

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

Appellate Case No. 2018-000779
Lower Case No. 2013-CP-29-00951

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S.C. SUPREME COURT

VERNARD JEROME MATHIS, #297034

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX

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about knowing potential witnesses. He stated that Faile was the only law enforcement officer involved in this case that he knew. In other places in the deposition, however he says Faile was the only one he knew *by name*. Roberts Dep. p. 16, l. 11- p. 17, l. 5. In later portions of his deposition he retreated further from this position and stated, "*As far as I can remember* the witnesses he was the only one I knew when he came on the stand." Roberts Dep. p. 18, ll. 5-6. (Emphasis added).

Although his deposition includes Roberts' claim that "*as far as he can recall*" he didn't share information concerning his long law enforcement career with this jury, he ultimately admitted that he knew one of the other jurors, and that juror knew about his law enforcement background.

In his deposition, Roberts claimed that he wasn't particularly close friends with Officer Faile. His position, however, overlooks "the thin blue line" that is the inherent loyalty and bond between all law enforcement officers. He knew that Applicant's lawyer would not want him on this jury, and yet, in a move that reflects the natural biases and loyalties of a veteran law enforcement officer, he didn't call the Clerk of Court's Office or Defense Counsel about the potential problem with his jury service, he called the Solicitor's Office. Knowing that the defense would use a peremptory strike to excuse him from jury service, he ignored several opportunities to reveal himself to the Court and the defense. Applicant has therefore presented credible evidence in support of his position that this juror intentionally concealed information that he knew would prompt Defense Counsel to use a strike to excuse him from jury service.

Applicant has likewise presented evidence from which the second prong of the *Woods* test could be met. Both *Roberts* and *Holland* admit that they knew Defense

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Counsel would have utilized a strike to keep Roberts off this jury. As noted above, the trial record documents that the defense had seven (7) strikes left when Roberts was seated. Applicant has made a showing that evidence of Juror misconduct exists, and that he was prejudiced by it inasmuch as he would have been in the position to strike this juror had he been aware of his law enforcement background. Through the depositions taken in this matter, Applicant has effectively established that evidence exists that both this juror and a member of the prosecution team have acknowledged that using a strike to remove a juror with his law enforcement history would have been a standard thing for the defense to do.

When considering a Motion for Summary Dismissal pursuant to S. C. Code Ann. § 17-27-70 (c), where no evidentiary hearing has been held, the PCR judge must assume facts presented by the Applicant are true, and view those facts in the light most favorable to the Applicant. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). Where, as here, a PCR application alleges facts that would establish just cause for review under recognized exceptions to the Statute of Limitation, or the Rule prohibiting successive applications, a hearing is necessary unless those facts are conclusively refuted by the record before the Court. For that reason, Applicant has submitted that a hearing on his current Application for Post-Conviction Relief is necessary and appropriate. This Court agrees.

Our Supreme Court has found a Post-Conviction Relief action is the appropriate venue to raise his claims. *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623, (S. Ct., 2013) Applicant argues that his application is timely pursuant to § 17-27-45(c), because it was filed within one year of his discovery and confirmation of the allegations raised in it.

Likewise, he submits this successive application is proper where he can demonstrate that the grounds contained therein could not have been raised by him in his original application inasmuch as the information at the core of these claims was not disclosed to him until after his first PCR action was decided. Respondent has argued that Applicant has failed to meet his burden of proof that he filed his current application within the time limits proscribed by S.C. Code Ann. § 17-27-45 (C). This Court now finds that Respondent's assertions on this point are premature. Applicant has presented sufficient evidence to establish that he is entitled to a hearing pursuant to *McCoy, supra*. At that hearing Respondent will be free to mount a challenge to the timeliness of this application pursuant to §17-27-45 (C). Likewise, Respondent argues that Applicant has not met his burden of proof with regard to the underlying allegations contained in this application. Applicant has not yet had his day in Court regarding the allegations raised in his current application for relief. While he has been allowed to engage in some limited discovery, he has not had a hearing at which he will have the opportunity to present his full case with regard to the allegations made in this application. Once again, Respondent's arguments with regard to Applicant's alleged failure to meet his burden of proof, are premature. After a full and fair hearing on these allegations, at which Applicant will have the opportunity to present any relevant evidence available to support his claims, Respondent may present its arguments as to how Applicant has failed to meet his burden of proof. Any decision of this Court based solely on the limited discovery materials before this Court would be premature and would no doubt result in a reversal and remand for further proceedings as in *McCoy, supra*.

Accordingly, Respondent's Motion for Dismissal is hereby denied. Applicant's

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request for a full evidentiary hearing on the allegations addressed in his application is hereby granted. Respondent is hereby directed to set this matter for hearing at the next practical term of Post-Conviction relief hearings to be held in the Sixth Judicial Circuit.

IT IS SO ORDERED.



Brian M. Gibbons
Circuit Court Judge for the
Sixth Judicial Circuit

This the _____ day of 10/25, 2014.

 , South Carolina

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E X H I B I T S.

3

NO.DESCRIPTIONI.D.EVD.

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P- 1

Deposition

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P-2

Deposition

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P-3

Employee list

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1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Ronnie Roberts				
4	Ms. Shurling	14		52	
5	Mr. Schmeckpeper		46		
6	John Clark				
7	Ms. Shurling	59			
8	Shareka Jones				
9	Ms. Shurling	65			
10	Vernard Mathis				
11	The Court	71			
12	Doug Barfield				
13	Ms. Shurling	75			
14	Mr. Schmeckpeper		84		
15	Tom Holland				
16	Ms. Shurling	90		100	
17	Mr. Schmeckpeper		98		
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1 THE COURT: All right yes, sir, Mr. Attorney
2 general.

3 MR. SCHMECKPEPER: Thank you, Your Honor. If it
4 please the Court, my name is Patrick Schmeckpeper with
5 AG's office. This is Vernard Jerome Mathis versus
6 State of South Carolina, 2013-CP-29-0951. If you just
7 bare with me for a moment, the procedural history here
8 is kind of extensive.

9 The Applicant was indicted for murder, armed
10 robbery, burglary-first degree, and two counts of
11 kidnapping in the Lancaster County Grand Jury. He was
12 represented by John Clark.

13 The applicant was convicted of all offenses
14 following a jury trial and on June 6, 2003, Judge
15 Short sentenced him to life imprisonment without the
16 parole pursuant to South Carolina Code 17-25-45.

17 Applicant filed an appeal pursuant to Anders which
18 was dismissed by the South Carolina Court of Appeals.
19 A rehearing and Writ of Certiorari were ultimately
20 denied and the Remittitur was sent on November 6,
21 2006.

22 Applicant then filed a petition -- application for
23 post conviction relief on March 8, 2007. He was
24 represented by Tricia Blanchette. Following an
25 evidentiary hearing on August 25, 2008, Judge Goode

1 denied and dismissed the application with prejudice on
2 October 14, 2008. The Petition for Writ of Certiorari
3 was denied on December 2, 2010 and Remittitur was sent
4 in January 7, 2011.

5 This application for post conviction relief which
6 is the applicant's second application was filed on
7 July 9, 2013. He subsequently filed a motion for
8 leave to conduct Discovery on October 7, 2013.
9 Respondent filed its Return in consenting to the
10 Applicant's motion with various stipulations, many
11 limiting and narrowing the issues.

12 Following Discovery respondent filed a Return and
13 Motion to dismiss and Conditional Order of dismissal.
14 The applicant filed its response. This Court in an
15 Order dated October 29, 2014 denied the respondent's
16 motion to dismiss and set the matter for an
17 evidentiary hearing.

18 Your Honor, at this point just to preserve the
19 record and protect the record, the States renews its
20 motion to dismiss. First, its application is
21 excessive and untimely. I think the State has
22 stipulated as to certain facts in regards to
23 timeliness. The State has stipulated that the
24 applicant actually did in fact learn of this issue
25 within one year of filing and would be timely. With

1 that regard the State contends though that the
2 applicant did not file one year of being able to
3 reasonably with good effort to find this information
4 out.

5 THE COURT: All right. Go ahead.

6 MR. SCHMECKPEPER: I believe the applicant talked
7 of raising the issue of prosecutorial misconduct. The
8 State moves for summary dismissal on that one for
9 failure to state a claim. The State's position is
10 that there is no evidence of prosecutorial misconduct
11 from the deposition and that given the nature of the
12 claims here there is no basis for prosecutorial
13 misconduct. There is no duty to disclose the
14 information alleged.

15 Thank you, Your Honor.

16 THE COURT: All right. Miss Shurling why don't you
17 address those. First of all, do you agreed with the
18 procedural history presented to me by the Attorney
19 General's Office.

20 MS. SHURLING: Your Honor, the procedural history
21 as articulated by respondent sounds correct.

22 With regard to the renewal of the motion for
23 summary judgement concerning timeliness, it is our
24 understanding as I believe respondent has conceded,
25 that the application was filed within one year of the

1 disclosure of the information that started this
2 inquiry to Shareka Jones who was a client of Thomas
3 Holland after he left the solicitor's office and went
4 in to private practice.

5 It is my understanding that their only remaining
6 contention having conceded that point is that this
7 information concerning the juror, Mr. Roberts, was
8 such that it could have been discovered through the
9 exercise of due diligence prior to the original post
10 conviction relief proceeding. A point that we would
11 strongly contest, and I can address that, Your Honor,
12 at the end of the proceeding if that is acceptable
13 with the Court.

14 I would also ask given the nature of the testimony
15 and the complexity of the issues involved if the Court
16 is inclined to take this matter under advisement at
17 the conclusion of the proceeding that rather than try
18 to articulate closing arguments in this extremely
19 complex matter at the end of this proceeding that we
20 be permitted to submit memoranda to the Court in
21 support of our respective positions and/or proposed
22 orders, whichever is desirable to the Court in lieu of
23 trying to actually orally have closing arguments in
24 this matter.

25 Your Honor, is Shareka Jones in the courtroom?

1 (Witness raises a hand).

2 Your Honor, Miss Jones is in the courtroom and I
3 will be presenting testimony from her but not on the
4 specific issue of timeliness. I may cover that again
5 just to make a clear record but she's here for other
6 reasons.

7 Your Honor, if I might note, I believe the State
8 has handed Your Honor's law clerk up copies of the
9 voir dire transcript of the portion of the trial
10 record dealing with voir dire.

11 THE COURT: Is that this?

12 MR. SCHMECKPEPER: Yes, the top packets are voir
13 dire transcript and that's the full transcript right
14 there.

15 THE COURT: Good.

16 MS. SHURLING: If I may approach, Your Honor --

17 THE COURT: Yes.

18 MS. SHURLING: -- I have taken the liberty of
19 preparing the Court a copy of the previous deposition
20 of Thomas Holland, Esquire, as well as the deposition
21 of Ronny Ellison Roberts, the juror in this matter.
22 We are prepared to offer the originals of those two
23 transcripts into evidence at this time. They have
24 already been handed to the court reporter and
25 pre-marked.

1 THE COURT: Any objection to those depositions
2 coming in.

3 MR. SCHMECKPEPER: No objection. My understanding
4 those depositions are already before this Court. I
5 think they were submitted with the pleadings. It is
6 my understanding this Court has already reviewed them.

7 THE COURT: All right.

8 MS. SCHURLING: And Your Honor, I believe you do
9 have previous copies but these are spiral bound and a
10 little bit easier to handle.

11 THE COURT: All right, to the extent that stuff
12 is, you know, duplicative of what's already in the
13 record we'll allow it back in the record. I want to
14 make sure both sides have a complete opportunity to
15 submit whatever is appropriate for the record. Okay,
16 so we will do that.

17 As to your arguments that you brought up at the
18 very beginning, I'll take them under advisement and
19 issue a ruling on everything at the end. But, you
20 know, this is Mr. Mathis's day in Court based upon the
21 allegations presented. I've issued a previous Order
22 which was entered on October 29, '14, ordering an
23 evidentiary hearing. We'll have the hearing subject
24 to of course to the State's motion and of course
25 subject to the State's position at the end of whatever

1 the hearing may or may not show.

2 MR. SCHMECKPEPER: Thank you judge.

3 THE COURT: Okay.

4 MS. SHURLING: Would Your Honor like to hear my
5 foundational argument?

6 THE COURT: Yes. Miss Schurling, why don't you
7 give me a basis of the relief that your client is
8 seeking and kind of tie it all together with a nice
9 bow and then you can present whatever evidence you
10 wish to present.

11 MS. SHURLING: Thank you, Your Honor. Your Honor
12 at this time -- one moment.

13 Your Honor, it's the applicant's position that his
14 right to a fair trial was violated by the intentional
15 withholding of information relevant to a juror who not
16 only served in his case but who ultimately served as
17 foreman at his trial. It's his position that this
18 information was deliberately withheld not only by the
19 juror, Mr. Roberts, but that the State's own agents;
20 the solicitors, and investigators, law enforcement
21 officers and even court personnel were aware of this
22 information and no one disclosed it either to the
23 applicant or to his counsel or to the Court, and that
24 that failure to disclose certainly was a violation of
25 his right to due process of law and his right to a

1 fair trial. We are asking for vacation of the
2 judgement and sentence against him on that basis.

3 Now, with regard to the State's position that this
4 is an issue that could have been and should have been
5 raised in the initial application for post conviction
6 relief -- my apologizes to the Court. I am taking
7 antihistimes so they are making my mouth stick
8 together. I'm sorry.

9 The standard, as the Court is well aware of due
10 diligence. Whether or not the evidence existed at the
11 time of the original proceeding and whether or not it
12 could have been ferrated out by counsel at the time
13 through the exercise of due diligence. In this case
14 that standard would appear to apply somewhat twice in
15 the sense that we are addressing the question of
16 whether or not trial counsel could have ferrated out
17 that information at the time of the original trial and
18 to a lesser degree and with regard to the State's
19 argument that it should have been raised in the
20 context of the original initial collateral review.
21 Whether or not the applicant acting through his post
22 conviction relief counsel could have and should have
23 raised this issue in the initial PCR proceeding.

24 It is our position that without the information
25 that was subsequently disclosed to him by a member of

1 the solicitor's own team at this trial after he left
2 the solicitor's office, that post conviction relief
3 counsel had no reason to question the validity of the
4 answers given by sworn jurors at the time of the
5 trial. That there was nothing that hinted of
6 impropriety in the jury selection process until the
7 disclosure to his credit by Tom Holland, and that
8 there was nothing trial counsel and PCR counsel,
9 specifically at the first PCR proceeding, could have
10 done or would have done in the exercise of due
11 diligence short of conducting a background check on
12 ever juror. And that I would submit is not being
13 pragmatic.

14 As the Court knows I do probably more post
15 conviction work than any lawyer in this state. And
16 essentially the Court would be asking -- the
17 respondent would be asking the Court to adopt a
18 standard that would say that a lawyer has an
19 obligation to do a background check on all the
20 potential jurors involved in a case at the time of a
21 PCR to determine whether there is potentially any
22 problem with the jury selection process and we would
23 submit that is an untenable burden to expect a
24 defendant in the South Carolina judicial system to
25 bear in the context of collateral review and for that

1 reason we would submit that the State's argument in
2 this regard is not meritorious and ask that the Court
3 allow us to proceed with the merits of the issue
4 before the Court bearing in mind that it's certainly
5 our position that his first opportunity reasonably to
6 raise this issue was after the disclosure was made by
7 the former assistant solicitor who disclosed the
8 misconduct before the Court today.

9 THE COURT: All right, and what I have ruled on
10 that is that I am taking all that under advisement.
11 We are going to have a merits hearing. I am going to
12 allow you to introduce whatever evidence you think
13 needs to be introduced as well as the State and I'll
14 take all that under advisement. Everybody gets to
15 testify today that needs to testify.

16 MS. SHURLING: Thank you, Your Honor.

17 THE COURT: Okay. You may call your witness.

18 MS. SHURLING: Thank you. Your Honor at this time
19 I would call Mr. Ronnie Roberts to the stand.

20 THE COURT: All right, Mr. Roberts.

21 MS. SHURLING: Your Honor, as he approaches I
22 would like the record to reflect that I will endeavor
23 to cover all of the points previously raised with Mr.
24 Roberts in the deposition to the extent --

25 THE COURT: All right. Sir, come on over hear.

1 Mr. Roberts, if you will face me and put your left
2 hand on that Bible.

3 RONNIE ROBERTS: Called as a witness, having been
4 duly sworn by the Court, was examined and testified as
5 follows:

6 THE COURT: All right I'm holding this deposition
7 from April 22nd of 2014. Is that what you are talking
8 about?

9 MS. SHURLING: Yes, sir.

10 THE COURT: Okay.

11 MS. SHURLING: Actually Your Honor, what date did
12 you say for the deposition?

13 THE COURT: The one I have is dated April 22,
14 2014.

15 MS. SHURLING: Correct. Thank you, Your Honor.

16 THE COURT: All right.

17 MS. SHURLING: Thank you.

18 DIRECT EXAMINATION

19 BY MS. SHURLING:

20 Q Mr. Roberts, would you spell your full name for the
21 record.

22 A R-o-n-n-i-e.

23 MS. SHURLING: Does madam court reporter need the
24 rest of his name or is that sufficient?

25 COURT REPORTER: That is fine. I have it here.

1 Q Mr. Roberts, you previously given a deposition in this
2 matter, correct?

3 A Yes.

4 Q Okay. Let's go back over basically the same grounds
5 that we covered in the deposition. Do you recall being called
6 for jury service in the trial of the State versus Vernard Jerome
7 Mathis?

8 A I do.

9 Q And after you received notification that you were being
10 called for jury service what did you do?

11 A I telephone the solicitor's office and I actually asked
12 to be dismissed because of I figured they wouldn't let me serve
13 anyway being a former police officer.

14 Q You asked to be dismissed?

15 A Yes.

16 Q Okay. Mr. Roberts, do you recall your earlier
17 testimony in your sworn deposition?

18 A Somewhat.

19 Q Do you recall stating that at the time of the phone
20 call to the solicitor's office it was not your intent to try to
21 get out of service?

22 A It was not my intent but I figured they would not allow
23 me to serve.

24 Q Okay.

25 A I didn't know.

1 Q Let's clarify that. You a moment ago testified you
2 were asking to be relieved from jury service?

3 A Well, that's a generalization. I asked about whether
4 or not I would be allowed to serve. I did not know that.

5 Q Okay. And so the record is clear you weren't asking to
6 be relieved --

7 A No.

8 Q -- of your responsibility of serving. You just were
9 inquiring as to whether or not you would be allowed to given --

10 A Correct.

11 Q -- your lengthy law enforcement?

12 A Correct. To the best of my knowledge.

13 Q And who did you speak to when you called the
14 solicitor's office that day?

15 A I actually can not remember. I called the solicitor's
16 phone number that was in the book and I know I spoke to someone.
17 I can not remember who I spoke with.

18 Q Okay.

19 A It was a few years ago.

20 Q Pardon me. In that conversation did you make it clear
21 to the party you were speaking to that you had been in law
22 enforcement for many years prior to your retirement?

23 A I don't know if the many years came in to play but I
24 did mention that I, you know, was a former law enforcement. I
25 was not at that time.

1 Q The person on the other end of that phone call was it
2 someone that already knew you?

3 A I do not recall.

4 Q You don't recall whether or not the person you spoke
5 with at the solicitor's office was someone who already knew you
6 as a former law enforcement officer?

7 A I don't recall who I spoke with and I don't recall if
8 they knew that I did tell them I was former law enforcement.
9 It's been a long time. I do not remember the exact
10 conversation.

11 Q And during that conversation what were you told with
12 regard to the issue of your jury service?

13 A I was told I had to report and that, you know, if they
14 had issues with my background that I would be dismissed or
15 struck. However they call that. That they don't choose you to
16 be on jury.

17 Q Okay. And once again do you recall your prior
18 deposition?

19 A Yes.

20 Q And do you recall saying that you were told as a result
21 of that telephone conversation that you had to show up and that
22 he might be able to let you go but --

23 A Correct.

24 Q -- but that he ended up keeping you all day?

25 A Yes. He said some times you come and they dismiss you

1 because they don't allow to you sit on the jury and you will be
2 dismissed so I was told I had to show up.

3 Q Okay. And it was also your statement in your
4 deposition, was it not, that although the person you were
5 talking to on the phone said he might be able to let you go that
6 he ended up keeping you all day, correct?

7 A Well, yes, I was retained as a juror.

8 Q Okay, and who is the "he" that kept you all day?

9 A Well, I don't know the he on the phone but when we came
10 to the jury the solicitor -- I think Mr. Justice was in charge
11 then.

12 Q Well --

13 A I'm assuming he was in charge of that. I don't know.

14 Q Okay. And did you have any reason to believe that
15 Solicitor Justice knew about your phone call to the solicitor's
16 office?

17 A I honestly couldn't tell you that. I assume but I
18 don't know.

19 Q You just assumed?

20 A Yes, ma'am.

21 Q Okay. Now, looking back to the time of the jury trial
22 do you recall who the solicitors were that were trying the case?

23 A I did not, but after our deposition I think you told me
24 Mr. Justice and Mr. Barfield.

25 Q And Mr. Tom Holland?

1 A Yeah, I think there was a third one.

2 Q Okay, and did you previous know -- let's start at the
3 top. Did you previously know John Justice?

4 A I had had one case in general sessions when I was a
5 young officer with Mr. Justice.

6 Q Okay. Now you went over your law enforcement
7 background with me in the deposition but let's do it again just
8 for the record. Please understand I'm just doing what I have to
9 do.

10 A I understand.

11 Q Your law enforcement career appears to have begun with
12 the Lancaster Police Department in 1975 through February 1982,
13 correct?

14 MR. SCHMECKPEPER: Your Honor, if I may. I don't
15 have a specific objection. However, I am aware the
16 witness's law enforcement background is in several
17 pleadings and the State would certainly stipulate to
18 his law enforcement background.

19 THE COURT: Okay.

20 MS. SHURLING: Okay.

21 THE COURT: Miss Shurling, it's your witness. You
22 can develop your witness however you want to.
23 Remember you'll have to me three p.m. and we will take
24 an hour break for lunch.

25 MS. SHURLING: And we will be aware of that.

1 CONT'D DIRECT:

2 Q Mr. Roberts, again, you had been in law enforcement for
3 many, many years at the time of this -- well, time leading up to
4 this trial. You had retired a couple years before this trial?

5 A I retired after 25 years, yes, ma'am.

6 Q And during that time part of your law enforcement
7 service had been with Lancaster and Kershaw, two places that
8 would have been within the ambient of the Sixth Circuit
9 Solicitor's office?

10 A I worked here six and a half years and I worked Kershaw
11 six months after I retired, yes.

12 Q Okay. Now, when you showed up for this trial, what
13 effort did you make to make the Court, the presiding judge,
14 aware of the law enforcement background that had caused you to
15 be concerned enough to call the solicitor's office? Let's put
16 it that way.

17 What did you do to make the Court aware of that same
18 information?

19 A You don't have any interaction with the Court as juror.
20 We sat in the what we call the audience until our name was
21 called.

22 Q Well, isn't it a fact that during jury selection there
23 were numerous points where questions were asked and jurors were
24 asked to stand if they were pertinent to them, and if they stood
25 they were then addressed individually by the Court?

1 A Correct.

2 Q So if you had answered certain questions that would
3 have given rise to an opportunity for you to have an individual
4 colloquy with the bench, right?

5 A I answered every question they asked me.

6 Q Okay. During the jury voir dire in this case you were
7 asked whether or not you had any relationship, any connection
8 with the Sixth Circuit Solicitor's Office and you did not stand
9 and answer that question?

10 A I did not have any connection with them at that time,
11 no, ma'am.

12 Q Did the specific question asked from the bench ask
13 whether you had any current connection or just whether you had
14 any connection with the solicitor's office?

15 A I'm not sure but at that time I had no connection with
16 anyone. I had retired in 2000 and I had no connection with any
17 law enforcement agency at all at that time.

18 Q Isn't it a fact Mr. Roberts that in your April
19 deposition you specifically stated under oath that you had no
20 recollection of even being asked that question when you were
21 part of the jury pool?

22 A No, ma'am, that's not what I said. I recall answering
23 your question about being called to jury, standing and asking if
24 I had any connection with anybody involved in the case that
25 would prevent me from giving a fair vote in the trial, however

1 you worded it.

2 MS. SHURLING: Your Honor, for the record I would
3 draw the Court's attention to page 15 of the
4 deposition, line 12 through 14.

5 Q And you indicated that the only person that you knew in
6 the solicitor's office at the time of the jury voir dire was Mr.
7 John Justice, the late John Justice?

