -- there were two men with

1 guns.

2 A Uh-huh.

3 Q Both of them were drunk?

4 A Uh-huh.

5 Q And the men with the guns had a gun pointed at your
6 dad.

7 A Yeah.

8 Q And you're thinking about what happened if they shoot
9 your dad.

10 A Yeah. Like, I was thinking about what was going to
11 happen, what's the worst case scenario.

12 Q You're 17 at the time.

13 A Yeah, 17.

14 Q Your dad's been there for all 17 years.

15 A Uh-huh.

16 Q You're thinking about what the next 17 years would be
17 like.

18 A Without my dad, yeah.

19 Q Without your dad.

20 A Yeah.

21 Q Do you have any children?

22 A No.

23 Q Do you plan on having any children?

24 A In the near future. About ten years from now.

25 Q In the near future. Those would be your dad's

1 grandkids.

2 A Yeah, right.

3 Q You're thinking about your kids growing up without
4 their granddad.

5 A Uh-huh.

6 Q You're thinking about the worst case scenarios.

7 A Yeah.

8 Q So you go back into that room because you don't want to
9 be near those guns, which is understandable.

10 A Nah, nah, I'm not, nah. You see, you got it mixed up
11 though.

12 See, when I'm peeking out, I'm like what's going on.
13 And so when he said come back out, that's when I started
14 thinking about the worst case scenarios and everything.
15 That's when, like, a million ideas started flowing through
16 my head at the time, like, oh, what to do, what to do.

17 Q When you came back out he put the gun to your temple.

18 A Yeah. When I came out he was already at my door ready
19 for me to come out.

20 Q So as soon as you came out the door he put the gun to
21 your temple.

22 A Yeah. He was like walk to the front and get on the
23 ground.

24 Q Is he beside you?

25 A No, yeah, he was beside me. But then when I walked

1 out, he got behind me.

2 Q So he was behind you walking you down the hallway.

3 A Uh-huh.

4 Q And he walked you into the living room.

5 A Uh-huh.

6 Q And told you to lay down on the floor.

7 A Yeah.

8 Q And so you laid down on your stomach.

9 A Uh-huh.

10 Q And at this point you have ear buds in your ears.

11 A Uh-huh.

12 Q Right? And the guy with the gun still has the gun to
13 the back of your head.

14 A Uh-huh. But by that time he walked around front of me
15 so I could see his feet. And then when I looked up I seen
16 his whole body and his face and head.

17 Q You're looking up from the ground.

18 A Yeah. I'm looking up, like, brother, like brother,
19 what.

20 Q After he rips the ear buds away from you --

21 A Yeah.

22 Q -- and he goes back down the hallway?

23 A Nah. He goes into the room where my dad is, which is
24 the kitchen.

25 Q Kitchen. Okay.

1 A And he was, like, so y'all think we're playing, where
2 the money at, where the money at. And so by that time when
3 he get done saying all of that, he goes back into the room.

4 Q Back into the living room?

5 A No. Back into my room.

6 Q Back into your room. When he was in the kitchen
7 talking to your dad when you were laying on the floor his
8 back was to you.

9 A Yeah.

10 Q You could see your dad.

11 A Yeah.

12 Q But the guy with the gun, his back was to you.

13 A Uh-huh.

14 Q Then he went back down the hallway. You're still face
15 down in the living room.

16 A Yeah. But I'm looking up the whole time because in
17 order to get to my room you have to come back through the
18 living room.

19 Q Uh-huh.

20 A So once he came back I got a good glimpse.

21 Q When he walks down the hallway, you're looking at his
22 back.

23 A No. When he's walking down the hallway to my room I'm
24 looking straight at the T.V.

25 Q Looking at the T.V.

- 1 A Yeah.
- 2 Q Okay. He had the gun to your head when you went into
3 your sister's bedroom?
- 4 A Yeah, yeah.
- 5 Q And you walked into your sister's bedroom the same way
6 he walked into the living room?
- 7 A Nah. When -- when I -- he walked me down the hallway.
8 I kind of busted into my sister's room. So it was, like,
9 he didn't have the gun pointed at me when I busted in my
10 sister's room. But he had the gun pointed in the room with
11 him.
- 12 Q He was behind you though when you went.
- 13 A Yeah, he was behind me, yeah, yeah.
- 14 Q Okay. And your sister at that moment was asleep.
- 15 A Yeah.
- 16 Q All right. And the guy with the gun to your head is
17 asking you where's the money, where's the stash.
- 18 A Uh-huh.
- 19 Q And so you pull the covers off of your sister, and she
20 got a good look.
- 21 A Uh-huh. Well, I -- see, that's her point of view. I
22 don't know her point of view.
- 23 Q And then you hopped out the window.
- 24 A Yeah. After I heard the first shot, first instinct
25 hop out the window and go to the front.

1 Q So you hopped out your sister's window and came back
2 around to the front?

3 A Uh-huh.

4 Q And then they left.

5 A That was it.

6 MR. NEELY: Nothing further from this witness, Your
7 Honor.

8 THE COURT: Mr. Morin.

9 MR. MORIN: I don't have any motion.

10 MR. BARNETTE: I just wanted to make sure.

11 REDIRECT EXAMINATION

12 BY MR. BARNETTE

13 Q The man that put the gun to your head that you saw in
14 your house that day, that's Mr. Woodruff, is that right?

15 A Uh-huh.

16 Q Any question about that?

17 A Ain't got no question.

18 Q Thank you, sir. That's all the questions I have.

19 THE COURT: Okay. Step down.

20 MR. BARNETTE: Your Honor, I'd like to call Sergeant
21 Letterman to if stand.

22 MURRAY BRANDON LETTERMAN,
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q If you would, sir, state your full name for the record,

1 please.

2 A Murray Brandon Letterman.

3 Q Where do you work, sir?

4 A Spartanburg County Sheriff's Office.

5 Q What's your position there, sir?

6 A Sergeant over violent crimes.

7 Q And how long have you been in law enforcement, sir?

8 A I've been in law enforcement for about 12 years.

9 Q Back on July 14th of 2015, was you working that day,
10 sir?

11 A Yes, sir, I was.

12 Q And I'm just going to ask you about the lineup. That's
13 all we're going to talk about right now from there.

14 A Okay.

15 Q Did you meet M.D. [REDACTED] the son, in this case?

16 A I did.

17 Q And afterwards did you show him a lineup concerning the
18 defendant Mr. Tyrus Woodruff?

19 A I did.

20 Q And let me show you what's been marked as Court's
21 Exhibit 2 for the purpose of this hearing. Was that the
22 lineup that you showed M.D. [REDACTED], the son? Just make sure
23 that's clear on the record.

24 A It is.

25 Q And in showing that lineup to him did you make any

1 suggestions to him or anything like that?

2 A No, sir.

3 Q Did you just merely show it and ask him if he knew
4 anybody in this lineup?

5 A Correct.

6 Q And did he pick somebody out of that lineup?

7 A He did.

8 Q And who did he pick out, sir? what number?

9 A He picked out No. 5.

10 Q And who was No. 5? I think you have it on a separate
11 -- is that the third sheet?

12 A The third sheet identifies photograph No. 5 as Tyrus
13 Rashawn Woodruff.

14 Q Okay. And he, obviously, he don't have access. That's
15 the -- that sheet is for your information.

16 A That's correct. That sheet's not shown to the person
17 that we're showing the lineup.

18 Q Okay. And he picked him right out or picked him out
19 very, very quickly?

20 A Pretty fairly quickly, yes.

21 Q Okay. And did he do an affidavit and so forth
22 identifying the person?

23 A He did.

24 Q And what did he write on the front of the affidavit,
25 sir?

1 A I believe I wrote it for him, but it was the tall one
2 who had the gun pointed at me. And he signed it.

3 Q Okay.

4 MR. BARNETTE: Your Honor, I'm just going to enter
5 this as Court's Exhibit 2 for purposes of this hearing. I
6 think the defense has already seen it.

7 (Exhibit previously marked.)

8 Q And then you showed him two other lineups too?

9 A I did.

10 Q And he wasn't able to identify anybody in those
11 lineups.

12 A No, he was not.

13 Q Okay. If you would, please answer any questions the
14 Court may have for you, or Mr. Neely.

15 CROSS-EXAMINATION

16 BY MR. NEELY

17 Q Investigator Letterman, on July 14th, 2015, when you
18 were investigating this case after you left East Croft
19 Road --

20 A Uh-huh.

21 Q -- you went back to Country Club Road where the victims
22 and witnesses still were.

23 A Yes. I believe I stopped by there briefly, yes.

24 Q And at that time you requested that they meet you back
25 at the sheriff's department to review lineups.

1 A That's correct.

2 Q Before your arrival at the Country Club Road the four
3 witnesses that didn't have to go to the hospital gave
4 written statements.

5 A I believe, yeah. I wasn't present for that, but I
6 believe they did, yes.

7 Q Did you review those statements before showing the
8 lineups?

9 A I can't recall if I did or not.

10 Q You've reviewed them since.

11 A Yes, sir.

12 Q And in reviewing that you're aware that Iesha Ferguson
13 described the two people in the house, one with the baseball
14 cap and one with dreads.

15 A I believe so, yes.

16 Q And in State's Exhibit 2 or what's been marked as
17 Court's Exhibit 2, the lineup for Mr. Woodruff, all of
18 these gentlemen --

19 MR. BARNETTE: I'm going to object to this line of
20 questioning because he's talking about a witness that was
21 not called during the Biggers hearing at this point. So I
22 would object to hearsay at this point.

23 THE COURT: What's the question?

24 MR. NEELY: The question is if in that lineup
25 Mr. Woodruff had dreads.

1 MR. BARNETTE: No. The objection was to Iesha
2 Ferguson. He asked a question concerning her about the
3 ball cap. So that's hearsay at this point. There was
4 no -- no evidence about that. And it's hearsay at this
5 point.

6 MR. NEELY: Your Honor, I don't think I'm using it for
7 the truth of the matter asserted. I'm --

8 THE COURT: Overruled.

9 Go ahead.

10 MR. NEELY: Thank you.

11 Q In that lineup Mr. Woodruff has dreads.

12 A Yes.

13 Q Okay. How old is that picture of Tyrus Woodruff?

14 A I can't tell you.

15 MR. NEELY: Have this marked as Court's Exhibit 3.

16 (Two photographs marked Court's Exhibit No. 3.)

17 Q Okay.

18 A Yes, sir.

19 Q That's Tyrus Woodruff on the day of July 14th of 2015,
20 correct?

21 A I can't remember his appearance that day, but if
22 that's the mugshot from that day, I would imagine it would
23 be him, yes.

24 Q And in that mugshot he does not have dreads.

25 A There are no dread shots -- dreads in this shot.

1 MR. BARNETTE: Your Honor, I'm going to object at this
2 point. Is he certifying that's the mugshot from this
3 arrest? Is Mr. Neely doing that?

4 THE COURT: I don't know. I mean, I -- he can't.
5 Somebody can presumably.

6 MR. BARNETTE: I'd object at this point unless there's
7 a foundation for the picture unless he -- if he's
8 representing that that's from the day, you know, as an
9 officer of the court, I don't have a problem with it, but I
10 don't know.

11 THE COURT: Well.

12 MR. NEELY: As an officer of the court that's the
13 mugshot from that day.

14 MR. BARNETTE: I'll withdraw my objection then, Your
15 Honor.

16 Q And in that mugshot there are no dreads.

17 A That's correct. There are no dreads in the mugshot.

18 Q Okay. The identification of Tyrus took place at
19 3:30 in the afternoon?

20 A I believe it's timed at 3:21.

21 Q At 3:21. And that mugshot was taken an hour later?

22 A I'm not sure when the mugshot was taken.

23 Q Was there any rush in getting that lineup done? Could
24 you have waited for an accurate mugshot to do a lineup?

25 A We had the -- we had the suspects and we were

1 interviewing. Some were cooperative and some were
2 noncooperative. So I thought it was essential to present
3 lineups to witnesses.

4 Q But you could have waited until you had a current
5 picture of Tyrus to do a photo lineup.

6 A I believe based off of the witnesses and their
7 statements and the identification that was what was going
8 to lead to the charges to have them booked in. So at that
9 time I didn't believe a current photo would have been
10 available.

11 Q Thank you.

12 A You're welcome.

13 MR. BARNETTE: Just one question in followup.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q Obviously, you do a computer-aided generated lineup.

17 A Correct.

18 Q And, obviously, pulled up Tyrus Woodruff, I guess, from
19 an older picture from when he was arrested earlier.

20 A Correct.

21 Q And so that would even make more sense. And all of the
22 pictures have the same characteristics in them.

23 A Correct. All dreadlocks, all black males, yes, sir.

24 Q So based off Court's Exhibit 3, which was entered by
25 the defense, he'd really been focused on the face because

1 all of them have dreads.

2 A That's correct.

3 Q Thank you. That's all the questions.

4 MR. NEELY: No redirect.

5 THE COURT: You can step down.

6 MR. BARNETTE: That'd be the only witness we would
7 call concerning this hearing, Your Honor.

8 THE COURT: Okay.

9 MR. NEELY: Thank you, Judge.

10 At this time on behalf of Mr. Woodruff we would move
11 to suppress the in-court identification by Mr. M.D.

12 -- Mr. M.D.

13 Your Honor, as to the first prong of Biggers, whether
14 there is an unduly suggestive police procedure, I would --
15 I would argue that a photo lineup that does not present an
16 accurate representation of the defendant on that day is
17 unduly suggestive.

18 There was no rush to do a lineup. They could have
19 waited the extra hour to get the booking photo of Mr. -- of
20 Mr. Woodruff.

21 As the solicitor asked Investigator Letterman,
22 Spillman automatically generates the lineups with just a
23 couple of clicks of the mouse. So the lineups could have
24 been done two hours later with an accurate depiction of
25 Mr. Woodruff.

1 I think doing a lineup based on Ms. Ferguson's
2 description with dreads and putting an old picture of Tyrus
3 Woodruff is improper police action, which would lead to the
4 second prong and the four factors -- the opportunity of the
5 witness to view the criminal at the time of the crime, the
6 witness' degree of attention, the accuracy of the witness'
7 prior description and the level of certainty.

8 Your Honor, I would say that M.D. [REDACTED] testified
9 that when he saw those guns what was running through his
10 head wasn't the man with the gun.

11 It was thinking about all of the possibilities of the
12 future. There is science on gun focus and how it distracts
13 from the attention to the person actually holding the gun.
14 And I would say that that makes his out-of-court
15 identification unreliable.

16 And based on those grounds we move to suppress his
17 in-court identification.

18 MR. BARNETTE: Your Honor, I would argue the opposite.
19 I'd argue it's not -- it's less suggestive. If we'd waited
20 and got a picture from there, obviously, using a mugshot
21 from the present time -- this was an older picture, had
22 basically -- of course there's no evidence here. He asked
23 the question about Iesha Ferguson. So there's no evidence
24 about her testimony in this case in this hearing.

25 But the other point is, I mean, these are pictures

1 that, obviously, he identified him off the face, because
2 all of them have the same characteristics that the Court
3 can see on Court's Exhibit 2. They all basically had
4 dreads, so and Tyrus Woodruff is on our photo, but,
5 basically, he -- obviously, made an identification off it.
6 It wasn't based off the dreads, obviously, from that
7 standpoint.

8 So I think it's definitely not -- he testified he had
9 plenty of time to observe the person. Obviously, he took
10 him out of the room and took him and put him in the floor.
11 He actually looked up at him. He was, again, brought back
12 to the room.

13 He testified here in Court that it's, obviously, the
14 same person that he saw that day that did that, pointed the
15 gun to him. So I'd ask for the identification to stand.

16 THE COURT: Is there any testimony by M.D. about
17 the hair style of the gunman?

18 MR. BARNETTE: It wasn't in this hearing, Your Honor.

19 THE COURT: I know. Is there -- did he provide any
20 previous description to law enforcement?

21 MR. NEELY: No, sir.

22 MR. BARNETTE: Your Honor, the written statement I
23 have is -- I mean, I don't know if you want to observe it
24 or not unless I'm missing something.

25 THE COURT: All right. I'll take it under advisement

1 and rule on it shortly.

2 what else do we have?

3 MR. NEELY: Your Honor, we have severance and
4 third-party guilt.

5 THE COURT: Okay.

6 MR. BARNETTE: Your Honor, we do have stipulations we
7 need to put on the record at the appropriate time also.

8 MS. WHITE: Your Honor, in reference to the motion for
9 severance, severance is generally required if there is
10 going to be a specific trial right of the defendant that's
11 going to be compromised by his joinder or his trial with
12 the codefendant.

13 In this situation we would argue that that does exist.
14 There were four alleged people involved in this crime.
15 Mr. Xavier Martin and Aquaviuous Ray have already pled.

16 You then have two defendants sitting at the table
17 where I think the implication is, obviously, that these are
18 the two left of the remaining four.

19 In this case Mr. Dewberry had made a statement, we
20 believe, that would be prejudicial to our client, Your
21 Honor, and even if it were redacted would create issues
22 with Brewton in the confrontation clause.

23 THE COURT: Is there -- excuse me just a minute. Is
24 there going to be any statement by Mr. Dewberry offered by
25 the state?

1 MR. BARNETTE: Not -- not at this point, Your Honor.
2 We're not going to put it in in the case in chief.
3 Obviously, if he testifies it becomes an issue at that
4 point.

5 THE COURT: Okay.

6 MR. BARNETTE: But it'd be after the testimony is
7 presented.

8 MS. WHITE: And, Your Honor, exactly what Mr. Barnette
9 said, Solicitor Barnette said, is if it becomes an issue at
10 that point -- Your Honor, if we get to that point, then
11 we're going to have to deal with the issues of the Brewton
12 and the redaction and the possible prejudice that's going
13 to prevent our prejudice against our client, Mr. Woodruff,
14 in having, again, this issue of a codefendant's statement
15 that potentially may or may not testify.

16 I think that, although I know it affects judicial
17 economy, that in this situation that it would be the best
18 argument or route, is to go ahead and sever the trials.

19 Essentially, our defense is contradictory to
20 Mr. Dewberry's.

21 Mr. Woodruff is arguing, obviously, he was not one of
22 the four. We had issues, obviously, as we brought up the
23 third-party guilt. But I believe that, as Mr. Morin would
24 have, each of them is claiming they are not one of the
25 four, which would then place the other, if that makes

1 sense, as the third or fourth party.

2 We believe that because the defenses are directly
3 contradictory that it would -- it would prevent us from
4 presenting a meaningful defense for him, is to be able to
5 go into all of that with Mr. Dewberry as a codefendant. So
6 we would ask that you sever the trials.

7 THE COURT: Mr. Morin, do you want to be heard on
8 that?

9 MR. MORIN: My client -- they haven't characterized
10 our defense quite the way we see it, but we're fine going
11 forward.

12 THE COURT: Okay.

13 MR. BARNETTE: Your Honor, response.

14 First thing, the statement would not be used,
15 obviously, unless Mr. Dewberry testified. And I don't know
16 if it would be used. I don't know what he would testify
17 to. But we are not going to present it in our case in
18 chief. I've told both parties that, we do not.

19 THE COURT: The question is if it's going to come up
20 at all.

21 MR. BARNETTE: And it may not. I mean, the problem is
22 if Mr. Dewberry testifies consistently with his statement
23 then -- or statements then -- obviously, at time it's not
24 an issue from that standpoint. It's when -- if we would --
25 inconsistent with those statements that he would be

1 crossed. Of course they have an opportunity to question
2 him on top of that, Your Honor.

3 THE COURT: Does the statement implicate Mr. Woodruff?

4 MR. BARNETTE: Yes.

5 THE COURT: Okay. Well, I'll have to look at the
6 statement, and then I'll determine it.

7 MR. BARNETTE: Yes, sir.

8 From the point -- let me point out to the Court or
9 whatever from that standpoint. The way I understand it
10 Brewton is the one printed in the direct testimony. We're
11 not going to do that. We're not presenting either one of
12 the statements from that standpoint. It'd possibly come up
13 after the defense decides to present their defense.

14 THE COURT: Well, if Mr. Dewberry testifies, I don't
15 see the issue, but if he doesn't testify is when the
16 issue -- when it could become an issue.

17 MR. BARNETTE: We're not going to introduce it unless
18 he -- I mean, it may not be introduced. And he has to
19 testify for it to be introduced to cross him. That'd be
20 the only time it'd be used. I just wanted to make sure the
21 court -- it would not be used against Mr. Woodruff in any
22 way, his testimony.

23 THE COURT: All right. Well, what I'm saying is you
24 don't intend to use the statement at all unless Mr.
25 Dewberry testifies?

1 MR. BARNETTE: That's correct, yes, sir.

2 THE COURT: Okay.

3 MS. WHITE: And, Your Honor, alternatively, depending
4 on what Your Honor decides with the motion to sever, we
5 would ask for a motion to suppress his statement if the
6 motion to sever is not granted.

7 THE COURT: A motion to suppress his statement?

8 MS. WHITE: Mr. Dewberry's statement.

9 THE COURT: On what grounds?

10 MS. WHITE: From them to be able to present it on the
11 same grounds of confrontation clause and issues, that if he
12 chooses not to testify.

13 THE COURT: If he does not testify?

14 MS. WHITE: Right. If he does not testify I know --
15 and, obviously, I understand --

16 THE COURT: Mr. Barnette's saying he's not intending
17 to offer it unless Mr. Dewberry testifies.

18 MS. WHITE: Right.

19 THE COURT: And then if he does, then he's subject to
20 your examination.

21 MS. WHITE: We just -- I just know that in trial
22 things come up differently and sometimes maybe decisions
23 have to be changed, so.

24 THE COURT: Well, I'm just saying but there can't be
25 any confrontation clause issued if Mr. Dewberry is

1 subject --

2 MS. WHITE: Sure.

3 THE COURT: -- to examination by Mr. Woodruff's
4 counsel.

5 MS. WHITE: Certainly.

6 THE COURT: Okay.

7 MS. WHITE: Thank you, Your Honor.

8 THE COURT: All right. Well, from what I have been
9 told right now I'm going to deny the motion to -- for
10 severance.

11 It doesn't appear that there's any real trial right
12 that is prejudiced by the joint trial of the two
13 defendants. And if something comes up we'll have to
14 address it, but right now it doesn't appear there's an
15 issue. So, there's no reason to sever the trials.

16 All right. What else?

17 MS. WHITE: Your Honor, I know that the state had
18 filed a motion to prevent third-party-guilt evidence. So I
19 don't know if you want to hear from them or just go ahead
20 and hear from us.

21 THE COURT: Is that all y'all had?

22 MS. WHITE: I'm sorry?

23 THE COURT: Is that all you have, Mr. Woodruff has?

24 MR. NEELY: Third-party guilt is the last one, Your
25 Honor.

1 MS. WHITE: Yes, sir.

2 THE COURT: Okay. Mr. Barnette.

3 MR. BARNETTE: Your Honor, before the third-party
4 guilt I was going to go through the stipulations just to
5 make sure, because it may come up in the other third-party
6 guilt from that standpoint, Your Honor.

7 From what I understood talking to Mr. Neely -- and I
8 think Mr. Morin is okay with this too -- we have Exhibit 1,
9 3 -- 1, 2, 3, 4 and No. 8.

10 There's three shell casings, 9mm shell casings, that
11 was found at the scene at [REDACTED] Country Club Road. And
12 there was one fired bullet that was found at the scene.

13 And then No. 8 was actually surgically removed from
14 the victim in this case, Marlon Davis, the father. And it
15 was taken by the surgeon and given to Dr. Wren and put into
16 evidence. And it was also taken down to SLED.

17 And the way I understand, the defense is going to
18 stipulate to the chain of custody on those items. And
19 there's also a --

20 THE COURT: Do I have a copy of your exhibit list?

21 MR. BARNETTE: May I approach, Your Honor?

22 THE COURT: Did you give me one of these lists?

23 MR. BARNETTE: I believe I did, Your Honor, but I'm
24 sorry if I didn't put it in a good place.

25 (Pause.)

1 THE COURT: Okay. Y'all agree to the admission of the
2 following exhibits without any foundation witness?

3 MR. BARNETTE: Without the chain-of-custody witnesses,
4 Your Honor, any chain of custody witnesses.

5 THE COURT: Okay.

6 MR. BARNETTE: The chain of custody would be
7 stipulated to as I understood.

8 MR. NEELY: Yes, sir.

9 THE COURT: Those numbers are what?

10 MR. BARNETTE: No. 1, No. 2, No. 3, No. 4 and No. 8,
11 Your Honor. And what that, three of those are the shell
12 casings that was found at the scene, and also sheriff's
13 department's one, two and seven.

14 And there was also one fired bullet that was gathered
15 at the scene. That's Exhibit 2, State's Exhibit 2.

16 And State's Exhibit 8 was the bullet that was
17 surgically removed from the victim in this case, Marlon
18 Davis, the father, in there. And they've agreed to
19 stipulate to the chain of custody on those items, Your
20 Honor.

21 THE COURT: All right. Exhibits 1, 2, 3, 4 and 8.

22 MR. BARNETTE: Yes, sir.

23 THE COURT: Right, Mr. Neely?

24 MR. NEELY: Yes, sir.

25 THE COURT: Okay.

1 MR. BARNETTE: And, Your Honor, there was other.

2 I don't know. We talked briefly about there was items
3 that was found at [REDACTED] East Croft Road -- or no, circle,
4 Your Honor, [REDACTED] area.

5 There was items 40 -- I guess 48, 49, 50, 51 -- 50 --
6 be 48, 49, 50, 51. What it is, that's a leather jacket
7 that was found in the car, a wallet that was found, a
8 wallet is 49. Leather -- a Levi wallet, 50, and iphone
9 with black case that was found inside of the residence, 51.

10 And we'd ask to put -- for them to stipulate to the
11 chain of custody, on this chain of custody. The individual
12 that collected it will be testifying.

13 MR. NEELY: So stipulated.

14 THE COURT: All right. What are those numbers?

15 MR. BARNETTE: And those numbers on the back side,
16 Your Honor, they're on page four. It's going to be No. 48,
17 49, 50 and 51. They're just marked for I.D. purposes at
18 this point.

19 THE COURT: Correct, Mr. Neely?

20 MR. NEELY: Yes, sir.

21 THE COURT: Okay.

22 MR. BARNETTE: Your Honor, there is three G.S.R. kits.
23 We are not entering those into evidence. I believe Mr.
24 Neely, is going to be entering -- I don't know if Mr. Morin
25 will be. Mr. Neely is going to ask that those be entered.

1 We're going to stipulate to the chain of custody on those
2 items. We're not stipulating to anything else in the chain
3 of custody, vice versa.

4 THE COURT: These just relate to Mr. Woodruff?

5 MR. BARNETTE: I think it's Mr. Woodruff,
6 Mr. Dewberry -- I'm assuming. Is that right, Mr. Morin?

7 MR. MORIN: I believe that's correct.

8 THE COURT: What's Mr. Dewberry's position on the
9 stipulation?

10 MR. MORIN: We're fine with that, Your Honor.

11 THE COURT: Okay.

12 MR. BARNETTE: And there is on Mr. -- I don't know if
13 we're going to be introducing Mr. Ray's, but it would be --
14 we also stipulate. There's actually three G.S.R.s
15 involving these two defendants and Aquavivuous Ray, which is
16 a third defendant.

17 THE COURT: All right. Third-party guilt?

18 MR. BARNETTE: Yes, sir.

19 We'd make a motion for third-party guilt in this case,
20 Your Honor, on both defendants. We believe it should not
21 be entered in unless there's a showing why it should be
22 entered in.

23 I do have memos on that, Your Honor, I could pass to
24 you and the defense, Your Honor.

25 THE COURT: Please do. Who's going first, you or --

1 you're going to go?

2 MR. MORIN: First on the third-party.

3 THE COURT: Do you intend to participate, because
4 y'all -- y'all got to settle on an order.

5 MR. MORIN: Yes, Your Honor. I understand.

6 THE COURT: You're sitting first at the table, so I
7 assume you're going first.

8 MS. WHITE: I'll let him go first if he'd like.

9 THE COURT: Well, he probably doesn't want to, but
10 y'all got to settle on the order.

11 MR. MORIN: Your Honor, I don't have a motion on the
12 third-party guilt at this time. I don't think that it
13 applies to my client.