8 A I knew Mr. Justice and I knew Mr. Barfield by site but
9 that was it.

10 Q Okay. Now in your deposition you initially said John
11 Justice was the only person you knew didn't you?

12 A Yeah, but you later questioned me and I told you I
13 recognized Mr. Barfield because he had this long, different type
14 mustache. He always looked a little different and I recognized
15 him by that.

16 Q And in fact you indicated that there were certain
17 family members of yours that you knew were acquainted with Mr.
18 Barfield, correct?

19 A I said possibly I guess. Older siblings. I don't
20 know, but I assume they did because they were older than I.

21 MS. SHURLING: Your Honor, I would assume with
22 regard to each of these references to the deposition
23 that the record will speak for itself. Thank you,
24 Your Honor.

25 THE COURT: Thank you.

1 Q Do you recall being asked on voir dire whether you had
2 any special relationship with any of the witnesses and then
3 Solicitor Justice read a list of the potential witnesses? Do
4 you recall that?

5 A I don't recall.

6 Q And it was your statement in your deposition that you
7 didn't know at the time you were seated who the State's
8 witnesses would be, is that correct?

9 A Well, that's correct.

10 Q Okay.

11 A Yes.

12 Q Well, let's go back over that for a minute. When you
13 got a notice to serve on this jury you were concerned enough
14 about the impact of your career background to call the
15 solicitor's office to discuss whether or not on you would even
16 be qualified to be a jury, right?

17 A No, not qualified. My concern was that most of the
18 time when a policeman is called and they are not seated so
19 they're really wasting time to be there as jurors when they are
20 never utilized on the jury. So I assumed nobody would seat me
21 because of that.

22 Q Okay. Do you recall stating in your deposition that
23 you did not know the names of the witnesses --

24 A I did not know --

25 Q -- to be called in this case.

1 THE COURT: Let her finish her question. Okay.
2 She can't take down two people talking.

3 THE WITNESS: Okay, I'm sorry.

4 Q I'll try to give you a better nod when I'm finished.
5 I'm sorry.

6 A I'm trying to be helpful.

7 Q I know, and we all want to get this done as quickly and
8 as painlessly as possible so just let me try to get my question
9 out.

10 A I'm sorry.

11 Q Do you recall stating in your deposition that you did
12 not hear the list of witnesses read out during the voir dire
13 selection?

14 A Again, it has been a long time. I don't -- I do not
15 remember hearing a complete list of witnesses. No, I do not.

16 Q Okay, and my question is, if you were concerned enough
17 about the impact of your prior record in law enforcement
18 impacting you serving as a juror, wouldn't you have been taking
19 special care to listen to the questions asked?

20 MR. SCHMECKPEPER: Your Honor, I would object.

21 It's argumentative.

22 THE COURT: I will sustain that objection.

23 Q Did you listen to the questions put to you from the
24 bench?

25 A Yes.

1 Q Do you have any explanation if you were listening to
2 why you would not recall a long list of the the State's
3 potential witnesses being read out by Solicitor Justice?

4 A I do not. It has been a long time ago and I do not
5 remember a lot of things that happened that far back.

6 Q Okay. Going back for just a moment, you had also said
7 you didn't recall being asked the question about any connection
8 with the solicitor's office. Do you recall that?

9 A Rephrase that please.

10 Q Do you recall being asked a question about whether or
11 not you had any connection with the solicitor's office during
12 the voir dire?

13 A I remember being asked. Yes, I was asked.

14 Q Are you saying you remember being questioned about it
15 during the deposition or that you have independent recollection
16 of it from the trial?

17 A From the deposition.

18 Q From the deposition?

19 A Yes.

20 Q And at the time of the deposition you said that you did
21 not recall being asked that question, correct?

22 A Correct.

23 Q Okay. And do you also recall that you subsequently
24 said that if you had heard that question you would have answered
25 and acknowledged that you knew the solicitor?

1 A I don't know how to answer that.

2 Q Well, if you had heard that question asking whether you
3 had any connection with the solicitor's office would you have
4 stood and answered that question, yes, I have --

5 A Well, actually no, I would not because I had no
6 connection with the solicitor's office at that time.

7 Q Mr. Roberts, you have acknowledged that you believed at
8 the time of your phone call to the solicitor's office that no
9 one, no defense attorney would want you on their jury if they
10 knew your background; isn't that true?

11 A That's one of my feelings, yes.

12 Q And yet when asked questions that provided you an
13 opportunity to make both sides aware of your background you
14 didn't answer; isn't that true?

15 A No, they didn't ask me my background. They asked me if
16 I had any connection that would prevent me from issuing a fair
17 verdict as a juror.

18 Q Well let's -- let's -- thank you. Let's look at that
19 more specifically.

20 MS. SHURLING: Your Honor, one moment. I
21 apologize.

22 THE COURT: Okay.

23 MS. SHURLING: Page 11 --

24 THE COURT: Is that the transcript?

25 MS. SHURLING: Of the record of the voir dire and

1 Your Honor, I hope I'm using the same copy that you
2 have.

3 THE COURT: Well, lets make sure. I got big thing
4 here. What are we talking about?

5 MS. SHURLING: Page 11, the top of the page. "Do
6 any members of the petit jury panel have any
7 relationship or contact with Solicitor John Reed
8 Justice or any member of the Sixth Judicial Circuit
9 Solicitor's Office, if so please stand."

10 THE COURT: I don't have that. It's page 11.

11 MR. SCHMECKPEPER: And Your Honor, I'm not sure if
12 it's on the record on appeal. The few transcripts
13 that I gave you it should be on the top one of those.

14 THE COURT: Yeah, that is what what I am looking
15 for.

16 MR. SCHMECKPEPER: May I approach.

17 THE COURT: I got the transcript.

18 MR. SCHMECKPEPER: And I think the ones that I
19 handed you the first ten or so pages of the voir dire
20 aren't in that transcript but they are in --

21 THE COURT: This one. (Indicating).

22 MR. SCHMECKPEPER: Yes, Your Honor, I think it's
23 that one. It should be two packets up there.

24 THE COURT: This is the one of the two packets.

25 MR. SCHMECKPEPER: I have an extra copy if I can

1 hand it up.

2 MS. SHURLING: I don't want to suddenly be using
3 yours. I don't have page references to yours.

4 THE COURT: All right. Are we past the point
5 about the news coverage? Are we past that?

6 MS. SHURLING: Yes, sir, Your Honor. On page 11.

7 THE COURT: Well, I don't have page 11 remember so
8 I am trying to find -- what's the first question?

9 MS. SHURLING: With a moment's indulgence, Your
10 Honor, I can try and locate that in the copy that has
11 just been handed to me by the State.

12 The copy that was previously provided to Your
13 Honor that you had at the time you were addressing my
14 proposed Order, it's on page 11 of that.

15 THE COURT: Read the question that the Court was
16 asking.

17 MS. SHURLING: "Do any members of the petit jury
18 panel have any relationship or contact with Solicitor
19 John Reed Justice or any member of the Sixth Circuit
20 Solicitor's Office, if so please stand.

21 THE COURT: All right.

22 Q Do you recall that question?

23 A I do.

24 Q You now recall it from the time it was asked?

25 A I remember if that's what they read, I remember that.

1 Q Okay. And why did you not respond to that question?

2 A I had no connection to the solicitor's office or
3 contact with them about this case.

4 Q Well, you had just called them, had you not?

5 A It was several weeks or whatever it was when I got the
6 jury notice about serving, not about this case.

7 Q With all due respect, the question doesn't reference
8 about this case?

9 MR. SCHMECKPEPER: Objection, Your Honor
10 argumentive.

11 THE COURT: Well, I haven't heard the whole
12 question. Go ahead.

13 Q The question as put to the jury panel by the Court does
14 not say any contact or relationship concerning this case does
15 it?

16 A I'm not sure.

17 THE COURT: Objection overruled.

18 Q And in fact even if it had, you had very recently
19 called the Sixth Circuit Solicitor's Office about jury selection
20 and jury service in this case had you not?

21 MR. SCHMECKPEPER: Your Honor, objection. Asked
22 and answered. I think we have been over this.

23 THE COURT: Overruled. You can answer the
24 question sir.

25 A I had not contacted the solicitor about this case, no.

1 MS. SHURLING: Your Honor, the record will speak
2 for itself. I will move on.

3 THE COURT: Okay.

4 Q With regard to the witnesses in this case you stated in
5 your deposition, did you not, that the only witness you knew was
6 the one that was now the sheriff; do you recall that?

7 A The witnesses, yes, ma'am.

8 Q And was that a reference to witness Barry Faile?

9 A Yes, ma'am.

10 Q When asked whether or not you had any relationship to
11 any of the witnesses articulated I believe your answer was that
12 you didn't hear the list of witnesses?

13 A I did not.

14 Q Do you have any explanation for why you would not have
15 heard that list?

16 A I did not hear the list.

17 Q But there is no question that you knew Barry Faile?

18 A I knew him. I had no relation with him.

19 Q As the trial progressed were there other law
20 enforcement officers that you knew?

21 A Not that I remember.

22 Q Do you recall in your deposition stating that Barry
23 Faile was the only one you knew by name?

24 A Yes.

25 Q Well, generally when you say the only one I knew by

1 name --

2 A Yes.

3 Q Did you -- what did you mean by that? Did you mean
4 there were others when you saw them that you just didn't know
5 their names?

6 A You asked me if I knew anyone. He is the only one I
7 knew by name.

8 Q Did you recognize other people that testified, law
9 enforcement officers, as people that you knew before that trial
10 as being in law enforcement?

11 A No, ma'am.

12 Q None of them?

13 A No.

14 Q Other than Barry Hall?

15 A I knew the sheriff but he did not testify.

16 Q Okay. You indicated earlier that you would have
17 disclosed your knowledge of the solicitor if you had heard that
18 question, right?

19 A Yes, ma'am. If I had known that was that important I
20 would have made that statement that I did, but I didn't see
21 where it would involve or keep me from, you know, serving on a
22 jury.

23 Q Okay. So your saying that you didn't hear the question
24 about any connection to the solicitor's office or the question
25 about all the witnesses?

1 A The question to the solicitor's office I explained a
2 while ago. I had no connections to the the solicitor's office.
3 I had been retired since 2000. I had no connections to anyone
4 involved in the case as far as I'm concerned.

5 Q Mr. Roberts, is there any question that at the time you
6 placed that phone call to the solicitor's office you knew from
7 your many years experience in law enforcement that no defense
8 lawyer was going to want you on his jury if he knew your
9 background?

10 A I knew that was a distinct possibility, yes, ma'am.

11 Q And in fact you've given a deposition in which you
12 state clearly that you knew nobody was going to want you on
13 their jury if they knew your background, right?

14 A I just said that, yes, ma'am.

15 Q Okay. Now, would you agree with me that law
16 enforcement and prosecutors are basically on the same side?

17 A We all want justice.

18 Q Pardon?

19 A We all want justice.

20 Q And that's a lovely sentiment. But as a practical
21 matter the solicitor's job is to prosecute criminals and law
22 enforcement's job is to investigate crimes and assist
23 prosecution in prosecuting criminals. Is that a fair statement?

24 A The way I look at law enforcement is that we present
25 the facts and the judge makes a decision or the jury makes the

1 decision whether they are guilty or innocent.

2 Q Well, let me put it to you this way. You have
3 acknowledged that you knew no defense attorney would want you on
4 their jury, correct?

5 A That's correct.

6 Q And you called the solicitor's office to discuss that
7 with them, right?

8 A Yes.

9 Q Did you call the public defender's office?

10 A I didn't know how to get in touch with them. I didn't
11 know who the defense attorneys were. Did not know which jury I
12 would be called to serve on. I made that call specifically
13 because I was called to a jury pool. There was no specific
14 trial mentioned or I had no idea what trial would be coming up.

15 Q My point being if as you said in your deposition that
16 you knew no defense attorney would want you on any jury if they
17 knew your background, you call the solicitor's office to fill
18 them in on that, right?

19 A Correct.

20 Q Why if your concern was that defense counsel wouldn't
21 want you as a juror if they knew your background why did you not
22 pay a little courtesy call to the public defender's office?

23 A I had no idea how to get in touch with them. I don't
24 know if that would be my responsibility.

25 Q But you felt it was your responsibility to give the

1 solicitor's office a heads up you were in that panel?

2 MR. SCHMECKPEPER: Objection. Mischaracterization
3 of his testimony?

4 THE COURT: Sustained.

5 Q Did you do anything to notify the Court that you had
6 concerns about your background as it related to jury service?

7 MR. SCHMECKPEPER: Objection. Asked and answered.

8 THE COURT: Overruled.

9 A Restate the question.

10 Q Did you do anything to advise the Court with regard to
11 your concerns about the fact that your law enforcement
12 background would effect your desirability your ability to serve
13 on a jury?

14 A I notified the only person I knew that would have any
15 control of that. I didn't know anybody else to call.

16 Q Sir, you have been in law enforcement for how many
17 years?

18 A I retired with 25 years.

19 Q In that 25 years how many times did you testify in
20 Court?

21 A Very few, but a few.

22 Q Pardon?

23 A A few.

24 Q Would it be fair to say that you had a good general
25 working knowledge of the judicial system and the court process?

1 A I do.

2 Q And you in fact admitted in your previous deposition
3 that you were familiar with the jury strike --

4 A Yes.

5 Q -- procedure, correct?

6 A Yes.

7 Q And you knew that defense counsel could have and in
8 fact you believe would have struck you if he known your
9 background, right?

10 A Very possible.

11 Q And yet you did nothing to provide that information to
12 the defendant's counsel or to the Court?

13 A I had no idea to know who the defense counsel was,
14 which case I would be tried or called to serve on or how to get
15 in touch with those particular people.

16 Q Well, certainly by the time the voir dire was going on
17 at this trial you knew, correct?

18 A I did not know how to get in touch with them, no,
19 ma'am. At that time as jurors we were told not to speak with
20 anyone else.

21 Q But were you given numerous opportunities throughout
22 the voir dire process to address the bench, weren't you?

23 A I don't think so.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 Q And once again just so we are very clear, at the time

1 you made that call to the solicitor's office you were not trying
2 to get out of jury service were you?

3 A I kind of was, but again, I did not think they would
4 let me serve so ---

5 Q Once again, you acknowledge in your previous deposition
6 you stated under oath that the intent of your call was not to
7 get out of your jury service?

8 A That was not my ultimate goal.

9 Q Okay.

10 MS. SHURLING: A moment's indulgence Your Honor?

11 THE COURT: Okay.

12 Q During the time period when you were the chief of
13 police in Kershaw, your feifdom, your area over which you had
14 authority was under the umbrella of the Sixth Circuit
15 Solicitor's Office, were they not?

16 A I would think so.

17 Q And certainly going back to your about seven years with
18 Lancaster those cases would have been as well?

19 A Yes.

20 Q Okay. So -- and John Justice, you said you knew him
21 only in passing from being a witness in one case?

22 A It was one case in general sessions. Our captain
23 presented all our cases. We didn't have to come as a witness
24 unless we were specifically called and I never was called.

25 Q Okay, and at the time of your jury service -- pardon

1 me, your service in Lancaster County when you began your career,
2 that job in law enforcement was under the umbrella of the Sixth
3 Circuit Solicitor's Office was it not?

4 A That's correct.

5 Q And by the time you began with the Lancaster Police
6 Department in 1982, solicitor John Justice was already the chief
7 prosecutor in that circuit, was he not?

8 A I'm not sure. I didn't start in '82. I started in
9 '75.

10 Q Pardon?

11 A You said I started my career in '72 (sic). I started
12 in '75.

13 Q Pardon me. I am looking at the dates are somewhat out
14 of order, but in 1975 up through -- when did you leave the
15 Lancaster Police Department?

16 A February 10, 1982.

17 Q So by that juncture you would have been aware that the
18 chief solicitor in the circuit in which you were a law
19 enforcement officer was John Justice?

20 A Correct.

21 Q You knew at least one person on the jury before this
22 jury trial, didn't you?

23 A Yes.

24 Q And that was Mr. Eddie Lewis?

25 A Yes.

1 MR. SCHMECKPEPER: Your Honor, I object to
2 relevance at this point. I don't see how this has to
3 do with juror misconduct or prosecutorial misconduct.

4 THE COURT: Miss Shurling.

5 MS. SHURLING: Well Your Honor, there are two
6 questions before the Court; one is whether or not this
7 juror intentionally withheld information to remain in
8 jury selection and the second question is of course
9 whether the solicitor's office has any fault in not
10 likewise disclosing that information.

11 With regard to the first question, I am endeavoring
12 to establish that there was at least one witness --
13 pardon me, one other juror who was aware of his law
14 enforcement background.

15 THE COURT: All right. Overruled. Go ahead,
16 rephrase your question.

17 Q You knew a Mr. Eddie Lewis?

18 A Yes.

19 Q He was also on the jury?

20 A Correct.

21 Q And Mr. Lewis knew you from prior to this trial as
22 someone who had been in law enforcement, correct?

23 A Correct.

24 Q Now, although you had initially said that John Justice
25 was the only person you knew in the solicitor's office you ended

1 up saying that you knew Doug Barfield as well, correct?

2 A I knew him by sight. I didn't personally know him.

3 Q By sight only?

4 A Yes.

5 Q If you only knew him by sight how did you know that some
6 of your family members knew him?

7 A Because of his age. I tried to explain that. I have
8 older brothers who I assumed knew him. I'm not sure, but them
9 being about the same age I would assume they knew each other.

10 Q Isn't it a fact, Mr. Roberts, that in your prior
11 deposition you acknowledge that you had family members who
12 actually knew Mr. Barfield.

13 A That's my brothers.

14 Q And my question is how did you ascertain that your
15 brother knew Mr. Barfield if at the time of the trial you only
16 knew him by sight, you didn't know his name?

17 A I am assuming today that my brothers at one time knew
18 Mr. Barfield because of their age and their similar time through
19 school. You asked -- I didn't know him at the time at the
20 court. On the day of the trial I did not know this particular
21 information but I later assumed they would have known him. I
22 did not know him.

23 MS. SHURLING: Your Honor, the record will speak
24 for itself.

25 THE COURT: I will read everything.

1 Q And again, you acknowledge do you not, that in your
2 deposition you very clearly stated under oath that if you had
3 heard the question about a connection with the solicitor's
4 office you would have answered yes? You would have answered the
5 question?

6 A Yes, I already answered that. Yes.

7 Q Okay. I curious, in your earlier statements concerning
8 this --

9 MS. SHERLING: And I touched on this Your Honor,
10 but I will try not to be redundant.

11 Q -- but you did say that he told me to come up and he
12 might could release me but he didn't keep me -- but he kept me.
13 He didn't. He kept me all week. Remember that?

14 A I remember saying that, yes.

15 Q Okay. Was he the same person all the way through that
16 statement?

17 A It's just a generic term. I'm not sure. I talked to
18 someone on the phone. I asked to be released. They said no.
19 To come on up. Excuse me. To come on up and, you know, show up
20 for jury duty so I did and I can't remember. This has been a
21 long time ago. I don't remember who I talked to on the phone.

22 Q So when you said that he --

23 A I asked to speak to the solicitor, excuse me.

24 Q Pardon me?

25 A I asked to speak to the solicitor but I don't remember

1 if they were in or I spoke to someone else.

2 Q So when you called you asked to speak to the solicitor?

3 A Yes. Yes.

4 Q And your statement in the deposition was that he told
5 me to come up and he might could release me but he didn't. He
6 kept me all week. And my question is the three he's in that
7 sentence were you continuously referring to the same person?

8 A I was generically referring to the solicitor's office
9 to see because Mr. Justice was over it. I really can't remember
10 who I spoke with.

11 Q Mr. Roberts, how did you come to be selected as the
12 foreman?

13 A I have no idea.

14 Q Did the judge --

15 A The judge said you are now the foreman and I don't know
16 how they picked the foreman. I never been involved in that
17 process, so I have no idea.

18 Q Well, there was no vote back in the jury room to your
19 knowledge?

20 A I was appointed before we went out I assume, as far as
21 I can remember.

22 Q So the judge tapped you as the foreman?

23 A I guess.

24 Q And were other than the Mr. Lewis that you admitted
25 knowing, anybody else on that jury know you as a law enforcement

1 officer that you are aware of?

2 A Not as far as I know.

3 Q Do you recall discussing your law enforcement
4 experience with anyone of them during the deliberation?

5 A I don't remember that I did.

6 Q But you can't swear that you didn't, can you?

7 A No, ma'am, but I don't think I did. I tried to stay
8 completely unbiased.

9 MS. SHURLING: A moment's indulgence Your Honor.

10 THE COURT: Yes.

11 Q Mr. Roberts, what was your position with the Assurant
12 Group?

13 A I was a training department manager.

14 Q Training in what area?

15 A Insurance.

16 Q Were you training in investigations?

17 A No, ma'am.

18 Q What was the subject matter of the training that you
19 were engaged?

20 A Can I explain the company that I worked for. It's the
21 Assurant Mortgage Insurance Company. I train people to operate
22 the computers to input people's information into their
23 insurance. It had nothing to do with law enforcement, security,
24 investigations, nothing like that.

25 Q Do you recall filling out a juror information card?

1 A I do not.

2 MS. SHURLING: Your Honor, very quickly if I may
3 check my notes.

4 Your Honor, I would have no further questions of
5 this witness at this time.

6 THE COURT: Thank you. Mr. Attorney General.

7 MR. SCHMECKPEPER: Yes, Your Honor, if I may, can
8 I request a five minute recess.

9 THE COURT: Okay.

10 MR. SCHMECKPEPER: Thank you, Your Honor.

11 THE COURT: You may step down and go to the
12 restroom if you need to and get you something to
13 drink.

14 MS. SHURLING: And obvious rules of court apply.
15 Would expect that the respondent would not be
16 communicating with the witness during the break.

17 THE COURT: Yes, don't talk to anybody during the
18 break. Okay. Just go get something to drink. Go to
19 restroom. We are down five minutes.

20 MS. SHURLING: Your Honor, before we proceed with
21 cross I have a couple more quick questions if I may.

22 THE COURT: Sure. No problem.

23 MS. SHURLING: Thank you.

24 DIRECT EXAMINATION

25 CONT'D BY MS. SHURLING:

1 Q For the record, Mr. Roberts, did you know prior to this
2 trial any members of the Steele family?

3 A No, ma'am.

4 Q You're certain?

5 A I don't think so.

6 Q How about Jimmy Taylor? Who is Jimmy Taylor in the law
7 enforcement world?

8 MR. SCHMECKPEPER: Your Honor, I hate to do this.
9 I am going to have to object as outside the scope of
10 the of the claims as alleged. I don't think any of
11 these people have been plead before, or I don't think
12 it has been alleged that the witness has had any
13 knowledge of these people prior to today. So I would
14 argue they should be precluded from pursuing these
15 claims or at the very least the record be left open so
16 the State can call these witnesses.

17 THE COURT: Let's see where it goes. I'll take
18 your objection under advisement. Go ahead and answer
19 the question.

20 MS. SHURLING: And Your Honor just quickly in
21 response, my answer would be given the fact that this
22 witness's position continues to be that he didn't even
23 hear the list of potential witnesses read out then I
24 certainly think it's pertinent to ask whether or not
25 he had knowledge of the victim or the victim's family

1 before this trial.

2 THE COURT: Okay. Go ahead and ask him the
3 question again. Who was the person?

4 Q Did you have prior to the date of this trial any
5 knowledge of any members of the Steele family, the victim's
6 family?

7 MR. SCHMECKPEPER: And Your Honor, I don't have
8 the same objection. I would just argue that's not the
9 question that was asked during voir dire. Was there
10 any special relationship or any familiar relationship.

11 THE COURT: Okay. State your question again.

12 MS. SHURLING: A moment's indulgence, Your Honor.

13 THE COURT: Okay.

14 Q The precise question, "If you are related by blood or
15 marriage or have any special relationship with any of these
16 stand when their name is called." That was the precise
17 question. And among the witnesses would have been the surviving
18 Rita Steele?

19 A I do not know them.

20 Q Okay. Thank you. How about a Mr. Jimmy Taylor. Do you
21 know him?

22 A No, ma'am.

23 Q You have no knowledge of him at all?

24 A Not to my recollection, no, ma'am.

25 Q In your job in law enforcement did you interact with

1 people in the probation office?

2 A Yes, at times.

3 Q Do you have any recollection of a Mr. Jimmy Taylor that
4 you interacted with in the probation office?

5 A It seems many years ago there was a person that worked
6 in the probation, but I didn't -- I don't know his name. We
7 called him by a nickname and I don't know if that is the same
8 guy or not.