14 THE COURT: Okay. So that settles that.

15 All right. Ms. White.

16 MS. WHITE: Thank you, Your Honor.

17 In this case there's a couple of different things
18 that, obviously, we understand that third-party guilt, the
19 evidence, has to be able to show something that's not only
20 inconsistent with our client's guilt but more than a mere
21 suspicion.

22 In the facts of the case, Your Honor, there are
23 several different facts that came up that we believe would
24 indicate third-party guilt.

25 Number one, the victim, Iesha Ferguson --

1 THE COURT: You're talking about somebody -- when you
2 say third-party guilt --

3 MS. WHITE: We have a specific person, Your Honor.

4 THE COURT: All right. And you have the specific
5 person that you believe excludes Mr. Woodruff?

6 MS. WHITE: Correct, Your Honor.

7 THE COURT: Okay.

8 MS. WHITE: Yes, Your Honor.

9 There are four, alleged four, perpetrators of the
10 crime.

11 As I indicated before Mr. Xavier Martin and Aquaviuous
12 Ray have both pled.

13 On trial now are Mr. Tavaris Dewberry and Mr. Tyrus
14 Woodruff.

15 During the investigation initially --

16 THE COURT: Excuse me just a minute. Let me ask one
17 other question.

18 Is it agreed by everyone -- or the state and the
19 defense -- based on your discussion with the victim and the
20 witnesses that there were four individuals involved in this
21 course of events?

22 MR. BARNETTE: We've alleged four, Your Honor. Three
23 of them went into the residence at some point in time, Your
24 Honor. The fourth one was the driver.

25 Mr. Martin's already pled guilty, those offenses.

1 THE COURT: All right.

2 MR. BARNETTE: So that's -- he's the fourth person.

3 THE COURT: So y'all are in agreement there were four
4 involved.

5 MR. BARNETTE: Yes, sir.

6 THE COURT: All right. Ms. White.

7 MS. WHITE: Thank you, Your Honor.

8 From the identification, from the initial conversation
9 with the victim Iesha Ferguson, Ms. Ferguson actually
10 identified on a lineup a gentleman by the name of
11 Mr. Terrez Robinson. Mr. Terrez Robinson's fingerprints
12 were found on the vehicle that was used in the commission
13 of this home invasion.

14 Your Honor, our client, Mr. Woodruff's, fingerprints
15 were not found on the vehicle. Mr. Woodruff also had no
16 G.S.R. on his hands, even though he was alleged to have
17 been one of the shooters of the incident.

18 There's also physical descriptions by --

19 THE COURT: He was alleged to be a shooter or alleged
20 to be in possession of a handgun?

21 MS. WHITE: He was alleged to have been in possession
22 of a handgun, but I believe there was allegations that two
23 separate people shot.

24 THE COURT: Is that going to be the evidence?

25 MR. BARNETTE: Your Honor, the casings at the scene

1 shows two different shooters.

2 THE COURT: Okay.

3 MS. WHITE: Your Honor, and there were also
4 descriptions of -- there were some witnesses that viewed
5 the gentlemen leaving the house as they, I guess -- three
6 parties running from the home going to meet the driver.

7 From the physical descriptions none of those match
8 Mr. Woodruff -- the clothing that he was wearing, that he
9 was found when he was arrested almost immediately
10 afterwards.

11 Your Honor, Mr. Woodruff was at the home where the
12 arrest occurred, but, again, we would argue that based on
13 the fingerprints of Mr. Terrez Robinson --

14 THE COURT: You said Mr. Woodruff was at --

15 MS. WHITE: At the home. When the police arrived at
16 Mr. Dewberry's home to make an arrest based on the fact
17 that an iphone was present, Mr. Woodruff was there.

18 THE COURT: Okay.

19 MS. WHITE: However, Mr. Woodruff's fingerprints were
20 not found on the vehicle. Mr. Terrez Robinson's were.
21 Mr. Terrez Robinson was identified by one of the victims in
22 a photo lineup. And, Your Honor, we would argue that that
23 is sufficient enough to argue that our client -- that is
24 inconsistent --

25 THE COURT: Who identified -- excuse me. Who

1 identified Mr. Robinson on the photo lineup?

2 MS. WHITE: Ms. Ferguson, Your Honor.

3 THE COURT: Okay.

4 MS. WHITE: And, Your Honor, just to clarify, that
5 lineup also included Tyrus Woodruff in there, but she
6 selected Terrez Robinson.

7 And, Your Honor, just to clarify it, in addition to
8 our argument about the four people involved Mr. Dewberry
9 did give statements that did confess to his involvement.

10 So we would argue again that they've got the three.

11 The fourth would be Mr. Terrez Robinson. We believe
12 that the evidence is inconsistent with our client's guilt
13 and provides more than just mere speculation that
14 Mr. Robinson was involved in this.

15 And we would ask to be able to present testimony
16 through the cross-examination. Or we do have on the
17 witness list Courtney Ferguson who's handled the
18 fingerprint analysis, Your Honor. We do intend to call
19 her, as well as Mr. Iesha Ferguson that identified him.

20 MR. BARNETTE: Your Honor, this is the reason why we
21 make third-party-guilt motions.

22 To give you some background from here, four people was
23 involved in this robbery. One was the driver. Three of
24 them actually went into the residence, Your Honor, in this
25 case -- two of these defendants -- Acquaviuous Ray, Your

1 Honor.

2 You already heard Mr. Woodruff's already been
3 identified by one witness in this case.

4 There would be another witness, the victim of the
5 attempted murder, identifying him.

6 The fingerprints they're talking about, there was
7 fingerprints found there. That's it. We don't know when
8 they were done, when they were scheduled. I mean,
9 Dewberry's fingerprint was also on that car from that
10 standpoint, Your Honor.

11 I have not received a notice of alibi defense. So the
12 only mention of Robinson in the lineup they keep talking
13 about is Iesha Ferguson. She identified the person they're
14 talking about, Mr. Robinson, as the driver, not as one of
15 the people that went inside the house.

16 So, and like I said, they haven't presented any
17 evidence from witnesses saying that.

18 Our version would be different from their version.

19 They talk about the G.S.R. kit. The G.S.R.,
20 obviously, it was done four hours afterwards. It could
21 have been rubbed off at any time.

22 He was actually the last person, along with Mr.
23 Martin, that came out of the house. He stayed in there
24 after the other two codefendants came out when the
25 sheriff's department arrested them.

1 Another thing too, Your Honor, they stole the iphone
2 of Mr. A.R. that day. The iphone -- immediately what
3 happened, when you hear Mr. A.R. on the 9-1-1 tape, he
4 immediately tells 9-1-1 they took my phone, you can track
5 it.

6 So immediately William Gary, Matt Davis, Detective
7 Letterman -- all of them started working on trying to get
8 the iphone, immediately tracked it to the residence, the
9 Dewberry residence.

10 Matt Davis immediately went to -- as quickly as he
11 could once they identified it -- and saw that -- basically
12 went there and called for backup.

13 They got there. All four defendants was found there
14 at that residence, Your Honor, from that standpoint within
15 a very short period of time, we would allege, from that
16 standpoint.

17 Mr. Robinson was nowhere to have been found. He was
18 nowhere there.

19 The -- in this case, the defendant in this case,
20 Mr. Woodruff, has been identified. He'll be identified by
21 two people. He was found at the scene.

22 They keep talking about the G.S.R. He fought and
23 wrestled with the sheriff's department officers. Deanna
24 Burgess had to have help in order to even try to attempt
25 the G.S.R. So they had to grab him, and he fought them.

1 obviously, that's the reason why the G.S.R. is not present,
2 for several reasons. Very fragile.

3 I know the Court's very familiar with that kind of
4 testimony. And that would be the testimony I think SLED --
5 the SLED analysis would present, plus the officers. If
6 they called Deanna Burgess about that I'm sure she'd talk
7 about how they had to fight him in order to get the G.S.R.
8 from that standpoint.

9 They had took photographs of the other three people.
10 They didn't take photographs of Mr. Woodruff because he was
11 resisting. He was fighting with them from that standpoint.
12 And that's been documented in reports and so forth.

13 And they're talking about Mr. -- you know, the
14 construction worker. My position would be they
15 characterized his testimony different from what we would
16 characterize it.

17 I don't think that he could identify the third person
18 from that standpoint and would identify his person. I
19 don't think the statement shows that.

20 I think it's consistent with the height that he's
21 talking about. So to me it's a mere -- mere-suspicion
22 situation they're bringing in there.

23 Alibi defense has not been raised at this, and,
24 obviously, they haven't given us notice of it, had not
25 done.

1 They have a fingerprint on a card that's not dated.
2 You don't know when that fingerprint was there. You
3 basically -- the construction worker can't identify them,
4 one way or the other. I don't see how it can prove either
5 way.

6 You've got two witnesses that's going to identify him
7 on the scene. You've got him found shortly after that.
8 They tracked the iphone that was stolen, taken to the
9 residence and so forth.

10 And I'll let them respond, but I've got the case law
11 too I think I would hand up.

12 That is one other thing, Ms. Dewberry -- Ms. Dewberry
13 basically said that all four of them arrived at her
14 residence. Never mentioned anything about Mr. Robinson.
15 And we have a statement showing that, Your Honor. And
16 she's also on the witness list.

17 So our allegations, Your Honor, in looking at the case
18 law -- Amin [sic] would be the best argument, I think, for
19 the state from that standpoint. Just -- I mean, this is
20 just a mere suspension.

21 They have no solid evidence to show Robinson's
22 involved in this crime, other than saying his fingerprint
23 was on the car and then somebody picked him out of a lineup
24 that was the driver, not the person that entered in, where
25 Woodruff entered into the house, would be our theory of the

1 case.

2 THE COURT: And where was Ms. Ferguson during this
3 event?

4 MR. BARNETTE: She was in her room. She was the one
5 that came home from work asleep in the room. Her brother
6 went in the room and warned her --

7 THE COURT: She's M.D. sister?

8 MR. BARNETTE: Yes, sir.

9 THE COURT: Iesha Ferguson is his sister?

10 MR. BARNETTE: Yes, sir.

11 THE COURT: Okay. I understand.

12 MS. WHITE: Your Honor, in response to the state, I
13 think the case of Holmes is what specifically said.

14 They're -- they're focusing on the strength of their
15 case. That's not to be considered in regards to whether or
16 not the third-party-guilt evidence should be introduced.

17 Whether or not they have a strong case they believe is
18 irrelevant to whether or not the evidence that we have
19 shows inconsistent with his guilt and more than a mere
20 suspicion of Mr. Robinson.

21 Your Honor, I think a lot of the facts that they
22 brought up -- Mr. Robinson wasn't at the home when the
23 gentleman arrived. He could have been dropped off.
24 There's -- to my understanding as well, there's no
25 requirement of an alibi defense to be able to present

1 third-party guilt. So I'm not really sure why that's, you
2 know, applicable in this case.

3 We would argue that the Holmes vs. South Carolina, is
4 specific to this case and that the strength of the state's
5 case and the evidence is not applicable to whether or not
6 the third-party guilt then can be introduced.

7 MR. BARNETTE: Your Honor, I'm not arguing that.

8 What I'm arguing is State vs. Amin [sic], 353 S.E. 2nd
9 405. It's a 2003 case, Your Honor. Basically, I can go
10 through the facts of the case, but you may be familiar with
11 the case already.

12 THE COURT: I'll read it.

13 MR. BARNETTE: Yes, sir.

14 But it says Amin wished -- basically, in this case the
15 defendant Amin sought to admit the proffered testimony of
16 officer Joe Philip Smith.

17 "Amin wished to establish that James Conyers who lived
18 in the apartment above the victim had been evicted. During
19 this proffer, in addition to testifying regarding the
20 living situation of Conyers and the victim, Officer Smith
21 stated that the first place the police look for a suspect,
22 once a murder victim has been identified, is in her
23 immediate family or immediate surroundings." The trial
24 court excluded this testimony.

25 Then the defendant also sought to present evidence of

1 D.N.A. testing demonstrating Amin was excluded as a source
2 of DNA obtained from a sperm fraction on a vaginal slide
3 taken from the victim.

4 The Court allowed a proffer but excluded the evidence,
5 Your Honor.

6 The Court of Appeals ruled the evidence offered Amin
7 was not inconsistent with his own guilt, nor did it raise
8 an inference, a reasonable inference, or presumption as to
9 his inference, Your Honor.

10 In the same situation, there is no evidence connecting
11 Roberts in this -- Robinson in this case like Boyers other
12 than the fact that the victims were roommates. Basically,
13 you have his fingerprint there and you have -- I mean, they
14 have supposedly this lineup from that standpoint. But the
15 person identified that person as the driver. And we know
16 Xavier Martin is the driver. He's pled to it.

17 So to me his testimony -- this testimony is not
18 inconsistent with his own guilt, and that's why I would
19 argue under that case.

20 Now, I understand Holmes is not about the strength of
21 the case. It's about what they're trying to present. And
22 the reason I mention alibi he -- you know, he's not -- I
23 mean, he's got to show some inconsistency in guilt. I
24 don't think he's shown any of that.

25 MS. WHITE: Your Honor, just briefly.

1 I think, again, the fact that they're arguing that
2 there are four people there, unfortunately, there's no
3 additional evidence to support that Mr. Robinson was there
4 because no one investigated.

5 They found a fingerprint. He was identified and the
6 statement was made he's not involved in this case.

7 So, you know, after being involved with cases, I do
8 know that, you know, the state has gone forward on cases
9 with a fingerprint and an identification of someone as
10 evidence of their guilt.

11 So the fact that they would argue that that is not
12 sufficient to argue potential third-party guilt is not
13 maybe consistent with -- with some of their past
14 prosecutions, Your Honor.

15 But we would argue that we think we've presented
16 enough. And we would be happy to proffer Ms. Ferguson's --
17 or Ms. Burgess' testimony when she arrives, when she's
18 ready, but we think that we have -- should have the ability
19 to cross-examine and present the evidence that we think
20 supports that.

21 Q Okay. Ms. Burgess being the fingerprint expert?

22 MS. WHITE: Yes, your Honor.

23 THE COURT: Okay. All right. Well, I'll reflect upon
24 it during the overnight recess and rule on it in the
25 morning.

1 MS. WHITE: Thank you, Your Honor.

2 THE COURT: What else?

3 MR. BARNETTE: Do you need a copy of that statement or
4 anything from there? Would you like for me to make that a
5 court's exhibit?

6 THE COURT: Yes.

7 MR. BARNETTE: Okay. Would you like Ms. Dewberry's
8 statement also?

9 THE COURT: Whose?

10 MR. BARNETTE: Ms. Dewberry's statement concerning the
11 third-party-guilt motion. You may not need that.

12 MS. WHITE: Your Honor, I think that's -- that's just
13 a statement of who arrived at her home, so I don't believe
14 that that's going to be --

15 THE COURT: Oh, Ms. Dewberry statement?

16 MR. BARNETTE: Yes, sir.

17 THE COURT: Oh, no. I don't know about her.

18 MS. WHITE: Your Honor, just for clarification, we
19 have no more motions at this point.

20 MR. BARNETTE: May we approach for a second?

21 (Bench conference held off the record.)

22 (Voluntary statement marked Court's Exhibit No. 4;
23 statement of Investigator T.N. Smith marked Court's Exhibit
24 No. 5.)

25 THE COURT: All right. Any other motions to address?

1 MR. MORIN: None from Mr. Dewberry.

2 MR. NEELY: None from Mr. Woodruff.

3 THE COURT: All right. Court is in recess until
4 9:30 in the morning.

5 I need to see counsel in chambers.

6 (Defendant's rap sheet marked Court's Exhibit No. 6.)

7 END OF REQUESTED PORTION OF TRANSCRIPT OF RECORD

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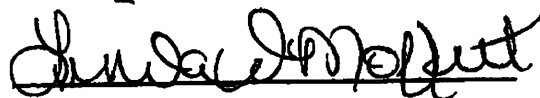
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st day of February 2017.

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

May 28, 2018



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } IN THE COURT OF GENERAL SESSIONS

3 The State, }
4 -vs- } TRANSCRIPT OF RECORD
5 } 2015-GS-42-3881-3884
6 Tyrus Rashawn Woodruff, }
7 Defendants. } February 22, 2017
8 } Spartanburg, South Carolina
9 }

10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE
12
13
14

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

16 BARRY JOE BARNETTE, ESQUIRE
17 SPENSER HOLLORAN SMITH, ESQUIRE
18 PAUL KRESWELL NEELY, ESQUIRE
19 CLAY T. ALLEN, ESQUIRE
20 Attorneys for Defendant Woodruff
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-1	One fired 9mm cartridge case	
4	S-2	One fired bullet	
5	S-3	One fired 9mm cartridge case	
6	S-4	One fired 9mm cartridge case	
7	S-5	(Withdrawn)	
8	S-6	Map	
9	S-7	Map	
10	S-8	One fired bullet fragment	
11	S-9	Photograph	
12	S-10	Photograph	
13	S-11	Photograph	
14	S-12	Photograph	
15	S-13	Photograph	
16	S-14	Photograph	
17	S-15	Photograph	
18	S-16	Photograph	
19	S-17	Photograph	
20	S-18	Photograph	
21	S-19	Photograph	
22	S-20	Photograph	
23	S-21	Photograph	
24	S-22	Photograph	
25	S-23	Photograph	

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-24	Photograph	
4	S-25	Photograph	
5	S-26	Photograph	
6	S-27	Photograph	
7	S-28	Photograph	
8	S-29	Photograph	
9	S-30	Photograph	
10	S-31	Photograph	
11	S-32	Photograph	
12	S-33	Photograph	
13	S-34	Photograph	
14	S-35	Photograph	
15	S-36	Photograph	
16	S-37	Photograph	
17	S-38	Photograph	
18	S-39	Photograph	
19	S-40	Photograph	
20	S-41	Photograph	
21	S-42	Photograph	
22	S-43	Photograph	
23	S-44	Photograph	
24	S-45	Photograph	
25	S-46	Photograph	

1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-47	Photograph	
4	S-48	Jacket	
5	S-49	wallet	
6	S-50	Levi wallet	
7	S-51	iPhone with black case	
8	S-52	SLED firearm report	
9	S-53	Incident report	
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1		<u>EXHIBITS</u>	
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	C-1	Voir dire request	
4	C-2	Lineup, voluntary statement	
5	C-3	Two photographs	
6	C-4	Voluntary statement	
7	C-5	Statement - Investigator T. N. Smith	
8	C-6	Rap sheet	
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1 (Proceedings February 22, 2017)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are y'all ready to proceed with
5 Mr. Woodruff's case?

6 MR. BARNETTE: Yes, sir. The state's ready, Your
7 Honor.

8 (Talking in audience.)

9 THE COURT: Sir -- remove him from the courtroom
10 please.

11 Don't come back.

12 UNIDENTIFIED PERSON: All right.

13 THE COURT: If you say another word you're going to
14 jail.

15 (Pause in proceedings.)

16 MR. NEELY: We're ready, Your Honor.

17 THE COURT: Okay. You are Tyrus Rashawn Woodruff.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Neely is your lawyer.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I have three indictments.

22 Indictment 2015-3883 charges you with burglary in the
23 first degree.

24 The state alleges that on July the 14th of 2015 you
25 did wilfully and intentionally enter a dwelling occupied by

1 Marlon Shermaine Davis located at [REDACTED] Country Club Road in
2 Spartanburg County, South Carolina, without consent and
3 with the intent to commit a crime therein and that some
4 other additional aggravating factor was present which makes
5 this a burglary in the first degree.

6 Solicitor, are the aggravating factors that you're
7 relying upon numbers one, two, three and four in the
8 indictment?

9 MR. BARNETTE: Yes, sir.

10 THE COURT: Those allege, Mr. Woodruff, that you did
11 enter the dwelling, committed the burglary while armed with
12 a deadly weapon.

13 Number two says that you caused physical injury to a
14 person who was not a participant in the crime.

15 Number three says that you used or threatened the use
16 of a dangerous instrument.

17 And number four says that you displayed what appeared
18 to be a knife, pistol, revolver, rifle, shotgun or other
19 firearm.

20 If convicted of burglary in the first degree you could
21 receive a sentence of not less than 15 years, and it could
22 be as much as life in prison.

23 Do you understand the charge contained in that
24 indictment?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand the potential sentence
2 that can be imposed if you are convicted of it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to plead guilty or not guilty
5 to that charge?

6 THE DEFENDANT: One moment, sir. I know the Court is
7 growing impatient. May I ask my lawyer a quick question?

8 THE COURT: Sure.

9 (Pause for defendant to confer with counsel.)

10 THE DEFENDANT: Guilty, sir.

11 THE COURT: Indictment 2015-3881 charges you with
12 attempted murder in count one and possession of a firearm
13 during the commission of a violent crime in count two.

14 The state alleges by way of this indictment that you
15 did here in Spartanburg County on or about July the 14th of
16 2015 with the intent to kill, did attempt to kill Marlon
17 Shermaine Davis with malice aforethought, expressed or
18 implied, by shooting him with a firearm.

19 Count two of the indictment alleges that you did on
20 the same date at the same time possess or visibly display a
21 firearm during the commission of a violent crime, that
22 violent crime being the attempted murder.

23 Attempted murder carries a potential sentence of up to
24 30 years in jail. Possession of a firearm during the
25 commission of a violent crime carries a potential sentence

1 of up to five years in jail.

2 Do you understand the charges contained in that
3 indictment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the potential sentences
6 that can be imposed if convicted?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to plead guilty or not guilty
9 to each of those charges?

10 THE DEFENDANT: Guilty, sir.

11 THE COURT: The remaining indictment I have is
12 Indictment 2015-3882.

13 It alleges that you did here in Spartanburg county on
14 or about July the 14th of 2015 while armed with a deadly
15 weapon or while alleging either by action or words that you
16 were armed while using a representation of a deadly weapon
17 did take, steal and carry away from the person or presence
18 of Marlon Shermaine Davis a wallet, a cell phone, and/or
19 some property, and/or currency by the use of force or
20 violence and intimidation with the intent to deprive him
21 permanently of his property.

22 If convicted of that crime, being the crime of armed
23 robbery, you could receive a sentence of up to 30 years in
24 jail. It requires a mandatory minimum sentence of not less
25 than ten years in jail.

1 Do you understand the charge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand the potential sentence?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you wish to plead guilty or not guilty
6 to that charge?

7 THE DEFENDANT: Guilty, sir.

8 THE COURT: Mr. Nelly is your lawyer. How long has
9 Mr. Neely been representing you on these charges?

10 THE DEFENDANT: Approximately 15 months, sir.

11 THE COURT: And during that 15 months have you been in
12 custody, incarcerated in the local detention facility?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And during that time have you had plenty
15 of time and opportunity to talk to your lawyer about your
16 cases, as well as your decision to plead guilty or to have
17 a jury trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did he go over each of these indictments
20 with you and explain to you what the state claims you did
21 in these indictments?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did he explain to you what kind of
24 sentence or punishment could be imposed if you were
25 convicted or found guilty or pled guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you tell him everything you know about
3 the facts that are alleged against you in these
4 indictments?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you and he discuss whether or not you
7 have a defense to any of the charges to which you're now
8 offering to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any defense to any of the
11 charges to which you're now offering to plead guilty?

12 THE DEFENDANT: One moment, sir.

13 (Pause for defendant to confer with counsel.)

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you understand that if you did have a
16 defense that when you plead guilty you give up your right
17 to assert that defense?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you discussed that with Mr. Neely?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And did he go over each of the indictments
22 with you and explain to you what the state would have to
23 prove in court before you could be convicted or found
24 guilty of attempted murder?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: of burglary in the first degree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: of armed robbery?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Of possession of a firearm during the
6 commission of a violent crime?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand what the state would
9 have to prove?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did Mr. Neely also explain to you each of
12 the constitutional rights that you have that you must give
13 up if you want to plead guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did he explain that you have a right to
16 remain silent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And of course that means that you don't
19 have to say anything; you don't have to testify; you don't
20 have to make a statement. You don't have to answer any
21 questions that I'm asking right now unless you want to
22 plead guilty.

23 You have an absolute right to remain silent and to
24 require the state to come into court with sufficient
25 evidence to establish your guilt to the satisfaction of a

1 jury beyond a reasonable doubt, and you don't have to
2 assist the State in their efforts to find you -- to prove
3 you guilty by making statements or testifying or answering
4 questions that might tend to prove your own guilt. So do
5 you understand your right to remain silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand it's your choice as to
8 whether or not you give that right up?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that when you plead
11 guilty you must give that right up?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: But if you have a jury trial you will not
14 have to give that right up.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand your right to remain
17 silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to give that right up in order
20 to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did Mr. Neely also explain to you that you
23 have a right to confront and to examine any witness in
24 court that would offer testimony or evidence tending to
25 prove you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that the state has the
3 burden of proving your guilt? So they would bring their
4 witnesses into court. Those witnesses would take the
5 witness stand. They would be placed under oath.

6 They would be subjected to direct and
7 cross-examination. Your lawyer could examine them on their
8 testimony in order to test their reliability of the
9 information they're providing and the credibility of the
10 witness providing that information.

11 Do you understand that you would be present when that
12 occurred? You'd be able to see who those witnesses are.
13 You would hear what they had to say. And of course
14 Mr. Neely would examine them on their testimony.

15 Do you understand your right to confront and to
16 examine witnesses in court?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that when you plead
19 guilty that doesn't occur?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: It would occur during a trial but does not
22 occur during a guilty plea.

23 Do you understand the right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you wish to give it up in order to

1 plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did Mr. Neely also explain to you that you
4 have a right to have a jury trial and to have 12 jurors
5 determine whether or not you're guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that you have
8 participated in the selection of those 12 jurors that are
9 to decide the verdicts in your case?

10 Those 12 jurors are presently patiently waiting back
11 in the jury room for us to bring them back into the
12 courtroom.

13 When you plead guilty you'll be giving up your right
14 to continue with that jury trial.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In order for a jury to find you guilty all
18 12 jurors have to be convinced of your guilt beyond a
19 reasonable doubt, and the burden is on the state to
20 convince them of that fact.

21 Do you understand?

22 THE DEFENDANT: May I?

23 (Pause for defendant to confer with counsel.)

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand your right to have a

1 jury trial and to continue with this trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you wish to continue with the trial or
4 give that right up?

5 THE DEFENDANT: Give that right up, sir.

6 THE COURT: Has anybody promised you anything that
7 caused you to make your decision to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have there been any plea negotiations that
10 your lawyer informed you of?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And did those negotiations result in some
13 agreement that the state would make a recommendation as to
14 a sentence and would also perhaps dismiss additional
15 charges that are pending against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Well, did you consider that in arriving at
18 your decision to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did that make any difference to you, or
21 were you going to plead guilty anyway?

22 THE DEFENDANT: In the beginning I was going to trial,
23 sir, but ultimately I've decided to plead guilty.

24 THE COURT: Okay. And so whatever the arrangement is,
25 or the plea negotiations are, you consider that not to be a

1 promise? You consider that to be something they're
2 offering. But you were going to plead guilty whether they
3 offered that or not?

4 THE DEFENDANT: One second.

5 THE COURT: Or is it a promise? That's what I need to
6 know.

7 (Pause for defendant to confer with counsel.)

8 THE DEFENDANT: Can you repeat the question, Your
9 Honor?

10 THE COURT: Yeah.

11 What I'm trying to find out, Mr. Woodruff, is if your
12 lawyer and the prosecutor have engaged in any type of
13 discussions that resulted in an agreement by the prosecutor
14 to make a recommendation to me so far as a sentence goes in
15 your case, as well as whether or not he agreed to dismiss
16 any other charges that are pending against you.

17 So I just need to know as to whether or not there was
18 any agreement and if that agreement influenced your
19 decision to plead guilty as opposed to have a jury trial.

20 THE DEFENDANT: No, sir.

21 THE COURT: Well, do you know that there has been some
22 negotiations going on?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Were you aware that the solicitor was
25 going to make a recommendation as to sentence?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And were you aware that -- you
3 are aware you do have additional charges pending.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And were you aware that they're not here
6 before me today for this guilty-plea process?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And as I understand it, the state is going
9 to dismiss those charges if you plead guilty to these
10 charges.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. So you understood what the
13 agreement was that was reached between your lawyer and the
14 prosecutor?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And your lawyer has been discussing that
17 offer with you, has he not?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, what did -- what did he tell you that
20 y'all have come to an agreement about?