9 Q And would that nickname be sir?

10 A We called him Bull.

11 Q Bull?

12 A But I only saw him periodically.

13 MS. SHURLING: Thank you. No further questions.

14 THE COURT: Mr. AG.

15 CROSS EXAMINATION

16 BY MR. SCHMECKPEPER:

17 Q Good morning Mr. Roberts. Almost afternoon.

18 A Good morning.

19 Q Thank you for being here with us today. I just got a
20 couple of questions. I am not trying to trick you. I got a
21 couple of questions about this case.

22 My first question, how old are you?

23 A I am 69 years and ten months.

24 Q And do you remember how long ago this trial was?

25 A I do not.

1 Q Thirteen years ago sounds fair?

2 A It's been a long time.

3 Q And do you remember when this deposition happened?

4 A It's been a long time too.

5 Q Several years though sound about right?

6 A Yes, sir. Yes, sir.

7 Q This may seem like a dumb question. Is it fair to say
8 that you might not have a perfect memory of every line of
9 testimony in the trial and every line of testimony in the
10 deposition?

11 A That's correct.

12 Q I am going to try to take you back a little bit and
13 please let me know if it's something you can't remember and if
14 you can't remember say you can't remember. But lets start off
15 the day you were called for jury service. You got the letter in
16 the mail or notice in the mail?

17 A Yes, that's the way i received it.

18 Q And I think there has been some questioning as to what
19 your next steps were. Could you just tell me what you did as
20 soon as you got it?

21 A Say it again.

22 Q I'm being a little unclear.

23 A I can't hear very well.

24 Q And I mumble and I apologize for that. When you got
25 that letter you eventually made a phone call?

1 A Yes, sir.

2 A And who did you call?

3 A I looked up the phone number to the solicitor in
4 Lancaster County and I called the office.

5 Q Now could clarify what your reasoning was for calling
6 the office?

7 A Well, it was -- it was basically twofold. I didn't seem
8 to think they would let me serve, but I had a responsible job in
9 Florence and I kind of was under pressure to be at work and so
10 it was kind of twofold. But basically I really didn't think
11 they would let me serve because of my law enforcement
12 background.

13 Q And you didn't want to go waste your time?

14 A Sir?

15 Q You didn't want to go waste your time?

16 A I wouldn't go that far but I wanted to do my duty but,
17 you know, kind of two-edge sword.

18 Q Let me ask you this question. I know you said you
19 called the solicitor's office. Did you know of any cases that
20 were coming up?

21 A No, sir.

22 Q Did you have any doubt in your mind that you could give
23 a defendant a fair trial?

24 A Oh, I would give him more fair than most people.

25 Q Do you think law enforcement in general shouldn't sit

1 on juries?

2 A I think they should.

3 Q But you heard that defense attorneys don't like law
4 enforcement on juries?

5 A Yes.

6 Q But you are not a defense attorney and you don't know
7 why they would or wouldn't, is that fair to say?

8 A Yes, sir.

9 Q As a matter of fact I know there are a lot of questions
10 asked by the judge during the voir dire. Did you know why the
11 judge asked each one of questions?

12 A Not so much, no, sir.

13 Q Did you stop and ask why they were being asked?

14 A No, sir.

15 Q So it is fair to say to your knowledge the defense
16 attorney could have just not cared if there was law enforcement
17 on the jury?

18 A Correct.

19 Q The question was never asked are there any prior law
20 enforcement officers on the jury?

21 A That's correct. I would have answered fairly,
22 honestly, if they asked me the question.

23 Q Let's talk about this voir dire because I think their
24 has been some questions about what -- I know there is some
25 question about what you remember and don't remember. Let's talk

1 about the facts.

2 So you were asked whether or not you had any special
3 relationship I think that is by blood or marriage with any of
4 the witnesses?

5 A Correct.

6 Q To your knowledge do you have any special relationship
7 by blood or marriage or otherwise any special relationship with
8 any of the witnesses called to trial?

9 A No, sir, I do not.

10 Q Anybody?

11 A Nobody.

12 Q If somebody asked you today do you have any relation or
13 contact with the Sixth Circuit Solicitor's Office what would you
14 say?

15 A I have none.

16 Q I think you testified at one point you did work for the
17 Lancaster County Sheriff's Department?

18 A I worked for Lancaster City Police Department.

19 Q Lancaster City Police and when was that?

20 A I started November 17, 1975 and I left in February
21 1982.

22 Q And during that time you said you had one trial with
23 the solicitor John Justin?

24 A Yes, sir.

25 Q How much contact did you have with Mr. Justice at that

1 time?

2 A He interviewed me like five minutes before the trial.
3 They called me as a witness. I testified to what I saw and I
4 was released and went back to work. That's the only contact I
5 had with him.

6 Q That was 25 years before this trial took place?

7 A Yes, sir.

8 Q May be more than 25?

9 A It was 1979 I believe it was.

10 MR. SCHMECKPEPER: Beg the Court's indulgence.

11 THE COURT: Yes.

12 Q I think it was also mentioned that you were chief of
13 police in the town of Kershaw?

14 A Yes, they hired me for a few months after I retired and
15 they they finally turned the police department duties over to
16 the sheriff. So it was a temporary job.

17 Q I am sure the Court is aware of this. I was not aware
18 of this prior to getting go involved in this case. The town of
19 Kershaw is not in the County of Kershaw, correct?

20 A It is not any longer.

21 Q Now during your tenure as Chief of Police and how long
22 did you say that was?

23 A In Kershaw six months.

24 Q Six months. Did you have any cases go to the Sixth
25 Circuit Solicitor's Officer?

1 A No, sir, we did not.

2 Q This might seem like a ridiculous question. Were you
3 trying to get on this jury?

4 A No, sir.

5 Q Were you trying to waste a week of your life to try
6 this case?

7 A No, sir.

8 Q Did you answer all the questions honestly and to best
9 of your ability when they were asked of you?

10 A Yes, as honestly as I could.

11 Q And did you tell the truth during the deposition?

12 A Yes.

13 Q And have you tried to tell the truth as best as you
14 remember it today?

15 A Yes, sir.

16 MR. SCHMECKPEPER: I beg the Court's indulgence.

17 THE COURT: Yes.

18 Q I think my last question is, do you think you were fair
19 and impartial on that jury?

20 A I think so.

21 MR. SCHMECKPEPER: I have no further questions.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MS. SHURLING:

25 Q Mr. Roberts, after the depositions were taken in this

1 case you were sent a copy by the court reporter for you to read
2 and approved, were you not?

3 A I think so.

4 Q Do you have a copy of that deposition of your very own?

5 A Yes, ma'am.

6 Q And you did not point out any errors in that
7 transcription of your deposition that needed to be corrected by
8 the court reporter did you?

9 A I did not.

10 Q And in preparation for this hearing here today did you
11 review your deposition?

12 A I did not.

13 Q So after receiving a subpoena to come to court and
14 testify in this matter you didn't reread your deposition?

15 A No, ma'am.

16 Q All right. You were sent the notice about jury service
17 from the clerk of court's office, correct?

18 A I'm not sure where it comes from.

19 Q Well --

20 A I would assume.

21 Q If jury summons are in fact sent from the clerk of
22 court's office you had that paperwork at the time you made the
23 phone call to the solicitor's office, correct?

24 A Yes.

25 Q So why would you have call the solicitor's office in

1 instead of the clerk of Court?

2 A I'm not sure. That's just who I knew to call. I knew
3 he was over the cases. That's all I knew.

4 Q Did I understand you a moment ago to say that you were
5 in a job at the time where you were in just a little bit --
6 under a little bit of pressure to try to be at work?

7 A Yeah.

8 Q And so that was at least part of the reason why you
9 called the solicitor's office?

10 A That's partial, yes, ma'am.

11 Q Well, if that be the case, that you were motivated by
12 desire to not miss work and you've already testified that you
13 knew that no defense attorney would want you on his jury if he
14 knew your background in law enforcement, right?

15 A Correct.

16 Q If you were really trying to if possible be able to go
17 to work and not have to show up for jury service why didn't you
18 contact the defense and tell them you were law enforcement?

19 A I wouldn't know who the defense attorney was.

20 Q Did you call the clerk of court's office and ask for
21 the names of the defense attorneys that had cases on the roster
22 for that week?

23 A No, ma'am, I did not.

24 Q Once you showed up for trial and jury selection began
25 did you make any effort to notify the then obvious defense

1 attorneys seated at defense counsel's table about your law
2 enforcement background?

3 A No, I did not.

4 Q And by your own earlier statement statement and
5 deposition and your testimony here today you knew that would
6 have resulted in you being release, right?

7 A I didn't know. I assumed.

8 Q Now, you made a point of the fact that you only had
9 that one trial where you interacted with John Justice, correct?

10 A That's correct.

11 Q Trials are not the only time law enforcement officers
12 interact with the solicitor's office are they?

13 A It wasn't my department.

14 Q So, in your experience in law enforcement would it be
15 fair to say that the vast majority of cases are disposed of by
16 guilty pleas?

17 A There was a good bit of guilty pleas, but my patrol
18 commander carried all general session cases forward. The only
19 time we had to physically appear was if we were call as a
20 witness in a jury trial.

21 Q Pardon me, I thought you were through.

22 A In a jury trial.

23 Q And so you are telling me that in all your years in law
24 enforcement you never had a situation where a prosecutor
25 discussed your investigation with you, went over discovery

1 materials with you, got your opinion about what a fair plea
2 offer would be, nothing?

3 A No, ma'am.

4 MS. SHURLING: One moment Your Honor. Nothing
5 further Your Honor.

6 MR. SCHMECKPEPER: I have no further questions.

7 THE COURT: Thank you, sir, you may step down. Any
8 objection to releasing Mr. Roberts from the subpoena.

9 MR. SCHMECKPEPER: May we approach?

10 THE COURT: Yes.

11 (Whereupon, there was an off the record
12 discussion.)

13 THE COURT: All right, no further questions by the
14 Attorney General but again in an effort and the
15 request for fairness to both sides I will allow both
16 sides to ask any further questions from Mr. Roberts
17 before the Court excuses him from his subpoena. Miss
18 Shurling.

19 REDIRECT EXAMINATION

20 BY MS. SHURLING:

21 Q Mr. Roberts, you have certain materials up at the desk
22 with you. Do you have materials relative to this at the desk
23 with you?

24 A Uh-huh.

25 Q What are they sir?

1 A Letters you sent me.

2 Q What's in the red folder?

3 A That's the deposition, statement that I made I guess.

4 Q So you have in fact been sitting here reading your
5 deposition for your testimony here today?

6 A I have not opened it today or yesterday, no, ma'am.

7 Q You deny that you have been sitting here reading your
8 deposition?

9 A I do.

10 MS. SHURLING: May I approach, Your Honor?

11 THE COURT: Yes.

12 Q May I see that document please.

13 A It's a folder full of your letters and my deposition

14 MS. SHURLING: Do you want to look at this with me.

15 A moment's indulgence Your Honor.

16 THE COURT: Sure.

17 MS. SHURLING: Your Honor, I would like the record
18 to reflect that in the document folder that has been
19 be handed to me by Mr. Roberts there is the condensed
20 copy of the Compuscripts transcription of his
21 deposition.

22 THE COURT: Okay.

23 MS. SHURLING: Pardon me, date April 22, 2014.

24 That's exactly what it is. And briefly Your Honor,
25 very quickly, just making sure there is nothing else

1 in here that needs to be addressed.

2 THE COURT: And I'll note that for the record.
3 I'll also note for the record that when you asked him
4 if he had prepared for this testimony if he had read
5 his deposition because he was asked to sign it and
6 look it at before sending it back in and he said no,
7 and then it was disclosed to the Court that he in fact
8 had his deposition at the witness stand with him.

9 MS. SHURLING: And Your Honor --

10 THE COURT: And that the Attorney General's Office
11 had apparently seen him looking at those materials
12 which is why I allowed you to recross, or re-question
13 Mr. Roberts about that and he has since denied that he
14 has looked at that and that's a determination of
15 credibility that the Court needs to make.

16 MS. SHURLING: Yes, sir, and just so the record is
17 clear, the specific disclosure which I very much
18 appreciate from respondent was that he had observed
19 him looking at a document in a red folder which may or
20 may not have been the deposition. He was doing as he
21 should in disclosing it. If this document is inside
22 the folder brought to court with this gentleman I
23 would like the record to reflect that you can't see
24 that it's red --

25 THE COURT: Yes.

1 MS. SHURLING: -- unless it's removed from the
2 folder to be looked at.

3 THE COURT: I'll note that as well. Any further
4 questions of this witness.

5 MS. SHURLING: Nothing further Your Honor.

6 THE COURT: Mr. AG?

7 MR. SCHMECKPEPER: Nothing.

8 THE COURT: Mr. Roberts, you are are released from
9 your subpoena. Have a great day. You are free to
10 leave.

11 All right, it is now noon, what do we have fairly
12 short that we can do before we break for lunch about
13 12:30.

14 MS. SHURLING: Your Honor, may I have one second?

15 THE COURT: Yes.

16 MS. SHURLING: Your Honor, I believe we can take
17 care of Mr. John Clark fairly quickly.

18 THE COURT: All right, Mr. Clark.

19 JOHN CLARK, called as a witness, having been duly
20 sworn by the Court, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. SHURLING:

24 Q Mr. Clark, do you recall representing Vernard Jerome
25 Mathis at his trial.

1 A Yes, I do.

2 Q And do you recall during the jury selection process
3 utilizing three strikes?

4 A I do not.

5 Q Okay.

6 MS. SHURLING: Your Honor, briefly. Your Honor,
7 attached to the application for post conviction relief
8 is a copy of the juror selection sheet.

9 THE COURT: Yes, ma'am.

10 MS. SHURLING: That would speak for itself and
11 documents that only three defense strikes were in fact
12 used during the jury selection process.

13 Q This being a murder trial how many strikes would you
14 have had?

15 A Ten I believe.

16 Q Okay, so you had seven more strikes you could have
17 utilized, right?

18 A If that's what the record is.

19 MS. SHURLING: May I approach Your Honor?

20 THE COURT: Yes.

21 Q It is asking a lot to ask you to remember that far
22 back. I'm sorry.

23 A If that's what the record is then yes, I would have
24 seven left.

25 Q Okay. If you had been aware that one of the jurors,

1 Mr. Roberts, had a 25-year background in law enforcement would
2 you have used one of your remaining strikes to remove him from
3 the jury?

4 A Absolutely.

5 Q Any question in your mind you would have struck him?

6 A No question at all.

7 Q And at any time -- someone redundant, but quickly. At
8 any time prior to jury selection did anyone from the solicitor's
9 office, or Mr. Roberts himself or anybody attempt to give you
10 any additional information --

11 A No, ma'am.

12 Q -- concerning the jury pool?

13 A No, ma'am.

14 MS. SHURLING: No further questions Your Honor.

15 THE COURT: All right, Mr. AG.

16 MR. SCHMECKPEPER: Your Honor, I don't have any
17 questions for this witness.

18 THE COURT: Thank you, sir. You may step down.
19 Any objection to him being released from his subpoena?

20 MS. SHURLING: None whatsoever.

21 THE COURT: You are free to leave.

22 MS. SHURLING: Thank you so much for being here.

23 THE COURT: Call your next witness.

24 MS. SHURLING: Your Honor, would you like me to do
25 one more quick one?

1 THE COURT: Yes.

2 MS. SHURLING: Your Honor, I would call Shareka
3 Jones.

4 THE COURT: Miss Jones.

5 SHAREKA JONES, called as a witness, having been
6 duly sworn by the Court, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. SHURLING:

10 Q Miss Jones, thank you for being here. You and I have
11 talked briefly concerning this matter by phone probably well
12 over a year ago, is that correct.

13 A Yes.

14 Q Now -- and I am sorry this is necessary, but it is. At
15 one point you got in a little bit of trouble with the law
16 yourself?

17 A Yes.

18 Q What was that charge?

19 A Forgery.

20 Q Forgery. And who represented you on that charge?

21 A Thomas Holland.

22 Q Tom Holland?

23 A Uh-huh.

24 Q Okay. And in the course of your representation by Mr.
25 Holland did there come a time when he was giving you a ride to

1 court to enter a plea on that charge?

2 A Yes, in September of 2012.

3 Q And at that time how did you come to be aware that Mr.
4 Holland had been one of the prosecutor in Mr. Vernard Mathis's
5 case?

6 A I was already a friend of the family and I just asked
7 him. He was talking. In particular he was my attorney and of
8 course I had already looked it up on the internet and they have
9 certain people that was in the case versus -- you know, Mathis
10 versus South Carolina and everything. They have all the
11 information on line.

12 Q Okay, so while your driving to court you bring up the
13 fact that I believe you were one of the prosecutors in somebody
14 I know's case, right?

15 A Right.

16 Q At that point what did he tell you?

17 A He said, yes, he was. He did the DNA part of the case.

18 Q Yes, ma'am.

19 A And that he did not believe that Mathis was guilty of
20 the charge and that the prosecution knew that Mr. Roberts was a
21 former police officer and they assigned him to be the foreman on
22 the case and they absolutely knew what they were doing as to
23 give him an unfair trial.

24 MR. SCHMECKPEPER: Your Honor, I object to all
25 this. This is hearsay.

1 THE COURT: Well, I mean the bell has been rung.
2 You didn't object at the very beginning. She's
3 already answered. It is hearsay Miss Shurling. What
4 do you say about that?

5 MS. SHURLING: Your Honor, I think it goes to the
6 manner in which the information in question came to.

7 THE COURT: Is Mr. Holland going to testify?

8 MS. SHURLING: Yes, sir.

9 THE COURT: Was he subpoenaed to be here today.

10 MS. SHURLING: Yes, sir.

11 THE COURT: He is not here. I don't see him in
12 the audience.

13 MS. SHURLING: And I was planning on calling him
14 over the luncheon break to find out why he is not here
15 but he was subpoenaed.

16 THE COURT: Well, we will send law enforcement to
17 go pick him up if he doesn't show up. Okay, you all
18 make a phone call to go and assist Mr. Holland coming
19 to court. I need him up in the courthouse. Okay.

20 All right, objection -- well, I am going to
21 overrule the objection. Since Mr. Holland is a
22 subpoenaed witness who intends to testify for the
23 State.

24 Okay. Go ahead.

25 Q Whose idea was it for you to put Mr. Holland in touch

1 with Mr. Mathis?

2 A His uncle and mine because I felt like he needed to
3 know.

4 Q Well, as your driving along you got that information.
5 Did you reach Mr. Mathis that day by cell phone so that he could
6 talk to Mr. Holland?

7 A Yes.

8 Q And were you within ear shot of that conversation?

9 A I was.

10 Q So at that time did you hear Mr. Holland convey to Mr.
11 Mathis the information concerning a juror in this case having
12 been law enforcement?

13 MR. SCHMECKPEPER: Your Honor, I object to
14 hearsay.

15 THE COURT: Overruled.

16 A Can you repeat the question please?

17 Q Did you hear Mr. Holland tell Mr. Mathis information
18 concerning one of his jurors having been a career law
19 enforcement person?

20 A Yes.

21 Q And was Mr. Holland at that time exploring the
22 possibility getting Mr. Mathis to hire him to help him with this
23 case?

24 A No.

25 Q So it was all about conveying information?

1 A Right.

2 Q And you were present during the entire conversation
3 with Mr. Holland by phone?

4 A Yes.

5 Q Okay. Pardon me. You were present when Mr. Holland
6 was talking to Mr. Mathis by phone?

7 A Yes.

8 Q Okay, I'm sorry. It got a little twisted for a second.
9 Has anybody offered you any kind of reward, any money or
10 compensation other than the witness fee that I have to give you
11 by law and your mileage money? Has anybody offered you in any
12 form; reward or any shape, form or fashion for bringing this
13 testimony before the court today?

14 A No, ma'am.

15 MS. SHURLING: Thank you. No further questions.

16 THE COURT: Mr. AG.

17 MR. SCHMECKPEPER: Nothing from the State.

18 THE COURT: Any objection to her being released
19 from her subpoena.

20 MS. SHURLING: None at all.

21 THE COURT: You are free to leave.

22 MS. SHURLING: Thank you for being here.

23 THE COURT: Any other short witness before we
24 break for lunch.

25 Do you have any witness you want to call out of

1 order.

2 MS. SHURLING: Your Honor, I believe the next
3 witness will be lengthy.

4 THE COURT: All right. Well, we will be down for
5 lunch then. We will reconvene at ten after one.
6 Remember we will conclude today at three p.m.

7 MS. SHURLING: Yes, sir, Your Honor. May we
8 approach real quickly?

9 THE COURT: Yes.

10 (WHEREUPON, court was in recess for luncheon
11 recess.)

12 MS. SHURLING: I apologize if I misunderstood.
13 Your Honor had courtroom staff call Mr. Holland's
14 office?

15 THE COURT: Yes, I told them to assist Mr. Holland
16 in getting to Court.

17 MS. SHURLING: Okay.

18 THE COURT: Is he your next witness?

19 MS. SHURLING: He doesn't have to be. I can call
20 one more but then he is.

21 THE COURT: All right. Well, you want me to order
22 that he appear in Court.

23 MS. SHURLING: Your Honor --

24 THE COURT: Was he served? Do you have an
25 affidavit of service with the subpoena?

1 MS. SHURLING: Yes.

2 THE COURT: If you show me affidavit of service
3 that he was properly served with a Rule 45 subpoena
4 and he's not here we got a problem.

5 MS. SHURLING: Your Honor, it was mailed certified
6 restricted delivery to Mr. Holland on November 7th.

7 THE COURT: And he signed for it?

8 MS. SHURLING: I do not have the green return
9 card.

10 THE COURT: You don't have to show proof of
11 receipt. All have you do is show me proof of delivery
12 restricted. Do you have that? Let me see what you've
13 got.

14 MS. SHURLING: It doesn't appear so, sir, and I
15 will go back and look.

16 Your Honor, I can call my office and ask my
17 paralegal. This is just a copy of all the subpoenas
18 in case I needed them.

19 THE COURT: Well, somebody needs to call him
20 obviously.

21 MS. SHURLING: Sir.

22 THE COURT: If you could have somebody try to get
23 in touch with Mr. Holland that would be the best
24 thing.

25 MS. SHURLING: Okay. Your Honor, may I step in

1 the hall.

2 THE COURT: Yes, you can.

3 MS. SHURLING: Your Honor, may I approach.

4 (WHEREUPON, there was an off the record
5 discussion.)

6 MS. SHURLING: My remaining witness Mr. Tom
7 Holland has apparently been delayed. I would ask that
8 we be allowed to let the State call their witness out
9 of turn and see if Mr. Holland shows up and then if
10 not we will be able to discuss on the record how we
11 want to proceed from there.

12 THE COURT: All right. Mr. AG is that okay?

13 MR. SCHMECKPEPER: No objection to that, Your
14 Honor.

15 THE COURT: Why don't we handle it that way and
16 for the record as well I have attempted to contact Mr.
17 Holland. He apparently was served a subpoena via a
18 certified mail return receipt requested restricted
19 delivery. We don't have evidence that he was actually
20 served but of course you don't have to show that. You
21 have done your due diligence, Miss Shurling, by
22 serving him so I want to make sure that Mr. Holland
23 actually was served and if he was served then I'm
24 going to find out why he didn't show up in court today
25 and I will deal with that in a separate matter.

1 Having said that, to the extent that Mr. Holland
2 doesn't show up today I am open to leaving the record
3 in this case for the next -- well, for the next sixty
4 days to allow you all to perpetuate his testimony into
5 a trial record other than his deposition if you are
6 all willing to do that.

7 MS. SHURLING: That would be fine with me Your
8 Honor.

9 MR. SCHMECKPEPER: That's fine with me. I may not
10 need any additional testimony if I may take another
11 look at the deposition but I would like the
12 opportunity to.

13 THE COURT: And I've got to put a time limit on it
14 because obviously time is of everybody's essence.

15 MS. SHURLING: I understand.

16 THE COURT: Mr. Mathis has been waiting a long day
17 for his day in Court. We've got the victim's family
18 back there as well. They want a conclusion. I
19 understand that and we will have a conclusion. I
20 can't belabor it any further.

21 MS. SHURLING: Yes, sir, Your Honor. One thing --

22 THE COURT: Go ahead.

23 MS. SHURLING: One thing that I would ask I have
24 consulted with my client extensively about his right
25 to testify at this proceeding if he desired to do so.

1 I have further advised him that in my judgement given
2 the testimony of John Clark that he as defense counsel
3 would have definitely stricken Mr. Roberts had he
4 known about his background with law enforcement that
5 it isn't necessary for my client to testify. It is my
6 understanding that this date he is not questioning
7 that testimony is sufficient to establish that issue.
8 Is that correct?

9 MR. MATHIS: That's correct.

10 MS. SHURLING: In that case, Your Honor, I would
11 ask that Your Honor briefly question my client --

12 THE COURT: Sure.

13 MS. SHURLING: -- with regard to his right to
14 testimony and whether or not he is voluntarily waiving
15 that right.

16 THE COURT: All right, thank you. Mr. Mathis if
17 you will please stand for me sir.

18 VERNARD MATHIS, called as a witness, having been
19 duly sworn by the clerk, was examined and testified as
20 follows:

21 EXAMINATION BY

22 THE COURT:

23 Q Thank you. You can be seated, and you keep talking
24 loud the way you are doing so I can hear you, okay?

25 A Yes, sir.

1 Q All right. Good. Did you hear your lawyer just tell
2 me that she discussed with you whether or not you wished to
3 testify today?

4 A Yes.

5 Q Is that correct?

6 A Yes, sir.

7 Q You all have discussed it?

8 A Yes, sir.

9 Q And you know you have the right to testify if you want
10 to but you don't have to in this case because what you are
11 alleging in this case has at least up to this point been
12 sufficiently established through other testimony, i.e. your
13 lawyer, Mr. Clark. Do you understand that?

14 A Yes, sir.

15 Q All right. Do you wish to testify?

16 A No, sir.

17 Q Is anybody making you not testify?

18 A No, sir.

19 Q You are making that own decision yourself?

20 A Yes, I am.

21 Q All right. Are you satisfied with your lawyer?

22 A Yes, I am.

23 Q Has she answered all your questions?

24 A Yes.

25 Q Do you need to talk to her any more about that?

1 A No, I don't.

2 THE COURT: All right, any further questions?

3 MS. SHURLING: Nothing, Your Honor. Thank you.

4 THE COURT: And you've asked at this point in time
5 with the right to further question Mr. Holland within
6 the next 60 days if you need too.

7 MS. SHURLING: Thank you, Your Honor, yes.

8 THE COURT: Is that correct?

9 MS. SHURLING: Correct, with one exception. A
10 stipulation that we had agreed to in advance. Your
11 Honor, at my request -- well, I subpoenaed from the
12 human resources department for the Sixth Circuit
13 Solicitor's Office a comprehensive list of all the
14 employees like several months before and at the time
15 of this trial to establish what employees were on the
16 payroll at the time. Whether they were male or female
17 and what their positions were. I received a letter
18 from now solicitor Randy Newman providing me with that
19 information and I did not require that Mr. Newman be
20 here today because the State had agreed to my
21 introduction of this exhibit without him here to
22 authenticate it under the business records rule.

23 MR. SCHMECKPEPER: I have no objection, Your
24 Honor.

25 THE COURT: All right. So stipulated. That will

1 come in then. I'll tell you what, for the purpose of
2 the record, madame court reporter, before she hands
3 that to you, all the depositions which have been
4 entered will be marked as court exhibits, court
5 exhibit one, court exhibit -- that's how I always mark
6 original depositions so we can have a clear record of
7 it.

8 As far as -- hang on a second. I got a phone call
9 from Mr. Holland. Let's go off the record.

10 (Whereupon, there was an off the record
11 discussion.)

12 THE COURT: He indicate he was not served but he
13 is on his way.

14 MS. SHURLING: Thank you, Your Honor.

15 THE COURT: You all can explore that if you want
16 to.

17 MS. SHURLING: I can certainly make his testimony
18 very brief.

19 THE COURT: You can you explore that if you want
20 to.

21 MS. SHURLING: Thank you, Your Honor. Your Honor,
22 I had already had both depositions marked as
23 plaintiff's exhibits.

24 THE COURT: That's fine as long as they are
25 properly marked in the record I don't care.

1 THE COURT: And so this would be plaintiff's
2 three.

3 THE COURT: Okay.

4 (Plaintiff's Exhibit 3, Employee list received in
5 evidence as of this date.)

6 MS. SHURLING: Your Honor, at this time I would
7 call Mr. Doug Barfield.

8 THE COURT: Okay. Mr. Barfield.

9 DOUG BARFIELD, called as a witness, having been
10 duly sworn by the Court, was examined and testified as
11 follows:

12 THE COURT: All right, Miss Sherling.

13 MS. SHERLING: Thank you.

14 DIRECT EXAMINATION

15 BY MS. SHERLING:

16 Q Mr. Barfield, welcome to the the world of private
17 practice I understand. When did you leave the solicitor's
18 office?

19 A January 13th of 2015.

20 Q '15?

21 A At five o'clock in the afternoon.

22 Q I would remember precisely as well.

23 Do you recall being one of the prosecutors in Mr. Varnard
24 Mathis's trial?

25 A Yes, ma'am.

1 Q And prior to this jury trial were you contacted by Mr.
2 Ronnie Roberts concerning his receipt of a jury summons?

3 A I have no recollection that I was.

4 Q Okay, and do you have any recollection of anyone else
5 in the solicitor's office conveying to you a message concerning
6 him having called the solicitor's office?

7 A I do not.

8 Q So it's your testimony here today that you were unaware
9 of any communication with Mr. Roberts to your office concerning
10 the question of whether or not he would be allowed to serve as a
11 juror?

12 A I have no recollection of any communication between Mr.
13 Roberts and me or anybody in my office concerning his jury
14 service.

15 Q Thank you. Now, during the course of this jury trial
16 was it brought to your attention by a member of the team, Mr.
17 Tom Holland that various members of court personnel and law
18 enforcement were talking about the fact that former chief of
19 police was on the jury and in fact had been made foreman?

20 A I do not recall that it was but I would not be
21 surprised that it was. This was 13 years ago.

22 Q I understand. You have no independent recollection of
23 having a discussion with Tom Holland concerning that matter?

24 A I do not.

25 Q Do you recall being aware yourself that Ronnie Roberts

1 was on the jury and that he was in fact a long time member of
2 the law enforcement community?

3 A I knew who Mr. Roberts was and I was aware that he was
4 a retired law enforcement officer when he was selected for this
5 jury.

6 Q Did you feel that it was in any way incumbent upon you
7 to notify defense counsel of that fact?

8 A No, ma'am.

9 Q Given the nature of the voir dire questions that were
10 put to the entire jury pool when Mr. Roberts did not respond to
11 the question concerning having had any connection with the
12 solicitor's office were you concerned by his failure to respond
13 to that question?

14 A I think you mischaracterized the question. The
15 question was asked in the present tense and he answered it
16 truthfully and that did not give me any concern.

17 Q Well, let's take a look at the actual question for just
18 a moment.

19 MS. SHURLING: Your Honor, may I publish that
20 question?

21 THE COURT: Yes, ma'am.

22 Q "Do any members of the petit jury panel have any
23 relationship or contact with Solicitor John Reed Justice or any
24 member of the Sixth Judicial Circuit solicitor's Office if so
25 please stand."

1 It's your interpretation of that question that it's limited
2 to present tense only?

3 A I think that's a clear reading of the question, do any
4 members have. And if Mr. Roberts didn't stand that did not give
5 my any concern at all.

6 Q Who is by the way Jimmy Taylor?

7 A Jimmy Taylor is a retired agent in charge of the
8 Lancaster County Office of Probation and Parole. Retired from
9 that position years and years and years ago and became sort of a
10 hang around with the solicitor's office and hung out with us and
11 watched us in court. Things like that.

12 Q Isn't it true that he was in fact paid to be a juror
13 consultant on a number of trials in your office?

14 A He got a small monthly check every month and did -- he
15 sat with us in court. He told us what he knew about jurors and
16 he did other things that he was asked to do from time to time.

17 Q So that would be a yes, he was paid?

18 A No, I disagree. He didn't get paid on a case by case
19 basis to help us pick juries and that's the way your question
20 was interpreted by me.

21 Q Then I will rephrase it. He received a regular check or
22 money in some form from your office to serve among other task as
23 a juror consultant on occasion?

24 A He told us what he knew about people in the jury pool
25 as part of what he did for us, yes. I think it's sort of

1 stretch to call him a jury consultant. He grew up in Lancaster
2 County. He knew everybody in Lancaster County and he had
3 information about people that were helpful to us and we drew
4 upon it.

5 Q I have no desire to argue with you, Mr. Barfield, but
6 isn't that by nature the -- isn't that the nature of a jury
7 consultant?

8 A If you want to characterize him as jury consultant I
9 will accept that.

10 Q Was he involved in the selection of the jury in the
11 Mathis case to best of your recollection?

12 A I have no recollection. He probably was but I have no
13 recollection of whether he was standing over there in the corner
14 or not.

15 Q And he had in fact been a former probation agent and at
16 one point ran the probation office in your county?

17 A He was the agent in charge in Lancaster County for
18 several years.

19 Q Okay. When it was brought to your attention by your
20 junior assistant solicitor Tom Holland that this person was on
21 the jury, that he was wondering out loud to you whether or not
22 that should be disclosed to the jury. Did you even consider
23 making defense counsel aware of that man's background?

24 A Again, I don't have an independent recollection that Tom
25 Holland and I had this conversation. I don't deny that we did.

1 My role in this trial was to assist Solicitor Justice. Second
2 chair I guess some people would call that. I haven't read the
3 transcript so I don't even know which witnesses or how I even
4 examined. It wasn't my decision to make and frankly, again, I
5 don't recall whether we had a pow wow with Solicitor Justice or
6 anybody else to talk about the issue.

7 Q Okay, and you say it wasn't your decision to make. On
8 a point that may have had an ethical dimension would you not
9 have an equal obligation as an officer of the Court with the
10 solicitor?

11 A Sure. If I had thought -- your question I guess is if
12 I thought one thing and John had thought another would I have
13 had an obligation to act on my thought, certainly, and I would
14 have.

15 Q Okay. So it's your position that you don't know
16 whether or not you discussed it with Solicitor Justice but if
17 you had perceived a real ethical problem on this point would you
18 have disclosed it regardless of the solicitor's position?

19 A I think I probably would have, yes, ma'am. If Mr.
20 Roberts had been asked the question, has anybody -- any member
21 of the jury panel a present or former law enforcement officer
22 and he had not stood up I would have if Solicitor Justice had
23 not. Yes, ma'am.

24 Q Would it be fair to say that you would have known from
25 your practice that no defense attorney would have knowingly

1 seated a law enforcement -- a former law enforcement officer,
2 particularly one with such lengthy experience in law enforcement
3 if they had known of his background?

4 MR. SCHMECKPEPER: Your Honor, I object. It's
5 speculation.

6 THE COURT: Overruled.

7 A I think it's probably fair to say that generally
8 speaking defense lawyers in criminal cases don't want current or
9 former police on the jury. But I do not think I can generally
10 say that no defense lawyer would ever strike a former police
11 officer in a particular case.

12 Q Would ever strike or seat?

13 A Excuse me, seat.

14 Q Well, how many years were you a prosecutor?

15 A Thirty.

16 Q Have you ever had a law enforcement officer or a
17 retired law enforcement officer on a jury that you can recall?

18 A I think I have but you are going to ask me what and I'm
19 not going to remember what but I believe there have been former
20 law enforcement officers that have sat on criminal juries in
21 Lancaster County. I can not point to you a case or a juror.

22 Q I understand. In your experience, sir, in your many,
23 many years as a prosecutor is it not true that the vast majority
24 of the time defense attorneys utilize strikes to get rid of
25 people with law enforcement careers or people who were formerly

1 law enforcement?

2 A I think that is generally an accurate statement along
3 with school teachers and principals and folks like that. It
4 happens all the time. That a generalization, but it's accurate.
5 I think it's fairly accurate.

6 Q I understand. Would it not also be very fair to say
7 that a law enforcement officer would have closer relationship
8 than solicitor's office then a school teacher or any of the
9 other individuals you named?

10 A No, ma'am, I am not going to say that. I will tell you
11 this about Mr. Roberts. I had a lot more contact with a lot of
12 more people within the Lancaster County School District than I
13 ever did with Ronnie Roberts as a police officer.

14 Q Mr. Roberts has testified and stated in his deposition
15 that after he received a subpoena for the depositions in this
16 matter he called you?

17 A He did.

18 Q Is that accurate?

19 A He did.

20 Q And can you disclose to us the nature of that
21 conversation?

22 A He wanted to know what this was all about and I didn't
23 know what it was all about because I had not heard of the filing
24 of this PCR or the allegations being made at the time you all
25 decided to take his deposition. I didn't know anything about

1 the litigation.

2 Q Did you give him any advice concerning the scope of his
3 testimony or his statements to be made in that deposition?

4 A I did not. He needed to give his deposition and tell
5 the truth and again, at that point I didn't remember
6 procedurally or factually too much about this matter because I
7 guess that was in 2014 which was 11 years after this case was
8 tried.

9 Q But back at the time the jury in this case was being
10 selected it's your testimony that you had no problem with the
11 lack of disclosure on the part of Mr. Roberts during the jury
12 questioning?

13 A I had no issue with his lack of a response to the voir
14 dire question. That did not give me any concern whatsoever.

15 Q Even after your junior solicitor brought it to your
16 attention and questioned the decision not to disclose?

17 A Assuming he did. No, ma'am, I did not. Again, I don't
18 have an independent recollection of a conversation with Tom
19 Holland about this at all. Again, I am not saying it didn't
20 happen.

21 MS. SHURLING: A moment's indulgence Your Honor.

22 THE COURT: Yes.

23 MS. SHURLING: No further questions Your Honor.

24 THE COURT: MR. Attorney General.

25 MR. SCHMECKPEPER: Briefly Your Honor.

1 CROSS EXAMINATION

2 BY MR. SCHMECKPEPER:

3 Q Good afternoon. I just got a couple of questions. You
4 said you were solicitor for thirty years?

5 A Let me qualify that a little bit. I started out a part
6 time assistant solicitor straight out of law school in 1984.
7 Continued to be part time until about 2000. Became full time in
8 about 2000. Became solicitor in October of 2006 and retired in
9 January of 2015.

10 Q Is anything unusual about potential jurors calling up
11 the solicitor's office when they get summons.

12 A It was not. If Mr. Roberts called us he certainly
13 wasn't the first and he certainly wasn't the last. When some
14 one called -- and my feeling about that is that folks associated
15 the solicitor's office with the court system more so than any
16 other agency and folks would call I got a jury summons. What am
17 I suppose to do?

18 Number one, I never told them anything about whether it was
19 common pleas or general sessions. I never talked about any
20 cases that were coming go up. My response was always go see or
21 call the Clerk of Court if you have some issue about jury
22 service and will he direct you in what action to take.

23 MR. SCHMECKPEPER: I don't have any further
24 questions.

25 THE COURT: Redirect?

1 MS. SHURLING: No, Your Honor.

2 THE COURT: Thank you sir. Any objection to him
3 being released from the subpoena?

4 MS. SHURLING: I don't Your Honor.

5 MR. SCHMECKPEPER: None, Your Honor.

6 THE COURT: All right. Thank you, sir, you are
7 free to leave.

8 Applicant may call your next witness.

9 MS. SHURLING: Your Honor, the only remaining
10 witness is Mr. Holland. It is my understanding he is
11 on his way.

12 THE COURT: All right. Just received a phone call
13 from Mr. Holland during Mr. Barfield's testimony.
14 Obviously I didn't take it. So let me see what he
15 wanted. Hopefully he's indicated he's on the way.

16 Off the record.

17 (WHEREUPON, there was a brief recess.)

18 MS. SHURLING: Your Honor, I'll address after --
19 well, there is one matter we can put on the record.

20 THE COURT: Okay.

21 MS. SHURLING: Your Honor, I had a copy of the PCR
22 record from Mr. Mathis's original post conviction
23 relief action and the appendix contained the PCR
24 transcript, the exhibits and the Order of Dismissal,
25 but I did not want to burden the Court with this is

1 two or three volumes so I had my office e-mail to the
2 Clerk of Court's office just the PCR hearing
3 transcript with the exhibits and the Order of
4 Dismissal and I believe that it was handed up to Your
5 Honor.

6 THE COURT: I have it right here.

7 MS. SHURLING: And to the extent it is my position
8 Your Honor in light of the case law that I will review
9 and argue at length in the memorandum we hope to
10 submit to Your Honor, I don't believe that harmless
11 error analysis is appropriate where there is a showing
12 of intentional concealment on the part of a juror's
13 material information. However, in the event that the
14 Court were to deem it appropriate to engage in
15 harmless error analysis I would point out that near
16 the end of this case after deliberations had begun
17 that the jury came back asking for further instruction
18 on whether they could find Mr. Mathis guilty of murder
19 even if they did not believe the sole co-defendant
20 testimony that he was the shooter. As a result of
21 that I went back and read the original PCR hearing
22 transcript and read the testimony of the co-defendant
23 who did in fact testify at trial and Mr. Elton
24 Wiggins, and at the PCR hearing he appeared and
25 totally repudiated his trial testimony. He testified

1 that he had lied on the stand. That he had done so
2 because he had been pressured into testifying against
3 applicant and because he was deathly afraid for his
4 family at the hands of not the applicant but the other
5 two men who actually were involved in this incident
6 with him. And while the Court did not see fit to
7 grant post conviction relief on the basis of his
8 testimony I believe the fact that it would be that
9 witness's position were the case called for retrial
10 would be a factor that the Court could take into
11 consideration in terms of any harmless error analysis.
12 Now I reiterate my position that I believe based on
13 the case law in this area that it is not necessary
14 that the applicant demonstrate prejudice. The second
15 prong of the Strickland standard where he meets his
16 burden of proving that a juror deliberately concealed
17 information, however I wanted to make that part of the
18 record available to the Court in the event the Court
19 deemed it appropriate to review it.

20 THE COURT: All right. Mr. Schmeckpeper.

21 MR. SCHMECKPEPER: And Your Honor, just to
22 supplement that, I don't think it's necessarily
23 appropriate to have the entire prior PCR transcript as
24 a part of this record just because the issues are not
25 pertinent but to the extent I understand the applicant

1 is relying on recantation of his co-defendant I just
2 call the Court's attention to the Order of Dismissal
3 where the PCR Court who had heard that co-defendant's
4 testimony specifically said, this Court finds the
5 applicant's co-defendant, Elton Wiggins, completely
6 lacked credibility in his testimony in the PCR
7 hearing. So if the Court is going to determine that I
8 would ask the Court to also determine the PCR Court's
9 Order.

10 THE COURT: You know, your argument really goes to
11 admissibility versus credibility and I am going to
12 read everything that you all submitted to me and I
13 will consider the entire record as a whole and make
14 whatever decision I deem is appropriate giving
15 everything due consideration. So, you know, I've been
16 given this information. I'll read it and I will make
17 a decision.

18 MS. SHURLING: Your Honor, shall we simply
19 consider the prior PCR record and the resulting Order
20 as part of the record before the Court or should I
21 introduce that material as an applicant's exhibit?

22 THE COURT: I'm considering this as part of the
23 record before the Court.

24 MS. SHURLING: Thank you. Just wanted to clarify
25 that.

1 THE COURT: Now we are just in a holding pattern
2 for Mr. Holland. Anything else you want to do before
3 he gets here?

4 MS. SHURLING: I have nothing further.

5 THE COURT: Do you have any witnesses or anything
6 you want to call out of order?

7 MR. SCHMECKPEPER: I have no witnesses, Your
8 Honor. I'm not planning on calling any witnesses. I
9 think I would like to ask after Mr. Holland -- I know
10 Miss Shurling has asked to do memos -- I would like
11 to do a brief closing argument as well.

12 THE COURT: Sure. We'll wait for Mr. Holland
13 after he testifies before we do all that. So why
14 don't we just be in recess until he gets here and then
15 we will knock it out and finish out for the day.
16 Okay.

17 MS. SHURLING: Thank you.

18 THE COURT: We are in recess.

19 (WHEREUPON, there was a brief recess.)

20 THE COURT: All right, Miss Shurling.

21 MS. SHURLING: Thank you, Your Honor. At this
22 time we would call Thomas Holland to the stand.

23 THOMAS HOLLAND, called as a witness, having been
24 duly sworn by the clerk, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MS. SHURLING:

3 Q Thank you, Mr. Holland. You were one of the three
4 prosecutors at the trial of Vernard Jerome Matnis, correct?

5 A Correct.

6 Q And that case was tried by -- who was lead counsel?

7 A Solicitor John Justice.

8 Q And who else was on the prosecution team?

9 A Doug Barfield and I did DNA witness. That's all I did.

10 Q Okay. So your involvement was limited to your
11 presentation of DNA evidence?

12 A That is correct.

13 Q And were you kind of in and out of the courtroom during
14 the trial?

15 A Yes.

16 Q Early part of the trial?

17 A That's correct.

18 Q Were you even in the courtroom when the jury was
19 selected?

20 A I'm not sure if I was there for all of it. I am sure I
21 was probably there for some of it, but I don't believe I sat
22 through all of it because it didn't have anything to do with me.

23 Q And at some point when you re-entered the courtroom did
24 you learn some information about who had been seated on the jury
25 that raised questions in your mind?

1 A Well, some time after the jury was selected I came back
2 in to the court and one of the deputies was saying we had a good
3 jury and we got a real good foreman and I said, why is that, and
4 they told me he use to be the former Chief of Police of Kershaw.

5 Q And who told you that sir?

6 A It was a deputy. I can't recall which one. It was a
7 deputy that was in the courtroom.

8 Q Okay. And after finding out that Mr. Roberts had been
9 seated would it be fair to say you were surprised he had not
10 been struck?

11 A Well, I was surprised that the defense didn't strike
12 him, yes.

13 Q And once you found out he had in fact been seated and
14 actually was the foreman, right?

15 A I believe so, yes.

16 Q Did you bring that to the attention of one of the
17 senior members the prosecution team?

18 A Some time later during the trial. It wasn't right
19 away. It wasn't something I ran up and say, hey. I just some
20 time later when I had opportunity, and I can't remember whether
21 it was John and Doug together or whether it was just John or it
22 was just Doug, but I said, you know, is that something we need
23 to disclose and they said no. He answered the questions the way
24 they were asked, so he didn't say anything untruthful so no, we
25 don't need to disclose anything.

1 Q If you had felt that that information was something
2 that should be disclosed to the defense would you have left that
3 decision or did you leave that decision to the more senior
4 members of the prosecution team?

5 A Well, yeah, they had been doing this a whole lot longer
6 then I had. I think that was my first year that I was in
7 Lancaster and I think I only was a prosecutor for only two years
8 at the time and the question was more of I guess a learning
9 thing. I was seeing if that was, you know, do we have to do
10 this or is that something, you know -- it wasn't that I thought
11 anybody was being unethical. I was just asking the question and
12 they said no. I don't know who said it. I don't know if it was
13 Doug or John.

14 No, everything was done above board. There was no -- they
15 didn't -- he didn't answer anything incorrectly. He answered
16 the questions that were posed to him. So, I don't know if that
17 is responsive to your question or not.

18 Q After this trial at some time in the future did you
19 leave the solicitor's office and go in private practice?

20 A Yeah, it was -- I think I left the solicitor's office
21 in 2006 and I went to private practice in 2011 and been in
22 private practice since then.

23 Q And at some juncture did you represent a young lady
24 name Miss Jones?

25 A Yes, Shareka Jones. Yes, I did.

1 Q Okay, and during the course of your representation of
2 Miss Jones, did you bring up the Vernard Mathis trial to her?

3 A Well, I did. We were driving to Spartanburg. She was
4 pleading guilty to a charge and we were going to Spartanburg and
5 I was mentioning -- I was driving her. It's a long ride. And I
6 was telling her that if it was a trial in Spartanburg I would
7 want to know who the jurors were. I would probably get a local
8 attorney to help me pick the jury because -- and I mentioned the
9 Vernard Mathis case because the foreman of the jury was a former
10 police officer and the defense attorney I knew was from out of
11 town and would not have had that knowledge. So I took it as a
12 learning lesson back then that if I were to try something out of
13 town I should have more information.

14 Q And you actually used Mr. Mathis's name in this.
15 learning experience?

16 A To her I probably did, yeah.

17 Q Okay. Well, as a consequence of your bringing up that
18 prior experience presumably by name, correct?

19 A I either brought it up by name or brought it up by the
20 victim's name.

21 Q And at that point did Miss Jones make you aware that
22 she knew Vernard Mathis?

23 A Either in the car ride or later on I remember her
24 coming to my office a couple weeks later and handing me a cell
25 phone with Mr. Mathis on the other end.

1 Q And in your conversation with Miss Jones concerning
2 this matter did you indicate that you felt that this was
3 something Mr. Mathis needed to know?

4 A No, I didn't feel like you know, you need to go tell
5 Mr. Mathis. At the time it happened if I was the defense
6 attorney I would like to have known.