21 THE DEFENDANT: One moment.

22 (Pause for defendant to confer with counsel.)

23 THE DEFENDANT: Okay. All right. We came to the
24 agreement that the additional pending charges would be
25 dismissed and that I would also be pleading to the 25 years,

1 sir.

2 THE COURT: All right. So let me understand.

3 The agreement is if you plead guilty to these charges
4 that I've just discussed with you --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- that you would receive a sentence of 25
7 years in total.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And that two additional armed robbery
10 charges that were pending against you would be dismissed.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is that all that they agreed to do for
13 you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you think there was something else
16 that was going to be part of that agreement?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have I stated the agreement in its
19 entirety?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Other than that agreement did
22 they offer or promise you anything that induced your
23 decision to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody threatened you in any way that

1 caused you to arrive at that decision?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody forced you into pleading
4 guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody put any pressure upon you that
7 caused you to make that decision that you otherwise would
8 not have made?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty freely and
11 voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Was it your decision, and yours alone?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And are you guilty of each of the crimes
16 just as they are described in these separate indictments?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, did Mr. Neely also explain to you
19 that a burglary in the first degree is classified as a
20 violent offense under the law?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did he also explain to you that burglary
23 in the first degree is classified as a most serious offense
24 under the law?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any prior convictions for a
2 violent offense or a most serious offense?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand the significance of that
5 crime being classified as violent, as well as most serious?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So Mr. Neely has explained the
8 significance of those designations and classifications to
9 you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did he also explain to you that armed
14 robbery is also classified as a violent and most serious
15 offense?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that significance?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did he also explain to you that
20 attempted murder is classified as a violent and most
21 serious offense?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, again, you understand the
24 significance of those classifications?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You are 24 years old.
2 THE DEFENDANT: Yes, sir.
3 THE COURT: How far did you go in school?
4 THE DEFENDANT: I graduated, sir.
5 THE COURT: From where?
6 THE DEFENDANT: Dorman High School.
7 THE COURT: And are you married?
8 THE DEFENDANT: Sir?
9 THE COURT: Are you married?
10 THE DEFENDANT: No, sir.
11 THE COURT: Do you have children?
12 THE DEFENDANT: No, sir.
13 THE COURT: Have you been employed?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: Where?
16 THE DEFENDANT: Land and Sea Distribution, sir.
17 THE COURT: And what did you do there?
18 THE DEFENDANT: I was a warehouse worker.
19 THE COURT: And what do they distribute?
20 THE DEFENDANT: Different items, but mostly clothes
21 though.
22 THE COURT: And have you ever been treated for any
23 type of substance abuse or addiction?
24 THE DEFENDANT: No, sir.
25 THE COURT: Do you suffer from any addiction today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever been treated for any type of
3 mental illness or emotional disturbance?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you suffer from any such a condition
6 today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you understand fully what you're doing?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you satisfied with your decision to
11 plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Listen to what the prosecutor
14 tells me about your cases.

15 MR. BARNETTE: Thank you, Your Honor.

16 This occurred on July 14th of 2015, Your Honor,
17 approximately noon that day at [REDACTED] Country Club Road, Your
18 Honor.

19 In that case Marlon Davis and his family lived there.
20 The defendant was with two other individuals, Your Honor.
21 There was four individuals total in this.

22 Xavier Martin drove a black 2010 Dodge Avenger over
23 there. He dropped off the defendant, along with Aquaviuous
24 Ray, as well as Tavaris Dewberry. Him and Mr. Ray went
25 inside by force, forced Mr. Davis, was the one originally

1 ran into -- forced him to the floor. Went to other members
2 of the family, Mr. Davis' son, Marlon Davis also. It's the
3 same name. And as well as Akia Ross in there.

4 During the time Mr. Ray actually shot Mr. Davis the
5 first time. This defendant shot him a second time.
6 There's also a third shot that was fired when he was
7 leaving from there.

8 They took the wallet of Mr. Davis or both Davises'
9 wallets. They also took Mr. Ross' iPhone in that case.
10 Basically, Mr. Dewberry came in and kept telling them hurry
11 up, hurry up.

12 We've alleged that he had knowledge of the robbery too
13 in this case, and the home invasion.

14 Once they took those items they kept asking about
15 money and drugs during the time. They even ransacked the
16 house.

17 Immediately leaving that Mr. Ross called 9-1-1 on
18 another phone, another family member's phone. He
19 immediately told them, said you need to track the iPhone.

20 The sheriff's department arrived just shortly after
21 about 12:11, 12:12. Once investigators got there they got
22 the information from Mr. Ross, found the phone. It was at
23 [REDACTED] East Croft Circle here in Spartanburg. Your Honor,
24 it's approximately 3.6 miles from the location.

25 Investigator Matt Davis was the one. He immediately

1 went there as soon as he could within the hour. He saw the
2 black Avenger. He basically called for backup, made sure
3 nobody left the residence there.

4 All the officers arrived there, Your Honor. They
5 surrounded it. All four defendants were still there, Your
6 Honor, in that case.

7 The items of both Davises was found -- their wallets,
8 credit cards, social security cards, driver's license --
9 was found in the Avenger in the back seat, Your Honor.

10 They also found the iPhone inside the residence at
11 [REDACTED] -- it was actually [REDACTED] This is like a quad
12 with four different apartments in that one house, and then
13 it's the back on the back side, [REDACTED] in that case,
14 Your Honor.

15 All four individuals were arrested and charged in this
16 case. Mr. Martin had already pled guilty; Mr. Ray has
17 already pled guilty. We were putting these two defendants
18 on trial.

19 I do have 53 exhibits, Your Honor, I'd like to enter
20 at this time and make them part of the record, Your Honor.
21 They were going to be exhibits in the trial.

22 I'd like to leave them open in case Mr. Dewberry
23 doesn't plead. Then we'll be able to use them for that.

24 And also, Your Honor, I do have the incident report,
25 which would be State's Exhibit 53, which goes into the

1 facts of the case. I'd like to make that part of the facts
2 of this case and part of the record, Your Honor, as well as
3 the other 52 exhibits, Your Honor.

4 THE COURT: All right. What about Mr. Woodruff's
5 previous criminal history, if any?

6 MR. BARNETTE: Your Honor, we did notify probation. I
7 see they're here. And he is currently on probation for
8 burglary second nonviolent. Your Honor, he received a
9 6-year -- six years suspended to 4-year sentence, two years
10 of probation, Your Honor. And that was done on 2012. And
11 he was convicted of that, Your Honor.

12 PROBATION AGENT: Your Honor, I show he's no longer on
13 probation. It was terminated in February.

14 THE COURT: Okay.

15 MR. BARNETTE: Well, he was convicted. Six years
16 suspended to four years and two years probation, Your
17 Honor, at that time.

18 And then he also has a false information in 2010, Your
19 Honor.

20 THE COURT: Mr. Neely, I have some blanks in the
21 informational section that need to be completed.

22 (Pause.)

23 THE COURT: Mr. Woodruff, you've heard what the
24 solicitor has told me about the facts that relate to each
25 of these cases.

1 Do you agree or disagree with his recitation of those
2 facts?

3 THE DEFENDANT: I agree.

4 THE COURT: You've heard what he told me about your
5 previous criminal history. Do you agree or disagree with
6 that as being accurate?

7 THE DEFENDANT: I agree.

8 THE COURT: Do you still want me to accept your pleas
9 of guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I'll accept them and hear from
12 you and Mr. Neely.

13 MR. NEELY: Thank you, Judge. May it please the
14 Court.

15 Your Honor, Tyrus is 24 years old. He told you that
16 he's a high school graduate from Dorman High. He also
17 attended a year at Spartanburg Community College where he
18 was studying radiology.

19 He has a son that is about a year and a half old at
20 this point, Your Honor. He also has good family support in
21 the courtroom with him today -- is his mother Sybil. His
22 brother Titus was in the courtroom previously. And he has
23 one older -- one brother that's older. He also has a good
24 support system. He has friends that are also in the
25 courtroom.

1 Your Honor, Tyrus has served 590 days in the jail at
2 this point, so we would ask for credit to be given for
3 that.

4 Your Honor, I know when the Court gives Tyrus the
5 opportunity he will express deep regret about this
6 incident. It's not just for what's happened to his family
7 but for what happened to the Davis family as well.

8 Your Honor, I don't think actions define who a person
9 are, and deep down I think Tyrus is a -- is a good person.
10 He made some terrible decisions.

11 And so, Your Honor, we would ask that you accept the
12 recommendations and any leniency the Court sees fit.

13 THE COURT: All right. Mr. Woodruff, do you have
14 anything you'd like to add to what your lawyer has told me?

15 THE DEFENDANT: Yes, sir. I would like to grant my
16 sincerest apologies to the family and the victim. And I
17 want you to know that I've acknowledged my mistakes and I'm
18 trying to correct my wrongs by paying my debt to society by
19 pleading here guilty today. And from this moment forward I
20 will just try to live my life to the fullest in a positive
21 light, Your Honor.

22 THE COURT: And what was the reason that you made the
23 decision to do what you did?

24 THE DEFENDANT: I wasn't thinking, sir.

25 THE COURT: And who influenced you to make that

1 decision?

2 THE DEFENDANT: Bad choice of friends.

3 THE COURT: What kind of friends cause you to make
4 that decision?

5 THE DEFENDANT: Or should I say associates, Your
6 Honor.

7 THE COURT: What kind of associates caused you to make
8 that decision?

9 THE DEFENDANT: Truthfully?

10 THE COURT: In other words, that put that in your
11 mind.

12 THE DEFENDANT: Truthfully, sir, they don't mean me
13 any good, sir.

14 THE COURT: Sir?

15 THE DEFENDANT: I say truthfully some that don't mean
16 me any good, sir.

17 THE COURT: Well, who was it that came up with the
18 idea that put it in your head that you were going to do
19 these acts and crimes on this date?

20 THE DEFENDANT: Sir?

21 THE COURT: So what -- who is the person that put this
22 idea into your mind that would have caused you to commit
23 these acts and crimes on this date?

24 THE DEFENDANT: One of my codefendants, sir.

25 THE COURT: And who was that?

1 THE DEFENDANT: Mr. Martin.

2 THE COURT: Mr. Martin?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Anybody else?

5 THE DEFENDANT: No, sir.

6 MR. BARNETTE: Your Honor, just for the record, you --
7 correctly, the negotiations was correctly stated by the
8 Court, Your Honor. And I have ran that by the victims.
9 They're in agreement with them, Your Honor, in this case,
10 as well as the Spartanburg County Sheriff's Department.

11 THE COURT: All right. So both of the Davises were
12 involved in the agreement process, as well as Mr. Ross?

13 MR. BARNETTE: Yes, sir. We went out and spoke out in
14 the hallway there. They are in agreement. They're here
15 present in the courtroom here today, Your Honor, as well as
16 Sergeant Letterman from the sheriff's department. He was
17 also involved with that also.

18 THE COURT: Do any of them wish to be heard?

19 MR. BARNETTE: I don't know if they want to be heard
20 or not from that standpoint, Your Honor. Let me ask them
21 real quick.

22 (Pause.)

23 MR. BARNETTE: Your Honor, they appreciate the
24 opportunity, but they understand what the recommendation
25 is, and they are in agreement with that.

1 THE COURT: Okay. All right. Mr. Woodruff, do you
2 want me to accept the recommendation that the solicitor has
3 made?

4 THE DEFENDANT: One moment, sir.
5 (Pause for defendant to confer with counsel.)

6 THE DEFENDANT: Yes, sir.

7 MR. BARNETTE: And, Your Honor, for the record, the
8 two armed robbery indictments are going to be dismissed.
9 They're dismissed just because of the plea arrangement,
10 Your Honor. It's 15-GS-42-385 and 15-GS-42-384, Your
11 Honor. And the recommendation was 25 years.

12 THE COURT: On Indictment 2015-3881, that's the
13 indictment for attempted murder, the Sentence of the Court
14 is you, Tyrus Rashawn Woodruff, be confined to the South
15 Carolina Department of Corrections for a period of 25
16 years.

17 That sentence is going to be concurrent with any other
18 sentence imposed today. He's to be given credit for any
19 time he's entitled to pursuant to 24-13-40. That's count
20 one of that indictment.

21 Count two, possession of a firearm during the
22 commission of a violent crime, five years concurrent.

23 Indictment 2015-3883, indictment for burglary in the
24 first degree, sentence is you be confined to the South
25 Carolina Department of Corrections for a period of 25

1 years. Concurrent with any other sentence. Credit for any
2 time he's entitled to.

3 Indictment 2015-3882, indictment for armed robbery,
4 Sentence of the Court is you be confined to the Department
5 of Corrections for 25 years. That sentence concurrent and
6 also to be given credit for any time he's entitled to.

7 MR. BARNETTE: Thank you, Your Honor.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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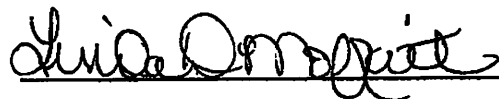
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 22nd day of February 2017.

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

November 30, 2017



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)Tyrus Rashawn Woodruff #353331)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-42-4115

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution (Lee C.I.)
2. Name and location of Court which imposed sentence Spartanburg County Judicial Courthouse, 180 Main Street, Spartanburg, South Carolina 29306
3. Name(s) of co-defendant(s) (if any) Aquarius Johnson Ray; Tavaris Juquez Dewberry; and Xavier Joshua Martin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 - GS - 420 - 3881 / Attempted Murder; Poss of Weapon during Violent Crime
 - (b) 2015 - GS - 420 - 3882 / Armed Robbery

- (c) 2015 - GS - 420 - 3883 / Burglary (1st degree) (See attached sheet)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 22, 2017 / 25 years concurrent sentencing
- (b) 5 years non-violent / Possession of weapons during violent crime
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty ✗
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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H. ROPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Actual Innocence
- (b) Ineffective Assistance of Trial Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached sheet
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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M. HOFFBLACKLEY

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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M. HOPE BLACKLEY

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:

i. Paul Kenneth Neely - 314 North Church Street, Suite 3000 -
Spartanburg, South Carolina 29303
 ii. Dwayne White - 314 North Church Street, Suite 3000 -
Spartanburg, South Carolina 29303
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Guilty Plea Sentencing
 ii. Petition Motions
 iii. _____

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

REVERSE, REMAND, and VACATE

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

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

Tyrus Rashawn Woodruff

SWORN to and subscribed before me this 19
day of Oct, 2017.

Diana Eastman (L.S.)
Notary Public

My Commission Expires: 3/3/2021

2017 NOV -7 AM 9:41
M. HOPE BLACKLEY

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

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

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

Tyrus Rashawn Woodruff
Applicant

SWORN or affirmed to and subscribed before me this

19 day of Oct, 2017.

Debra Eastwood
Notary Public

My Commission Expires:

3/3/2021

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M. HOPE BLACKLEY

10. (a) Actual Innocence - I am completely innocent of these allegedly above-mentioned charges. I was not at the scene of these alleged offenses, I am not on any audio and/or video surveillance device, nor was I identified by any ^{credible} witnesses. Furthermore, I have an alibi witness to further substantiate this allegation.

(b) Plea Counsel failed to interview my alibi witnesses. - I wanted to proceed with trial but plea counsel never interviewed my alibi witnesses, nor did he have them subpoenaed to testify for me at trial. He never called them, nor did he make any ~~an~~ initiative to contact these alibi witnesses in my behalf. From our first contact visit, I informed plea counsel that I had an alibi witness who can corroborate my innocence. He came to the Spartanburg County Detention Center five (5) times. He refused to call or contact my alibi witnesses. Moreover, during these ~~two~~ visits, I informed him that my co-defendants are ready and willing to testify under oath that I am innocent of these alleged offenses. I was not involved in these alleged offenses, nor did I have any knowledge pertaining to these alleged offenses.

(c) Plea counsel failed to investigate facts regarding my case. - At the time of my arrest the police did not have probable cause to charge me with Attempted Murder, ~~Armed~~ Robbery, Burglary (1st degree), and poss. of weapon during violent crime because I did not shoot anyone, did not have no weapon, had no knowledge of these alleged offenses, no one saw me with a gun or shoot anyone, nor did anyone ^{credible witnesses} identify me as committing these alleged offenses.

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HOFER BLACKLEY

(10) ¹³⁶ Plea Counsel failed to object that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause. The affidavit failed to set forth any facts as to why the police believed X committed these alleged offenses. The affidavit failed to set forth how the police conducted its investigation or how they came upon their investigation. Furthermore, it failed to include any facts or underlying reasons concerning the informant's veracity. There was nothing on the face of the affidavit from which the magistrate could have assessed the veracity and basis of knowledge of the informant. Had plea counsel objected and filed a Motion to Suppress on these grounds, all evidence seized by the Spartanburg County Sheriff's Department and all statements and testimony intended to be used by the State at trial would have been suppressed and excluded. See Exhibits A, B, C, & D.

11) Plea Counsel failed to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions. S.C. Code Ann. § 14-9-210 is jurisdictional in nature and requires that all criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions. My bill of indictment prints that it was returned, "At a Court of General Sessions convened on August 21, 2015, the Grand Jurors of Spartanburg County present upon their oath:..." The indictment is signed by the Solicitor, Barry J. Barnette, and sealed with a True Billed stamp. Furthermore, the title page of State's indictment prints that it was published at a Court of General Sessions term as convened on August 24, 2015. However, the terms of Spartanburg County General Sessions Court is set by S.C. Code Ann. § 14-5-710, which DOES NOT offer provisions for a Court to be open on August 21, 2015. The terms of Spartanburg County General Sessions Court shall be held at Spartanburg on: 1) the 2nd Monday in January for 2 weeks; 2) the 4th Monday of February for one (1) week; 3) the 4th Monday after the 4th Monday in March; 4) the 3rd Monday after the 4th Monday in May for one week; and 5) the 3rd Monday after the 4th Monday in September for 3 weeks. See Exhibits A, B, C, & D.

(r) 'Plea Counsel' me to plead guilty against my will and voluntary consent. On 137
2-21-17, I elected to proceed with trial and the Court conducted jury selection on
the alleged above-mentioned offenses. On 2-22-17, before trial commenced, my lawyer
had me brought to a room behind the judge's chambers with Clay Allen (Head Public
Defender) and my plea counsel to inform me that it would be in my best interest to
plead guilty because there was overwhelming evidence of guilt, ~~and~~ I would not be
able to plead third-party guilt, and that my alibi witnesses would not be able
to testify in my defense. My alibi witness was at trial and willing to testify.
Moreover, my co-defendants were ready and willing to testify in my behalf that
I did not shoot anyone, did not have any weapon, was not on the scene of these
alleged crimes, nor did I have any knowledge pertaining to the alleged offenses.

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Tyrus Rashawn Woodruff, #353331,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-4115

**RETURN AND PARTIAL
MOTION TO DISMISS**

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on November 7, 2017, would respectfully show this Court:

I.

Applicant is presently incarcerated pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during the commission of a violent crime (2015-GS-42-3881, count I and II), first-degree burglary (2015-GS-42-3883), and three counts of armed robbery (2015-GS-42-3882, -3884, -3885).

Charges resulted from an incident on July 14, 2015 in which Applicant and two other co-defendants¹ entered the victim's residence by force, forced three men inside (victims) onto the floor, shot one of the men twice, took the victims' wallets and iPhone and ransacked the home looking for drugs and money. The stolen iPhone was tracked to another residence within an hour of the incident. When law enforcement arrived at the other residence, the car that was driven to the victim's residence, a black Dodge Avenger, was parked outside and the four co-defendants were inside with

¹ A fourth co-defendant drove the black Dodge Avenger to and from the victim's residence.

the victims' wallets and iPhone. (Tr. pp. 24-26).

Paul K. Neely, Esquire, represented Applicant. Solicitor Barry J. Barnette represented the State. On February 22, 2017, Applicant pled guilty as indicted to attempted murder, possession of a weapon during the commission of a violent crime, first-degree burglary and one count of armed robbery before the Honorable J. Derham Cole. The State dismissed the other two indictments for armed robbery in exchange for Applicant's guilty pleas. Pursuant to the State's recommendation, Judge Cole sentenced Applicant to imprisonment for concurrent terms of twenty-five years each for attempted murder, first-degree burglary, and armed robbery, and five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal his convictions or sentences.

Attached to this Return are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Actual Innocence"
 - a. "I am completely innocent of these allegedly above-mentioned charges. I was not at the scene of these alleged offenses. I am not on any audio and/or video surveillance device, nor was I identified by any credible eye witnesses. Furthermore, I have an alibi witness to further substantiate this allegation."
2. "Ineffective Assistance of Trial Counsel"
 - a. Counsel failed to interview or subpoena alibi witness to testify.
 - i. Applicant informed Counsel about his alibi witness, but Counsel never contacted the witness.

- b. Counsel failed to investigate facts
 - i. During Counsel's visits, Applicant told Counsel his co-defendants were willing to testify Applicant is innocent of the charges.
 - ii. "The police did not have probable cause to arrest me with attempted murder, armed robbery, burglary (1st degree) and possession of weapon during violent crime."
- c. Counsel failed to challenge affidavit underlying arrest warrant
 - i. Affidavit was "insufficient to support a finding of probable cause."
 - ii. "The affidavit failed to set forth any facts as to why the police believed I committed the alleged offenses. The affidavit failed to set forth how the police conducted its investigation or how they came upon their investigation. Furthermore, it failed to include any facts or underlying reasons concerning the informant's veracity."
- d. "Counsel failed to object that State impaneled its grand jury outside the jurisdiction of the Court of General Sessions. S.C. Code Ann. § 14-9-210..."
 - i. The grand jury indicted Applicant in August of 2015. "The terms of Spartanburg County General Sessions are filed by S.C. Code Ann § 14-5-710, which DOES NOT offer provisions for a Court to be open on August 21, 2015."
- e. "Plea Counsel coerced me to plead guilty against my will and voluntary consent."
 - i. A jury was selected on February 21, 2017. "On [February 22, 2017], before trial commenced, my lawyer had me brought to a room behind the judge's chambers with Clay Allen (Head Public Defender) and my plea counsel to inform me that it would be in my best interest to plead guilty because there was overwhelming evidence of guilty, and I would not be able to plead third-party guilty, and that my alibi witness would not be able to testify in my defense."
 - ii. "My alibi witness was at trial and willing to testify."

III.

Applicant claims actual innocence. This allegation should be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's allegation of actual innocence does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, especially where Applicant pled guilty. Applicant waived his right to raise innocence as a defense when he pled guilty and waived his right to a jury trial. Therefore, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

Insufficient evidence of guilt is not a valid claim to overturn a guilty plea conviction. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and

waiving all other defenses. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6); see also State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) (quoting U.S. v. Broce, 488 U.S. 563, 569 (1989)) (“[W]hen the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”). For these reasons this allegation should be dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

IV.

Additionally, Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In this case, the record refutes Applicant's allegations. Applicant alleges he is actually innocent and his defense was an alibi witness Counsel failed to contact or subpoena to testify. However, at his guilty plea, under oath, Applicant testified he had plenty of time to discuss his case and his decision to plead guilty or have a jury trial with his lawyer. (Tr. p. 11, ll. 14-18). He also testified he told his lawyer everything he knew about the facts of the case and discussed whether or not he had a defense to any of the charges. (Tr. p. 12, ll. 2-9). Applicant also told the plea judge he did not have any defenses to the charges to which he was pleading. (Tr. p. 12, ll. 10-14). Despite Applicant's claim of actual innocence, he admitted he was guilty of each of the crimes to which he was pleading guilty. (Tr. p. 21, ll. 15-17). Applicant also expressed remorse for his actions and explained to the plea judge he was not thinking when he committed the offenses. (Tr. p. 29, ll. 15-24).

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial

admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Although Applicant now alleges Counsel coerced him to plead guilty against his will, at his guilty plea, under oath, he testified no one threatened, forced, or pressured him in any way into pleading guilty. (Tr. p. 20, l. 25 – p. 26, l. 9). He testified he was pleading guilty freely and voluntarily and the decision was his alone. (Tr. p. 20, ll. 10-14). Furthermore, he told the plea judge he understood the negotiation and agreement made with the State with regard to sentencing for the charges to which he was pleading guilty. (Tr. p. 19, l. 12 – p. 20, l. 20).

Respondent submits Applicant can satisfy neither requirement of the Strickland test and the record fully supports the knowing and voluntary nature of Applicant's plea. However, the allegation of ineffective assistance of counsel and allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

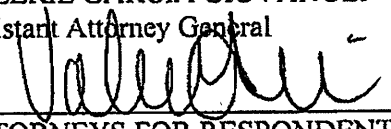
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

January 11, 2018

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

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2017-CP-42-4115

TYRUS RASHAWN WOODRUFF,
#353331,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

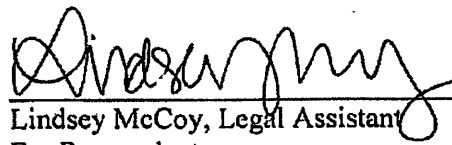
STATE OF SOUTH CAROLINA,

Respondent.

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this the 11th day of January, 2018.


Lindsey McCoy, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-42-4115

TYRUS RASHAWN WOODRUFF)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

FEBRUARY 21, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

VALERIE GIOVANOLI, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

RODNEY W. RICHEY, ESQUIRE
GREENVILLE, SOUTH CAROLINA

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SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Paul K. Neely				
By Mr. Richey	11			
By Ms. Giovanoli		23		
Tyrus Woodruff				
By Mr. Richey	44	51		
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Clay Allen				
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Spenser Smith				
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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(NO EXHIBITS)

1 MS. GIOVANOLI - May it please the Court.

2 THE COURT - Yes.

3 MS. GIOVANOLI - This is the case of Tyrus
4 Woodruff versus the State of South Carolina, docket number
5 2017-CP-42-4115. We're before the Court on an application
6 for post-conviction relief filed November 7th of 2017.
7 Applicant was indicted in August of 2015 for attempted
8 murder and possession of a weapon during the commission of
9 a violent crime, as well as first degree burglary and three
10 counts of armed robbery. The charges resulted from an
11 incident on July 14th, 2015 in which applicant and two
12 other co-defendants entered the victim's residence by
13 force, forced three men inside and one to the floor, shot
14 one of the men twice, took the victims' wallets and iphones
15 and ransacked the home looking for drugs and money. Paul
16 Neely represented applicant and on February 22nd, 2017 he
17 pled guilty as indicted to attempted murder, possession of
18 a weapon during the commission of violent crime, first
19 degree burglary and one count of armed robbery before The
20 Honorable J. Derham Cole. The State dismissed two other
21 indictments for armed robbery in exchange for applicant's
22 guilty plea. Pursuant to the State's recommendation, Judge
23 Cole sentenced applicant to imprisonment for concurrent
24 terms of twenty-five years each for attempted murder, first
25 degree burglary and armed robbery and five years for

1 possession of weapon during the commission of a violent
2 crime. Applicant did not appeal his conviction for his
3 sentences. He has filed a post-conviction relief
4 application alleging various instances of ineffective
5 assistance of counsel, as well as actual innocence. And
6 the State is present and ready to proceed. My witnesses
7 are here. Applicant is also present, and I believe Mr.
8 Rodney Richey has a motion for the Court, so I'll hand it
9 over to him.

10 THE COURT - Mr. Richey, be glad to hear from you.

11 MR. RICHEY - Thank you, Your Honor. May it
12 please the Court. Your Honor, my client has asked me to
13 request a continuance, and I will tell the Court a little
14 background. I went and saw him in preparation for this
15 hearing. He gave me the names of two witnesses because
16 there's an alibi issue in this case, and apparently, one of
17 these women had showed up for trial but wasn't -- because
18 the trial ended she didn't get to testify, and there is
19 going to be an issue in this case whether the ten day
20 notice was complied with and what this witness would have
21 to say. He gave me a phone number for, actually, two
22 witnesses. I attempted to call them, but they didn't
23 answer the phone. His brother was here today, and he is
24 going to assist me in trying to get these girls to come to
25 Court. I will tell the Court this is the first time this

1 case has been on the docket. To Ms. Giovanoli's credit,
2 this case was filed in November of last year. We do have a
3 quick docket that we are able to maintain. I would just
4 ask the Court to consider, as the next term is in June, and
5 I've talked to my client, either we're going to have these
6 people or we're not, but he -- and he told me that they
7 just recently moved, and so I'd ask the Court to consider
8 doing that. We'll assure the Court -- you know, I take
9 these -- motions kind a -- very serious when I request
10 them. He does have a twenty-five year sentence. He's
11 asked me to do that, and his brother did come to courthouse
12 today and told me he will assist me in trying to find these
13 girls.

14 THE COURT - (Pause) It's kind of hard to say in
15 a vacuum without knowing anymore about the case about what
16 the appropriate thing to do would be. If this were in
17 Florence County and I will be back here, what I would do is
18 proceed forward with the hearing. You know, we've got
19 these witnesses here who have been here all morning and get
20 that -- and just go ahead and get that part out of the way.
21 And it might be after hearing everything that it might be
22 that the evidence is so overwhelming that, um, -- and hear
23 the lawyers' explanation as to why they did not call those
24 people, it might not be necessary to do that, or it might
25 be that we could reconvene at a later date and time and

1 take those witnesses' testimony, but it's kind of difficult
2 for me to do that not knowing what the testimony's going to
3 be and the fact that I'm two hundred miles away from here.

4 MR. RICHEY - I'd tell the Court, this was a home
5 invasion and there were co-defendants that were at one home
6 that did this invasion. The cops caught the people --
7 assuming caught the people at a different residence. There
8 were some IDs in the case that did not match my client. My
9 client told the lawyers that he was at these women's house
10 and they were going to call one of the women at trial, and
11 I would be frank with the Court, Mr. -- my client he has --
12 and I use the phrase multiple girlfriends -- and there was
13 an issue that there were two girls that he was -- there was
14 a girl that -- that he was with on this day and she was
15 here prepared to testify, but there was an issue with this
16 ten day notice on her testifying, because the lawyer put
17 great effort into finding her, and so at the time of trial
18 the notice wasn't proper, but I will tell the Court there
19 is an issue here because of the identification at the time
20 of the trial did not match my client.

21 THE COURT - One of the things that might pose a
22 problem is that the plea itself might obviate all of that,
23 because he admitted to doing it. Might be a problem.

24 MR. RICHEY - Well, -- well, I will say, Your
25 Honor, the jury was picked in this case. The jury was

1 picked in this particular case and they did not go forward
2 with it; he pled.

3 THE COURT - Ms. Giovanoli, what do you have to
4 say about all that?

5 MS. GIOVANOLI - Well, to start I would agree
6 with, Your Honor, that if we were to take testimony today,
7 I think the issues could be resolved very easily with
8 counsel's testimony, but with regard to the plea, I agree
9 with that also, the transcript he agreed to the recitation
10 of the facts as presented by the solicitor. He pled
11 guilty, admitted his guilt on the record, and he did so
12 with some benefit of the State's recommendation, drop
13 charges as well as a recommendation concurrent sentence.
14 So, I mean at this point I would argue that we're ready to
15 proceed and go forward. I think that in the event today
16 Your Honor feels that it is important to present this
17 testimony from alleged alibi witnesses, then we could
18 bifurcate the proceedings and -- you know, come to Your
19 Honor and have -- hold a hearing to take further testimony,
20 but I don't think that it will be necessary after we
21 present our case today. Oh, and he did mention that he
22 wasn't ID'd but yet there were multiple victims and he was
23 ID'd by one of them and not another one, so there was an
24 affirmative identification, but that was an issue that they
25 were going to take to trial.

1 THE COURT - Well, I'll tell you what we're going
2 to do, is we're going to reconvene at 1:30 and we'll
3 proceed forward. We'll address the issue about
4 bifurcation, maybe agreeing to submit an affidavit if the
5 State would agree to do so. We'll talk about it. I think
6 we're going to proceed forward at 1:30, and we'll address
7 how we're going to deal with the alibi witness after all of
8 the testimony.

9 MR. RICHEY - Okay.

10 THE COURT - So, let's do it that way. So we'll -
11 - we'll recess until 1:30. That give us an hour and
12 fifteen minutes to get something to eat.

13 MS. GIOVANOLI - Thank you.

14 MR. RICHEY - Okay.

15 (WHEREUPON, LUNCH RECESS TAKEN.)

16 THE COURT - Please be seated. Good afternoon
17 everybody.

18 Ms. Giovanoli, you're recognized.

19 MS. GIOVANOLI - Thank you, Your Honor, this is
20 Tyrus Woodruff versus The State of South Carolina, docket
21 number 2017-CP-42-4115. I previously went through the
22 procedural history. This is an application for post-
23 conviction relief. I don't think I mentioned the
24 allegations but I would just hand it over to Mr. Rodney
25 Richey in order for him to delineate the special

1 allegations they'll be proceeding on today, so I'll hand it
2 over to him.

3 THE COURT - Mr. Richey, you're recognized.

4 MR. RICHEY - Thank you, Your Honor. One of the
5 allegations we're going to present is counsel was
6 ineffective by not calling these alibi witnesses to the
7 counsel, was not giving the proper advice as to plead
8 guilty. My client -- he wants to pursue that counsel
9 failed to object to the empanelment of the grand jury, that
10 counsel did not present evidence that would prove that he
11 was ineffective, that the evidence would prove his actual
12 innocence, and counsel did not present the evidence of a
13 photo lineup that would also show that he was, in fact, not
14 guilty of the charge. (pause) That would be our issues,
15 Your Honor.

16 THE COURT - You may call your first witness.

17 MR. RICHEY - We call Mr. Neely.

18 THE COURT - Mr. Neely, please come forward. I'm
19 going to ask, if you could, to come forward and place your
20 left hand on the bible and raise your right hand as the
21 clerk administers the oath -- or as I administer the oath.

22 PAUL K. NEELY, AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS -

24 THE COURT - All right, have a seat in the witness
25 chair. Pull up real close, speak loudly, clearly and

PAUL K. NEELY - DIRECT BY MR. RICHEY

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1 slowly in order that we can hear everything that you have
2 to say and start with your full name and spell that last
3 one.

4 MR. NEELY - My name is Paul Neely, N-e-e-l-y.

5 THE COURT - Very good.

6 MR. RICHEY - Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. RICHEY -

9 Q Mr. Neely, do you recall representing Mr. Woodruff in
10 this case?

11 A I do.

12 Q And do you recall the charges that you represented him
13 on?

14 A I do.

15 Q And what were those charges?

16 A Tyrus was charged with one count of attempted murder,
17 one count of burglary in the first degree and three counts
18 of armed robbery and then a weapons charge during the
19 violent crime.

20 Q Okay. And how did you represent him on these cases?

21 A I represented Tyrus for about fifteen months. Before
22 I was appointed to Tyrus' case he was previously
23 represented by Ms. Andrea Price who was also in the public
24 defender's office. She was appointed to Tyrus' case in
25 July of 2015 after he was arrested. She's on our bond team

1 with the public defender's office -- we're split into
2 teams, one team handles probation cases and one team that
3 handles bonds -- and so she had done a bond for Tyrus and
4 for a co-defendant or maybe just for the co-defendant, but
5 Tyrus felt that there was a conflict, and so I was assigned
6 to that case in, I believe, October or November.

7 Q And I'm going to give you a simple version of the
8 facts or a simple -- so we can kind of know what we want we
9 want to do. This is the case where the gentlemen went into
10 a guys home and, basically, a home invasion, shot him, took
11 his wallet and iphone, that kind of stuff. Is that a
12 general synopsis of what happened?

13 A I'm sorry. Can you repeat that for me?

14 Q Three gentlemen went into a -- a guy's home,
15 basically, robbed and shot him and took things out of the
16 home, and the police arrested three gentlemen at a
17 different residence.

18 A Three gentlemen went into the home, they arrested four
19 at a later residence.

20 Q Okay. So that's the gist of the facts. Is that
21 correct?

22 A That's correct.

23 Q And -- and Mr. Woodruff was one of the people that got
24 arrested at the other residence. Is that correct?

25 A That's correct.

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1 Q Okay. And -- and during the discovery of this case --
2 well, let me ask you this. Did Mr. Woodruff express to you
3 that he was not guilty of these charges?

4 A He did.

5 Q And was he basis he was not guilty is that he was not,
6 actually, there when the robbery occurred?

7 A That's correct. We talked at length about that.

8 Q Okay. And did he -- did he give you any alibi
9 witnesses' names to pursue?

10 A He did. He gave me two. He gave me the names the of
11 Taylor Dawkins and Christina Booker, both of which he says
12 he was with the night before and the morning of the
13 incident.

14 Q Okay. Did you have an opportunity to speak to either
15 one of these young ladies?

16 A Not substantively, and what I mean by that is, I was
17 provided by Tyrus addresses and phone numbers for both of
18 these alibi witnesses. I was able to communicate at
19 various points either through myself or through my
20 investigator, Paul Bennett, who's with my office, with them
21 to communicate what our wishes were and communicating with
22 them and to schedule appointments, but we never, actually,
23 talked about the substance of what I wanted to discuss with
24 them. We scheduled office appointments, but those never
25 materialized.

1 Q Okay. And did -- did anyone of these witnesses come
2 to the Court on the day of the trial?

3 A I have no idea.

4 Q And do you recall whether you gave the solicitor's
5 office any notice of these folks?

6 A I did not give them notice. I know that the rule
7 requires an alibi notice to be provided to the solicitor's
8 office at least ten days out from the trial. Because I had
9 never been able to communicate with them to confirm Tyrus'
10 alibi. I didn't feel comfortable going ahead and providing
11 that notice to them. Within that ten days it seemed like
12 we were going to have an a appointment with at least one of
13 the girls, Taylor Dawkins, and Paul Bennett and myself
14 drove out to the house where Tyrus was the night before.
15 That house was vacant, and that that meeting never
16 materialized, so I spent a good deal of time leading up to
17 trial researching that ten day rule, that ten day window to
18 see if there was -- if I was able to get in contact with
19 them, whether I would've been able to still provide that
20 notice to the State, but, ultimately, I never did provide
21 notice to them, because that -- again, those meetings never
22 materialized.

23 Q Did Mr. Woodruff ever indicate to you that he believed
24 the people were at trial?

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1 A I don't -- I don't remember. Honestly because we had
2 already pre-trial (sic) motions and had picked a jury and I
3 was -- I was solely focused on the defense that I knew I
4 had at that point, I don't remember if Tyrus mentioned that
5 or not.

6 Q Okay, let's talk about the defense you had. Did you
7 have a defense in this case in terms of the evidence that
8 was taken at the scene, fingerprints or anything of that
9 nature?

10 (WHEREUPON, A CELL PHONE GOES OFF)

11 MS. GIOVANOLI - I apologize.

12 Q Was there any evidence that you had at the time of the
13 trial ---

14 A I had ---

15 Q --- that was favorable to you?

16 A I'm sorry. I sure thought I did. I sure thought I
17 did, and that's a large part of what Tyrus and I talked
18 about for the fifteen months that I represented him. There
19 were -- besides the shooting victim, there were four other
20 witnesses inside of that house. The shooting victim was
21 never shown a six-pack lineup, but the four people inside
22 of the house were all shown a six-pack lineup of -- each of
23 them were shown a six-pack lineup of the four individuals
24 that were arrested at Demelta Dewberry's residence, which
25 is not the -- not the incident location. Of the four

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1 people shown the six-pack lineup, two people were unable to
2 identify anybody in Tyrus' case. One person, actually, did
3 identify Tyrus out of it, but another person identified
4 Terez Robinson. Now, what I found, especially, significant
5 about that is that in one of the written statements given
6 by one of the people identifying, they described the two
7 guys that were in the house, the two guys with the guns,
8 and they described one wearing a baseball cap and one
9 having dreads. Well, Aquavious Ray was the other person
10 who had the gun in the house, and he didn't have dreads.
11 Tyrus at the time he was arrested also did not have dreads.
12 The six-pack lineup that was shown of Tyrus Woodruff was an
13 old mugshot where he had dreads previously in, I think,
14 2013, 2014, somewhere around there -- it was an old mugshot
15 and he had -- he had long dreads before he went to SCDC on
16 that charge. Terez Robinson I knew had dreads and that was
17 who was picked out by this person. At the scene where the
18 boys were arrested at Demelta Dewberry's house, there was a
19 Dodge -- a Dodge Challenger, Dodge Avenger, a black Dodge
20 sedan. That car was dusted for latent prints and they were
21 able to lift some latent prints off of that car. Tyrus'
22 prints were nowhere on the car, but one of the prints that
23 was lifted from the back pas -- from the back driver's side
24 -- I believe it was the back driver's side -- was that of
25 Terez Robinson, so it's either -- to me in my mind it was

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1 either one of the world's largest coincidences that this
2 person was picked out of a lineup and his fingerprint was
3 on the getaway car or they had arrested the wrong guy,
4 because Dewberry had confessed, Xavier Martin had
5 confessed, Aquavious Ray hadn't confessed, but he had been
6 subsequently picked out of a photo lineup and so it was
7 down to -- and we knew there were four guys that were
8 involved, so that fourth guy either had to be Terez
9 Robinson or, you know, they had -- they had arrested Tyrus
10 and I was operating under the defense and under the
11 assumption that it was Terez Robinson.

12 Q Okay. And so that was kind of the strategy y'all were
13 gonna have at trial?

14 A That was -- that was absolutely out strategy. You
15 know, lack of thorough police investigation coupled with
16 third-party guilt.

17 Q And did you discuss that with Mr. Woodruff?

18 A We discussed that at length.

19 Q And so y'all were prepared to go to trial on that. He
20 subsequently pled guilty. Is that correct?

21 A He did, on the second day of trial.

22 Q And can you tell me why he pled guilty at that point
23 instead of going forward with the case that you outlined?

24 A So Monday morning of trial after the jury was
25 qualified, we picked the jury, we impaneled a jury. They

1 were never sworn, and then on Monday afternoon of trial we
2 argued pretrial motions. We argued -- we had a Biggers
3 hearing on the identification, on the out-of-court
4 identification, and we argued third-party guilt. The judge
5 that was presiding over that case, Judge Cole, took those
6 under advisement, didn't issue a formal ruling on the
7 record Monday afternoon. After the jury was released for
8 the day, we went back to chambers to discuss timing, to
9 discuss the way the case was proceeding forward. At that
10 time back in chambers was Judge Cole, my boss, Clay Allen,
11 myself, Barry Barnette and Spenser Smith, both from the
12 solicitor's office. While back in chambers, I received a
13 disk that contained jail phone calls that Tyrus had made
14 when he was first arrested. I believe they were all from
15 the first week that he was arrested and in the county jail,
16 certainly before he had a lawyer to advise him not to make
17 these particular phone calls. The solicitor's office
18 definitely viewed those as almost a confession. Now,
19 nowhere in the transcript did those phone calls or in
20 listening to phone calls does Tyrus say, I did this. It's
21 not -- it's not a confession. There is some slang that is
22 used that my understanding of what that meant would not
23 have been favorable for us had it been presented to the
24 jury. I was -- the judge indicated to me, because I had
25 raised that the State was violating Brady, the State was

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1 violating Rule 5, because we'd already impaneled a jury at
2 this point -- this case was from July of 2015 and this was
3 February of 2017 that we're at trial, and the phone calls
4 were from July of 2015 -- there was absolutely no reason
5 that the State could not have given me these tapes or their
6 need to sit on these tapes for nineteen months, but the
7 indication that I got from the judge was that we had equal
8 access to these tapes, which I'm still not quite sure
9 about. That was the indication that I was getting from the
10 trial judge and that the tapes were going to be admissible
11 at trial assuming the State could properly authenticate the
12 phone calls as being made by Tyrus. So on Monday night,
13 instead of preparing for opening statements and getting
14 ready for whatever other duties I had as an advocate for
15 Tyrus, I spent four hours in my office with Suzanne White,
16 who's also in my office, reviewing the jail phone calls,
17 and there was about three to four hours of jail phone
18 calls, and we listened to them. When we got back to Court
19 on Tuesday morning, we had another chambers conference at
20 which point it was indicated to me by the trial judge that
21 my third-party guilt motion was also going to be denied, so
22 I was left with a tape that the State was going to present
23 to the jury and going to be allowed to present to the jury
24 as, basically, what the State called a confession and then
25 no third-party guilt to argue to the jury, so this entire

1 defense that I had prepared for fifteen months that I had
2 worked hard with Tyrus to prepare was, you know, ripped out
3 from underneath me at the last moment. The -- the trial
4 judge gave me the impression -- he never outright said it -
5 - but during the chambers conference, the trial judge
6 indicated to me what he thought this case, based on the
7 facts as they were presented to him by the solicitor in
8 chambers, what he thought the case was worth. A co-
9 defendant had previously pled in, I think, November of 2016
10 in front of a different judge and received a twenty-five
11 year sentence, and it was indicated to me by the trial
12 judge that if Tyrus would accept the plea, even though he
13 didn't think the case was worth the twenty-five -- he
14 thought it was worth significantly more -- that he would do
15 the same as the other plea judge, and so on -- on that
16 Tuesday morning I met with Tyrus and then Clay Allen and
17 myself also met with Tyrus and I -- I definitely told Tyrus
18 I thought that if we went to trial now and we don't have a
19 defense, that jury's definitely going to find him guilty,
20 because I don't have anything to present to them, and if
21 he's found guilty, it's my strong belief that he would get
22 a life sentence based on the nature of the burg first
23 charge and the rest of the charges and that he can twenty-
24 five, he can get out when he's 44 or 45 years old and still
25 have some semblance of a life.

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1 Q Did you ever inquire -- did you ever contemplate the
2 idea of letting the judge rule on the issues to preserve
3 those issues for Mr. Woodruff and then plea after that?
4 Was there ever discussions about doing it that way?

5 A There was no discussion of that, and, quite frankly,
6 I've had that thought a lot since then. In that moment I
7 think I panicked a little bit, and I didn't preserve his
8 appellate rights, either by putting the denials on the
9 record, the denials of our motions on the record and giving
10 him something to appeal after the plea or certainly if the
11 appellate court would've found that the plea -- taken it
12 all the way to a jury verdict and letting -- letting him
13 appeal the issues and seeing if we could come back.

14 THE COURT - Doesn't the plea obviate -- I mean if
15 you enter a plea, you give up all those rights, don't you?
16 You do. I mean you can ask for a bench trial and handle it
17 that way, but if you plead guilty, it obviates that. What
18 do you think about that?

19 MR. RICHEY - Well, I think counsel has to advise
20 the client that -- and I haven't gotten to that -- the
21 client has -- if the counsel has advised the client, you
22 have a right to have these motions heard and have a right
23 to have a ruling on these motions prior to pleading guilty,
24 -- see, I think -- I think -- I think this is one of the
25 drawbacks -- and I do think the Court -- we all do it --

1 having the judge give you an idea about what he's going to
2 do, and what happens is, there's no record of it, and so
3 when the client comes back, the issue becomes, did you
4 properly advice him, that you have a right to have a ruling
5 on all these motions prior to pleading guilty, because if
6 that advice -- and I don't get to argue about it. That's
7 just my position.

8 THE COURT - Very good. Go ahead.

9 MR. RICHEY - Thank you, Your Honor.

10 Q Did you and Mr. Woodruff, along that line, did you sit
11 down and advise him that he has every right to have a
12 hearing on these motions and have a ruling on them, on
13 these motions?

14 A I don't know at what depth we had that conversation.
15 I know once it switched to a plea, my standard spill with a
16 client who's pleading is to go over constitutional rights,
17 your right to a jury trial, you right to be innocence until
18 presumed -- or until you're found guilty, your Fifth
19 Amendment rights to remain silent, and that if you plead,
20 you're giving up those constitutional rights, but I don't
21 know what -- that we discussed that. I don't -- I don't
22 remember.

23 Q Okay, because you all spent a substantial amount of
24 effort and time to developing this defense. Right?

25 A Correct.

PAUL K. NEELY - CROSS BY MS. GIOVANOLI

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1 Q And prior to that moment in time, that was the route
2 you all were taking, and you all were kind of comfortable
3 until you got the jail calls. Correct?

4 A Even with the jail calls I think it was the third-
5 party guilt that made me lose faith in what we were doing.

6 Q Okay. Okay. So if the -- if -- all right. In terms
7 of this alibi -- and you might have answered this -- you
8 had no communication with these folks.

9 A Nothing substantive. Again, there were -- there were
10 -- there was some communication about bringing -- getting
11 them into the office for -- for a call, but nothing
12 substantive.

13 MS. RICHEY - Thank you. Answer any questions the
14 attorney general has.

15 THE COURT - Ms. Giovanoli?

16 MS. GIOVANOLI - Thank you, Your Honor. Good
17 afternoon, Mr. Neely.

18 CROSS EXAMINATION

19 BY MS. GIOVANOLI -

20 Q So give us some background. How long have you been
21 practicing criminal law?

22 A I was admitted to the bar in November of -- or
23 February of 2014. I was hired at the Fourth Circuit Public
24 Defender's office in May of 2014.

1 Q Okay, and you were an assistant public defender in
2 this case?

3 A Yes, ma'am.

4 Q At the time of this case.

5 A (No response)

6 Q So you briefly touched on the discovery in this case.
7 I just wanted to get -- because I think that's really
8 relevant to your advice to Mr. Woodruff to plead guilty.
9 So you talked about some IDs, and I think it was a little
10 bit confusing, but there was a guy named Terez Robinson.
11 Correct?

12 A Correct.

13 Q And he was not involved in this incident. Correct?

14 A I don't know that.

15 Q Okay. Well, he was in the photo lineup, but they
16 didn't allege that he was involved in the incident. Is
17 that a better way to put it? The State didn't allege Terez
18 Robinson as part of this incident.

19 A Terez Robinson was not arrested as part of this
20 incident. He was in the six-pack lineup that was shown to
21 the witnesses in the house in the same photo lineup that
22 Tyrus was, and his fingerprints were on the get-away car,
23 so I don't know that Terez Robinson wasn't involved in this
24 case.

1 Q Okay. And the one victim in the house that did
2 identify Terez Robinson, she, specifically, identified him
3 as the driver of the get-away car. Is that not correct?

4 A I think during the Biggers hearing she said something
5 about the driver, but somebody else in the house gave a
6 written statement that said that one of the people that was
7 in the house had dreads. Neither Tyrus Woodruff nor
8 Aquavious Ray had dreads on July 15th.

9 Q But the alleged driver had dreads, did he not?

10 A I think Xavier Martin had dreads, yes, ma'am.

11 Q Okay. And you got the discovery in this case. Isn't
12 that correct?

13 A Yes, ma'am.

14 Q And in the report where the officer is describing of
15 giving the photo lineup to this victim and identified Terez
16 Robinson, did he not specify that the victim that
17 identified Terez Robinson identified him as the driver of
18 the get-away car?

19 A I believe that's correct, but she ---

20 Q Not as one ---

21 A --- but she also stated that she was confused -- or
22 not that she was confused, but that it was hectic, chaotic.

23 Q Right, but she identified a guy with dreads in the
24 six-pack lineup as the driver but unsure.

25 A Right.

1 Q Is that correct?

2 A That's correct.

3 Q And that person she identified was Terez Robinson who
4 was not charged in this crime.

5 A Again, his -- but his fingerprint was on the get-away
6 car.

7 Q Okay. But also in the discovery, wasn't the --
8 there's multiple victims, but there's one that was shot.

9 Is that correct?

10 A That's correct.

11 Q Do you recall his name?

12 A His name was Marlin Davis.

13 Q Marlin Davis. And Marlin Davis, in fact, identified
14 the defendant has his shooter in the six-pack lineup that
15 he was presented. Is that correct?

16 A No. That is not correct. He was never shown a six-
17 pack lineup.

18 Q And I'm sorry, so Marlin Davis had a son, Marlin
19 Davis, Jr.

20 A I think there's Marlin L. and Marlin S. Davis, and I
21 don't remember which one's which. The son, Marlin Davis
22 was in a bedroom with his sister, and he was shown a six-
23 pack lineup. The father, Marlin Davis, was the shooting
24 victim and he had been taken to the hospital, and at no
25 point was a six-pack lineup ever presented to him.

1 Q Okay, and in the six-pack lineup that was presented to
2 the son that was in the house during the incident, who did
3 he identify?

4 A I believe he, actually, did identify Tyrus. I believe
5 that's the person who identified Tyrus.

6 Q Okay, and then -- let's see -- so that's the
7 identification issue. No one else in the house could
8 identify anyone in the six-pack lineup.

9 A There were four people, Marlin Davis, the son,
10 identified Tyrus. One of the girls identified Terez
11 Robinson, and then the other two people shown the six-pack
12 lineup couldn't identify anybody.

13 Q Okay. And isn't it true that after law enforcement
14 arrived, an iphone had been stolen, so they used the "Find
15 my Iphone Application" to track the iphone to another
16 residence. Is that correct?

17 A That's correct.

18 Q And when law enforcement arrived at the other
19 residence, four co-defendants were there. Actually, I'm
20 sorry. Four guys, defendant and his three co-defendants
21 were there.

22 A That's correct.

23 Q And they found the victim's wallet, social security
24 cards, credit cards, driver's licenses at that residence
25 with the four people.

1 A I think most of that stuff was found in the get-away
2 car.

3 Q Okay. And where was the iphone found?

4 A That might've been in the house.

5 Q And do you know how long it took for law enforcement
6 to arrive at the scene where the defendants were after the
7 incident occurred?

8 A If I'm remembering correctly, I think it was between
9 30 and 45 minutes.

10 Q So you guys pursued pre-trial motions in this case,
11 the motion for third-party guilt to admit evidence of
12 third-party guilt, Terez Robinson, specifically. Is that
13 correct?

14 A Yes, ma'am.

15 Q And also a Neil vs. Biggers hearing.

16 A Yes, ma'am.

17 Q Okay. And we don't have the transcript,
18 unfortunately. That was an oversight by my office. So can
19 you kind of expand a little bit on the arguments presented
20 as far as the third-party guilt motion?

21 A Suzanne White from our office, actually, argued that
22 motion. That might be a better question for her, because
23 she did a lot of the research on the case law for that
24 case.

1 Q Okay. Do you remember of anything that happened in
2 the motion?

3 A Uh, what do you mean?

4 Q I mean do you remember the motion? Can you enlighten
5 us a little bit about what happened?

6 A I mean we -- we argued the motion in Court. Barry
7 Barnette argued it for the State, but there was no ruling
8 made that day.

9 Q Okay, you don't know if witnesses were presented or --
10 -

11 A I don't -- I don't remember. I'm sorry.

12 Q So you testified earlier that third-party guilt was
13 your main theory at trial, but you don't remember anything
14 about the hearing, pre-trial hearing.

15 A I'm sorry, I don't.

16 Q How about the Neil vs. Biggers hearing?

17 A Witnesses were called to that case. I, actually,
18 argued that Officer Brandon Letterman was called --
19 Sergeant Brandon Letterman was called, Marlin Davis, the
20 son, was called, think Iesha Ferguson was called to the
21 stand, as well.

22 Q Okay. And what was some of the -- well, what was the
23 testimony offered by Letterman, the general gist of it,
24 since we don't have a transcript?

1 A Basically, the gist of his testimony was that law
2 enforcement hadn't done anything inappropriate in that
3 case, because the six-pack lineup is generated randomly, so
4 the fact that Tyrus -- that Tyrus' mugshot had dreads in
5 it and all the other people had dreads in it, that was --
6 that was merely done to match Tyrus' picture at the time,
7 and it was generated, I think, for them by SLED.

8 Q Could you made the argument that they didn't supply a
9 photo of what he looked like that day?

10 A I did.

11 Q And do you know why they didn't take a photo of him
12 that day?

13 A I don't know. . I don't.

14 Q Whenever he was taken into custody -- I'm sure you saw
15 this in the discovery -- he, actually, physically,
16 prevented them from taking gunshot residue samples from his
17 hands. Is that correct?

18 A Yeah, he did.

19 Q And there was, actually, a battery there for lack of a
20 better term? Is that correct?

21 A There was, but they still booked him into the jail and
22 took a mugshot of him on July 15th.

23 Q And that was after they took the gunshot residue test.
24 Is that -- isn't that correct?

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1 A I think they interrogated -- or attempted to
2 interrogate him first before they booked him into the jail,
3 but I don't think if they wanted to do a current six-pack
4 lineup that it was as pressing as showing a photo of him
5 with dreads when one of the people in the house was
6 described as somebody with dreads.