7 Q Okay. And you said some time shortly after that she
8 came to your office and had him on the phone?

9 A That's correct. She was on probation and she was
10 talking about her probation and then she said I was talking to
11 Vernard, or Mr. Mathis or his family or somebody, and then she
12 said would you talk to him and I said sure, and she handed me
13 the cell phone. She called him on the cell phone and handed me
14 the phone.

15 Q And you had a discussion with him at that time
16 concerning who had been on his jury?

17 A Yes. He asked me. I told him the same thing I today
18 her that he was the former Chief of Police of Kershaw but he
19 wasn't in law enforcement at the time of the trial.

20 Q And did you share with him the fact that the entire
21 prosecution team knew it?

22 A They knew -- I am sure they knew it from the beginning.
23 I mean, it was the Town of Kershaw.

24 Q Okay. Did you have any discussion at all at that point
25 in time with Mr. Mathis about what he could do with that

1 information? What steps he might take to bring that to the
2 attention of the Court or anything of that nature?

3 A I remember him asking me to represent him and he
4 offered me, you know, a fee and I said I couldn't. That would be
5 a conflict of interest. I couldn't because I participated in
6 the original trial.

7 Q But pardon me. I'm sorry.

8 A I participated in the original trial. I couldn't very
9 well help him on ---

10 Q But did you discuss with him what steps he might could
11 take to pursue getting this information before the Court?

12 A I might have told him. I think he had a lawyer at the
13 time, or he said he had a lawyer or talked to a lawyer and
14 that's basically I referred him to get a lawyer.

15 Q Okay. When you discussed this matter with whichever
16 senior prosecutor you were talking to, do you recall being told
17 that that person didn't know what Mr. Roberts knew or words to
18 that he effect; I don't know what he knew kind of thing would be
19 your words from the deposition? Could you tell us what you
20 meant by that?

21 A No, if you give me the context of the question.

22 MS. SHURLING: Your Honor, I am looking at page
23 nine of the deposition, lines six through 12.

24 THE COURT: Do you want to see it Mr. Holland?

25 THE WITNESS: Yes. Which line?

1 Q Line six through 12. Well, let's actually start at
2 line three. So in your conversation you established with
3 whoever you were talking to that the defense still had some
4 strikes left. Right?

5 A I don't know how many strikes they had. I don't even
6 know if I was even in the jury room.

7 Q I didn't say how many, but according to your deposition
8 statement you did ask whether or not they had run out of strikes
9 and he said no, he had some strikes left. Do you see that
10 portion of your deposition testimony?

11 A I do.

12 Q Okay. So, whoever that conversation was with you did
13 establish at least that the defense still had strikes available,
14 right?

15 A I believe so.

16 Q Okay. And you recalled asking did he know that this
17 person was former law enforcement?

18 A Yes.

19 Q And what were you told in response to that?

20 A I don't know that they -- I imagined they said -- I
21 think they say I don't know what he knew. Something to that
22 effect. I don't know.

23 Q Sure.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 THE COURT: Okay.

1 Q When you talked to Mr. Mathis by phone, was it your
2 impression that he had not previously been familiar with this
3 information?

4 A No, by the time I talked to him he was familiar with it
5 because he had already talk to Shareka Jones.

6 Q I realize that. I meant did he say anything to
7 indicate to you that he had not known that until he talked to
8 Miss Jones and found out what he told her?

9 A I don't remember whether he mentioned it or not. I
10 think your previous question you were asking about what the
11 defense attorney knew when I asked him if he knew and they said
12 I don't know what he knows, because I remember -- I remember the
13 defense attorney talking to some public defender and a couple of
14 defense attorneys prior to the jury selection, but so I don't
15 know that's where my question to that came from, did he know
16 based on what somebody else told him. So I didn't know what he
17 knew.

18 Q So at that point whoever you were talking with
19 indicated he didn't know what he knew?

20 A Yeah.

21 Q Okay. If I could just get you to take a quick look at
22 page 11, line 23 through 12, line six?

23 A Page 11.

24 Q Line 23.

25 A Okay.

1 Q Through 12, line six. Would it be fair to say that
2 your recollection at the time of the deposition is that you felt
3 that it would be the decision of your superiors because it was
4 their case about whether or not to disclose?

5 A Certainly.

6 MS. SHURLING: One moment please, Your Honor.

7 THE COURT: Yeah.

8 MS. SHURLING: No further questions Your Honor.

9 THE COURT: Mr. AG.

10 MR. SCHMECKPEPER: Briefly Your Honor.

11 THE COURT: Yes.

12 CROSS EXAMINATION

13 BY MR. SCHMECKPEPER:

14 Q Goods afternoon Mr. Holland.

15 A Good afternoon.

16 Q I have a of couple brief questions and please forgive
17 me and correct me if I mischaracterize anything that you said.
18 Your testimony is that you were -- you had one witness in this
19 trial?

20 A Correct.

21 Q You didn't see voir dire?

22 A I saw may be parts of it, bits and parts. Actually I
23 probably didn't see any of it. I probably would not have sat
24 through that.

25 Q And I think your testimony is that you didn't disclose

1 this out of any it ethical obligation. You just happened to be
2 discussing a learning opportunity with one of your clients?

3 A Well, right. What I talked with the client it was
4 learning opportunity. When I approached John or Doug, or both,
5 it wasn't out of sense that they were -- I assumed they weren't
6 doing anything unethical. I never saw them do anything
7 unethical, so there was never a question about ethics. It was
8 just about whether or not we should or shouldn't from a
9 practical standpoint if -- because sometimes things you can err
10 on the side of caution and sometimes you don't have to do things
11 over.

12 Q And you talked to -- I think talked to your then
13 witness and then one time you talked to applicant on his cell
14 phone?

15 A That's correct. It was in my conference room in my
16 office and Shareka Jones called him presumably on a cell phone.

17 Q He was in department of corrections at this time?

18 A He was.

19 MR. SCHMECKPEPER: Beg the Court's indulgence.

20 THE COURT: Yes.

21 MR. SCHMECKPEPER: Your Honor have I no further
22 questions.

23 MS. SHURLING: Briefly.

24 THE COURT: Yes.

25 REDIRECT EXAMINATION

1 BY MS. SHURLING:

2 Q To be fair Mr. Holland, do you know that she was on a
3 cell phone, right?

4 A Well, she was on a cell phone and I believe she said he
5 had a cell phone but I don't know whether he had one or not.

6 Q Okay.

7 MS. SHURLING: Your Honor, I would object to
8 hearsay assertion.

9 Q But to your knowledge she was on a cell phone at the
10 time of the conversation, correct?

11 A To my knowledge she was on a cell phone. I have no
12 idea what he was talking on whether it was cell phone, landline
13 or anything else.

14 Q So he may very well have set up that time to call her
15 for this specific purpose with somebody in SCDC for all you
16 know?

17 A I don't believe it was a scheduled visit to my office
18 but she could have I imagine.

19 Q So you can not swear under oath here today that he was
20 on a cell phone merely that she was on a cell phone?

21 A I can not swear under oath he was on a cell phone.

22 Q Okay. And would it be fair to say that based on your
23 experience now and even then with far less experience then you
24 have today that you would expect a peremptory strike to be used
25 to excuse any former law enforcement officer?

1 A If I was a defense attorney and I had a former law
2 enforcement officer I would strike him if I had a strike.

3 MS. SHURLING: Nothing further Your Honor.

4 MR. SCHMECKPEPER: Nothing from the State, Your
5 Honor.

6 THE COURT: Thank you, Mr. Holland. Here is your
7 deposition. You are free to leave. Anything further
8 from the applicant?

9 MS. SHURLING: No, sir, Your Honor.

10 THE COURT: Applicant rests?

11 MS. SHURLING: Applicant rests.

12 THE COURT: Applicant rest. Anything from the
13 State?

14 MR. SCHMECKPEPER: State rests, Your Honor. I
15 appreciate the opportunity to do a brief closing.

16 THE COURT: I will be glad to hear from you. Yes,
17 ma'am.

18 MS. SHURLING: Your Honor, the applicant
19 respectfully submits that the record clearly reflects
20 that the juror in question deliberately withheld
21 information that he knew would have resulted in him
22 being struck by the defense as a juror in this case.
23 It is clear from his testimony that he is -- and I say
24 this reluctantly because I don't like to say it about
25 anybody, but his testimony is simply not credible. He

1 claims on one hand that he was calling the solicitor's
2 office because he had a new job and he kind of wasn't
3 specifically asking to be excused but it would have
4 been better if he could have gone to work and yet
5 testifying that he believed all along that if the
6 defense knew his background they would strike him. He
7 made absolutely no effort to tell anybody in advance
8 that he had a decades long history with law
9 enforcement other than the solicitor's office. The
10 record establishes that he had among his professional
11 bio two stints with law enforcement officers one of
12 which -- I mean law enforcement agencies. One of
13 which was shortly before his retirement whose cases
14 were tried by the Sixth Circuit Solicitor's Office.
15 As the application for post conviction relief in this
16 case reveals Solicitor Justice was the longest
17 standing elected solicitor in the State of South
18 Carolina and had in fact begun about the time that
19 this gentleman began his law enforcement career. So
20 his early law enforcement career where he was in a
21 position where cases would have been prosecuted by the
22 Sixth Circuit John Justice was already there and he
23 was still there when he was Chief of Police in
24 Kershaw.

25 It's clear from his testimony that he even once he

1 got to the courtroom took no steps whatsoever to
2 notify either the clerk of courts office or the bench
3 that he had this extensive law enforcement background
4 even though he has admitted under oath both in his
5 deposition and here today that he knew that no defense
6 attorney would want him on their jury if they knew
7 that information.

8 Furthermore, having advised the solicitor's office,
9 discussed with them at least, the fact that you know
10 nobody is going to want me if they know my background.
11 He claims that he came to court and sat through the
12 jury selection process and didn't pay attention to the
13 questions that were being asked. He claims he never
14 heard the question about whether or not he had any
15 connection with solicitor's office. He admitted in
16 his deposition that if he had heard it he would have
17 stood, but he says he just didn't hear it. Then he
18 admits that he knew one of the witnesses in the case.
19 That one of the witnesses knew him as former retired
20 law enforcement officer, but he claims he doesn't
21 remember that question either.

22 The record is clear that when the Court asked if
23 anyone had any kind of special relationship with or --
24 and I want to clarify because during the questioning
25 by respondent and I know it wasn't deliberate, but the

1 question came out in such a way that it sounded like
2 that they were asked if they had a relationship either
3 by blood or marriage they should stand. In fact the
4 question says do they have a relationship by blood or
5 marriage or any special relationship that should be
6 disclosed and knowing that then -- well pardon me --
7 after that question is asked then Solicitor John
8 Justice stands up and reads a long list of who the
9 potential witnesses in this case are going to be
10 including the very officer that juror Roberts admits
11 that he knew. But once again he conveniently didn't
12 hear that whole question which is quite remarkable
13 because John Justice read a long list of law
14 enforcement witnesses and then non-law enforcement
15 witnesses and yet this juror claims he just didn't
16 hear that. Did not answer because he just didn't hear
17 it.

18 Of course Your Honor, he's also claimed that he
19 didn't review his deposition in preparation for his
20 testimony here today. And had it not been for the
21 very appropriate and generous behavior on the part of
22 respondent in reporting what they had seen, we
23 wouldn't know that wasn't true either. And I would
24 submit to Your Honor if you review this Court's Order,
25 the findings of fact and recitation of the statements

1 found in the deposition in the Order denying summary
2 judgement that testimony alone before we came today
3 establishes someone who is not being forthright with
4 the Court. It is clear this man knew that he would
5 not be wanted as a juror if anybody knew about his
6 background. He claims he wanted to get out of it if
7 he could because of his new job and yet he did not
8 answer questions that would have clearly got him him
9 bumped and he says he knew it would have gotten him
10 bumped. He said he knew, he understood how the
11 peremptory strike system worked and he knew that a
12 defense attorney would strike him if they knew that
13 information. That's not consistent with somebody that
14 as he sworn under oath today really wanted to get out
15 of doing it if he could because of his new job.

16 He absolutely testified that he never made any
17 effort to tell the clerk of court's office the same
18 information that he went out of his way to share with
19 the prosecution, that being that he had this lengthy
20 history of a law enforcement career that he admits
21 would have been relevant to how someone wanted to use
22 their peremptory strikes. But he didn't tell the
23 clerk of court that. He didn't ask to be excused
24 based on his law enforcement history or even inform
25 the clerk of court of that so that she could have made

1 that information available to defense counsel. Now
2 once he gets to court this person who is so concerned
3 about whether his professional career prior to his
4 retirement was going to disqualify him -- to use his
5 own words from the deposition -- disqualify him from
6 being on a jury is supposedly so lackadaisical about
7 jury service that he don't even bother to lister to
8 the questions being put to the jury pool during jury
9 selection. None of that makes any sense, Your Honor.
10 This man knew that the defense would not want him on a
11 jury and that he would be stricken if he made that
12 information available and at every turn when he had an
13 opportunity to disclose his relationship both with the
14 solicitor's office and his career in law enforcement
15 and then as what happened in an example of a fair
16 trial give the defendant and his lawyer the
17 opportunity to use a peremptory strike. But instead
18 he concealed it and that's the kind of deliberate
19 concealment of material information that the case law
20 talks about when addressing this type of juror
21 question.

22 Further, Your Honor, we believe and again I would
23 reiterate my hope we would be allowed to actually do
24 some formal briefs or memoranda on this issue. The
25 case law reveals that where there's evidence from

1 which the Court can conclude that the evidence in
2 question was deliberately concealed and deliberately
3 not disclosed to the defendant there is a harmless
4 error analysis that needs to be engaged in, and we
5 believe it is apparent from the totality of the
6 testimony and the sworn statements given in the
7 deposition in this case that that vital information
8 was in fact withheld from the defense on the facts of
9 this case.

10 Now, having said that we do not believe that
11 harmless error analysis is appropriate under the facts
12 of this case, something I will brief at more length
13 with leave of Court, I would note that even if we were
14 going to do harmless error analysis that you got a
15 case where after being charged the jury came back and
16 asked for further instructions of what they could do
17 if they did not believe that the defendant was the
18 shooter. That question in and of itself reveals that
19 this jury was having serious questions about the
20 credibility of the co-defendant witness who was
21 presented by the State. We have got a case where
22 although there was evidence of various people saying
23 that Mr. Mathis was involved in purchasing some items
24 and renting some cars that may or may not have been
25 involved in this incident, the real testimony that

1 tied him to this horrific crime came at the hands of
2 witness Wiggins who testified at the post conviction
3 relief proceeding that he lied. That he lied about
4 the defendant being there. That he lied about him
5 being involved in it. That he lied about the
6 defendant being the shooter and that he had done so
7 because the two people who actually committed this
8 horrific crime with him were threatening the health
9 and the safety of his family if he told the truth. He
10 further testified that he had yielded to subtle
11 pressure from the State to offer up Mr. Mathis as the
12 shooter in this case and that he was testifying at the
13 post conviction relief proceeding for one reason and
14 one reason only other than his guilt and that was the
15 fact that the two people that had actually been
16 involved in the commission of this terrible crime were
17 now dead. They had both died. So the people that
18 were a threat to his family, the people who is danger
19 to his family provided the basis for him being willing
20 to through Mr. Mathis under the bus were no longer
21 around to be a threat to his family and for that
22 reason despite strong threats of prosecution for
23 perjury if he changed his testimony from that he
24 offered at Mr. Mathis's trial he came forward and told
25 the truth.

1 Now, I readily concede that the post conviction
2 relief court for whatever reason declined to find that
3 testimony meritorious or credible rather.
4 Notwithstanding that, it does give a window into what
5 would be left of the State's case if this case were
6 ever to be retried. It's far from one of those cases
7 where there is such extensive direct evidence of guilt
8 that we could ever venture to say that this was
9 harmless error. Even if harmless error analysis were
10 appropriate, which we submit due to the willfulness of
11 Mr. Roberts's nondisclosure, harmless error analysis
12 is not even called for under the case law. We have
13 gone over all of this, both of us briefly.

14 Your Honor, given the intricacy of the issue
15 involved in this case, the fact that we have
16 depositions in addition to testimony offered here
17 today I would ask that the Court allow us leave to
18 each submit memoranda in support of our respective
19 positions or proposed orders whichever the Court might
20 prefer. And also Your Honor, I would note that my
21 client and I are prepared and have already discussed
22 with madame court reporter ordering an expedited copy
23 of the transcript of today's proceedings in order that
24 we might be able to provide Your Honor with very
25 specific references to testimony here today just as in

1 the previously orders that Your Honor was provided
2 specific references to the statements made in the
3 depositions, we would like the ability to do that;
4 make specific page and line reference to the testimony
5 offered today as well and we have taken steps earlier
6 in the break to order a expedited record in this
7 matter.

8 THE COURT: Thank you. First of all Mr. Attorney
9 General do you wish to have additional time to brief
10 any more issues or submit any excess memoranda.

11 MR. SCHMECKPEPER: Your Honor, I'd be happy to if
12 you like me to.

13 THE COURT: Neither one of you have to do it but
14 if you want to do it I will allow it.

15 MS. SHURLING: Thank you, Your Honor.

16 THE COURT: And so what I'm thinking is sixty days
17 sufficient. I don't know what the court reporter has
18 before or whatever her friends, other court reporters
19 who may assist her in getting this expedited
20 transcript typed up. I don't know how long it is
21 going to take.

22 MS. SHURLING: Yes, sir, Your Honor, my request
23 would be since we are on the cusp of Thanksgiving and
24 Christmas that we be given 60 days from service of the
25 record in this matter to submit informal briefs or

1 THE COURT: Let me hear your opposing arguments.

2 MR. SCHMECKPEPER: Your Honor, I will be very
3 brief.

4 THE COURT: Yes.

5 MR. SCHMECKPEPER: I think the first issue for me
6 to look at is -- I think there has been a lot of
7 testimony regarding failure of disclosure by the
8 solicitor's office. If I can touch on that briefly.
9 Looking at the case law I don't think the State was
10 under any duty to disclose this information. I don't
11 think the State has to disclose everything they know
12 about every potential juror. It's not exculpatory.
13 It's inculpatory. Is not covered by Brady, and I have
14 been unable to find any standards requiring the State
15 to disclose that kind of information. And Your Honor
16 I think that also goes towards to some extent the
17 timeliness issue the State has raised beginning in
18 this proceeding.

19 The fact of the matter is counsel could have found
20 this information out by simply asking the jury or
21 requesting the judge ask the jury if anybody had any
22 prior law enforcement experience.

23 THE COURT: Was that addressed in the initial PCR
24 application under the ineffective assistance of
25 counsel claim?

1 MS. SHURLING: It was not, Your Honor, and I'm
2 sorry Mr. Clark is no longer here but it is my
3 understanding that -- well, and he testified here
4 today if he had known the background of that
5 information he most certainly would have struck him
6 and he has indicated to me that if he had any
7 information concerning that juror that he certainly
8 would have asked that the Court inquire further. But
9 he just had no hint that that problem existed.

10 MR. SCHMECKPEPER: And again, that is the basis of
11 my claim. That my argument this isn't timely because
12 again, all that was required is at trial counsel ask
13 that voir dire question. If keeping law enforcement
14 officers out of the jury pool is that important to
15 bring this issue up.

16 THE COURT: For what it's worth I always ask that
17 question in voir dire because it's always asked of me
18 to ask that question.

19 MR. SCHMECKPEPER: Yes, Your Honor, and I see it
20 asked quite often. Some times it is not and if it
21 had been asked we certainly wouldn't be here today I
22 think it's fair to say.

23 THE COURT: Sometimes I get just the usual, Your
24 Honor. Well, I don't know what that is, what the
25 usual is. Sometimes then I'll ask a couple of

1 questions and then the State and defense say okay
2 that's good. So anyway, I don't know if that was done
3 here or not. Go ahead. I'm listening.

4 MR. SCHMECKPEPER: And that kind of brings me to
5 the crux of what is I think is being discussed here
6 today of whether or not there was any juror
7 misconduct. Just to go over the standard very quickly
8 or very briefly, I think Ms. Shurling is right. It's
9 not a harmless error analysis. If there was juror
10 misconduct, if there was intentional concealment of
11 information by a juror then the next question is
12 whether or not it would have been either grounds for
13 strike for cause or whether or not it would have been
14 a material factor in defense attorney using peremptory
15 strike based on information. I think the second prong
16 of that information there's clearly testimony -- is
17 clearly testimony that supports that. The question
18 here is whether or not there was intentional
19 concealment.

20 The State's position is there was no concealment at
21 all. I understand that the applicant's position is
22 that the juror here should have gone out, run straight
23 to the defense attorney and said wait, you don't want
24 me. I'm a law enforcement officer. I know you are
25 not going to want me on the jury so release me. The

1 question wasn't asked whether there was anybody with
2 law enforcement experience and I think that is clear
3 from the record. And similar, the jurors don't have
4 the obligation to anticipate whatever they may think
5 coming in to the courtroom they don't have the
6 obligation to anticipate what the defense attorney or
7 the solicitors want in a potential juror. That is
8 what voir dire is for. So I think the testimony
9 presented today -- and it was frankly unusual and
10 strange. I think the testimony here presented -- the
11 testimony here goes to the fact that I think the
12 witness and the juror, Mr. Roberts, was confused about
13 a lot of issues. Confused about a lot of questions
14 asked. Frankly, the trial happened a long time ago.
15 The deposition happened a long time. I think at least
16 some of that can be taken into account. But assuming
17 for the sake of argument there was any actual
18 concealment the next question isn't whether or not he
19 was prejudiced, the next question is whether or not it
20 was intentional or unintentional and the law is pretty
21 clear on those two. And forgive me, I'm going to
22 quote Jones real quick. Intentional concealment
23 occurs when a question presented to the jury is
24 reasonably comprehensible to the average juror and the
25 subject of inquiry is of such significance that the

1 juror's failure to response isn't reasonable. An
2 unintentional concealment occurs when the question is
3 ambiguous, or incomprehensible, or the subject of the
4 inquiry is insignificant or so far removed in time
5 that the jurors failure to respond is reasonable under
6 the circumstances, and I think that is what we have
7 here, Your Honor. Again, it was never asked if he had
8 law enforcement experience. If the Court wants to
9 construe his prior law enforcement experience and
10 relationship with the solicitor's office, again, he
11 was with the Sixth Circuit 25 years before this
12 happened. His time in Kershaw, the City of Kershaw,
13 he didn't have any general session cases with the
14 solicitor's office. If these are -- if you can
15 construe these as relationships, I think the State's
16 position is and I think the facts bear out that these
17 contacts and this relationship is so insignificant and
18 so remote as to excuse this omission given the
19 questions asked.

20 Once again, the questions asked weren't entirely
21 clear. They were present tense as I think testified
22 by Mr. Barfield. Do you have any relationship or
23 contacts with the Sixth Circuit Solicitor's Office. I
24 don't think it's unreasonable for the juror to have
25 answered the way he did.

1 Your Honor, there is no constitutional prohibition
2 on the law enforcement serving as jurors. The fact
3 that I think some defense attorneys, or even maybe a
4 lot of defense attorneys don't want law enforcement on
5 there jury, in their jury pool, doesn't mean
6 applicant's constitutional rights have been violated
7 here and I will be happy to answer any questions.