7 Q Well, if there had been a fight between law
8 enforcement and Mr. Woodruff and they took a photo of him
9 with injuries to his face, would that have not been
10 suggestive in a photo lineup?

11 A I don't recall seeing any injuries of him in his
12 mugshot.

13 Q Okay, you, um -- you did some further investigation of
14 this case other than just reviewing discovery. Isn't that
15 correct?

16 A Yes, ma'am.

17 Q Okay, and that involved researching -- not researching
18 -- but investigating these alleged alibi witnesses?

19 A Yes, ma'am.

20 Q So you testified earlier that there was some
21 communication, but, ultimately, you never got to talk to
22 these two alleged alibi witnesses.

23 A That's correct.

1 Q Can you elaborate a little further on the efforts that
2 you and your investigator made in an effort to contact
3 these two girls?

4 A Sure. Tyrus over the course of our meetings provided
5 me with what he believed to be current phone numbers for
6 both of these ladies, and he gave me what he believed to be
7 current addresses for both of these ladies. I attempted to
8 call on several occasions, and my investigator, Paul
9 Bennett, also attempted to call on several occasions.
10 Either myself or Bennett had spoken with them and scheduled
11 an office appointment for them to come in and give us a
12 written statement about the night of July 14th and the
13 morning of July 15th, but those meetings never
14 materialized. Um ---

15 Q Can I stop you there? When you say never materialized
16 ---

17 A They never showed up at the office.

18 Q Okay.

19 A They never showed ---

20 Q And then happened on a few occasions?

21 A At least one, and I think a couple.

22 Q At least one and maybe a couple?

23 A Yes, ma'am.

24 Q Okay, and then continue. What else did you do other
25 than those scheduled office visits?

1 A Uh, I know I had Bennett drive out to the addresses
2 that Tyrus had provided for me, and I know on at least one
3 occasion, looking back through my notes, on February 8th
4 before trial he had a new address for Christina Booker, one
5 of the alibi witnesses, and it was a Greenville address
6 now, but nobody came to the door when Bennett went out
7 there.

8 Q So Bennett went to Greenville to find this girl?

9 A He did.

10 Q As well as her previous residence.

11 A Correct.

12 Q Were either of these residences abandoned?

13 A Where Tyrus told me he was on the night of July 15th,
14 which -- or July 14th, I'm sorry, the night before this
15 happened was a house on Dean Street, [REDACTED] Dean Street. We
16 went -- Bennett and myself went before trial to try and
17 find the -- the occupants of that residence. When we went
18 there in either late January or early February of 2017, so
19 about a year and a half after the incident, that house
20 hadn't had occupants in it for several months. There was a
21 construction crew or a landscaping crew next door that had
22 been working on the house next door, and they said they've
23 never seen anybody there, and they had been there for a few
24 months. That doesn't mean it was unoccupied in July of
25 2015.

1 Q Okay. So Tyrus told you that he was with a woman the
2 night before the incident. Is that correct?

3 A He was with -- with two women and there was a guy
4 there.

5 Q Okay, but he told you he was with one woman the night
6 before the incident. So the incident occurred at 11:30-ish
7 am?

8 A No he said he was -- okay, sorry. What's the
9 question?

10 Q Okay. When did the incident occur?

11 A July 15th at around noon.

12 Q Yes, okay, around noon?

13 A (No response)

14 Q And the night of July 14th ---

15 A Right.

16 Q --- where did Tyrus say he was?

17 A From the night of July 14th into the morning of July
18 15th -- and I didn't have specific times, but Tyrus told me
19 he was at that house on Dean Street with a couple of ladies
20 and a gentleman, and I never got the guy's name. I don't
21 think Tyrus could remember the guy's name.

22 Q And did you speak to another woman who alleged herself
23 to be at the defendant's -- excuse me -- applicant's baby's
24 mother who said he was with her that night?

25 A I did.

1 Q And then so you got Mr. Woodruff saying he was at this
2 house on Dean Street the night -- the night before July
3 15th and the baby's mother saying that he was with her
4 somewhere else. Is that correct?

5 A That's correct.

6 Q And then you also have these other two alleged alibi
7 witnesses that are also came out (sic) and their names are
8 Booker and Dawkins?

9 A I think Dawkins is correct. Booker is definitely
10 correct. I think Dawkins is correct.

11 Q Okay. And according to Woodruff, what was -- what
12 were they going to say?

13 A That that's where was Tyrus was the night of the 14th
14 and into the morning of the 15th.

15 Q Is there any other reason why you didn't pursue
16 calling them at trial a little more stringently?

17 A Booker and Dawkins?

18 Q Yes.

19 A I -- I didn't know where -- at that point I was
20 prepared to go forward on third-party guilt and I wasn't
21 sure where the truth was at that point. You know, my
22 experience with baby mamas and somebody facing significant
23 time is that will (sic) say our loved one is somewhere when
24 they're not, and I had never been able to meet with Dawkins
25 and Booker to weigh who I thought was telling the truth,

1 and I didn't want to put myself in unethical situation
2 where I was calling somebody to the stand that I thought
3 would -- was going to perjure themselves and I didn't want
4 to be a knowing party to that, so having never been able to
5 speak to Tyrus' alibi witnesses, that would be why I didn't
6 call them.

7 Q Would you characterize the two alleged alibi witnesses
8 as uncooperative?

9 A No.

10 Q Failing to ---

11 A Uncooperative? No. I mean they -- every time we
12 spoke they said they were certainly willing to help Tyrus.
13 They just -- I know one of them worked the third shift, and
14 one of them -- I don't think one of them had a good excuse
15 for not coming other than just not coming, so as far as
16 providing a defense for Tyrus they were un -- they didn't.
17 They didn't. So maybe uncooperative is a good word, but
18 during my phone conversations with them, they wanted to.

19 Q You said the phone conversations were just about
20 scheduling an office visit.

21 A Just scheduling. We didn't talk substantively about
22 what -- about the nature of what had taken place, but that
23 Tyrus had told me that he had been with them, would they
24 come in and write a statement, and they had agreed to do
25 that.

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1 Q On multiple occasions.

2 A Right.

3 Q And didn't show up.

4 A Correct.

5 Q And so that's fair to characterize that as
6 uncooperative.

7 A Sure.

8 Q Going to the other allegation of preserving the record
9 -- I think there was some testimony about that -- you
10 disagreed with the judge's ruling -- in chambers. He
11 didn't -- well, we concede that he didn't make a ruling on
12 the record, but you disagreed with his ruling. Is that
13 correct?

14 A I did.

15 Q Okay, but you advised Mr. Woodruff to plead guilty
16 because you didn't, actually, think that his ruling rose to
17 an abuse of discretion that you could win on appeal if you
18 proceeded to trial.

19 A I didn't know if the Court of Appeals reviewed it
20 under an abuse of discretion standard that it would be
21 overturned, so my advice to Tyrus was a preservation -- was
22 preservation and bias, because I thought with a lack of
23 defense at that point, because our legs had been cut out
24 from underneath us, that if we went to trial with no
25 defense, undoubtedly in my mind I thought Tyrus was going

1 to get a life sentence, and I did not know if a -- if the
2 Court of Appeals when they reviewed the transcript from the
3 trial with an abuse of discretion standard would overturn
4 the judge's ruling, and I could do the math on a twenty-
5 five year sentence. I knew that Tyrus could get out, so
6 that advice was -- was for his preservation.

7 Q And did you give that advice believing it was in his
8 best interest?

9 A At the time -- at -- sure. I thought that was what
10 was best for Tyrus.

11 Q And do you still believe that that was what was best
12 for Tyrus?

13 A From my experience from doing this job, I do think
14 that's what was best for Tyrus. I know that Tyrus the
15 entire time that I had represented him maintained that he
16 was not a party to what happened, that they had arrested
17 the wrong guy, and even the morning of the plea he was
18 waffling on whether he wanted to plea or go to trial. So
19 whether Tyrus thinks that's the best thing for Tyrus, I
20 don't know. I think from a legal standpoint of who
21 somebody's not having to serve twenty-five years, I think
22 that was the best interest for him.

23 Q So you touched on him, his actual innocence, for lack
24 of a better term -- didn't one of his co-defendants also
25 put him in the house at the shooting, their statement?

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1 A The co-defendant who when everybody else got twenty-
2 five years got probation put him in the house. Sure. The
3 guy who has narced on eight other co-defendants to get
4 himself out of prison put Tyrus in the house.

5 Q Okay, and then Aquavious Ray was, actually, going to
6 be a defense witness. Is that correct?

7 A (No response)

8 Q Just yes or no and then I'll ask you another question.

9 A No. Aquavious Ray was not going to be a defense
10 witness.

11 Q Originally he was, but you spoke to him three times
12 and he went back and forth and, ultimately, said, no, I'm
13 not going to testify on his behalf.

14 A Aquavious Ray was under subpoena to testify on behalf
15 of Tyrus. He was included on our witness list. Myself and
16 Paul Bennett drove to Broad River or Kirkland to wherever
17 he was being housed after his plea to meet with him and to
18 find out about what had, actually, happened, because he had
19 already pled guilty, there was no reason for him not to
20 testify. He never said that Tyrus was there; he never said
21 that Tyrus was there and during that meeting he indicated
22 that he was willing to testify, so when we were getting
23 ready to go to trial, he was under subpoena and we went
24 through SCDC channels and subpoenaed him the proper way and
25 he was brought back to Spartanburg. Before for the trial

1 I met with him again in the county jail along with my
2 Investigator, Paul Bennett, and he seemed far more on the
3 fence that time about testifying, about cooperating. I
4 think a large part of the problem then was that even though
5 the subpoena had got there about two weeks before, nobody
6 from SCDC told him what was happening, and so they just
7 grabbed him out of his cell the morning they were
8 transporting him, didn't lock up whatever worldly
9 possessions he has left and just brought him up to
10 Spartanburg, and so he was worried about that and wanted to
11 get back down to SCDC. And then his other concern was how
12 testifying would impact his charges that he had already
13 pled to or if anymore charges could be brought against him,
14 and he spoke with Robin File who represented him on these
15 charges and the third time I met with him and in my
16 communications with Mr. File, Aquavious Ray made the
17 decision through his attorney that he was not going to
18 testify at trial that morning.

19 Q Okay, you just testified that he never said Mr.
20 Woodruff was at the scene, but now you're ever (sic),
21 actually, saying he was absolutely not there?

22 A He didn't say one way or the other.

23 Q There's been an allegation that you were ineffective
24 for failing to object to the State's empanelment of the
25 grand jury, which was -- occurred in August of 2015. Did

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1 you -- did you discuss anything about the grand jury
2 proceedings, the indictment with the applicant?

3 A If we did, I don't remember.

4 Q Did you notice any defects in the indictment?

5 A No.

6 Q There's also been allegation that you were -- that you
7 coerced Mr. Woodruff into pleading guilty against his will.
8 Did you threaten or overly pressure him to plead guilty, or
9 was it his decision?

10 A I didn't threaten Tyrus. One of the things that,
11 especially, in Tyrus' case that I'm proud of is that over
12 the course of my representation with Tyrus, I built a
13 relationship with him, because we met at least once a
14 month, if not more than that, where I felt that Tyrus
15 trusted -- trusted me, and he was charged with something
16 where -- I mean he was facing the rest of his life in
17 prison, and our entire conversations during that 15 months
18 of representation was that we weren't going to take a plea,
19 because he told me he -- he didn't do it, and we had a good
20 defense, and then on that second morning of trial -- and we
21 had -- we had picked the jury, we had argued pre-trial
22 motions on that Monday, and then on the second morning of
23 trial after my legs had been cut out from underneath me, I
24 made a decision that I felt was in his best interest to
25 tell him that he needed to plead guilty, that he trusted me

1 up until that point, and then on the morning of trial, I
2 set him in the room right outside this courtroom with my
3 boss and we both tell him -- and I don't know if he'd ever,
4 actually, met Clay before that morning or not, but we both
5 tell him very strongly that it's our opinion that if we go
6 to trial with no defense and he's found guilty, he's going
7 to get life in prison and that we both think it's in his
8 best interest to plead guilty to twenty-five years. You
9 know, and I had worked hard on building that trust
10 relationship with him, and, you know, he -- he was
11 emotional; he was crying, and I think at that moment he
12 trusted my advice, and I don't know if he did what was best
13 for him. I don't know if I coerced him or not. I think
14 that's a question that if he took the stand, you'd have to
15 ask him.

16 Q Well, coercion is threatening someone to do something.
17 Did you threaten him to do -- to plead guilty?

18 A I mean it ---

19 Q You said you don't know if you coerced him.

20 A I mean the -- I didn't put a gun to his head. I did
21 say if you don't, I think you're going to get life.

22 Q Okay, and you and your boss -- your boss was the Chief
23 Public Defender, Mr. Clay Allen?

24 A That's correct.

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1 Q And he was, actually, co-counsel on this case, was he
2 not?

3 A More ---

4 Q Second chair.

5 A --- or less, yes. Yes, ma'am.

6 Q So this was your case that you were trying?

7 A Yes, ma'am.

8 Q And you worked really hard to prepare for this case.

9 A Yes, ma'am.

10 Q And you really want to win this case.

11 A Very much so.

12 Q And you still have those feelings today.

13 A Very much so.

14 Q Despite all of that, you advised Mr. Woodruff to plead
15 guilty because you felt it was in his best interest.

16 A Twenty-five years beats life.

17 Q And you still believe that today.

18 A Sure. Twenty-five years always beats life.

19 Q And you did not threaten Mr. Woodruff to plead guilty?

20 A I can't say I threatened him.

21 Q I mean you advised him. You didn't ---

22 THE COURT - I think -- I think it's clear what
23 transpired. He explained life versus twenty-five. I think
24 it was clear from his testimony.

1 MS. GIOVANOLI - Thank you. I have no further
2 questions. Thank you very much.

3 MR. RICHEY - No questions.

4 THE COURT - All right, you may step down.

5 MR. NEELY - Thank you, Judge.

6 MR. RICHEY - We call Mr. Woodruff.

7 THE COURT - Mr. Woodruff, please come forward.
8 Mr. Woodruff, take your time and place the paperwork down.
9 I'm going to ask you to raise your right hand. Place your
10 left hand on the Bible and raise your right hand.

11 TYRUS RASHAWN WOODRUFF, AFTER BEING FIRST DULY
12 SWORN, TESTIFIES AS FOLLOWS -

13 THE COURT - I'm going to ask you to have a seat
14 in the witness chair. Pull up real close to the
15 microphone. Speak loudly, clearly and slowly in order that
16 we'll hear everything that you have to say. State your
17 full name, please, sir.

18 MR. WOODRUFF - Tyrus Rashawn Woodruff.

19 THE COURT - Very good.

20 DIRECT EXAMINATION

21 BY MR. RICHEY -

22 Q Mr. Woodruff, are you currently in the department of
23 corrections?

24 A Yes.

25 Q And what are you there for?

1 A I'm there for charges of attempted murder, armed
2 robbery, first degree burglary and possession of a weapon
3 during a violent crime.

4 Q And Mr. Neely represented you. Is that correct?

5 A Yes, sir.

6 Q And in terms of what happened, of the base level
7 facts, what he said, you pretty much agree with that, that
8 there was a home invasion by some gentlemen and then you
9 got arrested some time after that home invasion?

10 A Yes, sir.

11 Q So that's the basic facts though. Is that correct?

12 A Yes, sir.

13 Q Okay. And -- and let me go to these issues. You told
14 Mr. Neely you were not guilty. Correct?

15 A Yes, sir.

16 Q And you told him that you didn't have anything to do
17 with the case. Right?

18 A Yes, sir.

19 Q Where did you tell him you were at when this happened?

20 A I told him I was at a friend's house.

21 Q Okay. And what friend was that?

22 A Ms. Dawkins, Taylor Dawkins.

23 Q Okay. Ms. Dawkins, who's house was it that -- when
24 you say -- who's house was it?

25 A Ms. Dawkins.

1 Q So -- so did she rent the place, own the place?

2 A I'm unaware, um, I think she rented, if I'm not
3 mistaken.

4 Q Who lived with her, Ms. Dawkins? She live by herself?

5 A Yes, sir.

6 Q Okay. And was there anybody else there at the time?

7 A Yes.

8 Q Who -- who was all there?

9 A A friend guy of mine and a few other females.

10 Q You know those females' names?

11 A Yes, sir.

12 Q Who were they?

13 A Ms. Dawkins, Taylor Dawkins, Christina Booker, Ebony
14 Tubbs and a friend guy of mine by the name of D -- his
15 nickname was Diago (phonetic). I don't really know his
16 real name.

17 Q Okay, so -- so in terms of all this about this girl
18 said you were with her and that girl, you know,
19 essentially, these girls were all in the house together.
20 Dawkins, Booker, Tubbs, you're saying they all were in the
21 house with you.

22 A Yes.

23 Q So you're in the house with three women.

24 A Yes.

25 Q One of which you got a baby by?

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1 A No.

2 Q You don't have a baby by Dawkins.

3 A No.

4 Q Okay. You don't have a baby by Tubbs or either one of
5 those.

6 A No.

7 Q Okay.

8 A No, sir.

9 Q So you told your lawyer you were with Dawkins. Is
10 that correct?

11 A Yes, sir.

12 Q And -- and all these other women were there. Okay?
13 Do you have -- do you know any reason why he would not
14 believe her?

15 A Say that again, sir.

16 Q When Ms. Dawkins told your lawyer that you were with
17 her, do you know any reason why he should not have believed
18 her?

19 A No, sir. Mr. Richey, to my knowledge I'm not sure if
20 my attorney ever spoke with Ms. ---

21 Q Now, we -- you were in the courtroom. Your attorney
22 testified ---

23 A Okay.

24 Q --- that he talked to Dawkins.

25 A Okay.

1 Q You understand that?

2 A Yes, sir.

3 Q Okay. And let's go forward with this a little bit.

4 A Okay.

5 Q You pick a jury. Right?

6 A Yes, sir.

7 Q Y'all are in the trial. Correct?

8 A Yes, sir.

9 Q The lawyer comes -- did the lawyer come to you and
10 talk to you about these jail calls?

11 A The -- the following day after we picked the jury, yes
12 sir.

13 Q Right. And -- and did he present to you that's the
14 day he got them?

15 A Yes, sir.

16 Q Okay. And y'all discussed the impact that would have
17 on your case?

18 A Yes, sir.

19 Q Okay. Did he also discuss with you the third-party
20 defense that y'all would have? Correct?

21 A Yes, sir.

22 Q So it was, basically, the day of trial when y'all
23 started trial, y'all felt pretty good. Is that correct?

24 A Yes, sir.

TYRUS RASHAWN WOODRUFF - DIRECT BY MR. RICHEY

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1 Q Okay. But then he came to you and didn't feel as good
2 after his meeting with the judge. Is that correct?

3 A Yes, sir.

4 Q And what did he tell you about the meeting with the
5 judge?

6 A He, basically, told me that the solicitor's motions
7 were granted and that mine were denied.

8 Q Okay, he told you the judge had already ruled on the
9 motions?

10 A The morning after, yes, if I'm not mistaken, yes, sir.

11 Q Okay. And so based off that information, did that --
12 did those -- did that information have an impact on you
13 pleading guilty?

14 A Yes, sir.

15 Q Okay. If you -- would -- if you had known the judge
16 had not ruled on those motions, would you had acted
17 differently?

18 A Yes, sir.

19 Q Would you had a -- what would you have done if you
20 knew he hadn't ruled on them?

21 A Proceeded with trial.

22 Q Okay. You would not have pled guilty.

23 A No, sir.

24 Q Did your lawyer tell you it was in your best interest
25 at that time to plead guilty?

1 A Yes, sir.

2 Q And did you -- did you believe that because of what
3 you perceived the judge's ruling was?

4 A Yes, sir.

5 Q Did he have -- did he have a discussion with you about
6 the standard that had to be proved at the Court of Appeals
7 or anything?

8 A No, sir.

9 Q Are you aware of what the standard is of what he'd
10 have to prove at the Court of Appeals and all this stuff?

11 A No, sir.

12 Q Was -- was the Court of Appeal, the standard of proof,
13 anything, was that ever mentioned to you at all?

14 A No, sir.

15 Q And you believe that it was reasonable for Ms. Dawkins
16 to testify?

17 A Yes, sir.

18 Q And the -- the coercion to plead guilty, what was
19 that?

20 A It was head public defender, Clay Allen, as well as
21 Mr. Paul Neely, you know, meeting with me in the room, you
22 know, just, basically, telling me to take the plea, do not
23 go to trial, things of that nature.

TYRUS RASHAWN WOODRUFF - CROSS BY MS. GIOVANOLI

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1 Q So -- I'm not going to beat this to death, but up to
2 the day you pick that jury and all of that, y'all felt good
3 that you were going to win. Correct?

4 A Yes, sir.

5 Q And then the second day the bottom fell out. Correct?

6 A Yes, sir.

7 MR. RICHEY - Okay. Thank you. Answer any
8 questions the attorney general has.

9 THE COURT - Yes, ma'am.

10 MS. GIOVANOLI - Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MS. GIOVANOLI -

13 Q Good afternoon, Mr. Woodruff.

14 A Good afternoon.

15 Q Were you telling the truth during your guilty plea?

16 A (Pause) The thing at guilty plea, no. At pre-trial
17 inquiry trial counsel informed me that the judge would be
18 asking questions and, you know, to answer them with yes,
19 no, you know, because it was court formality, ma'am.

20 Q And so did you tell the truth?

21 A (Pause) During pre-trial inquiry? Is that what you're
22 asking?

23 Q No, just during your plea, your guilty plea. The
24 judge asked you a lot of questions. I just want to know if
25 you told the judge the truth?

1 A No.

2 Q No? So whenever he explained to you that when you
3 plead guilty you were giving up your right to assert any
4 defenses you had and you told him that you understand that,
5 and then he asked you if Mr. Neely had discussed that with
6 you and you said yes, sir, that was a lie?

7 A Could you repeat that, ma'am?

8 Q So today you're saying that you never discussed the
9 fact that you were waiving those defenses that you pled
10 guilty. You testified to that, but you never discussed
11 with Mr. Neely that you waive your defenses if you pled
12 guilty.

13 A Yes, ma'am.

14 Q Okay. But during your plea, the Court, actually,
15 advised you that if you pled guilty, that you would give up
16 your right to assert whatever defenses you had, and you
17 told him you understood that. And he asked you if you had
18 discussed that with your Attorney, Mr. Neely, and you told
19 him yes. And all I'm asking you is was that the truth?

20 A Yes, I -- I had the discussion with Mr. Neely.

21 Q Okay, so you were aware that you were waiving your
22 right to assert those defenses if you pled guilty.

23 A Actually, I was unaware, you know, because I was -- I
24 was, you know, conferring with Mr. Neely as I was standing
25 up there, you know, taking the plea and, you know, after

1 some of the questions I was asking, you know, how should I
2 respond, because in my heart I still wanted to go to trial
3 and, you know, Mr. Neely was, basically, telling me to get
4 it over with, just, you know, answer these questions and
5 plead guilty here today.

6 Q Okay. You've also alleged that Mr. Neely unduly
7 pressured you and coerced you into pleading guilty. Is
8 that correct?

9 A Yes, ma'am.

10 Q Okay, but during your guilty plea, the Court asked you
11 five times if this was your decision. It starts on page
12 20, he asked, has anybody threatened you in any way that
13 caused you to arrive at this decision and you told him no.
14 Was that the truth?

15 A No, ma'am.

16 Q Okay, and then also he asked you has anybody coerced
17 you into pleading guilty, and you, again, said, no, sir.
18 Was that the truth?

19 A No, ma'am.

20 Q Okay, and then he again asked you, has anybody put any
21 pressure on you that caused you to make that decision that
22 you otherwise would not have made, and you said, no, sir.
23 That wasn't the truth either?

24 A No, ma'am.

1 Q And he asked again, are you pleading guilty freely and
2 voluntarily, and you said, yes, sir. So that wasn't the
3 truth?

4 A No, ma'am.

5 Q And lastly you said, was it your decision and yours
6 alone, and you said, yes, sir. That wasn't the truth?

7 A No, ma'am.

8 Q So are you telling the truth here today?

9 A Yes, ma'am.

10 Q What's the difference in when you were talking to a
11 plea judge and today?

12 A Because I felt that, you know, to not receive a life
13 sentence I would just have to go through, you know, with
14 the pre-trial inquiry and answer the questions as the judge
15 would see fit, ma'am, and that, you know, Mr. Neely told me
16 it was the best thing that I should do at that moment.

17 Q So you pled guilty in order to avoid receiving a life
18 sentence?

19 A Yes, ma'am, and there was also a discussion in which
20 my lawyer told my family, as well as myself, that if I
21 didn't plead that day that I have a twin brother who has no
22 involvement with this case -- I don't know what the
23 solicitor's office, you know, would have presented against
24 him, but they were also telling me that if I didn't plea

TYRUS RASHAWN WOODRUFF - CROSS BY MS. GIOVANOLI

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1 that he would receive an amount of time, you know, and he
2 wasn't even associated with this case.

3 Q So you're testifying today that the State threatened
4 your brother with charges?

5 A Yes, ma'am.

6 Q And when did that occur?

7 A At -- I became aware of this after, you know,
8 receiving -- receiving the twenty-five years, but, you
9 know, my family's very busy, my mother, you know, but he
10 told -- my brother he was here -- I don't where he is now,
11 but he was here. He told me this. My mother told me this
12 and a friend of mine who was there at Court told me that
13 Mr. Neely stated that my brother could potentially be
14 arrested if I proceeded with trial versus the outcome.

15 Q And you just said you found that out after you pled
16 guilty, after you got the twenty-five years?

17 A Ma'am.

18 Q You told -- you just testified that you found that out
19 after you got twenty-five years?

20 A Yes.

21 Q Okay. You testified also that you were at Taylor
22 Dawkins' house the morning of the incident. Is that
23 correct?

24 A Yes.

1 Q So then how did you get from her house all the way
2 other to Ms. Dewberry's house that morning?

3 A Um, Christina and Ebony. They dropped me off.

4 Q But you're aware that Ms. Dewberry, the owner of the
5 house at which you were found, testified that you all four
6 arrived together in one car, the black Avenger.

7 A I'm aware -- I'm unaware of that.

8 Q You're unaware of that? Did your -- did your attorney
9 review discovery with you?

10 A Yes, but I was unaware of that.

11 Q Okay. Is it true that you have a conviction from 2010
12 for giving false information?

13 A Yes, ma'am.

14 Q And you also have a previous burglary second
15 conviction from 2012?

16 A Yes.

17 MS. GIOVANOLI - I have no further questions.

18 Thank you very much.

19 THE COURT - Any re-direct?

20 MR. RICHEY - No other questions.

21 THE COURT - All right, you may step down.

22 You may call your next witness.

23 MR. RICHEY - No other witnesses.

24 THE COURT - Do you have anything from the State?

CLAY ALLEN - DIRECT BY MS. GIOVANOLI

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1 MS. GIOVANOLI - Yes, Your Honor, briefly, Mr.
2 Clay Allen who was present during the plea discussions.

3 THE COURT - Very good.

4 Mr. Allen, please come forward. I'm going to ask
5 you if you could place your left hand on the Bible and
6 raise your right hand as I'll swear you in.

7 MR. ALLEN - Yes, sir.

8 CLAY ALLEN, AFTER BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS -

10 THE COURT - Have a seat in the witness chair.
11 I'm going to ask you to pull up real close to the
12 microphone. Speak loudly, ---

13 MR. ALLEN - Okay.

14 THE COURT - --- clearly, slowly in order that we
15 can hear everything that you have to say.

16 MR. ALLEN - Yes, sir.

17 THE COURT - Very good. Yes, ma'am.

18 DIRECT EXAMINATION

19 BY MS. GIOVANOLI -

20 Q Good afternoon, Mr. Allen. What is your current
21 position?

22 A I am the Seventh Judicial Circuit Public Defender.

23 Q Okay, and were you in that position at the time of
24 this trial?

25 A Yes.

1 Q Or plea rather?

2 A Yes.

3 Q And how long have you been practicing criminal law?

4 A Since November, 1979.

5 Q What was your role in this case?

6 A Primarily, on the day of the jury selection I was
7 sitting with Mr. Neely. He wanted me to sit with him.
8 This, I think, was his first actual trial with Mr.
9 Barnette, the circuit solicitor, and I think he just wanted
10 me to sit with him to sort of make sure he keeps things
11 straight and that sort of thing. Prior to trial I wasn't
12 really involved in the development of the defense or
13 anything. I mean he -- he and I would talk periodically,
14 you know, bouncing ideas off of me, which is typical in
15 the office, but I don't know if I was -- I didn't read the
16 discovery. I did not have a -- such a knowledge of the
17 case to, basically, substitute for him.