8 THE COURT: All right, you have two minutes.

9 MS. SHURLING: Your Honor, just very quickly.

10 THE COURT: Yeah.

11 MS. SHURLING: This a rare case because we don't
12 have to speculate about what the juror's state of mind
13 was. We know that he has admitted under oath that he
14 knew that no defense attorney was going to want him on
15 their jury if they knew about his background. We know
16 he was concerned enough about it to go to the
17 solicitor but that when the case came to court and a
18 jury was being empaneled. He wanted us to believe he
19 wasn't concerned enough about it to even listen with
20 any degree of care to the questions that were being
21 put to him. The question concerning contact with the
22 solicitor's office, is any relationship or any contact
23 with the solicitor's office, he's admitted under oath
24 in his deposition and here today that if he had heard
25 that he claims he would have stood, but he says he

1 just didn't hear it, and yet the question says any
2 relationship or any contact with the solicitor's
3 office. This is a man that a scant few weeks earlier
4 or even days -- we don't know exactly how long
5 before -- had just contacted the solicitor and talked
6 to the solicitor's office about whether or not he
7 would be disqualified from participating on this jury.
8 We know that the person he spoke with had to have been
9 either a lawyer or investigator at the solicitor's
10 office because of the exhibit which was introduced
11 without objection from the current solicitor's office
12 shows we researched it and there were no male
13 employees in that solicitor's office at that time
14 other than lawyers and investigators. And we know
15 from his deposition testimony and statements made
16 under oath in the deposition he claims he didn't know
17 who he talked to and yet he said he told me I had to
18 come and he might be able to let me go, but he kept me
19 all day long. So, a description of a continuing
20 course of conduct that he, whoever he was, engaged in
21 and further we know that not only does he claim not to
22 have listened to the questions being put to the panel
23 by the Court which makes no sense given his supposedly
24 concern earlier about this issue, but that he did not
25 contact the clerk. The Clerk of Court's Office send

1 out jury notices Your Honor. He didn't contact the
2 Clerk of Court's Office. He contacted the prosecutor.
3 When he got to the courtroom he didn't notify the
4 bench in any way of this information and his own
5 admitted concerns about whether or not that would
6 disqualify him. He didn't tell anybody, and I submit
7 to you that the totality of his behavior with regard
8 to this matter evidences someone whose testimony is
9 sadly not credible on this point and evidences the
10 fact that he didn't really want to be relieved of jury
11 service in this case. He's admitted he knew that if
12 defense attorney found out his law enforcement
13 background they would have struck him. He has
14 admitted he was fully familiar with the peremptory
15 strike policy. The rules that both sides had strikes
16 they could use. He knew it and yet he did not
17 disclose this information even though by his own
18 admission both in deposition and here today he knew
19 that no defense attorney would want him as a juror if
20 they knew. And beyond that Your Honor, I'll look
21 forward to be somewhat more articulate in written
22 submissions.

23 THE COURT: Thank you. Anything further?

24 MR. SCHMECKPEPER: Your Honor, I would say that I
25 think there's been a mischaracterization of the

1 witness's testimony to the extent that I know he at
2 times said, oh, I didn't hear that or I'm not really
3 sure what that was. But he did testify here today and
4 he did testify in his deposition that he did not think
5 he had a relationship with the Sixth Circuit
6 Solicitor's Office and he did not think he had a
7 special relationship or familiar relationship with any
8 of these witnesses that the State called.

9 THE COURT: And I will read all that. Here is
10 what I am going to do. I will take the matter under
11 advisement of course. This concludes the hearing and
12 the trial of this matter.

13 MS. SHURLING: Thank you, Your Honor.

14 THE COURT: What will happen is I will have --
15 hang on a second sir -- I am going to have the lawyers
16 submit to me any additional memoranda that you wish
17 to. You don't have to. If you want to you can.
18 Okay. On or before March 1st will be the deadline. I
19 will then be in touch with the attorneys regarding a
20 decision in this case.

21 MS. SHURLING: Thank you, Your Honor.

22 THE COURT: That concludes the trial of this case.
23 We are off the record.
24
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 22th day of November, 2016.

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

December 6, 2016

1 memos to the Court.

2 THE COURT: Make it easy, March 1st.

3 MS. SHURLING: Your Honor, my only prayer would be
4 that it would be somehow tied to when I receive the
5 transcript in case there is some unforeseen delay in
6 madame court reporter being able to get me the
7 transcript.

8 THE COURT: Well, that ain't going happen, is it
9 madame court reporter?

10 COURT REPORTER: Not at all.

11 MS. SHURLING: Great. Thank you, Your Honor.

12 THE COURT: All right. March 1st will be the
13 deadline for submitting any additional memorandum. I
14 know that sounds like a long time but that is less
15 than 90 days away.

16 MS. SHURLING: Yes, sir, and may I ask would Your
17 Honor prefer the arguments to be formatted in the form
18 of a memoranda or informal proposed orders.

19 THE COURT: Memorandum. I don't like proposed
20 orders.

21 MS. SHURLING: Okay. Thank you.

22 THE COURT: After I read everything and consider
23 all my notes and evidence and everything that's when I
24 will issue instructions for an Order.

25 MS. SHURLING: Thank you, Your Honor.

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 22th day of November, 2016.

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

December 6, 2016

S/ *Aileen Butler*



CERTIFIED TO BE A TRUE COPY

A handwritten signature in cursive script, appearing to read "Jeff Hammond".

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, SC

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF LANCASTER
3
4 Vernard Jerome Mathis, #297034,
5 Plaintiff,
6 vs. Case No. 2013-CP-29-00951
7 State of South Carolina,
8 Defendant.
9

10 D E P O S I T I O N
11

12 WITNESS: Ronnie Ellison Roberts
13 DATE: April 22, 2014
14 TIME: 1:01 p.m.
15 LOCATION: Lancaster Courthouse
16 104 N. Main Street
Lancaster, South Carolina
17 TAKEN BY: Attorneys for Plaintiff
18 REPORTED BY: LAURA CHAMBLEE
19 Registered Professional Reporter

20 - - - - -

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10 1000 Assembly Street
Columbia, South Carolina 29201

11

12 ALSO PRESENT: Vernard Jerome Mathis

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15 (INDEX AT REAR OF TRANSCRIPT)

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1 STIPULATION: It is stipulated by counsel
2 that this deposition is being taken in accordance with
3 the South Carolina Rules of Civil Procedure, and that
4 the deponent reserves the right to read and sign the
5 deposition transcript.

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7 THEREUPON,

8 RONNIE ELLISON ROBERTS, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. SHURLING:

12 Q Would you state your full name for the
13 record, please.

14 A Ronnie Ellison Roberts.

15 Q And is Ronnie a nickname? Is it Ronald?

16 A No, that's my name.

17 Q That's your name, okay. Mr. Roberts, are
18 you currently employed?

19 A Yes, I am.

20 Q Where do you work?

21 A I work for the Horry County School District
22 in Myrtle Beach.

23 Q And how long have you had that position?

24 A Since 2005.

25 Q 2005? Back in June of 2003 were you

1 employed?

2 A Yes.

3 Q Where did you work at that time?

4 A I worked for a mortgage insurance company
5 called Assurant Group in Florence.

6 Q Called what?

7 A Assurant.

8 Q Assurant, okay. What was your position with
9 that company?

10 A Training manager.

11 Q Pardon?

12 A Training manager.

13 Q Training manager for bank operations or
14 security?

15 A We did training on how to operate the
16 machines which was computers and just a daily SOP
17 process throughout the building. It wasn't security.
18 It was -- It's actually fraud insurance, hazard
19 insurance, stuff like that. So we trained employees
20 how to run the computers and how to read the software.

21 Q Okay. And in your capacity as manager over
22 the training, did you -- were you involved in training
23 security forces as well?

24 A We didn't have a security force.

25 Q Did you have guards in your branches?

1 A No, no.

2 Q No security guards in your branches of your
3 bank?

4 A I don't know what the branches were. I
5 worked in Florence.

6 Q Oh, okay. You worked at the headquarters?

7 A No, I don't know where -- The headquarters
8 were somewhere up north or either California.

9 Q Okay. Did they have branches in the --

10 A I couldn't tell you. I wasn't involved in
11 that.

12 Q Well, you said you were training managers
13 for the bank?

14 A No. I was the training manager for that
15 building. We trained the new employees how to operate
16 the computers, how to read the software and do the
17 process of typing in hazard insurance on mortgages.

18 Q Thank you.

19 A It was like a mortgage company. And our job
20 was to do the hazard insurance part of the mortgage.

21 Q Thank you. That's much --

22 A That's all I can tell you.

23 Q No, that's much clearer. I misunderstood
24 you. I thought it was an actual bank.

25 A I was a training manager over the department

1 of training.

2 Q Gotcha. Prior to that position where were
3 you employed?

4 A I was employed with the Northeastern
5 Technical College for two years.

6 Q And prior to that?

7 A I taught criminal law and I was what we call
8 a program manager for training throughout industry in
9 a three-county area: First aid, management training,
10 team building, stuff like that.

11 Q When you taught criminal law where did you
12 teach?

13 A At the same place. I taught two semesters
14 at night for criminal law 101.

15 Q Prior to that position where were you
16 employed?

17 A I was -- I retired as a police officer with
18 the City of York, South Carolina as police chief.

19 Q And when would that have been?

20 A April 7, 2000.

21 Q Were you not more recently than that the
22 Kershaw County police chief?

23 A Oh yeah. After I retired--forgot about that
24 one--I took the City Chief -- the town of Kershaw, not
25 the County of Kershaw.

1 Q I get that confused. Thank you for
2 correcting me.

3 A Kershaw City is not in Kershaw County.

4 Q Camden is in Kershaw County, but the city of
5 Kershaw is not?

6 A The county line used to cut the city of
7 Kershaw in half. And they moved the county line south
8 of there. So Kershaw is not in Kershaw County any
9 more. But I took that position from I think it was
10 June 2000 to December 2000. They turned the police
11 duties over to the county sheriff.

12 Q Okay. And prior to that you worked with the
13 York Police Department?

14 A After that -- no, you're going backwards on
15 me.

16 Q Okay.

17 A I took York July 1998. I retired in
18 April 2000. Retired. And then after I retired, came
19 home to my home town of Kershaw. They offered me the
20 police chief job for six months until they decided
21 what they were going to do. They actually did away
22 with the police department.

23 Q Okay.

24 A So that was after I retired. I took it
25 temporarily.

1 Q And prior to working at the York Police
2 Department from July '98 until April 2000 were you
3 employed with the Lake City Police Department?

4 A I was employed with Lake City Police
5 Department from July '96 to July '98, then I moved to
6 York.

7 Q Okay. Prior to the police department
8 position with Lake City, did you work for the South
9 Carolina Criminal Justice Academy?

10 A I was an instructor from '89 to '96.

11 Q And prior to that where were you employed?

12 A University of South Carolina.

13 Q Police department?

14 A Uh-huh.

15 Q In Columbia or the Lancaster campus?

16 A Both. I was in Columbia the last four
17 years, from '86 to '89. I was at USC Lancaster from
18 '82 to '86. I promoted to chief and I moved to
19 Columbia in February 2000 -- I mean 1986.

20 Q And prior to that you came full circle,
21 didn't you, in 1982 you were employed by the Lancaster
22 Police Department; is that correct?

23 A Let's start at the beginning.

24 Q Okay. We'll start at the beginning. What
25 was your first job with law enforcement?

1 A Lancaster City Police Department
2 November 17, 1975. I started in the old building
3 right here at Main Street, right beside where the old
4 courthouse burned down. We had a building right here.

5 Q Okay.

6 A So from November 17, 1975, I stayed at the
7 Lancaster Police Department until February 2000 -- I'm
8 sorry, 1982, which is a little over seven years.

9 Q Okay.

10 A I left there and went to USC Lancaster as
11 their first director of public safety. Stayed there
12 until February 1986. I became --

13 Q May I interrupt you real quickly?

14 A Yes.

15 Q When you went to the University of South
16 Carolina in 1989 you said Lancaster.

17 A No.

18 Q I believe a moment ago you said both
19 Columbia and Lancaster.

20 A I worked the Lancaster campus, was promoted
21 to chief at the Columbia campus, all of that is under
22 the University of South Carolina.

23 Q Okay. And --

24 A From February of '82 to January '86 I was at
25 the University in two campuses.

1 Q And then you went to the University of South
2 Carolina Police Department in 1989?

3 A Columbia I went in '86.

4 Q '86?

5 A February of '86 to April '89 I was at main
6 campus as the commander of the police department.
7 Then the police academy called and offered me a job
8 teaching. I went out there in April '89, left in July
9 '96, took the Lake City chief job.

10 Q Where you remained --

11 A I left there in '98 and I took the York job
12 which I retired from.

13 Q And you remained there until April 2000?

14 A April 7, 2000, Friday at 5:00 o'clock I
15 retired.

16 Q And I believe then your last law enforcement
17 job, we're back at the beginning, you were the Kershaw
18 chief.

19 A I came home. Then the Kershaw chief left
20 kind of suddenly. They offered me that job
21 temporarily until they decided what they were going to
22 do. I took it until December.

23 Q All righty.

24 A We got that straight.

25 Q I got it. I got it. Do you recall back in

1 June of 2003 serving on the jury in a case called The
2 State versus Vernard Jerome Mathis?

3 A I certainly do.

4 Q And were you actually the foreman, I
5 believe?

6 A I was appointed foreman.

7 Q Okay. Do you remember the jury selection
8 process for that jury?

9 A Only mine.

10 Q That's fair enough.

11 A I was selected to be seated.

12 Q When the voir dire was going on in this
13 case, is there any particular reason why you did not
14 disclose your law enforcement history in this judicial
15 circuit?

16 A They called my name, asked me to stand. I
17 stood up. He said what is your current occupation. I
18 told him. He said fine, I make a motion that he be
19 seated. I was not asked any other questions. I would
20 have answered any question I was asked. You're not
21 supposed to volunteer a bunch of stuff you're not
22 asked to do. So I answered the questions I was asked
23 honestly.

24 Q I understand. Do you recall certain
25 questions though that were put to the entire group,

1 not you individually?

2 A Something about the charge was could you
3 give this person a fair trial, da-da-da-da, and I felt
4 like I could.

5 Q Well, do you recall being asked whether you
6 had any relationship with the 6th Circuit Solicitor's
7 office or anyone in that office that might affect your
8 jury service? I'm paraphrasing but words to that
9 affect.

10 A No. Of course I have no relationship with
11 them.

12 Q Well, let's talk about that for a minute.
13 Wouldn't the 6th Circuit Solicitor's staff have been
14 responsible for prosecuting cases under your command
15 when you were the Kershaw police chief?

16 A We had no cases come to the Solicitor's
17 office during that short tenure that I can remember.

18 Q Well, wouldn't -- Certainly the Lancaster
19 Police Department where you were for a number of years
20 from 1975 until '82 --

21 A That was 23 years before that. I didn't
22 have anything to do with them.

23 Q Well, you were a law enforcement officer
24 from 1975 until 1982 with the Lancaster Police
25 Department, correct?

1 A Certainly was, yes, ma'am.

2 Q And all of the cases investigated and
3 prosecuted by that office would have been prosecuted
4 by the 6th Circuit Solicitor's office; were they not?

5 A Sure.

6 Q And, in fact, Solicitor John Justice, who
7 was the longest serving Solicitor in the state I
8 believe at the time --

9 A I couldn't tell you.

10 Q -- he left, was the Solicitor even way back
11 then; was he not?

12 A He was Solicitor back then, yes.

13 Q Did you testify in cases that you were
14 involved in investigating back when you were with the
15 Lancaster Police Department?

16 A I think the only one that I testified in
17 when I was with Lancaster was one drug case where I
18 was a witness where a guy was in possession of drugs.
19 I was called to the witness stand one time during that
20 tenure for the general sessions cases.

21 Q When you were at the University of South
22 Carolina Police Department in Lancaster, any cases
23 investigated and pursued for what we call street
24 charges would have also been handled by the --

25 A We had none.

1 Q -- the 6th Circuit Solicitor's office,
2 wouldn't they?

3 A We did nothing but parking, disorderly. And
4 Lancaster City Police Department took care of all the
5 cases. We would call them to the scene. They would
6 complete the report and take care of everything there.
7 We had an agreement that they would handle -- I don't
8 know what they do now. I think they've got a
9 director, that they do arrest powers and all that
10 stuff.

11 Q I understand. If I understand you
12 correctly, you're saying that you would have done
13 preliminary investigation and then turned it over to
14 the Lancaster Police Department?

15 A At that time I had security guards. They
16 had no arrest powers. And they would call the police
17 to the crime. Most of the time it was at night and I
18 was working day shift, I was never there. We never
19 had any problems over there. Biggest thing was
20 parking.

21 Q And if any of those matters did go to court,
22 either you or any of your officers would have been
23 subject to testifying to at least your preliminary
24 findings, correct?

25 A Well, if they had, but they never did.

1 Q Okay. How about Lake City, is that --

2 A Florence County.

3 Q So that's not within the area?

4 A No.

5 Q And York is not within the 6th Judicial
6 Circuit?

7 A I don't know. I don't think so. It's in
8 York County.

9 Q But certainly the town of Kershaw is and
10 Lancaster is?

11 A Correct.

12 Q Do you not recall being asked that question
13 about --

14 A No, ma'am.

15 Q Did you know personally any of the people
16 working at the Solicitor's office during this time
17 period?

18 A Nothing but Mr. Justice. I called and
19 talked to someone and told them, you know, with my
20 background would it not disqualify me. And they said
21 as long as I could do a fair trial, you know, to come
22 up, that they would not excuse me. So I came up.

23 Q You spoke to someone in the Solicitor's
24 office?

25 A Yes. I called and asked.

1 Q Do you know who you spoke with?

2 A No, ma'am, I do not to be honest with you.
3 It's been 13, 12, 10, some years ago.

4 Q How about law enforcement officers during
5 that time period? I mean you were with the Kershaw
6 Police Department. Would you have been familiar with
7 and worked with officers in the Lancaster Police
8 Department?

9 A I knew some of them, yeah. I mean it's a
10 small town; you know everybody.

11 Q Did you know the officers that testified in
12 this case?

13 A The only one I knew was the one who is now
14 Sheriff. I knew him. I didn't know the others.

15 Q Did you respond in the affirmative when you
16 were asked if you knew any of the witnesses on this
17 case?

18 A I didn't know who the witnesses were when I
19 was being seated.

20 Q They didn't read you a list of witnesses
21 that would be --

22 A I do not recall that, no, ma'am.

23 Q But you knew the officer who subsequently
24 became the Sheriff?

25 A Yes.

1 Q Do you remember his name?

2 A Barry Faile.

3 Q Barry Faile?

4 A Barry Faile. But that's the only one I knew
5 by name.

6 Q And you knew Mr. Justice?

7 A Yes.

8 Q How did you know Mr. John Justice?

9 A Like you stated previously, I knew he was
10 the Solicitor. He had been here a long time.

11 Q And over the years, had he worked on
12 prosecuting any cases that you were involved in?

13 A The only time I ever spoke with him was that
14 one time that I was for called for a witness. I was
15 an officer with the City of Lancaster. I was called
16 up to give my statement. I was the initial officer on
17 the case and that was it. Other than that, we
18 didn't -- our low level street officer didn't deal
19 with the Solicitor. Our captain and chief dealt with
20 the Solicitor and the Solicitor's office on our cases.
21 Some departments may be a little different.

22 They called me off the street to do the
23 statement on the initial officer, where I found this
24 guy shooting up with drugs and I chased him down
25 through the woods and caught him. That was it. They

1 took care of the rest of it, the lab analysis and all
2 that. So that's all I had to do with that.

3 Q And Barry Faile is the only law enforcement
4 officer that you knew that was involved in this case?

5 A As far as I can remember the witnesses he
6 was the only one I knew when he came on the stand. He
7 was on the drug team or something then. I don't even
8 know what his job was. He's since then been elected
9 sheriff, I think. I wasn't living here. I living
10 down at the beach. I didn't know everybody, but a
11 town this size you get to know people when you see
12 them. And I stayed away from him. I didn't speak
13 with anybody during, because we were the jury and
14 there was no interaction with anybody.

15 Q When you were functioning as a juror in this
16 case and you were actually the foreman you said --

17 A Uh-huh.

18 Q -- did you disclose to the members of the
19 jury your law enforcement background?

20 A Did not.

21 Q You didn't discuss with any of them the fact
22 that you had spent your career in law enforcement?

23 A I don't remember doing that. Now one of
24 them knew me and lived near me. He knew, but he knew
25 I was also retired and it wasn't brought up that I

1 know of.

2 Q Okay. And who was the juror that knew you?

3 A Eddie. I think his last name is Lewis.

4 Q How long did the jury in this cases
5 deliberate?

6 A I cannot remember. I do remember we had
7 asked for the judge to do some type of explanation on
8 the charges. There was one juror who wanted further
9 explanation before they would vote or wanted to vote.
10 So I asked for him -- We were called back out and he
11 went over the charges and explained the charges to the
12 jury again. I remember doing that. That's been a
13 long time.

14 Q During the deliberation process, did you
15 have an opportunity to express your views concerning
16 the weight of the evidence in this case --

17 A No.

18 Q -- to your fellow jurors?

19 A I didn't do that. Everybody was asked -- we
20 went around the table and voted. There was one person
21 that --

22 MR. HUNTER: Objection.

23 MS. WILLIAMS: Rule 606, going into the
24 nature of the deliberations of the jury.

25 MS. SHURLING: I believe he's answered in

1 the negative anyway so...

2 THE DEPONENT: There wasn't a lot of
3 deliberation in the room. Like I say, we asked
4 for an explanation and we got that. We came back
5 and voted. I think it was fairly quick. I
6 can't -- It's been a long time. I can't
7 remember. I don't know, but I did not want to
8 use my background to entice someone to vote my
9 way, you know what I'm saying. So I didn't. I
10 let everybody make up their own mind. Nobody was
11 enticed to vote. I was the most fair person in
12 that jury room.

13 BY MS. SHURLING:

14 Q But as you stated, Mr. Barry Faile knew you
15 were a career law enforcement?

16 A Yeah, but he wasn't in the jury room. He
17 was a witness on the stand.

18 Q I understand, but he was a witness, he --

19 A He was a witness.

20 Q He was on the law enforcement team on this
21 case?

22 A Yes.

23 Q And he knew you?

24 A Yes.

25 Q And you knew him?

1 A Yes.

2 Q And you knew him from your law enforcement
3 connections?

4 A I knew him. And I will say this, we're not
5 close friends.

6 Q Okay. And Mr. Eddie Lewis who was on the
7 jury knew your background in law enforcement?

8 A He would have known.

9 MS. SHURLING: Okay. We'll take just a
10 quick break. Mary, take about a minute break?

11 MS. WILLIAMS: Okay.

12 (Whereupon, a brief break was taken.)

13 BY MS. SHURLING:

14 Q So you've indicated that you knew John
15 Justice. You also knew Doug Barfield as well, didn't
16 you?

17 A Yeah, I know of him, yeah. But he was -- I
18 don't remember which one presented the case but I
19 think Barfield was the assistant or something.

20 Q Mr. John Justice, Doug Barfield, and a
21 lawyer named Thomas Holland was also prosecuting this
22 case. Did you know Mr. Holland?

23 A No, never heard his name before.

24 Q But you did know Doug Barfield and John
25 Justice?

1 A I've known of him, yeah.

2 Q You knew each other by sight?

3 A Yeah.

4 MS. SHURLING: Nothing further.

5 MS. WILLIAMS: I'll be quick.

6 EXAMINATION

7 BY MS. WILLIAMS:

8 Q Now Mr. Faile would you say is he related to
9 you by blood or marriage?

10 A No, ma'am.

11 Q Do you have any special relationship with
12 him?

13 A No.

14 Q Tell me how you know Solicitor Barfield?
15 Were you in contact with him in 2003?

16 A No.

17 Q When was the last time you had contact with
18 him?

19 A When I got this letter I called and asked
20 what it was about. He said he had no idea, didn't
21 know it was happening.

22 Q This letter for this deposition?

23 A For today.

24 Q Okay. You called him?

25 A On the case itself, had no contact before or

1 after, no interaction during the trial. I just -- he
2 dresses a certain kind of way. That's how I knew him.
3 Everybody knows him.

4 Q How about Mr. Barfield, were you in contact?

5 A Barfield is the one I'm talking about.

6 Q Oh, he's the one dresses --

7 A He's got the mustache thing and all that
8 going on. That's all I know.

9 Q How do you know of him? He's just
10 somebody --

11 A I've just seen him around. I knew he worked
12 in the Solicitor's office. I didn't know him that
13 well. He knows some of my older family but he's older
14 than I am.

15 Q So you wouldn't call him up and invite him
16 to a --

17 A No.

18 Q -- party?

19 A No.

20 Q And at the time of this trial you were in
21 regular contact with him in any way?

22 A No, Sheriff Faile either.

23 Q The phone call you made to the Solicitor's
24 office, was that just to a receptionist?

25 A Whoever answered the phone. I don't

1 remember who it was.

2 Q Okay.

3 A I told them I got a subpoena for a juror. I
4 said they're not going to let me sit on the jury
5 stand. And they said, you know, we can't excuse you
6 because of that; you come on up. I told him I had
7 retired, whoever it was I talked with. They said,
8 come on up and do it. They couldn't issue an excuse
9 for that, which I wasn't trying to get out of it. I
10 just didn't think -- it was a waste of time. I don't
11 think anybody would let me sit anyway.

12 Q Okay. So if I was to ask you, did you have
13 a relationship with Mr. Barfield at the time of this
14 trial?

15 A No.

16 Q Did you have a relationship with the
17 Solicitor, Mr. Justice?

18 A No.

19 Q You just kind of knew who they were?

20 A I had that one case that I testified when --
21 I think I was a corporal with the City Police
22 Department.

23 Q That would have been in the late '70s?

24 A He called me to the witness stand and I had
25 never met him until that morning. I had seen him but

1 I had never met him.

2 Q Okay. That was in the late '70s?

3 A Haven't talked to him since, no, ma'am.

4 Between '75 and '82.

5 Q Okay.

6 A And I moved out of town in February '86 and

7 I've been in and out of town ever since then, so...

8 Q And by the time of this trial you had moved;
9 you were no longer living in Lancaster?

10 A I've got a house here but I don't live here.
11 I live at Myrtle Beach and work full-time down there.

12 Q So would you visit here?

13 A I visit monthly. All my parents are passed.
14 I've got brothers here. We come up once a month, stay
15 in the house, clean up. Sunday go back to the beach.

16 EXAMINATION

17 BY MR. HUNTER:

18 Q So at the time of the trial you had -- you
19 wouldn't say you had any relationship with the
20 Solicitor's office?

21 A No, sir.

22 Q Or anyone there?

23 A No, sir. I left town and moved to Columbia
24 in '86 and we lived there and didn't have a place
25 here. We didn't come back up except holidays. In '89

1 my father passed way. In '93 -- in '96 my mother
2 passed away when I was in York -- or Lake City. I
3 came up for the funerals there. We really hadn't been
4 back that much.

5 Barfield was not working as Solicitor when I
6 was at the police department, I don't think. I don't
7 remember him even being mentioned until years later.
8 So I'm not even sure when he came to work with the
9 Solicitor's office.

10 Q And going back to the voir dire, if you had
11 heard the question asked about whether you knew anyone
12 in the Solicitor's office or had any contact with
13 them, if you thought you should have affirmatively
14 answered the question, would you have?

15 A Sure. As a matter of fact, like I say, I
16 called ahead of time. I thought that might disqualify
17 me. And he said, no, it wouldn't disqualify me, to
18 come on up. And I came. Like I say, I thought I was
19 doing the right thing. Still think I did.

20 I think I was the most fair person to you
21 and your liberty when I was in that jury room.
22 There's nobody would have been more fair than I. I
23 would never take anybody's liberty away unless I was
24 sure what I was doing. I did that for 25 years. In
25 all due conscious I have no regrets. I don't think I

1 misled anybody. I don't think I told any story, never
2 will. That's not why I'm here; that's not what I'm
3 all about.

4 MS. WILLIAMS: I have one more and I'll be
5 done. I didn't mean to cut you off.

6 MR. HUNTER: Okay. So --

7 MS. SHURLING: Just for the record. If we
8 were in a trial proceeding, I would object to
9 both of you asking questions. You're supposed to
10 designate one person in a deposition to ask
11 questions.

12 MS. WILLIAMS: Well, I apologize because I
13 thought we discussed beforehand that Croom was
14 coming here today because he's taking over this
15 job after today. He can write down his questions
16 and I'll be glad to ask them for him.

17 MS. SHURLING: No, no. Given that
18 circumstance, I'm not objecting to him doing it.
19 I'm just making it clear that in a trial setting
20 or a hearing setting, I would object to more than
21 one lawyer --

22 MS. WILLIAMS: I won't be doing anything
23 after today.

24 MS. SHURLING: Gotcha. Just making it
25 clear.

1 MR. HUNTER: You'll be dealing with me from
2 then on. So if you don't mind I do have one or
3 two more questions.

4 MS. SHURLING: You're either going to ask it
5 or you're going to pass her a note, so it doesn't
6 make much difference.

7 BY MR. HUNTER:

8 Q You said that -- I just want to clear this
9 up. While you were the Kershaw City Police Chief you
10 had no cases go to the Solicitor's office?

11 A No. I was there a short time. They were in
12 transition and they were in the background getting
13 ready to turn over. The only cases I think came up
14 were speeding cases. Nothing -- none of that goes to
15 the Solicitor's office here. And I don't think we had
16 any general sessions or anything that came up through
17 them. So I had no contact with them at the time I was
18 there. Not even a phone call.

19 MR. HUNTER: That's all I have.

20 FURTHER EXAMINATION

21 BY MS. WILLIAMS:

22 Q And your knowledge of those people, just
23 knowing who they were did that in any way impact
24 your --

25 A No, ma'am.

1 Q I'm sorry. Did it impact you being fair and
2 impartial to Mr. Mathis?

3 A It did not.

4 MS. WILLIAMS: That's all I have. Thank
5 you.

6 FURTHER EXAMINATION

7 BY MS. SHURLING:

8 Q Mr. Roberts, when you received the summons
9 for jury service, I believe it was your statement that
10 you thought your career in law enforcement might be a
11 problem and disqualify you?

12 A His attorney is not going to want me to
13 serve, I know that. But I have a citizen duty to do
14 it and I didn't mind doing that. But my work was
15 giving me a fit about being off in the position I had.
16 I had only been there like six months and they didn't
17 want me off. I explained the subpoena situation and
18 they were a little more lenient but they still didn't
19 like it. So I called and told them I would see what
20 would happened. He told me to come up and he might
21 could release me but he didn't. He kept me all week.

22 Q Well, let's do a couple of follow-ups on
23 that. You called the Solicitor's office to ask them
24 whether you would be disqualified based on your law
25 enforcement background?

1 A Yeah.

2 Q You just indicated that you knew his
3 attorney wasn't going to want you?

4 A Well, you assume the defense attorney is not
5 going to want a police officer. But if I was in his
6 chair, I would rather have a police officer sitting on
7 a jury than anyone else.

8 Q I understand but you understand how the
9 judicial system works. You know that both sides have
10 peremptory strikes which they can use to remove jurors
11 they have a problem with, correct?

12 A Yes.

13 Q When during the jury selection process did
14 you disclose your law enforcement background?

15 A I did not except I called before it started.

16 Q So you disclosed it --

17 A I assume the defense attorneys did they
18 their leg work and knew. I didn't know. I have
19 nothing to do with that.

20 Q Well, when you filled out the sheet that was
21 sent to you after or with the summons, where you
22 filled in your background, you didn't say anything
23 about law enforcement background on that, did you?

24 A Can I see it?

25 Q Certainly.

1 A It says present or current employer,
2 Assurant Group. That's where I worked.

3 Q I understand.

4 A There was nowhere for previous employment.

5 Q I understand that. Okay. But my point is
6 you called the Solicitor's office and made them aware
7 of who you were and what your law enforcement
8 background was and inquired as to whether that would
9 disqualify you from serving?

10 A Yes, I did.

11 Q And they said, no, for you to show up?

12 A Yes.

13 Q And that they might could let you out after
14 you showed up, right?

15 A He said I could possibly be released, but
16 like I said, I was not.

17 Q Once you got there who did you talk to about
18 possibly being released?

19 A No one. I had already made my statement and
20 when they called the names, you know, we came in. I
21 don't see anywhere else in there where I was asked the
22 question of former employment.

23 Q But again, you called the Solicitor's office
24 and discussed with them your law enforcement
25 background but--

1 A Yes.

2 Q -- but you didn't call the attorney
3 representing any of the people on the docket, did you?

4 A I didn't know who was going to be called up
5 on the docket.

6 Q And you didn't disclose it in response to
7 questions from the Court during voir dire?

8 A No.

9 Q Okay.

10 A Is that a juror's responsibility to call all
11 the defendants that are coming up to trial and give
12 them their background?

13 Q Do you recall being asked, Do any members of
14 the petit jury panel have any relationship or contact
15 with Solicitor John Justice or any member of the 6th
16 Judicial Solicitor's office?

17 A I had no relationship with them.

18 Q It says or contact with.

19 A I had no contact with them. I mean they
20 contacted all the jurors, and they're the ones that
21 sent out the list, isn't it?

22 Q Didn't you just say you had contacted them
23 by telephone and asked whether you could be excused
24 because of your law enforcement background?

25 A Yes, I did and I've already explained that

1 twice.

2 Q I understand, but you didn't explain it
3 during the jury selection process, did you?

4 A I answered every question on that whatever
5 you saw call it, questionnaire.

6 MS. SHURLING: A moment's indulgence.

7 (Brief pause in proceedings.)

8 MS. SHURLING: Nothing further.

9 MS. WILLIAMS: Nothing.

10 MR. HUNTER: I got one.

11 MS. WILLIAMS: You can go ahead.

12 MS. SHURLING: Go ahead.

13 FURTHER EXAMINATION

14 BY MR. HUNTER:

15 Q If you had been asked during voir dire if
16 anybody on the jury panel had any prior law
17 enforcement experience would you have answered?

18 A I would have stood up.

19 MR. HUNTER: Thank you.

20 MS. SHURLING: Nothing further.

21 (The deposition concluded at 1:35 p.m. The
22 deponent reserved signing his deposition.)

23

24

25

1 SIGNATURE OF DEPONENT

2 I, the undersigned, RONNIE ELLISON ROBERTS, do hereby
3 certify that I have read the foregoing deposition and
4 find it to be a true and accurate transcription of my
5 testimony, with the following corrections, if any:

6 PAGE LINE CHANGE REASON

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RONNIE ROBERTS

DATE

24

25

1 CERTIFICATE OF REPORTER

2 I, Laura Chamblee, Registered
3 Professional Reporter and Notary Public for the State of
South Carolina at Large, do hereby certify:

4 That the foregoing deposition was taken
5 before me on the date and at the time and location
6 stated on page 1 of this transcript; that the deponent
7 was duly sworn to testify to the truth, the whole truth,
8 and nothing but the truth; that the testimony of the
9 deponent and all objections made at the time of the
examination were recorded stenographically by me and
were thereafter transcribed; that the foregoing
deposition as typed is a true, accurate and complete
record of the said deposition at the time of the
deposition to the best of my ability.

10 I further certify that I am neither
11 related to nor counsel for any party to the cause
pending or interested in the events thereof.

12 Witness my hand, I have hereunto
13 affixed my official seal this 25th day of April 2014,
at Hartsville, Darlington County, South Carolina.

14

15

16

17 _____
Laura Chamblee,
18 Registered Professional Reporter
Notary Public
19 State of South Carolina at Large
My Commission expires:
20 December 22, 2018

21

22

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24

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14 (No exhibits were marked for identification.)

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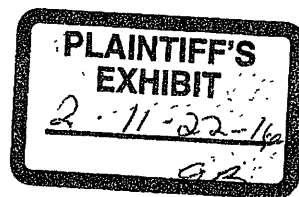
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CERTIFIED TO BE A TRUE COPY

A handwritten signature in black ink, appearing to read "Jeff Hammond".

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, PA

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF LANCASTER
3
4 Vernard Jerome Mathis, #297034,
5 Plaintiff,
6 vs. Case No. 2013-CP-29-00951
7 State of South Carolina,
8 Defendant.

9
10 D E P O S I T I O N
11

12 WITNESS: Thomas William Holland, Esq.
13 DATE: April 22, 2014
14 TIME: 1:53 p.m.
15 LOCATION: Lancaster Courthouse
16 104 N. Main Street
Lancaster, South Carolina
17 TAKEN BY: Attorneys for Plaintiff
18 REPORTED BY: LAURA CHAMBLEE
Registered Professional Reporter
19

20 - - - - -

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Columbia, South Carolina 29201

11

12 ALSO PRESENT: Vernard Jerome Mathis

13

14

15 (INDEX AT REAR OF TRANSCRIPT)

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1 STIPULATION: It is stipulated by counsel
2 that this deposition is being taken in accordance with
3 the South Carolina Rules of Civil Procedure, and that
4 the deponent reserves the right to read and sign the
5 deposition transcript.

6 - - - - -

7 THEREUPON,

8 THOMAS WILLIAM HOLLAND, ESQ., being first
9 duly sworn, testified as follows:

10 EXAMINATION

11 BY MS. SHURLING:

12 Q State your full name for the record.

13 A Thomas William Holland, Sr.

14 Q Mr. Holland, are you a licensed attorney in
15 the state of South Carolina?

16 A I am.

17 Q Where do you currently practice?

18 A I have a sole practice, practice myself in
19 Lancaster.

20 Q In Lancaster?

21 A Uh-huh.

22 Q And you're obviously a local because you say
23 Lancaster, not Lancaster?

24 A I'm a relatively recent local. I've been
25 here about 13, 14 years. About 14 years.

1 Q Back in June 2003 do you recall
2 participating in the prosecution of Vernard Mathis in
3 Lancaster County?

4 A I did.

5 Q Who were the other -- I'm getting somewhat
6 ahead of myself. During what time period did you work
7 for the Solicitor's office in the 6th Circuit?

8 A I believe it was October, November 2001 to
9 September, October 2006.

10 Q Okay. And do you recall the prosecution of
11 this case?

12 A I do.

13 Q Who else was on the prosecution team with
14 you?

15 A The -- I wouldn't call it a team as much
16 as -- I mean as far as -- I don't feel like I was part
17 of the team, but I did a witness. John Justice was
18 the prosecutor and Doug Barfield. I was in and out of
19 the trial. I believe he questioned several witnesses
20 so those two were the primary attorneys on the case.
21 I did one SLED DNA witness.

22 Q Okay. But you did actually handle a
23 witness --

24 A Yes.

25 Q -- at trial as opposed to just take notes?

1 A Correct. And actually I didn't take notes.
2 That was the only thing I did, was that one witness.

3 Q Okay. Were you there from the outset of
4 this trial or did you come in some time after the
5 trial began?

6 A I came in and out. As far as the jury
7 selection, I was in and out of the jury selection.
8 Mainly out because I had no responsibility toward it.
9 And I had just been there for a short period of time;
10 I didn't know anybody in Lancaster as far as being
11 able to help pick a jury. So I came in as an observer
12 more than anything. And I was in the trial -- in and
13 out throughout the whole trial. I can't tell you how
14 much of the trial I watched. I could tell you I did
15 that one witness. I know I did that. Other than
16 that, I was in and out.

17 Q After the jury in this case was selected did
18 you become privy to any discussion concerning the
19 composition of the jury?

20 A I did.

21 Q And what was brought to your attention?

22 A I was -- I came in and I can't tell you who
23 I talked to but it was a court person, whether -- I
24 don't know whether it was a bailiff or a law
25 enforcement officer or whatever. I came in and I said

1 something to the effect of, you know, how does it
2 look, or what does the jury look like, or something
3 like that. And they said it looked good and they
4 mentioned the foreman of the jury. I can't recall his
5 name.

6 Q Mr. Ronnie Roberts?

7 A Ronnie Roberts, yeah. They mentioned that
8 he was a former chief of the Kershaw -- town of
9 Kershaw police which had been disbanded and the
10 Sheriff's Office took over contract law enforcement
11 for the town of Kershaw. And I don't know how long he
12 had been out of law enforcement. I didn't know, but
13 they said he had been prior law enforcement. So that
14 was -- The gist of the conversation was that we had a
15 good jury, had a good foreman because he's prior law
16 enforcement.

17 Q Okay. Did you subsequently hear other law
18 enforcement officers connected with this case
19 discussing the fact that Mr. Roberts was on the jury?

20 A I did. I heard -- and again, law
21 enforcement and court personnel, they're people in
22 court. I don't know whether they were bailiffs. I
23 know some of them were law enforcement. I couldn't
24 tell you who they were or which ones, but I did hear
25 comments of the same thing--that we had a former Chief

1 of Police on the -- you know, former law enforcement
2 on the jury. And it was kind of a -- it shocked me in
3 the sense that, you know, how he could -- how he could
4 have been on the jury, you know, why he wasn't struck
5 or whatever, but I wasn't there during that whole
6 process.

7 Q Did you, in fact, hear any law enforcement
8 officers that were witnesses in this case
9 acknowledging that they knew that one of the jurors
10 was former law enforcement?

11 A I cannot honestly say that any of the ones
12 that I talked to were witnesses in the case or not. I
13 know that the case had a ton of witnesses. A good
14 portion of the Sheriff's Office was involved in that
15 case because at the time the Sheriff's Office is the
16 one -- they didn't have as many officers as they do
17 now, and a lot of people worked that case from one
18 angle or another. They were either working the shift
19 that night or they got called. All the investigators
20 got called out. So all the investigators were part of
21 the investigating. Where they testified or not, you
22 know, I don't know. And I don't know -- You can
23 say -- I would venture to guess that almost everybody
24 who was working during that time had -- you know,
25 could have been a witness in that case. Almost

1 everybody in that case.

2 Q But there were multiple law enforcement
3 officers that we're talking about the fact that a
4 former chief was not only on the jury but the foreman?

5 A There was -- there was several people who
6 mentioned it. And they were law enforcement or
7 bailiffs or some combination. So there were multiple
8 people. It wasn't -- it was more in the context of --
9 I mean it wasn't a long discussion. It was like, you
10 know, it's a good jury; these are the -- you know, and
11 they mentioned the foreman, you know. And so it
12 wasn't a long discussion as far as --

13 Q I understand.

14 A It wasn't like that was the whole case or
15 anything.

16 Q I understand, but it was significant enough
17 for them to bring it to your attention?

18 A Right, right.

19 Q And did you subsequently go to the senior
20 prosecutors on this case and have a discussion with
21 them about this man's presence on the jury?

22 A I did. I had come from the 16th Circuit.
23 And we were always, I guess, taught to -- anything
24 that could possibly be a problem later, to deal with
25 it and take care of it just so you're not in a

1 position like we're in now. And so I asked -- and I
2 cannot recall whether I talked to -- whether it was
3 Doug Barfield or John Justice. I would assume I would
4 have talked to Doug because it was more of a -- you
5 know, it was more of a learning thing for myself as
6 far as, you know, how did he get on the jury, did he
7 run out of strikes. He said, no, he had some strikes
8 left. The other attorney, did he run out of strikes?
9 He said, no, he had some strikes left. And I recall
10 saying, well, did he know that this person was a
11 former law enforcement. And the response was, I don't
12 know what he knew kind of thing. And I said, is that
13 something that we should disclose or should have
14 disclosed, because by this time the jury had already
15 been sworn. You know, picked and sworn, and it was,
16 you know, he was picked. And he said, no, he answered
17 all the questions. He's not current law enforcement,
18 and that's the question they ask. And so, you know,
19 by the law everything was followed.

20 Q But you expressly remember asking one of the
21 two senior prosecutors --

22 A One of the two.

23 Q -- whether that was not in fact something
24 that y'all should disclose?

25 A Right. And mine was more out of an

1 abundance of caution to not have -- to have the
2 disposition final, not have anything come back later.
3 You know, it's sometimes better not to have the fight,
4 you know, later.

5 Q And this was before -- after jury selection
6 but before witnesses started?

7 A I can't tell you that, I can't tell you
8 whether it was before witnesses started or when I had
9 the conversation. It was -- witnesses may have
10 started. They might have already done the openings.
11 I don't know. I don't know the context of when I had
12 that conversation. And it might have been -- I would
13 have assumed it would have been some type of break
14 somewhere where Doug wasn't doing anything or John
15 wasn't doing anything. And it would have been a
16 question because I didn't feel like anything was
17 illegal, per se, or a violation of any rules, but, you
18 know, kind of more of a policy thing of how you want
19 to run your office kind of thing. So it was kind
20 of -- you know, it wasn't -- I can't tell you when
21 that conversation was from when I found out to when I
22 had the conversation with the senior -- as you said,
23 senior prosecutor, one of the senior prosecutors.

24 Q Again, although I understand you can't say
25 under oath which it was, your instinct is that you

1 would have been more likely interacting with Doug
2 Barfield than with John Justice?

3 A Right, because I worked in Lancaster with
4 Doug; I saw John rarely. And he wouldn't be the
5 person I would talk to first, I wouldn't think.
6 Unless -- unless we just happened to be at the same
7 place at the same time. And I said, hey, by the way,
8 how did that happen kind of thing. So I can't --
9 that's why I can't tell you who it was. I would just
10 imagine it would be Doug. I'm not -- That's pure
11 speculation.

12 Q There were alternate jurors in this case;
13 were there not?

14 A I assume. I don't know. I would assume.

15 Q Have you ever tried a case where they didn't
16 pick at least one alternate?

17 A Not in a murder case. I would imagine they
18 had two or three in this case.

19 Q So even if the case had been underway, there
20 were alternates available to step in if the Judge had
21 chosen to excuse Mr. Roberts?

22 A I would assume so.

23 Q Did you ever consider disclosing the
24 background of this particular juror yourself to the
25 defense team?

1 A No. No, I didn't. I mean I just -- I knew
2 that it wasn't illegal in the sense that it was not --
3 the law provided that certain questions be asked and
4 be answered. And what former employment was, was not
5 one of them. So, you know, I knew that was the -- so
6 I didn't -- It was their case, so, you know.

7 Q Did there come a time after you left the
8 Solicitor's office that you disclosed this information
9 to Mr. Vernard Mathis?

10 A Yeah.

11 Q And actually you didn't -- you didn't
12 disclose it directly to Mr. Mathis, did you?

13 A Actually I had a conversation with
14 Mr. Mathis, so the -- It was through a client that I
15 had. And he called -- well, I guess let me back up.
16 I had a conversation with somebody on the other side
17 who said they were Vernard Mathis, you know. I had
18 never seen -- I'm assuming this is Mr. Mathis. I
19 don't know him.

20 Q I apologize. I should have introduced you.

21 A Other than the trial that week or whatever
22 it was, first time I laid eyes on Mr. Mathis. And at
23 some time --

24 Q You're fixing to anticipate my next
25 question, so let me --

1 A Okay.

2 Q Were you subsequently contacted by, God rest
3 his soul, Dave McDougal, an investigator that had been
4 hired to investigate rumors to the effect that
5 Mr. Roberts was former law enforcement?

6 A I did.

7 Q Did you report to Mr. McDougal essentially
8 what you've told us here today?

9 A Yes.

10 MS. SHURLING: Moment's indulgence.

11 (Brief pause in proceedings.)

12 BY MS. SHURLING:

13 Q Mr. Holland, would it be fair to say that
14 the law enforcement personnel that you discussed the
15 composition of the jury with were fairly giddy about
16 the fact that they've gotten this law enforcement guy
17 on the jury?

18 A I wouldn't classify as it giddy. They took
19 it as being a positive, you know, of course. Just the
20 fact that, you know -- usually when -- well, I don't
21 know. They took it as a positive. I think I probably
22 had a conversation with them about it's not always a
23 positive that you have law enforcement on but --

24 Q Pardon me. I didn't mean to interrupt you,
25 but it's fair to say and I believe you have already

1 stated that multiple people in law enforcement brought
2 up to you the fact that a former chief of police was
3 foreman on the jury?

4 A They were happy about it.

5 Q They were happy about it.

6 A They were happy about it in the sense you've
7 got twelve seats and to have one of them with somebody
8 with law enforcement, I mean it would be the same
9 thing as having, you know, somebody that you know is a
10 good citizen on the jury that -- you know, probably
11 better than that just because they have some law
12 enforcement experience. But, yeah, they're happy
13 about it but they weren't -- giddy I think is more
14 like, you know, like they wouldn't have won the case
15 but for that. It wasn't like that.

16 Q But they were definitely happy about it?

17 A Yeah, they were happy about it. I'm always
18 happy when I get a good jury.

19 Q When you had the discussion with senior -- a
20 senior member of the team, was it your belief that
21 defense counsel would have stricken that individual if
22 they had known he was law enforcement?

23 A That just goes -- I mean all I could tell
24 you is what I would do in that same situation, and
25 what I would suspect that any attorney would do in

1 that situation. If you had strikes and a former
2 police officer comes up, you know, unless the former
3 police officer for some reason that might help you, as
4 a defense attorney you would strike a former police
5 officer. I think unless you had some reason not to,
6 you would strike. Would I strike them? Yeah, I would
7 strike them. If I was on the prosecution, you know, I
8 would -- in fact, every time a police officer --
9 former police officer or a spouse or father or sister
10 or brother of a police officer comes up, I always
11 present them. And unless they've run out of strikes,
12 the defense attorney strikes them. Sometimes they run
13 out of strikes and they have to have them anyway,
14 so --

15 Q In your experience while you were with the
16 Solicitor's office during jury selection are jurors
17 given an opportunity to come up and speak with the
18 Court about any reason that they might assert as a
19 basis for getting out of jury duty?

20 A Yes. Again, I wasn't there during that part
21 of that trial I don't believe.

22 Q I was speaking to your general experience.

23 A Generally after they do the voir dire of the
24 whole panel, they will ask if there's any reason in
25 particular a particular juror might have, and they

1 bring them up. They line them up and they come one by
2 one to the judge. And the prosecution and the defense
3 stand there and they present why they should be --
4 they might need to be excused or why they think they
5 might not qualify under some reason that they -- one
6 of the disqualifications, that they're not sure.

7 Some people say, well, I've got a record,
8 I had a DUI. Does that disqualify me? And it
9 doesn't disqualify you, and they send them back,
10 those type of things.

11 Q Sure. What I was trying to get to, and
12 obviously I'm more familiar with Richland County --

13 A They do a blanket -- They blanket any other
14 reason you think, any hardship or any other reason you
15 need ask the Court about. They usually put that in
16 there, and they'll come up. And you, of course, get
17 all kinds of responses of why somebody can't serve
18 jury duty.

19 Q Sure. But other than the one by one, my
20 name is Tara Shurling and I'm an attorney here in
21 Richland County, which is what I would say when I'm
22 called up for jury duty, other than that general voir
23 dire of the panel, there is an opportunity during jury
24 selection for people to assert other things that might
25 be problems with them serving in your experience?

1 A I believe every trial I've done the judge
2 has allowed for that because there might be a
3 particular hardship for that week that might not be a
4 reason that would excuse them from jury duty normally
5 or by the law, but the judge may let them out, you
6 know.

7 If they had a vacation planned for
8 Wednesday through Friday, you know, they could go up
9 and say I had a vacation planned, that type of
10 thing. And some people will come up and explain
11 something that they didn't want to talk about in
12 public, you know, like whether they have the
13 education and the knowledge to serve. And they'll
14 come up and say, I only have a third grade
15 education. So those type things.

16 Q And occasionally will jurors come and say
17 I'm not sure if I should have responded to some
18 question that the Court asked?

19 A If they have a question in their mind, yeah,
20 they will -- that has happened.

21 Q Okay. But again you weren't in the
22 courtroom for that portion of this?

23 A I assume they did. I guess it all boils
24 down to whether the person actually had that question,
25 you know, if they answered the question.

1 Q Well, is Judge Short a resident Judge at
2 that time, do you recall?

3 A Yes, he's -- he's from Chesterfield and he's
4 resident judge.

5 MS. SHURLING: Nothing further yet.

6 EXAMINATION

7 BY MS. WILLIAMS:

8 Q Mr. Holland, is asking, how does it look,
9 would that be something you might typically do when
10 you pull a jury?

11 A Oh, yeah. Any time you pull a jury,
12 especially if you're not -- If you're an attorney and
13 you're not involved in picking the case (sic) or not
14 even involved in the case, at least I do all the time,
15 how does the jury look. I think that's just a common,
16 you know, you want to see how it looks. Because I've
17 had jurors that, you know, you pick and you know they
18 don't look good. They generally surprise you
19 sometimes. It's, you know -- I think some lawyers
20 think it's more science than it is anything else. And
21 it's not. I think it's pure luck, most juries.

22 Q And you said you weren't sure whether this
23 was a bailiff or maybe an officer like we have today
24 who is a uniformed officer but just is there for
25 security. You're not sure who you were talking to?

1 A Yeah, that's correct. I don't know who
2 first told me, you know. It was somebody because -- I
3 remember because it was in the old courthouse. And
4 you come in to the courtroom and the bench is to your
5 left, and the grand jury chairs were to the right.
6 And that's where we would sneak -- not sneak in
7 because I don't sneak anywhere, but that's where you
8 come in and sit there. And that's where there, the
9 bailiff is over there, officers working court, because
10 we have bailiffs and then we have officers actually
11 working security of the court, and then we had
12 probably some -- the witnesses that might be
13 anticipated at trial. Probably at that time there
14 probably weren't that many of the witnesses in court
15 because they hadn't started calling any witnesses yet
16 when I first learned that it was -- I don't know -- I
17 vaguely recall having that conversation like while
18 something was going on in the court and I was kind of
19 in court trying to be quiet, talking, kind of
20 whispering type of thing.

21 Q You didn't have any knowledge a juror had
22 called and said, hey, I used to be a policeman, you
23 didn't have any knowledge of a juror who made a phone
24 call to your office?

25 A No.

1 Q Do you have a receptionist desk? How does
2 that work when people call your office?

3 A Back then my office was actually in the
4 courtroom. And Doug Barfield's office was across the
5 street. They had a -- He had a secretary and I
6 believe -- I don't know whether the Lancaster line
7 rang on my phone or whether I had a separate line. I
8 don't know if I got general calls. I think they might
9 have went to the other office, and I just got people
10 who called me, unless they called and Julie--she's
11 still there--she might give them my number to call me
12 or something, if they called that office and needed to
13 talk to me, and they gave them my direct dial number.

14 Q But you didn't receive a phone call of that
15 nature?

16 A Not that I recall, no.

17 Q You said --

18 A Sorry. Just to clarify that. If anybody
19 called me about jury duty, I wouldn't talk to them
20 because they're potential jurors. I would tell them,
21 you need to call the Clerk of Court's Office. I would
22 have referred them to the Clerk of Court's office and
23 given them their number so it's not something -- I
24 wouldn't talk to a juror just because --

25 Q You said something about maybe seating a law

1 enforcement might not always be a positive thing for a
2 prosecutor. Does that --

3 A Yeah, sometimes they might be too skeptical,
4 especially, you know -- they'll look at it like --
5 they start doing things how -- they would think about
6 things on how they would have done it versus, you
7 know, how it was done. So they would a lot of times,
8 I think, overanalyze things. I think that's a
9 problem, you know -- can be a problem with law
10 enforcement.

11 Q All right. If you can give me one -- You're
12 not sure who you were talking to. You said you were
13 not sure this was a witness that you were speaking
14 with that knew of Mr. --

15 A It wasn't like it was -- I think that's what
16 she was trying to ask me too. It wasn't like it was
17 one conversation. It was multiple conversations with
18 multiple people. I don't know how many. Don't know
19 whether it was two or three.

20 Q Talking about other jurors too?

21 A Talking about other jurors and, you know,
22 talking about him being a good juror but also kind of
23 like how did he get on the jury, you know, how did he
24 not strike him.

25 Q Like this person is a teacher or this person

1 does other --

2 A Yeah. And they were all in -- I mean it
3 wasn't like it was the topic of the day or was a big
4 scandal or anything. It was just kind of, you know --

5 Q The usual conversations about --

6 A Yeah. A juror being good or bad, you know,
7 and why is he good or bad.

8 Q Okay:

9 A And they just -- just said he would be a
10 good juror. I mean that's what --

11 Q Talk about other jurors probably?

12 A I'm sure they did because there was -- From
13 what I recall, it was by and large a pretty good jury
14 for -- especially when the defense has ten strikes and
15 the prosecution has five. Usually -- I can't recall
16 totally the jury, but it looked like a good jury.

17 Q Do you recall when you spoke to
18 Mr. McDougal?

19 A A year and a half ago, two years, something
20 like that. It was within the last couple of years.

21 Q Okay. Did you talk to Mr. Mathis before or
22 after that, do you recall?

23 A I believe it was before that.

24 Q And your client then was before you talked
25 to Mr. Mathis?

1 A Right. In fact, when I was talking to my
2 client we were driving to Spartanburg. I was driving
3 to -- it was actually a plea. And I made a comment
4 that I didn't like to go to other counties and try
5 cases unless I knew somebody there just because, you
6 know, I like to know the people on my jury. We were
7 just doing a plea. I was like normally I wouldn't do
8 a -- I would investigate further before I went and did
9 a trial in another county.

10 Q Can you tell me just the name of that
11 client? I don't need to know anything specific about
12 the case, if you recall?

13 A Yeah, I recall it. I just don't know that I
14 can, you know -- I guess it's public record.

15 Q I think you can give me the name.

16 MS. SHURLING: I think the fact of
17 representation is covered by privilege so I
18 would object.

19 THE DEPONENT: Yeah and that's the reason
20 I paused.

21 MS. SHURLING: Until if and when I would
22 choose to use her as a witness.

23 MS. WILLIAMS: That's okay. I can ask and
24 you can say you're not going to say, that's
25 fine.

1 MS. SHURLING: Until if and when I would
2 use her as a witness I believe that's
3 privileged.

4 MS. WILLIAMS: Absolutely.

5 BY MS. WILLIAMS:

6 Q So that representation was before you spoke
7 to Mr. Mathis, which was before you spoke to Mr.
8 McDougal?

9 A Right. The client I had knew something
10 about Mr. Mathis or one of his relatives or whatever.
11 And then I met with my client and was handed a cell
12 phone. And Mr. Mathis was purportedly on the other
13 end of the cell phone.

14 MS. WILLIAMS: All right. That's it.

15 EXAMINATION

16 BY MS. SHURLING:

17 Q Mr. Holland, at the time your former client
18 had this conversation with you, you had no independent
19 firsthand knowledge of the accuracy of the assertion
20 that Ronnie Roberts had been in law enforcement, did
21 you?

22 A That I knew he had been in law enforcement?

23 Q Right, did you have any firsthand knowledge
24 of that?

25 A I never -- Like I said, between 2001 and

1 2003, I had never heard of him, never saw him. First
2 I knew that he was law enforcement was when somebody
3 told me he was in law enforcement after he was on the
4 jury -- had been in law enforcement.

5 Q And again, multiple law enforcement officers
6 referenced the fact that they thought they had a good
7 jury and specifically noted there was a former chief
8 of police as foreman?

9 A Multiple people said that they felt like
10 they had a good jury and multiple people, yes -- I
11 think more people said there was a good jury than
12 actually made the next step, because of the foreman.
13 But there was, you know -- when we're talking about
14 multiple people, we're not talking -- I'm not talking
15 about half a courtroom. I'm talking about four or
16 five people maybe.

17 Q But there were four or five people who --

18 A Felt like we had a good jury. And several
19 of those, maybe three of them, four of them, maybe all
20 five of them said we had a good jury and we have a
21 good foreman.

22 Q Because he was a retired chief of police.
23 Acknowledged that they knew he was a former chief of
24 police?

25 A I don't know if they outright said it or if

1 it was -- I assumed -- I found out first it was a
2 chief of police. So I don't know if it was one of
3 those, we got a good jury and he's a -- and we got a
4 good foreman. I don't know if that next sentence was,
5 because he's a chief of police, ever came out because
6 I knew he was a former chief of police. So I assumed
7 that's what they were talking about. So I think --

8 Q I understand.

9 A They might have thought I knew as well.

10 Q To the best of your recollection, did
11 multiple people mention to you knowing that he had
12 been in law enforcement?

13 A I know other people than the first person,
14 and I can't remember who the first person was -- the
15 first -- The way the conversation happened was, you
16 know, how does the jury look, the jury looks good,
17 we've got a good foreman, why is he a good foreman,
18 he's former chief of police at Kershaw. I said, where
19 does he work now. They said, don't know but he used
20 to be law enforcement. I said, because obviously he's
21 not law enforcement now or he wouldn't be sitting
22 there.

23 Q Sure.

24 A So that's how that conversation went. The
25 conversations I had with other people after that, I

1 don't know if we ever came to that discussion of why
2 he was a good foreman, because I knew why they
3 thought -- or I assumed why they thought he was a good
4 foreman. So it was -- but multiple people were happy
5 with the jury, like I said, and they felt we had a
6 strong -- and other people mentioned about the foreman
7 being --

8 Q Having a good foreman?

9 A Right, we had a good foreman. So I took
10 that to mean, from learning that he was prior law
11 enforcement, that that's what they meant. Now whether
12 that's what they meant or not, I'm assuming.

13 Q You mentioned earlier that you know having
14 somebody on the jury that was former law enforcement
15 might or might not be a good thing. I'm paraphrasing.

16 A Right.

17 Q Something to that effect. You're in private
18 practice now?

19 MS. WILLIAMS: I'm going to object to him
20 being an expert on the standards of practice
21 for an attorney. Green and other authority.

22 BY MS. SHURLING:

23 Q You stated for the record that having
24 someone on a jury might or might not be a good thing;
25 is that correct?

1 A That's correct.

2 Q Okay. Are you currently in private
3 practice?

4 A Yes, I am.

5 Q Would you ever under any circumstances seat
6 a juror with 25 years --

7 MS. WILLIAMS: Again I'm going to object
8 to this testimony as being expert testimony on
9 whether --

10 MS. SHURLING: Your objection is noted.
11 It's a deposition.

12 THE DEPONENT: I don't know that I can
13 answer that with that -- I don't know. Depends
14 on the case I'm trying, depends on what I'm
15 doing. But I would tend to believe that if I
16 was a defense attorney, I'm not going to want
17 to seat a law enforcement officer, you know, a
18 former law enforcement officer. Just generally
19 that would be kind of my -- you know, a rule of
20 thumb. If they're prior law enforcement, I
21 don't want them on my jury. That's just -- if
22 they're related to somebody in law enforcement,
23 I don't want them on my jury just because
24 they're pro law enforcement. You know, I'm
25 assuming they are. We have very little

1 knowledge about what our jurors -- their
2 background, so we have to hang on to the little
3 things that we do know.

4 BY MS. SHURLING:

5 Q Sure.

6 A If that's all I got, I don't know, I might
7 put somebody with 25 years experience if I know
8 something else about them that would outweigh that.

9 Q If they got fired for cheating or something?

10 A Right, if they're former law enforcement and
11 they weren't -- yeah, if they'd done the same thing
12 that my guy is being tried for and that's why they're
13 former law enforcement, then I might be okay with
14 them. So I can't speculate on that.

15 Q I understand. Going forward, you
16 specifically recall someone telling you that Mr.
17 Roberts was a former chief of police in the town of
18 Kershaw?

19 A That's correct.

20 Q But you didn't know anything about the other
21 24 years law enforcement experience this gentleman
22 had?

23 A No, I didn't know anything about him.
24 Didn't know him at all. Never talked to him until he
25 walked out the door there when I was coming in and he

1 was going out. I had no knowledge of whether he had
2 been in law enforcement for a day or 25 years. I had
3 no knowledge. Just that he was chief of police in the
4 town of Kershaw, which the town of Kershaw is small
5 and I know some small agencies that you might not have
6 to have put a year or two experience to be chief of
7 police of a small agency. So I wouldn't have assessed
8 that he was a long-term law enforcement officer just
9 because he was chief of police of Kershaw, the town of
10 Kershaw.

11 Q I understand. And again, you've recapped
12 nicely these conversations you had with law
13 enforcement personnel either in the courtroom or from
14 the community but there's no question in your mind
15 that you had a conversation with one of the senior
16 prosecutors in this case and they acknowledged that
17 they knew Mr. Roberts --

18 A Yes.

19 Q -- was a retired chief of police in Kershaw?

20 A Yes.

21 MS. SHURLING: Thank you. No further
22 questions.

23 (The deposition concluded at 2:43 p.m. The
24 deponent reserved signing his deposition.)

25

1 SIGNATURE OF DEPONENT

2 I, the undersigned, THOMAS WILLIAM HOLLAND, do
3 hereby certify that I have read the foregoing deposition
4 and find it to be a true and accurate transcription of
5 my testimony, with the following corrections, if any:

6	PAGE	LINE	CHANGE	REASON

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24 THOMAS WILLIAM HOLLAND DATE

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1 CERTIFICATE OF REPORTER

2 I, Laura Chamblee, Registered
3 Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify:

4 That the foregoing deposition was
5 taken before me on the date and at the time and
location stated on page 1 of this transcript; that
6 the deponent was duly sworn to testify to the truth;
the whole truth and nothing but the truth; that
7 the testimony of the deponent and all objections
made at the time of the examination were recorded
8 stenographically by me and were thereafter transcribed;
that the foregoing deposition as typed is a true,
9 accurate and complete record of the said deposition at
the time of the deposition to the best of my ability.

10 I further certify that I am neither
11 related to nor counsel for any party to the cause
pending or interested in the events thereof.

12 Witness my hand, I have hereunto
13 affixed my official seal this 25th day of April 2014, at
Hartsville, Darlington County, South Carolina.

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17 _____
Laura Chamblee,
18 Registered Professional Reporter
Notary Public
19 State of South Carolina at Large
My Commission expires:
20 December 22, 2018

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State of South Carolina
Solicitor, Sixth Judicial Circuit



CHESTER/FAIRFIELD
LANCASTER
RANDY E. NEWMAN, JR., SOLICITOR

August 4, 2015

Vernard Mathis

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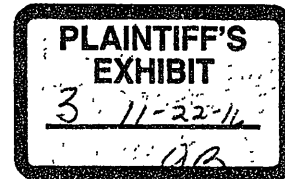
Jeff Hammond

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

TO WHOM IT MAY CONCERN:

The information provided constitutes a complete and accurate list of all the information requested in the subpoena. Sixth Circuit Solicitor's Office personnel from April 21, 2003 through June 6, 2003.

John R. Justice, Solicitor
Douglas A. Barfield, Jr., Deputy Solicitor
Claude Coleman, Assistant Solicitor
Michael Hemlepp, Assistant Solicitor
Tom Holland, Assistant Solicitor
Chris Taylor, Assistant Solicitor
Ann Hardee, Administrative Assistant
Terrie Frost, PTI Director
Jamesa Lyde, Juvenile Arbitration
Linda Macon, Victim/Witness Coordinator
Julie Small, Lancaster Secretary
Fred Stewart, Investigator
Jessica Wylie, Paralegal



Sincerely,

Randy E. Newman, Jr.
Randy E. Newman, Jr.
Solicitor

Sworn to before me this 4th day of

August, 2015
Julie S. Small
Notary Public for South Carolina

My Commission Expires: 6-15-2016

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EXHIBITS

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DATE 11-22-16

DEC 14 2016

COUNTY Lancaster

JUDGE Bruce G. Brown

PLAINTIFF Veronica Mathis

DEFENDANT State

ATTORNEY T. Shurling

ATTORNEY R. Schmuckpeper

CASE NUMBER 2013-CP-29-0951

PLAINTIFF

1. Depo R Roberts

2. Depo T. Holland

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DEFENDANT

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JOINT

1. _____

2. Jeff Hammond

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GAL

RECEIVED OF Aileen Butler, COURT REPORTER ALL OF THE ABOVE EXHIBITS.

DATE _____

CLERK _____

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)

2013-CP-29-051

v.

THE STATE OF SOUTH CAROLINA,)
Respondent.)

MEMORANDUM IN SUPPORT OF
POST-CONVICTION RELIEF
APPLICATION

I.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (200-GS-29-1418), Armed Robbery (2001-GS-29-0250), First Degree Burglary (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented Applicant in the Court of General Sessions on these charges. Following trial by jury, Applicant was convicted on all counts. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr. then circuit court judge, to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

A direct appeal was filed on Applicant's behalf. Appellate Counsel submitted a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Applicant submitted a *pro se* brief in response to the no-merit submission by his court-appointed appellate counsel. The appeal was subsequently dismissed. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. Filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the Petition for Rehearing and

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denying Applicant's Petition for Rehearing *en banc* on September 20, 2005. Applicant next petitioned the Supreme Court of South Carolina for a Writ of Certiorari. His petition was denied by order dated November 2, 2006. The Remittitur was returned to the lower court on November 6, 2006.

Applicant initially filed an Application for Post-Conviction Relief hereafter (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on that application on August 25, 2008, before the Honorable Kenneth G. Goode at which Applicant was present and represented by Tricia Blanchette, Esquire. By order dated October 14, 2008, Judge Goode denied and dismissed the application with prejudice. A PCR appeal was filed in that matter, and a Petition for Writ of Certiorari was filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Applicant filed this application for Post-Conviction Relief on July 9, 2013, and docketed at 2013-CP-29-051. In his current PCR Application he alleged that:

1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.

- a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:

- i. Kershaw Police Department from June 26, 2000 through

December 31, 2000.

- ii. York Police Department from July 14, 1998 until April 7, 2000.
- iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
- iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
- v. University of South Carolina Police Department starting in 1989.
- vi. Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court or Counsel for the Applicant.

d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

During the evidentiary hearing held in this matter testimony came to light, as will be discussed *infra*, which supports the following additional

claim.

3. The State improperly failed to report direct communication between the Solicitor's Office and Juror Roberts after he was summoned for jury duty, but before Applicant's trial.

Applicant subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present during these depositions and represented by undersigned counsel. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. After these depositions, Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. Respondent's Motion for Dismissal was denied and an evidentiary hearing was granted by Order signed by Judge Brian M. Gibbons and filed with the Clerk of Court's Office on October 29, 2014.

An evidentiary hearing was convened in this matter on November 22, 2016 before the Honorable Brian M. Gibbons at the Lancaster County Courthouse. The Applicant was present at this hearing and was represented by undersigned counsel, Tara Dawn Shurling. The Respondent was represented by Patrick Schneckpeper, Assistant Attorney General. At the conclusion of this evidentiary hearing the Court granted leave to submit memoranda on the respective positions of both parties in lieu of full closing arguments.

II.

SUMMARY OF RELEVANT PORTIONS OF DEPOSITIONS

Ronnie Ellison Roberts

In 2003 he was employed by Assurant Group, a mortgage insurance company, in Florence, South Carolina. He described his position with that company as a training manager. Prior to that, he taught criminal law at Northeastern Technical College for two years. Roberts Dep. p. 3, l. 25-p. 6, l. 14. When asked what job he held prior to that, Roberts initially responded that prior to that he retired as Police Chief for the City of York, on April 7, 2000. Roberts Dep. p. 6, ll. 15-20. When prompted by Applicant's Counsel, he acknowledged that after leaving the York Police Department he took the position as Chief of Police in the Town of Kershaw from approximately June, 2000 to December, 2000, when the City did away with its police department. Roberts Dep. p. 6, l. 21- p. 7, l. 25.

Roberts's lengthy history of employment in the field of law enforcement is documented by his deposition which establishes the following employment timeline:

- November 17, 1975 – February, 1982 He was with the Lancaster Police Department.
- 1982 – 1986 Director of Public Safety USC Police Department at USC Lancaster, South Carolina

- 1986 – 1989 Police Chief at USC Police Department in Columbia, S. C.
- 1989 – 1996 Instructor for the South Carolina Criminal Justice Academy
- July, 1996 – July, 1998 Chief of Police Lake City Police Department
- July, 1998 – April, 2000 York Police Department

Roberts Dep. p. 6, l. 15 – p. 10, l. 22. Roberts expressly recalled serving on Applicant's jury in June, 2008, and confirmed that he was appointed as foreman on that jury. Roberts Dep. p. 10, l. 25- p. 11, l. 6. When asked if he recalled being asked during *voir dire* whether he had any relationship with the Sixth Circuit Solicitor's Office, Roberts not only said "no" but added, "Of course I have no relationship with them." Roberts Dep. p. 12, ll. 5-11. He repeated his claim that he didn't recall being asked the question about his relationship with the Sixth Circuit Solicitor's Office, and claimed the only person he knew in that office was Solicitor John R. Justice. Roberts Dep. p. 15, ll. 12-18.

In his deposition, Roberts admitted calling the Solicitor's Office after being summoned for jury service. He specifically stated, "I called and talked to someone and told them, you know, with my background would it not disqualify me. And they said as long as I could do a fair trial, you know, to come up, that they would not excuse me. So I came up." Roberts Dep. p. 15, l. 18-22. Roberts stated that he could not recall who he spoke with at the Solicitor's Office. Roberts Dep. p. 15, l. 23- p. 16, l. 2. When asked if he knew any of the witnesses who testified in this case, Roberts replied, "The only one I knew was the one who is now the Sheriff. I knew him. I didn't know the others." Roberts Dep. p. 16, ll. 11-14 and 23-25. Roberts stated that he did not know who the witnesses were going to be at the time he was seated. He claimed that the list of potential

witnesses *was not read during* jury selection. Roberts Dep. p. 16, ll. 15-22. The record of the *voir dire* of Applicant's jury very clearly reflects that the Court did ask if any of the members of the Petit Jury if they had any special relationship with any of the potential witnesses, and then had Solicitor Justice read the list of their potential witnesses to the jury pool. *Voir Dire* Tr. p. 6- p. 8. Next, the jury pool was expressly asked, "Do any members of the Petit Jury panel have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit's Solicitor's Office. If so stand." *Voir Dire* tr. p. 11. Juror Roberts did not respond to this question. Roberts admitted that he knew Barry Faile, a law enforcement witness for the State. He also added, "But that's the only one I knew by name." Roberts Dep. p. 16, l. 23-p. 17, l. 5. Roberts admitted he knew Solicitor Justice, but claimed he had only spoken with him one time, and that was in a case where he was a prosecution witness. Roberts Dep. p. 17, ll. 6-25.

When questioned more closely about knowing Officer Barry Faile, who testified at Applicant's trial, Roberts once again qualified his answer noting that, "As far as I can remember" he was the only witness he knew from this trial Roberts Dep. p. 18, ll. 3-6. Initially, Roberts claimed he *did not* discuss his law enforcement background with the members of Applicant's jury. Roberts Dep. p. 18, ll. 18-20. When pressed on this issue, however, he qualified his answer by stating, "I don't remember doing that." He also noted that one of