18 Q Were you familiar with the facts of the case?

19 A Then I was, yes.

20 Q Okay, so you were kind of sitting as a -- in a
21 supervisory role? Is that fair to say?

22 A Not so much a supervisory role, just basically, a
23 second person involved to make sure, you know, that if I
24 felt like something was objectionable to whisper to him to
25 object or something like that or to suggest other questions

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1 to him on the -- to the witnesses, you know, that type of
2 thing.

3 Q Okay, and is it true that you were present during a
4 meeting with Mr. Woodruff and Mr. Neely regarding pleading
5 guilty?

6 A At least one of them, yes, on that day, the Tuesday.
7 I mean I -- I can't remember if the first meeting it that
8 was just Mr. Neely and Mr. Woodruff alone, but, eventually,
9 I was part of the meeting, yes.

10 Q Okay, so that was on the Tuesday that he pled guilty?

11 A Yes.

12 Q And do you remember what happened during that meeting?

13 A Somewhat.

14 Q Okay, did you give any advice to Mr. Woodruff?

15 A Yes, I, basically, was in agreement with Mr. Neely's
16 assessment of the case as it stood at that point, and um,
17 also I -- I think I advised or suggested to Mr. Woodruff
18 that it's a bad choice, to -- I mean a better choice to
19 make, obviously, but that -- and a difficult one, but that
20 he -- but that the twenty-five year sentence was better
21 than the outcome that he would probably get had he gone
22 further with the trial.

23 Q Okay, so did you threaten him in any way to plead
24 guilty?

25 A No, I did not threaten him.

1 Q And you didn't witness Mr. Neely threaten him in any
2 way.

3 A No, not threats of violence or anything like that or
4 threats to taint the case, but, you know, we just gave him
5 what we thought was our opinion about what would happen if
6 he -- if he proceeded with the trial.

7 Q Okay, did you have any discussions regarding an appeal
8 if he proceeded with the trial?

9 A Possibly. I mean I think yes. I'm sure that came up.
10 It does come up with many clients at times, but -- and we
11 try to explain or I try to explain to clients that the
12 purpose of the appeal is to correct an error that the judge
13 made, you know, that we objected to or something to that
14 effect. It's hard to explain preservation of error to a
15 lot of the clients but, basically, we try to explain that
16 the whole purpose of an appeal is to correct a mistake that
17 the judge made and that the best he would get out of an
18 appeal would be another trial before probably another judge
19 at another time. A lot of clients think that an appeal is
20 a second bite at the apple if you will or that the
21 appellate court will substitute their judgment for the
22 Court's judgment. We try -- I try to make sure they
23 understand that, that the judge make a mistake in, you
24 know, ruling, that he would get another trial and be back
25 where he is right there.

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1 Q In your review of the case at that time, did you think
2 his would case would be successful on appeal?

3 A Didn't really -- that's iffy. I mean, if Judge -- if
4 the trial judge made his ruling in such a way that it was
5 discretionary, then absent -- as we all know, absent a
6 clear showing of an abuse of that discretion it would not
7 be disturbed on appeal, so -- and I've had experience with
8 this particular trial judge and there are many times that
9 he would us -- you know, he expresses his discretion, you
10 know, which witnesses are more believable than others and
11 that type of thing, so I felt like he could cover the
12 record pretty good for the purpose of the appeal, and
13 that's what I was trying to explain to Mr. Woodruff is that
14 if it went further and, you know, we don't know if he would
15 be successful on appeal.

16 Q Were you present during the in-chambers conversation
17 when Judge Cole indicated he would be denying any
18 admissibility of third-party guilt?

19 A I'm pretty sure I was.

20 Q Is that pretty common, to have in-chambers discussions
21 prior to a ruling from the bench?

22 A With that judge, yes. It is not -- it is not unusual
23 to do that. It's not unusual for him not to -- or to
24 withhold making a ruling until, obviously, he has to. You
25 know, that's just -- I mean I had a death penalty case with

1 him one time and we had to week-long -- for an example, we
2 had a week-long hearing on mental retardation and he never
3 ruled on that. We, ultimately, resolved it by way of plea,
4 but it was clear, and he reminded us prior to the plea that
5 the client was making a decision to enter a plea without
6 his having ruled on that issue and that he needed to be
7 aware of that.

8 MS. GIOVANOLI - All right, thank you very much.
9 Answer any questions Mr. Richey may have for you. Thank
10 you.

11 THE COURT - Any cross examination, Mr. Richey.

12 CROSS EXAMINATION

13 BY MR. RICHEY -

14 Q This was Mr. Neely's case. He did most of the work.
15 Correct?

16 A Yes, he did. It was Mr. Neely's case.

17 Q And you didn't get into the details of discovery and
18 the defenses and any of that stuff.

19 A I didn't get into the details of the discovery,
20 anything like that. We had talked about the discussed. We
21 had talked about some of the legal issues.

22 Q So -- so, basically, he -- he knew everything about
23 the case in great detail, and you were just there to say
24 your line of thought is correct. Right? Let me say it

CLAY ALLEN - CROSS BY MR. RICHEY

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1 this way. You didn't have the details of discovery.

2 Correct?

3 A I didn't have the details of discovery. I did not
4 review the discovery in detail. That is correct.

5 Q And the person's whose case that is, they have that
6 information.

7 A That's correct.

8 MR. RICHEY - Okay. Thank you.

9 THE COURT - Any re-direct?

10 MS. GIOVANOLI - No further questions.

11 THE COURT - You may step down. Thank you, sir.

12 All right, you may call your next witness.

13 MS. GIOVANOLI - The State would call Spenser

14 Hollering to the stand.

15 THE COURT - Yes, sir. Please come around. I ask
16 you if you could to place your left hand on the Bible and
17 raise your right hand as I administer the oath.

18 SPENSER HOLLERING SMITH, AFTER BEING FIRST DULY

19 SWORN, TESTIFIES AS FOLLOWS -

20 THE COURT - Have a seat in the witness chair.

21 I'm going to ask that you speak loudly, clearly and slowly
22 and let's start with your full name.

23 MR. SMITH - My name is Spenser Hollering Smith.

24 DIRECT EXAMINATION

25 BY MS. GIOVANOLI -

1 Q Good afternoon, Mr. Smith. What is your current
2 position?

3 A I am a assistance solicitor at the Seventh Judicial
4 Circuit.

5 Q And were you involved in this case that we're here on
6 today?

7 A I assisted Solicitor Barnette in the trial of the --
8 if it had gone to trial.

9 Q Okay, and I'll just cut straight to the point. My
10 purpose for calling you today is to kind of give the Court
11 a summary of discovery against the applicant in this case.
12 Since it's a guilty plea, we don't have the luxury of
13 having a trial transcript and all the evidence presented to
14 the jury, so if you could briefly describe the State's
15 evidence against the applicant.

16 A The State was going to have Marlin Davis, the son, was
17 going to pick him out -- he had picked him out of a photo
18 lineup, was going to do an in-court identification. Mr.
19 Neely testified earlier that the dad never was shown a
20 lineup. That's correct, because he was in the hospital.
21 He was planning on identifying him. That identification
22 would've come off of seeing him off of the news. I'm sure
23 that that would've been, obviously, subject to cross
24 examination, potential tainting, but he was planning on
25 identifying him in Court. We had Ms. Demelta Dewberry on

1 our witness list. She was, actually, in jail on a family
2 court bench warrant, something like that, at that time.
3 She gave a written statement to police shortly after -- it
4 was her home where all four of them were arrested. She
5 said that all four arrived in that black Dodge Avenger
6 together, which is contrary to what Mr. Woodruff testified
7 to earlier. She would've been a potential witness. The
8 State also had Xavier Martin. There was some discussion
9 with Mr. Neely. He, initially, was not cooperative. He,
10 ultimately, had another pending case to be resolved, which
11 would've made him automatically life without parole
12 eligible if he got convicted on any of these charges. At
13 that point he expressed a desire to speak to us. He gave
14 multiple statements to the solicitor's office that he had
15 been the driver. He certainly minimized his role; there's
16 no doubt about that, and he was going to say that -- he was
17 going to go -- he had gone over to that location under the
18 belief that they were going to buy marijuana and that
19 whatever had happened inside the house he certainly wasn't
20 aware of, but that he had taken Tyrus, Aquavious and
21 Tavaris over to that house and that they had then jumped
22 back in the car with them and certainly once they got back
23 in the car with them he was able to surmise what had
24 happened and they went to Ms. Dewberry's house. We also
25 had -- Deputy Matt Davis would've -- or Investigator Matt

1 Davis would've testified. He is the investigator who --
2 this incident occurred on Country Club Road. It's on kind
3 of the east ---

4 MR. RICHEY - Judge, Judge, I want to object as
5 hearsay. I believe he can talk to what the evidence was,
6 but this blatant hearsay about this officer would testify -
7 - I think he can testify to what the evidence was but to
8 try to bolster this evidence in the way he's doing, I think
9 is a problem.

10 MS. GIOVANOLI - I believe that he's testifying to
11 what was in discovery. This is PCR. If allegations are
12 ineffective assistance of counsel, one being that it was an
13 involuntary guilty plea based on that advice from counsel -
14 - The counsel made his advice based on the discovery in the
15 case, so I think this is very relevant.

16 MR. RICHEY - Well, -- I'm sorry, excuse me, Your
17 Honor.

18 THE COURT - I'll allow that, um ---

19 MS. GIOVANOLI - As to hearsay, it's not being
20 offered for the truth of the matter. It's being offered as
21 this is the discovery of the case and this is why the
22 counsel ---

23 THE COURT - I'll overrule the objection.
24 Proceed.

25 MS. GIOVANOLI - Thank you.

1 Q Please continue.

2 A There was some mention earlier of cell phones were
3 taken in this incident and one of the victims -- so the
4 area where this occurred is undoubtedly -- and the time of
5 day it occurred -- it's a very busy area; it's a very busy
6 road, and there were multiple investigators and uniformed
7 patrol on scene within minutes of the incident happening.
8 Every invest -- cops tend to eat lunch at about 11:00
9 o'clock, so they were all kind of finishing their lunch,
10 and when they hear a call this serious, they, basically,
11 all responded. Matt Davis responded to the scene and found
12 one of the victims who was, basically, screaming out, I
13 have tracked my iphone, I have tracked my iphone, I have
14 tracked my iphone. They had stolen his iphone. He grabbed
15 a computer from uniform patrol -- all this is on body cam
16 and is in discovery -- and he grabs the computer, he enters
17 in his phone number and gets it coming back to a location
18 at Camp Croft Circle, and he, basically, gets in his car
19 and takes off. He's in an unmarked F150. He gets to the
20 scene and he sees four black males -- well, three of them
21 are standing -- Xavier Martin, the getaway driver, is a
22 paraplegic -- he's in a wheelchair, but they are standing
23 outside of the residence at the time. He's in his chair
24 and he radios back and says, you know, I've got the
25 location, there's four black males. They, obviously, had a

1 description of four black males. He then gets information
2 that it's a black Dodge Avenger. He confirms that that's
3 the car out there, and they, basically, tell him to observe
4 it, make sure nobody goes in and out and backup is coming,
5 and SWAT team and everything comes, surrounds the house,
6 and then they end up ordering the people out. I think -- I
7 think Tavaris and Aquavious came out first and Tyrus stayed
8 in with Mr. Martin, because he was unable to walk, and he
9 wanted to make sure somebody bad didn't happen to him
10 thinking that the police were -- that he was being like
11 non-compliant by not standing up, and so he came out, I
12 think, with Mr. Martin.

13 Q Okay, and then so continue on the discovery, they're
14 at the house, what was found at the house?

15 A There was a mixture of some stuff found inside the
16 house and some stuff found inside the car. I think there
17 was a letterman jacket. There was a wallet that contained
18 a social security card for the son, Marlin Davis,
19 obviously, the cell phone that the location was coming back
20 to, things of that nature. There was not a large amount of
21 money. Really not a lot was gotten in this armed robbery.
22 It was, essentially, wallets that -- I'm not sure they
23 really contained any money and cell phones which got them
24 caught.

1 Q Okay, and are you aware of any -- the jail calls?

2 There was a jail phone call. Why was that turned over
3 late?

4 A Um, so I -- Solicitor Barnette came, asked me to
5 assist on this case. At this time I was kind of -- I was
6 doing DUIs. He was, I guess, grooming me maybe to do
7 violent crimes, which I do now. When the boss asked you to
8 do a case of this serious nature, I tried to go above and
9 beyond and I started listening to jail calls right when I
10 got the case, and I'll be honest, I didn't really realize
11 how relevant it was until things started coming out in the
12 motion hearing, but I had listed to a jail call that was
13 from Mr. Woodruff's account. You know, I cannot a hundred
14 percent confirm that it was him, but I think I had
15 supporting evidence to show that it was, but -- where he's
16 talking to a female about, asking her if she got the glizzy
17 which from my slang term, that would be a Glock, a pistol,
18 if she had gotten that from Ms. Dewberry's house.
19 Certainly thought that was inculpatory evidence that he
20 participated in the crime.

21 Q Was there any mention on that phone call about him
22 hiding it under the refrigerator?

23 A Yes. And I think he -- there was also mention of
24 the keys to that black Dodge Avenger were hidden in that
25 same location. There is, subsequently, a call where she

1 had been back by the house and wasn't able to find the keys
2 and they were wondering where the keys must've gone.

3 Q Is it your understanding that the female on the phone
4 was one of these alibi witnesses?

5 A I have no -- it's very diffi -- I could tell you what
6 phone number it was made to, but I did not ever figure out,
7 necessarily, who was on the other end of that line.
8 Actually, one part about the Glock, he tells the woman on
9 the phone to text a number and ask them, did you get the
10 glizzy out from under the under the -- so he's -- it's
11 almost like a three-way communication. He's asking that
12 person to text another individual.

13 Q Okay, and this was turned over a little bit late
14 because you had just realized the connection it had to the
15 case?

16 A Yes. I mean I -- it -- lot of the jail phone calls,
17 it's difficult to understand what is being discussed, and I
18 think -- I'm trying to think -- in our conversations with
19 Xavier Martin we asked him where the gun was and he said
20 something about the refrigerator and I -- maybe jogged my
21 memory.

22 Q There was also some testimony with regard to
23 identification.

24 A Yes.

1 Q There was one person at the house, I think it was a
2 female, who identified Terez Robinson?

3 A Yeah, Iesha Ferguson is the one that is -- who gives -
4 - her written statement is very unclear, probably would've
5 better to have somebody follow-up and ask, because it's
6 very -- it says I saw somebody with dreads, but at the
7 point that she's referring to seeing somebody with dreads,
8 she's talking about she's already hopped out of the window
9 of the house. She did identify Terez Robinson in the
10 lineup pack that contained Tyrus Woodruff, but she said,
11 this was the driver, he had dreads. And so my -- my
12 personal belief is that her written statement is referring
13 to the driver as the person that had dreads. Akia Ross
14 gives a description. He does not mention dreads on either
15 of the two inside the house. He says one had a ball cap
16 and had some facial hair on and a chin. (sic) He said the
17 other one had a low haircut, and he didn't think he had
18 anything on his -- I think he describe Mr. Woodruff as
19 having dark lips. He picked out Aquavious Ray, did not
20 pick out Tyrus Woodruff. Marlin Davis, the son, picked out
21 Tyrus Woodruff. They kind of split up inside the house,
22 and one with Marlin and took him around to the rooms, and I
23 think Aquavious stayed with Marlin Davis, Sr., and,
24 ultimately, shot him.

1 Q Xavier Martin who alleges he was the driver had dreads
2 also. Is that ---

3 A He -- he did. And -- I -- and Judge Cole -- sometimes
4 Judge Cole makes the argument before the State or the
5 defense does. It happens both ways, but Judge Cole was
6 able to figure out to me that it was more of a confusion
7 attempt, that she was identifying the driver, who we knew
8 was admitting that he was the driver, and trying to confuse
9 that to then say that it was Terez Robinson that was the
10 person in the car, and to win the third-party guilt motion,
11 they have to prove that not only did this other person do
12 it but that Tyrus Woodruff is excluded as having done it
13 because of this other person's involvement and it has -- it
14 can't just mean there's another unknown co-defendant but
15 that it excludes Tyrus Woodruff, and he was able to say,
16 because she's identifying the driver and another person's
17 identifying him in the house, that it's not exclusionary of
18 Mr. Woodruff's participation.

19 Q Was that kind of the gist of the conversation that
20 y'all had in chambers?

21 A Yes, um, we had -- I'm trying to remember like Mr.
22 Neely did, too, if Iesha testified or not. I don't -- I
23 don't think we were going to use her. My impression of her
24 when we met with her in pre-trial was she's one of those
25 eager witnesses that was wanting to identify somebody and

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1 help out, and there's body cam showing how she was right
2 after the incident, incredibly, incredibly scared,
3 agitated, all over the place. So I'm not sure if she
4 testified or not. I know that Marlin Davis, the son,
5 testified at the Biggers hearing and that -- I didn't -- as
6 far as -- there was no masks. This was daytime and this --
7 so there's no masks. They had plenty of opportunity to see
8 the people that did this.

9 Q And Marlin Davis, the son, identified Mr. Woodruff.

10 A He did.

11 Q Did he identify him as one of the shooters?

12 A Well, he -- I think on his affidavit statement he said
13 this is the one that walked with me to the back of the
14 house holding a gun on me. I -- the timing of the
15 shooting, I think, Akia is, actually, with Senior Mr. Davis
16 in the kitchen area, and he takes Marlin back through the
17 house, and that's where he comes across his sister and her
18 friend, and they climb out of the window. I don't know
19 when the shooting occurred. Aquavious, I believe, shot him
20 first, and then Tyrus -- but I don't know if Marlin
21 witnessed the second shot or not, definitely heard a second
22 shot, but I don't know if he was standing right there.
23 Akia definitely would've testified that another man shot
24 him, but he was not able to pick out Woodruff out of the
25 lineup.

1 Q Okay.

2 MS. GIOVANOLI - I have no further questions.

3 Thank you very much.

4 THE COURT - Yes, sir?

5 MR. RICHEY - Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. RICHEY -

8 Q Did you -- did y'all talk to -- did y'all talk to --
9 did anything in there that y'all did or y'all investigate,
10 did y'all talk to Ebony Tubbs?

11 A My -- the solicitor's office investigation or the
12 sheriff's office investigation?

13 Q Sheriff's office, solicitor's office, did y'all talk
14 to Ebony Tubbs?

15 A I do not believe so.

16 Q Did y'all talk to Christina Brooks?

17 A I don't believe so.

18 Q Did y'all talk to Ms. Dawkins?

19 A I do not believe so.

20 Q Did y'all have any evidence that they could exonerate
21 Mr. Woodruff?

22 A No.

23 Q Okay. And when did you start working on this case?

24 Was it at the beginning, the end, six months before ---

SPENSER HOLLERING SMITH - CROSS BY MR. RICHEY

75

1 A No, I -- I would say that he asked me -- it was
2 probably a year before we got to trial that he asked me to
3 -- now, how much I did on it during that, I would say not a
4 whole lot. Now, the last two months, but, unfortunately,
5 for the luxury of being the solicitor is you can pick your
6 case and be number one and have two months to prepare for
7 it, so, I mean we had a lot of preparation time to talk
8 about and interview different witnesses.

9 Q So during that two months time that you started -- did
10 you start listening to those jail calls within the first
11 month you started?

12 A Very quickly, yes.

13 Q So within two months of this -- the date that this
14 came to the Court, you already had the phone -- you heard
15 the phone calls and you were already listening to them.
16 Correct?

17 A Yes.

18 Q And you knew that those phone calls were admissions by
19 Mr. Woodruff on them.

20 A No, I -- I honestly didn't. I would've certainly
21 would've (sic) taken them to Solicitor Barnette. There was
22 something -- and I don't recall what it was -- something
23 came up as the testimony of -- I'll just tell you, if I had
24 something like that, I certainly would've handed it over,

1 because we would've want to do (sic) -- try to get Mr.
2 Woodruff to plead guilty.

3 Q Well, what I'm asking you is, those were statements by
4 him. Correct?

5 A Yes.

6 Q And you viewed those statements at some point in the
7 case as very incriminating to him. Correct?

8 A Yes.

9 Q When you went back to the meeting with the trial judge
10 about the admissibility of those evidence, (sic) did you
11 tell the trial judge that you've been listening to these
12 tapes for two months?

13 A Well, I -- I'll tell you it's been -- it was longer
14 than two months, but yes.

15 Q Did you tell the Judge we been listening to ---

16 A Yes.

17 Q --- these tapes for two months, and we've turned them
18 over to them today?

19 A Yes.

20 THE COURT - You know, one of the things that --
21 Mr. Richey, I understand your frustration about late
22 disclosure or discovery information. I feel your pain, but
23 we really can't undo what Judge Cole did in that regard.
24 He ruled that it was admissible. You understand what I'm
25 saying? I mean I can't do anything about that.

1 MR. RICHEY - Your Honor, um, I -- I just want the
2 record to reflect that the fairness of it and maybe the
3 appeals court reviewing this record would somehow intervene
4 and discuss the fairness that the solicitor's office can
5 review information for two months, admission by a
6 defendant, and turn over that information that they know is
7 incriminating the day of trial. I'm hoping that this
8 transcript reflect and the appeals court will intervene and
9 say that's inappropriate.

10 No other questions for this witness.

11 MS. GIOVANOLI - Just for the record, I think that
12 was a mischaracterization, that he didn't know it was
13 incriminating at the time he was listening to it. It
14 dawned on him during pre-trial motions. The slang was
15 used, glizzy. I'm not sure that most people know what that
16 means, but sometimes things fall together that way.

17 THE COURT - Apparently, he does know what a
18 glizzy is. He told us what it was, but at ---

19 MS. GIOVANOLI - I've never heard that word.

20 THE COURT - --- any rate, that's neither here nor
21 there. All right, any further question of this witness.

22 MS. GIOVANOLI - No further questions from the
23 State.

24 THE COURT - You may step down.

25 MR. SMITH - Thank you, Your Honor.

1 THE COURT - Anything further?

2 MS. GIOVANOLI - The State has no further
3 witnesses, Your Honor.

4 THE COURT - All right. What is the defense's
5 position with regard to the proffering of alibi witnesses?

6 MR. RICHEY - Your Honor, I believe that the bare
7 minimum Ms. Dawkins was a lady who counsel testified that
8 he talked to her, and I think counsel made the decision as
9 her credibility -- he made a credibility decision on her,
10 and I think that witness will be necessary, because she
11 could come in and testify and we could determine her
12 credibility. I think counsel made a credibility statement
13 -- made a credibility argument against calling her based on
14 this other lady ---

15 THE COURT - I mean there's two different -- there
16 were two different alibis, apparently.

17 MR. RICHEY - Well, I think Mr. Woodruff said that
18 all these folks would've yelled (sic) at one time, because
19 it -- it appears that this, Ms. -- at Christina Booker,
20 when -- when the testimony was going on, it was like he was
21 Christina, but then he went out to the house and the mother
22 of the child said, no, he was with me, that's Dawkins, but
23 Mr. Woodruff testified that the three women were all
24 together.

1 THE COURT - What do you think about the fact that
2 very detailed plea transcript where he admits to the facts
3 that were given and admits that he was involved, admits
4 that he was guilty, and he gave up all his constitution
5 rights including the right to an alibi and other things
6 such as that?

7 MR. RICHEY - Well, I'm going to go back to our
8 first issue, the issue of the pre-trial hearings. Okay, I
9 think that -- that is -- that is the big crux of it all,
10 because ---

11 THE COURT - Okay, but my question right now is
12 whether or not we're going to reconvene to hear the alibi
13 witnesses. Let me ask you this, in your years of
14 practicing law, when you have witnesses from a defense
15 standpoint that you want to help you -- my father who's
16 practiced -- is 88 years old -- has probably been
17 practicing law for over 60 years, said that when you're
18 representing a defendant and you have to subpoena them to
19 come to Court to help you, you got trouble. What do you
20 think about that general proposition of common sense?

21 MR. RICHEY - Well, Your Honor, unfortunately,
22 when you represent criminal defendants sometimes, you might
23 not do things that believe -- for example, a witness who's
24 uncooperative, but your client says I want that witness at
25 trial -- we might not want the witness, but our client say,

1 hey, I want to do it, I want them there, we don't have any
2 choice and we can talk til we're blue in the face, hey, I
3 could chase this lady down, she's uncooperative, I called
4 her, she's da, da, da -- but if the client says I want them
5 there, we have to present them, which is ---

6 THE COURT - I think, according to your client,
7 they were here.

8 MR. RICHEY - But ---

9 THE COURT - It sounds like he had fulfilled --
10 not only did he do that, he went out to the house, he
11 attempted to meet with them on a number of different of
12 occasions, but he fulfilled the duty by subpoenaing them,
13 and according to your client, they were here.

14 MR. RICHEY - Well, Your Honor, ---

15 THE COURT - Mr. Neely doesn't remember whether
16 they were or not, but your client says they were here.

17 MR. RICHEY - Well, Your Honor, and that's even
18 heightens the issue, because even if they're here, they're
19 not eligible to testify, because ---

20 THE COURT - Say that again.

21 MR. RICHEY - Even if they're in the courtroom
22 that day, they're not subject to be called as a witness,
23 because the ten day alibi notice hadn't been given to the
24 solicitor's office. So if he attempts to call them, the
25 State can object because they have no notice of them.

1 That's why I asked the solicitor about these witnesses, do
2 you know anything about them. So even if they're there,
3 they're not eligible to testify.

4 THE COURT - Well, I don't know about Judge Cole,
5 but if a person that is subpoenaed to be there as an alibi
6 witness, I know there's a rule you're suppose to give ten
7 days notice, but if you proceed forward and you've got
8 alibi witnesses in the courtroom and you don't allow them
9 to testify, you know what they call that trial?

10 MR. RICHEY - Yeah, I ---

11 THE COURT - They call it a preliminary hearing,
12 so I don't -- I don't see -- apparently, he had done all he
13 was supposed to do getting them here and, um ---

14 MR. RICHEY - Judge, I can -- I can, actually,
15 cite a case where I had is State vs. Robin Watkins where
16 Watkins' alibi witnesses were at trial and Judge Pyle
17 refused to let them testify because he had to comply with
18 the notice. Now, the case was reversed on PCR, of course,
19 but that -- some judges ---

20 THE COURT - So that's the reason why you do it,
21 and that's the reason why I think Mr. Neely would've been
22 successful in calling them up, and I'm not real sure the
23 solicitor would've objected to it, but none-the-less, my
24 question to you is, do you want to come down to the fair
25 City of Florence and -- I bet you -- I'll tell you what

1 we're going to do, we're going to pick a day -- and what
2 does the week of April the 30th sound like?

3 MR. RICHEY - Week of ---

4 THE COURT - April the 30th.

5 MR. RICHEY - 30th?

6 THE COURT - Yes.

7 MR. RICHEY - 30?

8 THE COURT - 30th. That's a chamber's week, and
9 y'all not have a whole lot going on. What you think about
10 that, Mr. Richey?

11 MR. RICHEY - That's a chamber's week?

12 THE COURT - That is a chamber's week.

13 MR. RICHEY - Well, if it's a chamber's week, at
14 this late notice I don't see an issue with me. Now, are
15 you going to be here?

16 THE COURT - At this late notice, what you mean?
17 That's a -- we got a full month for you to subpoena ---

18 MR. RICHEY - No, no, no, I said with this amount
19 of notice.

20 THE COURT - Oh, I got it. This early notice you
21 mean.

22 MR. RICHEY - Yeah, yes, sir.

23 THE COURT - All right.

24 MS. GIOVANOLI - Notice is fine. May I be heard
25 on the bifurcation?

1 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
2 WHICH WAS NOT REPORTED.)

3 MS. GIOVANOLI - May I be heard on the need for
4 bifurcation?

5 THE COURT - Yes.

6 MS. GIOVANOLI - I just think that the issue and
7 PCR would be ineffective assistance of counsel, so let's
8 say alibi -- alleged alibi witness does come to testify
9 April 30th, does what she said, is that going to affect
10 whether or not counsel was ineffective, because,
11 essentially, he's testified that he -- he and his
12 investigator went out to two different residences, made
13 multiple calls. He also set up office appointments to --
14 at which both of these girls didn't show up multiple times,
15 and he didn't know if she was or was not present at the day
16 of the trial, but if we go back to the ultimate crux -- or
17 the issue here is was counsel ineffective in failing to
18 subpoena or investigate these witnesses. He absolutely was
19 not. His investigation was reasonable. It was not his
20 control that they were uncooperative witnesses. I think
21 that would speak to their credibility, too, which also Mr.
22 Neely testified to him having some questions about their
23 credibility and whether or not their testimony would be
24 true ---

1 THE COURT - Well, don't you think it would be
2 important if they came here and they turned out to be
3 the very best alibi witnesses in the entire world, and then
4 um, it would weigh in with regard to ineffectiveness by
5 advising him -- him to plead guilty with these stellar
6 alibi witnesses?

7 MS. GIOVANOLI - Absolutely, but that wasn't what
8 happened. Mr. Neely said that he doesn't even recall if
9 they were there, which means he didn't speak to them. He
10 doesn't remember speaking to them. He's not sure if they
11 were in the audience, but in -- in 15 months leading up to
12 it ---

13 THE COURT - That might be -- that might be
14 ineffective in and of itself by not knowing.

15 MS. GIOVANOLI - I disagree with the extent to
16 which he went and try and contact these witness, 15 months
17 of trying to go find them, make telephone calls, make
18 office visits. These girls were not showing up. He -- he
19 wasn't ready to ---

20 THE COURT - I do anticipate that probably it's
21 going to be a real possibility that they don't show up on
22 April 30th.

23 MS. GIOVANOLI - And that's fine, too. I just
24 wanted to at least address the main issue of ineffective
25 assistance ---

1 THE COURT - Well, I think that it is important.
2 I think it's important for us to give them an opportunity
3 to come here and -- there's two different ineffectiveness.
4 Number one is to advise him to plead guilty if they've got
5 the very best alibi witnesses in the world. Based on what
6 I've heard here today, that's probably not the case. I
7 think they are allowed to do that and to address the issue
8 about the ten day notice.

9 MS. GIOVANOLI - Well, I agree. You've stated
10 kind of like a hypothetical, if they have the best alibi
11 witnesses in the world ---

12 THE COURT - How do I know that unless I hear from
13 them?

14 MS. GIOVANOLI - At the time of the plea is when
15 we judge counsel's assistance, and at the time of the plea
16 they didn't have the best alibi witnesses in the world, and
17 he's testified to that, that his whole defense theory was
18 third-party guilt in Neil vs. Biggers. He also tried to
19 pursue investigation of the alibi witnesses, but---

20 THE COURT - He might be mistaken on his
21 assessment on it, and that's what we're going to evaluate
22 on April the 30th.

23 MS. GIOVANOLI - Okay.

24 THE COURT - And what I'm going to ask that both
25 of y'all do, you go ahead and I would proceed forward post-

1 hast in getting subpoenas to these individuals as best you
2 can, do whatever you can to locate them, and after a
3 reasonable period of time, if you're not able to locate
4 them and you see that there's -- it's not necessary to
5 reconvene, I'm going to ask that both of you submit
6 proposed Orders with regard to what's been presented here
7 today, and I'll -- and we'll see y 'all in Florence on
8 April the 30th.

9 MR. RICHEY - Judge ---

10 MS. GIOVANOLI - Your Honor, may I make one last
11 request, that the witnesses' information be provided to the
12 State so that we're on notice of who's testifying. One of
13 the primary issues would be criminal histories with which
14 we may or may not impeach these witnesses?

15 THE COURT - I think we know who they are, don't
16 we? What's the names of them again?

17 MR. RICHEY - Ebony Tibbs -- Tubbs, excuse, Tubbs,
18 T-u-b-b-s, Christina Booker, Taylor Dawkins.

19 THE COURT - Okay. I think all those were
20 identified in the hearing.

21 MS. GIOVANOLI - Can I -- I'll consult with
22 counsel regarding some other identifying information so
23 that I can pull their criminal history. Often times a name
24 is not sufficient.

25 Thank you.

1 MR. RICHEY - Judge, one thing from me before we -
2 - we are going to claim that advising him to plead guilty
3 prior to the Court's ruling on the record was ineffective,
4 so this -- the Order we send you, we'd like to add that
5 language in if the Court will allow us.

6 THE COURT - Well, you can submit a proposed Order
7 on all of it, and I'll look at them and I might sign yours,
8 I might sign hers. I might make up my own.

9 MR. RICHEY - Yes, sir.

10 THE COURT - So, however the spirit moves you, you
11 put it in the proposed Order as to what you think my ruling
12 ought to be.

13 MR. RICHEY - Yes, sir.

14 THE COURT - Whole idea of it. And we'll proceed
15 forward in that fashion.

16 MR. RICHEY - Thank you, Your Honor.

17 MS. GIOVANOLI - That will conclude the hearings
18 for the today.

19 THE COURT - Very good, and we'll stand at ease
20 until 9:30 in the morning.

21 (END OF TRANSCRIPT)

22

23

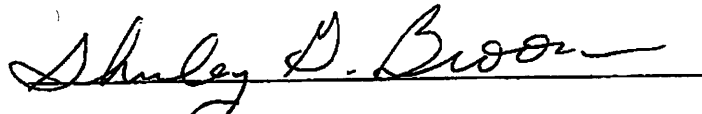
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 87 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Tyrus Rashawn Woodruff vs. State of South Carolina, as taken by me in Court of Common Pleas for the Seventh Judicial Circuit on February 21, 2018, and provided by me this the 15th day of June, 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

State of South Carolina	)	Court of Common Pleas
	)	7th Judicial Circuit
County of Spartanburg	)	Case No. 2017-CP-42-04115
	)	
Tyrus Rashawn Woodruff,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

May 31, 2018
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge.

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

Jordan Cox, Esquire
 Lindsey McCallister, Esquire
 Attorneys for the State

Rodney Richey, Esquire
 Attorney for the Applicant

Krystal J. Smith
 Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

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dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 May 31, 2018

2 (WHEREUPON, the proceedings began at 11:49 a.m. The
3 applicant was present in the courtroom with his
4 counsel.)

5 THE COURT: All right. We can -- we can go ahead and
6 proceed. Yes, sir.

7 I understand that this matter commenced in Spartanburg,
8 and we're reconvening here in Florence County for the
9 purposes of exploring ineffectiveness for not calling an
10 alibi witness. I'm going to ask you, if you could, to -- if
11 you could, place on the record the case, the title of the
12 case, and --

13 MR. COX: Yes, Your Honor. I can do that.

14 THE COURT: If you can, place on the record the title of
15 the case and the procedural history and what brings us here
16 today.

17 MR. COX: Yes, Your Honor. May it please the Court.

18 THE COURT: Yes.

19 MR. COX: Before you is Case No. 2017-CP-42-4115. This
20 is Tyrus Rashawn Woodruff versus the State of South Carolina.

21 Mr. Woodruff has filed a PCR application based on his
22 convictions in Spartanburg County. His PCR application was
23 filed in November of 2017. In February of 2018, Your Honor
24 was in Spartanburg County and heard the evidentiary hearing,
25 but the hearing at that time was continued and the record was

1 left open to be continued at this time.

2 THE COURT: Very good.

3 MR. COX: I believe Mr. Richey was trying to locate an
4 alibi witness, and I'll turn it over to Mr. Richey at this
5 time.

6 THE COURT: Mr. Richey, you're recognized.

7 MR. RICHEY: Thank you, Your Honor. May it please the
8 Court.

9 Your Honor, I have -- I have contacted one of these
10 alibi witnesses, Ebony Tubbs. I have recently called her in
11 the last four minutes. She told me that she went to, I
12 guess, some old building, and they told her to come over
13 here. She was out in the parking lot. I went down there to
14 look for her and I tried to call her back. I didn't get any
15 answer.

16 So I don't know if she's out there wandering around
17 somewhere or not, but that's the status on where I am. I did
18 tell her she needed to be here at 12, but I talked to her
19 less than five minutes ago.

20 THE COURT: All right.

21 MR. RICHEY: She said she went to the wrong place.

22 THE COURT: All right. Well, we'll sit here and wait on
23 her then. Would you like to step out and try to contact her
24 again?

25 MR. RICHEY: Yes, sir. I will. Have you seen here

1 today?

2 (WHEREUPON, several people entered the courtroom.)

3 THE COURT: There she is right there. All right. You
4 may call your first witness.

5 MR. RICHEY: Ms. Tubbs.

6 THE COURT: Yes, ma'am. Please come forward and place
7 your left hand on the Bible and raise your right hand as the
8 clerk administers the oath.

9 THE BAILIFF: Right here. Turn around.

10 THE CLERK: If you'll turn this way, please. Place your
11 left hand on the Bible and raise your right hand. Do you
12 swear or affirm that the testimony you give will be the
13 truth, the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: Yes.

16 THE CLERK: Walk around and have a seat in the witness
17 chair.

18 THE COURT: Pull up real close to that microphone and
19 speak loudly, clearly, and slowly in order that we can hear
20 everything that you have to say, and let's start with your
21 full name.

22 THE WITNESS: Ebony Shakendria [ph.] Tubbs.

23 THE COURT: Spell that last one.

24 THE WITNESS: T-u-b-b-s.

25 THE COURT: Very good. Yes, sir.

EBONY TUBBS - DIRECT BY MR. RICHEY

1 MR. RICHEY: Thank you, Your Honor.

2 EBONY TUBBS, being first duly
3 sworn, testified as follows:

4 BY MR. RICHEY:

5 Q: Ms. Tubbs, do you know Tyrus Woodruff?

6 A: Yes.

7 Q: And how do you know him?

8 A: We're close friends.

9 Q: Close friends? And you understand that back in '15,
10 Tyrus got into trouble; is that correct?

11 A: Yes, sir.

12 Q: And -- and the night, 7/14/15, when this alleged
13 incident happened, the burglary and all that, do you recall
14 that night?

15 A: Yes. I recall the previous night.

16 Q: And -- and the previous night? And at that time, do you
17 know the whereabouts of Tyrus at that time?

18 A: Yes.

19 Q: And where was he at?

20 A: With me.

21 Q: Okay. He was with you where?

22 A: We drove to a location where we had a little get-
23 together.

24 Q: I'm sorry. I cannot hear you.

25 A: We had a get-together.

EBONY TUBBS - DIRECT BY MR. RICHEY

1 MR. RICHEY: Can I move a little bit closer, Your Honor,
2 so I can hear her?
3 THE COURT: Yes.
4 MR. RICHEY: I can't hear her real well.
5 BY MR. RICHEY:
6 Q: Y'all had a get-together?
7 A: Yes.
8 Q: And where was this get-together at?
9 A: It was located on Dean Street.
10 Q: Okay. And so when this incident occurred, Tyrus was
11 there?
12 A: Yes.
13 Q: Do you recall any facts about the -- do you recall
14 people alleging Tyrus was at this burglary incident?
15 A: I'm sorry. Can you say that again?
16 Q: Do you recall any information that you heard about Tyrus
17 supposedly being at this incident where this burglary
18 happened?
19 A: No.
20 Q: Okay. Did you talk to law enforcement?
21 A: No. I didn't get the chance.
22 Q: And did you talk to anybody at the Public Defender's
23 Office?
24 A: No, sir. I wasn't contacted.
25 Q: You were not contacted?

EBONY TUBBS - DIRECT BY MR. RICHEY

1 A: No.

2 Q: And you -- you've had this information now for three
3 years; is that correct? At least since '15; correct?

4 A: Yes.

5 Q: And nobody from the Solicitor's Office or anybody
6 contacted you?

7 A: No.

8 Q: Okay. You understand, ma'am, that when you testify, you
9 are swearing under oath under penalty of perjury that you are
10 telling the truth? You understand that?

11 A: Yes, sir.

12 Q: And you understand if you're not truthful, then there
13 are consequences to that?

14 A: Yes, sir.

15 Q: Had you been contacted -- and I'm assuming you drove --
16 what? Two and a half hours today; correct?

17 A: Yes.

18 Q: And if you had been contacted at the time of trial, you
19 would have been there to testify?

20 A: Of course, yes.

21 Q: And your testimony would have been that Tyrus didn't --
22 could not have done this because he was with you?

23 A: Yes.

24 Q: Okay. And I'm going to ask you do y'all have any
25 children in common or anything?

EBONY TUBBS - DIRECT BY MR. RICHEY

1 A: No.

2 Q: Okay. Christina Booker -- do you know her?

3 A: Yes.

4 Q: And was Christina there that day?

5 A: Yes. That night, yes.

6 Q: Approximately how many people were there?

7 A: I would say between eight and ten.

8 Q: And none of y'all got a call from anybody about the

9 case?

10 A: No.

11 Q: Okay.

12 MR. RICHEY: Thank you, ma'am. Answer any questions

13 that the attorney general has for you.

14 CROSS-EXAMINATION

15 BY MR. COX:

16 Q: Ms. Tubbs, how are you doing?

17 A: I'm fine. And you?

18 Q: I'm doing well. I just have a few questions.

19 A: Uh-huh.

20 Q: You testified here today that you were with Mr. Woodruff

21 the night of the 14th? Or was it the night of --

22 A: The night of the 13th.

23 Q: The night of the 13th?

24 A: Yes.

25 Q: So your recollection when you were aware of where Mr.

EBONY TUBBS - CROSS BY MR. COX

- 1 Woodruff, his whereabouts, that was the night of July 13th,
2 2015?
- 3 A: Yes.
- 4 Q: Okay.
- 5 A: Unto the 14th.
- 6 Q: Into the morning of the 14th?
- 7 A: I would say about noon.
- 8 Q: Okay. About noon?
- 9 A: Yes.
- 10 Q: Okay. When did you last see Mr. Woodruff? When did you
11 drop -- did -- did you drop him anywhere? Did you drop him
12 off?
- 13 A: Yes. I dropped him off about -- I would say 12, that
14 noon.
- 15 Q: Okay.
- 16 A: I want to say 12:15.
- 17 Q: Okay.
- 18 A: That was the last time.
- 19 Q: Now, you testified here today you were not contacted by
20 Mr. Woodruff's attorney at the PD's Office?
- 21 A: No. And I've had the same number for over 10 years.
- 22 Q: Have you changed --
- 23 A: So my number has been current.
- 24 Q: Okay. Have you changed your address at all?
- 25 A: No.

EBONY TUBBS - CROSS BY MR. COX

1 Q: During the time?

2 A: No.

3 Q: Okay. No time between 2015 and 2017?

4 A: No.

5 Q: Okay. Were you at -- were you -- did you go to his
6 hearing when he pled guilty?

7 A: No.

8 Q: Okay. And you didn't hear from anyone from the
9 Solicitor's Office as well?

10 A: No.

11 MR. COX: Ms. Tubbs, thank you. Your Honor, I don't
12 have any more questions.

13 THE COURT: Any redirect?

14 MR. RICHEY: No, sir.

15 THE COURT: All right. You may call your next witness.

16 MR. RICHEY: That's -- that's all the witnesses we have,
17 Your Honor.

18 THE COURT: All right. I'll be glad to hear arguments
19 from the applicant.

20 MR. COX: Your Honor, may Ms. Tubbs be excused?

21 THE COURT: Yes. She -- you may step down.

22 THE WITNESS: Thank you.

23 THE COURT: I'm sorry. You're free to leave. All
24 right. Any further testimony from either side?

25 MR. COX: Nothing from the State, Your Honor.

1 THE COURT: Okay.

2 MR. RICHEY: Your Honor, at this time, the applicant
3 would move that the Court grant his post-conviction relief
4 application, and I don't recall all the arguments I made
5 previous, but I'll -- but I'm going to specifically address
6 this issue, if the Court wants.

7 Your Honor, I believe that the applicant should be
8 granted his PCR based off this witness. The availability of
9 the witness I don't think can be contested at this point. In
10 light of the fact that this lady drove three hours -- 2 1/2
11 -- three hours to get here, that tells me that she would have
12 came less than probably 15 or 20 minutes to the courthouse in
13 Spartanburg to testify.

14 I think her testimony was credible and I think at a bare
15 minimum if there was a witness who had been contacted --
16 because she testified nobody contacted her. So it's our
17 position that based off the witness's testimony that that was
18 a critical witness in the case and that she should have been
19 called as a witness for Mr. Woodruff in this case.

20 THE COURT: Yes, sir?

21 MR. COX: Your Honor, prior to today's hearing, this
22 case -- this application for PCR was handled by Attorney
23 Valerie Giovalani -- or Giovanoli -- excuse me -- with the
24 Attorney General's Office. She is no longer with that
25 office. I have recently taken over this case.

1 As far as the prior hearing, we have not received or I
2 have not requested a record -- I mean a record of that
3 hearing yet. I would not be able to make an argument at this
4 time as to the prior hearing. I'm asking you to allow me to
5 prepare a memo of arguments and a proposed order for you as
6 far as the prior hearing once we get a full and complete
7 transcript of the --

8 THE COURT: Okay.

9 MR. COX: -- full hearing.

10 THE COURT: All right. What I'm going to do is I'm
11 going to ask both sides to prepare a proposed order, but I'll
12 be interested in hearing what you have to say about the --
13 the alibi witness.

14 MR. COX: The alibi witness?

15 THE COURT: Yes.

16 MR. COX: Your Honor, Ms. Tubbs was here today. She
17 testified that she was with Mr. Woodruff. That she was --
18 her number didn't change. Her address didn't change.

19 It is my understanding from -- from the record of the
20 plea that Mr. Woodruff was content with his -- with the
21 representation that his public defender at that time gave
22 him. If Miss Tubbs was available, if her number did not
23 change, her address did not change, and Mr. Woodruff provided
24 that information and she wasn't contacted, Mr. Woodruff had
25 ample opportunity to bring that to the attention of the plea

1 judge. I believe it was Judge Cole at the time.

2 I would just argue that even with the testimony here
3 today that Mr. Woodruff has not met his burden of proof to
4 show that it was ineffective assistance of counsel.

5 THE COURT: All right. Anything from your co-counsel?

6 MS. MCCALLISTER: Your Honor, I'm sorry. May I have a
7 moment?

8 Your Honor, I just would -- I think I would echo what
9 Mr. Cox just said about the transcript. If there -- we have
10 some of -- some notes from the previous attorney that
11 indicated maybe Mr. Woodruff's counsel testified about this
12 issue and about this alibi witness and what he did, but we
13 don't have that transcript. So it's a bit difficult for us
14 to respond to the argument fully without seeing that
15 testimony because we're in the dark about what was said at
16 that February hearing.

17 THE COURT: Right.

18 MS. MCCALLISTER: So we would just ask --

19 THE COURT: Would you like to say anything about the
20 alibi witness? You say you're pretty hamstrung because you
21 don't know exactly what the plea transcript says and/or the
22 testimony of the trial counsel?

23 MS. MCCALLISTER: Exactly, Your Honor.

24 THE COURT: Okay. Well, do you think that it would be
25 appropriate for both sides to have an opportunity to take a

1 look at the transcript of the previous hearing and the law
2 and submit proposed orders?

3 MR. COX: Yes, Your Honor.

4 THE COURT: Mr. Richey?

5 MR. RICHEY: Yes, sir.

6 THE COURT: All right. Anything further from anybody?

7 MR. RICHEY: No, sir.

8 THE COURT: All right. Very good.

9 MR. COX: No, Your Honor.

10 THE COURT: All right. Well, I'll anxiously await the
11 proposed orders and -- and how long do you anticipate it
12 would take to get the transcript?

13 MR. COX: Your Honor, it's my understanding that court
14 reporters normally are granted a 60-day window.

15 MS. MCCALLISTER: I think it's either 30 or 60. I'm not
16 sure.

17 MR. COX: To put together the transcript. It kind of
18 depends on the size of the transcript. This being a guilty
19 plea PCR application, Your Honor, I don't anticipate the
20 hearing transcript to take that long to prepare. I believe
21 we can get proposed orders to you within 30 days, if we
22 receive the transcript within that 30-day window.

23 THE COURT: Okay. All right. Go ahead and make the
24 request for the -- for the transcript. I'm going to give you
25 45 days from the day you receive the transcript.

1 MR. COX: Yes, Your Honor. Thank you.

2 THE COURT: Very good. All right. Good luck to you.

3 MR. RICHEY: Thank you, Your Honor.

4 (WHEREUPON, the proceedings ended at 12:12 p.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 17, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Spartanburg County, South Carolina, held in
13 Florence, South Carolina, on the 31st day of May, 2018.

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

17 s/Krystal J. Smith

18 Court Reporter

20	Florence, South Carolina
----	--------------------------

21	June 1, 2018
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Tyrus Rashawn Woodruff, #353331,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-4115

MOTION TO SUPPLEMENT
RECORD

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAR -1 AM 9:03
M. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed November 7, 2017. Respondent made its return, requesting an evidentiary hearing. An evidentiary hearing was held before the Court on February 20, 2018. Applicant was present at the hearing and was represented by Rodney Richey, Esquire. Respondent was represented by Assistant Attorney General Valerie Garcia Giovanoli of the South Carolina Attorney General's Office. The record was held open at the hearing to allow Applicant the opportunity to present testimony from an alleged alibi witness.

In preparing Applicant's case for an evidentiary hearing, it came to Respondent's attention, through Applicant's trial attorney, that Applicant's guilty plea originally started as a trial, with jury selection and pre-trial motions. At the time Respondent requested the transcript of Applicant's guilty plea, Respondent was unaware Applicant's case started as a jury trial. Furthermore, Applicant did not allege any defects in the pre-trial hearings. However, at the evidentiary hearing, many issues arose surrounding the pre-trial motion hearings. The evidence presented at the evidentiary hearing revealed it was the result of the pre-trial motions that influenced both Trial Counsel's advice and Applicant's decision to plead guilty. However, Trial Counsel could not recall the pre-trial hearings and could offer no testimony to reconstruct the pre-trial hearings for this Court.

The pre-trial transcript prior to Applicant's guilty plea is part of the record of the criminal case before the Court of General Sessions. Because Applicant's claims stem from his convictions and sentences from the criminal case in General Sessions, the pre-trial transcript should be part of the record in the instant action and is necessary to the Court's decision to grant or deny relief in this matter. See S.C. Code Ann. § 17-27-70(a) ("If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record"); see also S.C. Code Ann. § 17-27-80 ("The court shall make specific findings of fact, and state expressly its conclusions of law relating to each issue presented."). Therefore, without this transcription, the record before this Court is incomplete. Respondent has conferred with opposing counsel, who does not oppose this motion. Accordingly, Respondent moves for leave to supplement the record¹ in Applicant's PCR action with the pre-trial transcript.

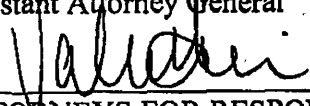
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

February 26, 2018

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

¹ The record is currently still open.

CLERK OF COURT
 SPARTANBURG COUNTY
 2018 MAR -1 AM 9:03
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

TYRUS RASHAWN WOODRUFF,
#353331,

2017-CP-42-4115

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

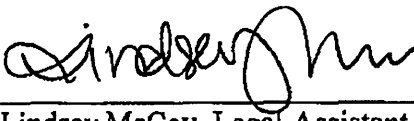
STATE OF SOUTH CAROLINA,

Respondent.

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this the 26th day of February, 2018.


Lindsey McCoy, Legal Assistant
For Respondent

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SPARTANBURG COUNTY
2018 MAR -1 AM 9:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Tyrus Rashawn Woodruff, #353331,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-4115

ORDER TO SUPPLEMENT
RECORD

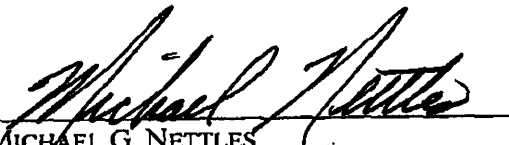
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CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG 16 PM 2:44
A. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed November 7, 2017. Respondent made its return, requesting an evidentiary hearing. An evidentiary hearing was held before the Court on February 20, 2018. The record was held open at the hearing to allow Applicant the opportunity to present testimony from an alleged alibi witness.

Respondent has moved for leave to supplement the record¹ in Applicant's PCR action with the pre-trial transcript that includes jury selection and pre-trial motions. Applicant does not oppose the motion. This Court finds it appropriate to supplement the record with the pre-trial transcript so that the record is complete.

IT IS THEREFORE ORDERED, Respondent's motion is granted. Upon receipt of the transcript, Respondent shall file same with the Spartanburg County Clerk of Court and provide copies to Applicant and this Court.

AND IT IS SO ORDERED this 8 day of August, 2018.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

, South Carolina

¹ The record is currently still open.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Tyrus Rashawn Woodruff, #353331,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-4115

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief ("PCR") filed by Tyrus Rashawn Woodruff ("Applicant") on November 7, 2017. The State ("Respondent") made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 21, 2018, at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Paul Neely, Esquire, ("Counsel"), Clay Allen ("Co-counsel") and Spenser Smith ("Solicitor") also testified. The hearing was continued to allow Applicant to locate an alibi witness to testify at a later date. On May 31, 2018, a subsequent evidentiary hearing was convened in front of Judge Nettles in Florence County, South Carolina. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. Eboni Tubbs testified on behalf of Applicant.

This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the pre-trial and plea transcript, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently incarcerated pursuant to orders of commitment of the Spartanburg

County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for attempted murder and possession of a weapon during the commission of a violent crime (2015-GS-42-3881, count I and II), first-degree burglary (2015-GS-42-3883), and three counts of armed robbery (2015-GS-42-3882, -3884, -3885).

The charges resulted from an incident on July 14, 2015, in which Applicant and two other co-defendants¹ entered the victim's residence, forced the three men inside (victims) onto the floor, shot one of the men twice, took the victims' wallets and iPhone and ransacked the home looking for drugs and money. The stolen iPhone was tracked to another residence within an hour of the incident. When law enforcement arrived at the other residence, the car that was driven to the victims' residence, a black Dodge Avenger, was parked outside and the four co-defendants were inside with the victims' wallets and iPhone. (Tr. pp. 24-26).

On February 21, 2017, Applicant's trial began in Spartanburg County, South Carolina, Paul K. Neely, Esquire, represented Applicant. Clay T. Allen, Esquire, also represented Applicant as second-chair. Solicitor Barry J. Barnette and Assistant Solicitor Spenser Smith represented the State. On February 22, 2017, Applicant pled guilty as indicted to attempted murder, possession of a weapon during the commission of a violent crime, first-degree burglary and one count of armed robbery before the Honorable J. Derham Cole. The State dismissed the other two indictments for armed robbery in exchange for Applicant's guilty pleas. Pursuant to the State's recommendation, Judge Cole sentenced Applicant to imprisonment for concurrent terms of twenty-five years each for attempted murder, first-degree burglary, and armed robbery, and five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Actual Innocence"
 - a. "I am completely innocent of these allegedly above-mentioned charges. I was not at the scene of these alleged offenses. I am not on any audio and/or video surveillance device, nor was I identified by any credible eye witnesses. Furthermore, I have an alibi witness to further substantiate this allegation."
2. "Ineffective Assistance of Trial Counsel"
 - a. Counsel failed to interview or subpoena alibi witness to testify.
 - i. Applicant informed Counsel about his alibi witness, but Counsel never contacted the witness.
 - b. Counsel failed to investigate facts
 - i. During Counsel's visits, Applicant told Counsel his co-defendants were willing to testify Applicant is innocent of the charges.
 - ii. "The police did not have probable cause to arrest me with attempted murder, armed robbery, burglary (1st degree) and possession of weapon during violent crime."
 - c. Counsel failed to challenge affidavit underlying arrest warrant
 - i. Affidavit was "insufficient to support a finding of probable cause."
 - ii. "The affidavit failed to set forth any facts as to why the police believed I committed the alleged offenses. The affidavit failed to set forth how the police conducted its investigation or how they came upon their investigation. Furthermore, it failed to include any facts or underlying reasons concerning the informant's veracity."
 - d. "Counsel failed to object that State impaneled its grand jury outside the jurisdiction of the Court of General Sessions. S.C. Code Ann. § 14-9-210..."
 - i. The grand jury indicted Applicant in August of 2015. "The terms of Spartanburg County General Sessions are filed by S.C. Code Ann § 14-5-710, which DOES NOT offer provisions for a Court to be open on August 21, 2015."
 - e. "Plea Counsel coerced me to plead guilty against my will and voluntary consent."
 - i. A jury was selected on February 21, 2017. "On [February 22, 2017], before trial commenced, my lawyer had me brought to a room behind the judge's chambers with Clay Allen (Head Public Defender) and my plea counsel to inform me that it

1 A fourth co-defendant drove the black Dodge Avenger to and from the victim's residence.

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 HOPE BACHLEY

would be in my best interest to plead guilty because there was overwhelming evidence of guilty, and I would not be able to plead third-party guilty, and that my alibi witness would not be able to testify in my defense.”

3. “My alibi witness was at trial and willing to testify.”

At the start of the hearing, Applicant moved for a continuance on the basis that he was not prepared to present testimony from an alleged alibi witness. This Court allowed the hearing to proceed and reserved ruling on whether the hearing would be bifurcated to take testimony from the alleged alibi witness at a later date. Applicant informed this Court he would be proceeding on his allegations that Counsel failed to call his alibi witness, gave him improper advice to plead guilty because the evidence proved actual innocence, failed to object to the empanelment of the grand jury, and failed to present evidence of a photo lineup identification which established his innocence.

SUMMARY OF TESTIMONY AT PCR HEARING

Trial Counsel

Counsel has been practicing law since May of 2014. Counsel testified he represented Applicant for fifteen months prior to trial. Counsel testified Applicant had always maintained his innocence of the charges. Applicant provided Counsel with the names of two witnesses he claimed could give him an alibi: Christina Booker and Taylor Dawkins. Applicant provided Counsel with the addresses and phone numbers of the two women. Counsel and his investigator made multiple attempts to track down the two women in order to interview them. Their attempts included calling the phone numbers, leaving messages, visiting two separate addresses, and mailing letters. Counsel recalled he and/or his investigator making phone contact one of the women and scheduling an office meeting in order to speak to them regarding an alibi for Applicant. On more than one occasion, the woman failed to appear at the scheduled office visits. In addition to the two women Applicant offered as alibi witnesses, another woman, who is believed to be the mother of Applicant's child, also offered to testify as an alibi witness. However, because her story was inconsistent with

Applicant's alibi, Counsel felt ethically prohibited from calling her as an alibi witness. Counsel testified he did not give the State the requisite ten day alibi witness notice because he was never able to get the alleged alibi witnesses to cooperate and talk to him, despite numerous attempts. In the abundance of caution, Counsel researched the notice rule to determine if he could get around it in the event the witness did cooperate at the last minute. Having been unsuccessful at a prior address, Counsel received another address of where the woman may have moved. However, when he went to try to find her there, the residence had been abandoned.

Despite being unable to corroborate Applicant's alibi, Counsel felt confident going into trial based on his strategy of presenting evidence of third party guilt. Counsel also prepared to challenge the out of court identification of Applicant in a six pack photo lineup, pursuant to Neil v. Biggers.² Counsel focused on these strategies rather than the elusive "alibi" witness because he was confident they would be successful and he did not have confidence in the alleged alibi strategy. Although Counsel felt the winning strategy was third party guilt and wholeheartedly disagreed with Judge Cole's ruling on that motion, he could not recall anything from the third party guilt pre-trial motion, the testimony presented, or the arguments made.

Counsel testified that no one identified Applicant in a six pack lineup. Later, Counsel testified the son of Marlon Davis identified Applicant when shown a six pack lineup. Counsel believed Applicant's photo in the six pack lineup was misleading because the photo depicted Applicant with dreads. However, Applicant did not have dreads at the time of the shooting. In addition, one witness identified another man with dreads in the photo lineup – a man by the name of Terez Robinson. Counsel waived on whether this witness was identifying Terez as the driver of the getaway vehicle or one of the home intruders. Counsel explained that at the scene of arrest, there was a black Dodge Avenger. Law enforcement found one latent print on the back driver's side door.

The print matched that of Terez Robinson. Counsel felt this was more than just a mere coincidence and felt this supported their argument of third party guilt. However, Applicant was present at the home with the other three co-defendants 30-45 minutes after the burglary, but not Terez.

After the pre-trial hearings, Judge Cole took the matters under advisement. Then there was an in-chambers conference with Judge Cole and the Solicitor. Judge Cole indicated he would not allow evidence of third party guilt and would allow the out of court identification of Applicant. At that time, the Solicitor also handed over jail phone calls made by Applicant from jail after his arrest. They did not capture explicit confessions, but would not have been favorable to the defense if presented. Judge Cole indicated he would allow the jail phone calls to be presented at trial, despite the late disclosure. Counsel spent four hours reviewing the jail phone calls that night before the second day of trial. Counsel admitted that he considered this his case, he was determined to win, and he disagreed with Judge Cole's rulings, but not to the extent he felt Applicant would be successful on appeal.

During the in-chamber conference, Judge Cole indicated that although he believed Applicant deserved much more time, he would give him the same sentence his co-defendant, who had already pled guilty, had gotten – 25 years. Counsel then advised Applicant he would most likely be convicted at trial since he lost the pre-trial motions and he would most likely get a life sentenced. Counsel also advised him to accept the 25 year offer. Counsel testified he believed the plea was in Applicant's best interest and still believes it was given the circumstances. Counsel discussed with Applicant that by pleading guilty he would give up his rights, but was unsure if he specifically addressed any issues regarding having the judge put his ruling on the record in order for it to be preserved for appeal. Counsel lamented that even with the jail calls coming in, it was the failed motion for third party guilt

² 409 U.S. 188 (1972).

that made him lose faith in going to trial. Counsel testified he did not threaten Applicant to plead guilty, but rather strongly advised him to do so.

Applicant

Applicant testified that at the time of the burglary, he was at Taylor Dawkins' house. Applicant testified that he was at the home with his friend, Diago, and three other females. Applicant testified that these were all of the people at the home that night. However, his friend gave him a ride to co-defendant Dewberry's home shortly after the burglary. Applicant testified he told Counsel Dawkins and Booker would testify that he was with them at the time of the burglary. Applicant testified that he told his attorney that he was with Booker during the night before the robbery. Applicant testified that Ebony Tubbs was in the house at the same time the night before, but Applicant did not testify that he informed his Attorney of this information. Applicant testified that he did not believe Counsel contacted Booker.

Applicant testified Counsel never told him Judge Cole did not make rulings on the record, and had he known that, he would have proceeded with trial. Applicant admitted he pled guilty because of what Counsel told him how the judge ruled on the pre-trial motions. Applicant testified Counsel told him not to go to trial and to accept the plea offer.

Co-Counsel

Co-Counsel has practiced criminal law since 1979. He is, and was at the time of Applicant's plea, the Chief Public Defender for the Seventh Judicial Circuit. His role in this case was minimal and could be characterized as co-counsel or second chair. He was familiar with the facts and evidence, but not as intimately as Counsel. Co-Counsel was present during a discussion on the second day of trial, in which Counsel and Co-Counsel offered their advice with regard to pleading guilty. He told Applicant he agreed with Counsel's assessment that it was in his best interest to plead guilty. Neither he nor Counsel threatened or coerced Applicant to plead guilty. Co-Counsel

was sure they discussed appeal issues with Applicant. Co-Counsel also explained that it is not uncommon for Judge Cole to inform the parties of his rulings in-chambers.

Assistant Solicitor Spenser Smith

Spenser Smith is an Assistant Solicitor for the Seventh Circuit Solicitor's Office. He became involved with the case when Solicitor Barry Barnette, the lead prosecutor, requested his help. Assistant Solicitor Smith summarized the State's evidence, which included: three intruders entered the residence of Marlon Davis shortly before noon; the intruders robbed three men in the house and searched the house for drugs and money; the homeowner, Marlon Davis, was shot twice by two of the intruders; Davis' son identified Applicant in a six pack photo lineup; Davis was never shown a lineup because he was in the hospital being treated for his gunshot wounds, but was prepared to identify Applicant in court; when police arrived to the home within minutes after the burglary, one of the victim's claimed they had tracked their stolen iphone; within approximately twenty minutes, an investigator arrived at the residence to which the iphone had been traced (co-defendant Dewberry's home); the investigator saw a black Dodge Avenger outside the residence which matched the description of the car in which the intruders fled; there were also four men standing outside which he observed until backup arrived; no one left the residence during that time; when backup arrived, they went in to arrest the four men since there were allegations three men entered the residence and one man drove the car; they found the wallets (and contents) of the victims, a letterman jacket belonging to a victim, as well as the stolen iphone at the residence and in the black Dodge; Xavier Martin, a co-defendant, who was a paraplegic and confined to a wheelchair, gave a statement that he was the driver of the car; Xavier Martin had dreads; one of the victims identified Terez Robinson from a six pack photo lineup, who also had dreads, as the driver of the car; Akia Ross, another victim in the home during the burglary, also gave a statement that none of the intruders had dreads, Davis' son identified Applicant as one of the home intruders; there was a jail call from Applicant's account in

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which he was heard telling a girl to go back to Dewberry's residence and retrieve both the keys to the black Dodge and a gun he had hidden under the refrigerator; Ms. Dewberry, the owner of the residence at which Applicant was arrested, gave a statement that she witnessed all four men arrive at the same time and together in the black Dodge.

Assistant Solicitor Smith testified he did not realize the inculpatory value of the jail calls until the pre-trial motions, although he was aware of them well in advance of trial. However, even without the jail calls, the evidence against Applicant was strong. Assistant Solicitor Smith testified Judge Cole indicated he would not allow evidence of third party guilt to be admitted because although Terez Robinson's fingerprint was found on the black Dodge and he was identified in a photo lineup as the *driver*, because neither was inconsistent with Applicant's guilt.

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A. HOPE BRADLEY

Alibi Witness – Ms. Tubbs

Ms. Tubbs testified that she was with Applicant on the night of July 13, 2015, through the morning of July 14, 2015. Ms. Tubbs testified that she was with a group of eight to ten people at Booker's home until she dropped Applicant off at about noon the next day. Ms. Tubbs testified that she and Applicant were "close friends." Ms. Tubbs testified that her number and address had not changed since the incident. Ms. Tubbs testified that none of the eight to ten people at Booker's home were contacted about Applicant's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Failure to present alibi witnesses Christina Booker and Taylor Dawkins

Applicant alleged Counsel was ineffective for failing to present testimony from an alleged alibi witness and failing to request a continuance in order to present testimony from an alleged alibi witnesses. This Court finds Counsel provided credible testimony on the issue. Counsel testified that

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he was informed of Taylor Dawkins and Christina Booker as potential alibi witnesses. A third witness, the mother of Applicant's child, was also named by Applicant as a possible alibi witness. Counsel testified he and his investigator made numerous attempts at locating and speaking to the witnesses Applicant provided. In addition to being difficult, if not impossible to locate, the witnesses missed multiple scheduled office visits. Counsel and his investigator even went to two different addresses, one in Greenville, looking for these witnesses. Counsel testified that he was able to communicate with the mother of Applicant's child, but her version of events did not match with what Applicant had described as his alibi. Counsel was also not as confident pursuing the alibi strategy as much as he was confident in pursuing what he believed was their winning strategy third party guilt.

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This Court finds that Applicant has failed to show that Counsel was ineffective for not presenting Christina Booker, Taylor Dawkins, or the mother of his child as witnesses to support his alleged alibi. First, this Court notes any claims surrounding the failure to present testimony from an alleged alibi witness assumes the testimony from the alleged alibi witness would have been favorable to the defense and therefore affected the outcome of the trial. An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of the alleged alibi witness Christina Booker, Taylor Dawkins, or the mother of his child, any prejudice derived from any of Counsel's actions leading to her not testifying is purely speculative. Therefore the allegations are denied and dismissed.

Failure to present alibi witness Ebony Tubbs

Although Applicant never informed Counsel of Ebony Tubbs' potential use as an alibi witness, she was called to testify at the PCR hearing. Ms. Tubbs testified that she was Applicant's

close friend and she was with him the night before the robbery, along with eight to ten other people. Ms. Tubbs testified that she was the person responsible for driving Applicant during the night before the alleged crime, as well as the next morning. Ms. Tubbs testified that none of the eight to ten witnesses from Dawkins' home were ever contacted by Counsel. Ms. Tubbs testified that she did not have any children in common with Applicant.

This Court finds that Ms. Tubbs testimony is not credible in light of the record, Applicant's testimony, and of Counsel's credible testimony. First, Ms. Tubbs claims to have been at a get together with eight to ten people, including Applicant, on the night before the burglary. Applicant contradicts this claim by alleging he was with Ms. Tubbs and only three other individuals. Next, Ms. Tubbs stated that no one was contacted by Counsel in order to testify on Applicant's behalf. Counsel testified that he attempted to contact all of the witnesses provided to him and spoke to at least one of the women at the alleged get-together. Counsel scheduled multiple meetings with this potential witness, but the witness never arrived for a meeting.

Ms. Tubbs testified that she was not the mother of Applicant's child, but that she was with Applicant the night before the burglary. Counsel testified that he spoke to the mother of Applicant's child and that she would have testified that she was with Applicant, instead. Counsel found that this testimony contradicted what Applicant had previously told him and chose not to call her as a witness. Ms. Tubbs testified that she dropped Applicant off at noon, which was after the alleged burglary. The record shows that a witness for the State, Ms. Dewberry, would have testified at trial that Applicant arrived at her home around noon in a car with his co-defendants, including her own son.

Finally, Ms. Tubbs testified that she was not contacted by Counsel prior to Applicant's guilty plea. Counsel testified as to the great lengths he went to contact and interview all of the individuals Applicant informed him would be potential alibi witnesses. This included calling multiple phone numbers, driving to multiple addresses, and enlisting the help of his investigator. Applicant never

testified that he informed Counsel of Ms. Tubbs' contact information, even though Ms. Tubbs testified that her number and address have not changed. This Court finds that Counsel testified credibly when stating that he attempted to get in contact with all of the potential witnesses provided to him by Applicant.

This Court finds that Ms. Tubbs was not credible in her testimony, as it conflicts with the record, Applicant's own testimony, and the credible testimony of Counsel. Counsel was not deficient in failing to call Ms. Tubbs as an alibi witness, because Applicant has failed to show that she was offered to Counsel as a potential witness. Applicant has further failed to show any prejudice, as no evidence was presented to show that absent the deficiency of Counsel, Applicant would have proceeded to trial. Applicant testified that he pleaded guilty in order to avoid a life sentence not because of any failure on the part of Counsel. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed.

Failure to challenge empanelment of grand jury

Applicant alleged counsel should have objected to the empanelment of the grand jury. However, he has offered no reason as to why the empanelment was objectionable or invalid. "The regularity of grand jury proceedings is presumed absent clear evidence to the contrary." Evans v. State, 363 S.C. 495, 514, 611 S.E.2d 510, 520 (2005) (citing State v. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct.App.1991)). This Court has also reviewed the indictments and cannot find any defects. Applicant has failed to present evidence to overcome the presumption of regularity in the grand jury proceedings or show some defect in the grand jury empanelment or process. Applicant has failed to meet his burden of proof with regard to this allegation. It is therefore denied and dismissed.

Improper advice to plead guilty

Applicant alleged Counsel was ineffective for advising him to plead guilty. He further

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argues, in support of this allegation, that he is actually innocent and evidence involving photo lineup identification proves his innocence. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

This Court finds Counsel's advice to plead guilty was reasonable and Applicant has failed to prove, by a preponderance of the evidence, that the advice was somehow improper. First, this Court notes the evidence against Applicant was strong, as outlined above in Assistant Solicitor Smith's testimony. Although Counsel may question his decisions in hindsight, at the time of trial, Counsel was faced with pre-trial rulings that were detrimental to Applicant and his entire defense. Counsel disagreed with Judge Cole's rulings, however, he did not believe they would be likely to prevail on appeal. Weighing the risk of continuing trial, with the almost certainty of Applicant being convicted and sentenced to life imprisonment with the uncertainty of prevailing on appeal and the guarantee of a twenty-five year sentence if Applicant pled guilty, he advised Applicant to plead guilty. Counsel may perpetually question that decision, but regardless, this Court finds Counsel's advice to be reasonable in light of the circumstances. Even Co-Counsel, the Chief Public Defender, agreed and

supported the advice to plead guilty.

Applicant asserts he is actually innocent of the crimes to which he pled and therefore Counsel should not have advised him to plead guilty. However, Applicant has provided little, if any, evidence to prove this claim. Counsel believed the evidence against Applicant was sufficient to convict Applicant and this Court views the evidence with that same belief. Therefore, the advice to plead guilty was in Applicant's best interest and was certainly reasonable. This allegation is denied and dismissed.

Failure to await ruling on pre-trial motions

Applicant alleges Counsel was ineffective for failing to await a ruling on the pre-trial motions. This Court finds this allegation to be without merit. Although no ruling was made on the record with regard to Applicant's pre-trial motions on third party guilty and Biggers, Judge Cole indicated in a chambers conference that he would allow the out of court identification to be admitted and he would not allow any evidence of third party guilt, because the evidence presented with regard to a third party was consistent with Applicant's guilt. After review of the pre-trial transcript, this Court agrees with Judge Cole's prospective ruling.

At the pre-trial hearing, Counsel argued that testimony would be presented that a witness would have identified a third-party as the driver of the vehicle, rather than identify Applicant. Counsel argued that Applicant's finger prints were not located on the scene nor was there any gunshot residue testing done on Applicant. Assistant Solicitor Smith argued prior to Applicant's trial, the admitted driver of the vehicle had already entered a guilty plea. Assistant Solicitor Smith argued the evidence would show that Applicant was inside the home of the victim's and would not have been the driver. Assistant Solicitor Smith continued, arguing Applicant was identified by Ms. Dewberry as one of the four individuals who arrived at her home immediately following the robbery. Assistant Solicitor Smith argued two other witnesses, including the gunshot victim, would identify

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Applicant as one of the shooters inside the home. Finally, Assistant Solicitor Smith argued the person identified for third-party guilty was never found near the arrest scene, while all four involved were. Both attorneys agreed that there were only four men involved in the robbery.

"Evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the defendant's guilt." State v. Rice, 375 S.C. 383, 317 652 S.E.2d 409, 416 (Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011). "The evidence must raise a reasonable inference as to the accused's innocence." Id. Therefore, despite Applicant's assertion to the contrary, there is no reasonable probability that had Counsel awaited a ruling by Judge Cole on the record, Applicant would not have pled guilty but insisted on trial.

There was some testimony from Applicant indicating that had Counsel sought a ruling on the record, the issues would have been preserved for appeal. However, this is completely erroneous. Whether Judge Cole ruled off or on the record, would not have affected Applicant's ability to appeal those rulings after Applicant pled guilty. "[A] plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses..." Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975)(emphasis added.) Applicant was advised of this during the guilty plea. Judge Cole asked Applicant if he understood that if he had a defense, he gave up the right to assert it by pleading guilty, to which Applicant responded, "yes, sir." (Plea tr. p. 12, ll. 15-18). Applicant also told Judge Cole he had discussed that fact with Counsel. (Plea tr. p. 12, ll. 19-20). Therefore, Applicant was aware he was waiving his right to assert his defense(s) by pleading guilty. A ruling from Judge Cole on the record would not have affected that waiver or Applicant's ability to appeal the judge's rulings. The allegation is denied and dismissed.

CONCLUSION

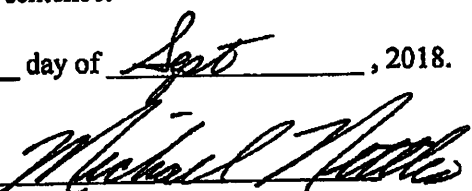
Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

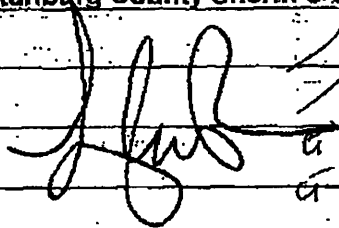
AND IT IS SO ORDERED this 21 day of Sept, 2018.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

Lawrence, South Carolina

WITNESSES

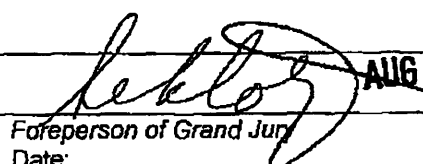
Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2015A4210202258
2015A4210202262

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-03-42-3881

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2015

TERM

THE STATE

v.

TYRUS RASHAWN WOODRUFF

Indictment for

**ATTEMPTED MURDER – COUNT I;
POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME –
COUNT II**

SC Code 16-03-0029; 16-23-490

CDR Code 3410; 549

Class FEL-A ; FEL/F

2015 AUG 25 PM 2:18

M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 21 2015

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

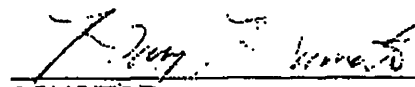
ATTEMPTED MURDER – COUNT I

That the Defendant, Tyrus Rashawn Woodruff, did in Spartanburg County on or about July 14, 2015, with intent to kill, attempted to kill [REDACTED] with malice aforethought, expressed or implied, by shooting him with a firearm, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME – COUNT II**

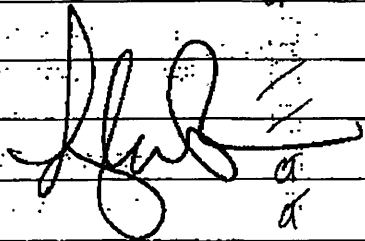
That the Defendant, Tyrus Rashawn Woodruff, did in Spartanburg County on or about July 14, 2015 possess or visibly display a firearm or a knife during the commission of a violent crime, to-wit: ATTEMPTED MURDER, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

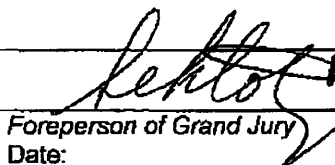
~~Spartanburg County Sheriff's Office~~



ARREST WARRANT NUMBER

2015A4210202260

ACTION OF GRAND JURY

 **AUG 21 2015**
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-CS-42-3882

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2015

TERM

**THE STATE
v.**

TYRUS RASHAWN WOODRUFF

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class: FEL/A;

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M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

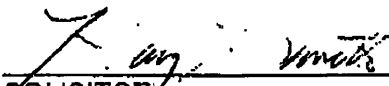
AUG 21 2015

At a Court of General Sessions, convened on _____ the Grand
 Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

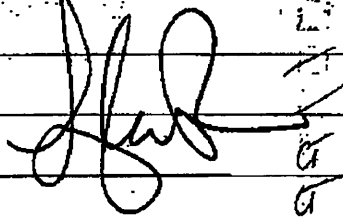
That the Defendant, Tyrus Rashawn Woodruff, did in Spartanburg County on or about July 14, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of [REDACTED], including but not limited to a wallet and cell phone, by means of force, violence, and/or intimidation with the intent to deprive him permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2015A4210202256

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-36-42-3883

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2015

TERM

THE STATE

v.

TYRUS RASHAWN WOODRUFF

Indictment for

**BURGLARY FIRST DEGREE
(DWELLING)**

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

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M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

AUG 21 2015

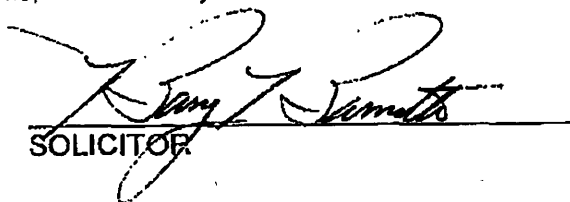
At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY FIRST DEGREE (DWELLING)

That the Defendant, Tyrus Rashawn Woodruff., did in Spartanburg County on or about July 14, 2015 willfully and intentionally enter a dwelling occupied by Marlon Shermaine Davis located at [REDACTED] Country Club Road, Spartanburg, South Carolina without consent and with intent to commit a crime therein, and either in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

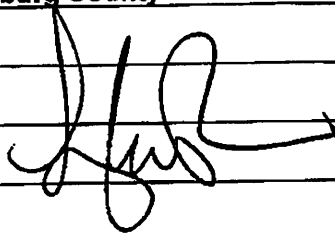
- (1) was armed with a deadly weapon or explosive, and/or
 - (2) caused physical injury to any person who was not a participant in the crime, and/or
 - (3) used or threatened the use of a dangerous instrument, and/or
 - (4) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, and/or
 - (5) entered the dwelling during the nighttime, and/or
 - (6) committed the crime while possessing a prior record of two or more convictions for burglary or housebreaking or a combination of both,
- all in violation of Section 16-11-0311 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

15-GS-42-3884

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2015

TERM

**THE STATE
v.**

TYRUS RASHAWN WOODRUFF

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-330 (A)
CDR Code: 139
Class: FEL/A; FEL/F

NP-dismissed - the Defendant pled to four (4) other charges. He pled to Burglary First (1st) Degree on Ind. No. 15-GS-42-3863 and received a twenty-five (25) year sentence; pled to Attempted Murder (count one) and PWDVC (count two) on Ind. No. 15-GS-42-3881 and received a 25 year sentence for Att. Armed Robbery on Ind. No. 15-GS-42-3882 and received a 25 year sentence from Judge Derham Cole on 2/22/2017. All sentences are concurrent. The victims and the SCSO were present for the Unity Plea. - Barry Barnette - 2/23/2017.

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M. HOPE BLACKLEY

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

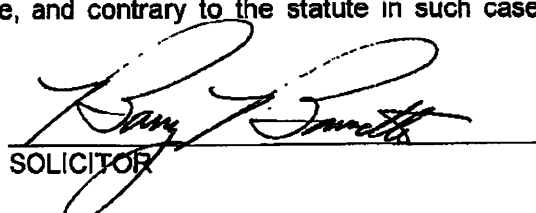
AUG 21 2015

At a Court of General Sessions, convened on _____, the Grand
 Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

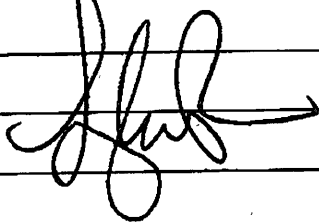
That the Defendant, Tyrus Rashawn Woodruff, did in Spartanburg County on or about July 14, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Akia Jawan Ross, including but not limited to a cell phone, by means of force, violence, and/or intimidation with the intent to deprive him permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-3885

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2015

TERM

THE STATE

v.

TYRUS RASHAWN WOODRUFF

Indictment for
ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class: FEL/A; FEL/F

NP - dismissed - the Defendant pled to four (4) other charges. He pled to Burglary (1st) First Degree on Ind. No.: 15-GS-42-3863 and received a twenty-five (25) year sentence; pled to Attempted Murder (COUNT ONE) and PWDVC (COUNT TWO) on Ind. No.: 15-GS-42-3881 and received a 25 year sentence for Att. Murder and 5 years on PWDVC; he pled to Armed Robbery on Ind. No.: 15-GS-42-3882 and received a 25 year sentence from Judge Durham Cole on 2/23/2017. All sentences are concurrent. The victims and SCSD were present for the guilty plea. - Barry Barnette - 2/23/2017.

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M. HOPE BLACKLEY

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2017 FEB 23 AM 9:11
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

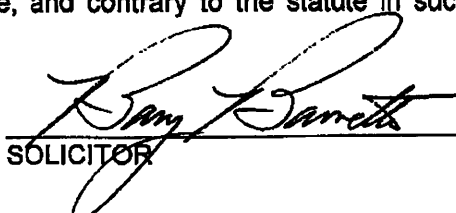
AUG 21 2015

At a Court of General Sessions, convened on _____, the Grand
Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Tyrus Rashawn Woodruff, did in Spartanburg County on or about July 14, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Marlon LaShawn Davis, including but not limited to a wallet, by means of force, violence, and/or intimidation with the intent to deprive him permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR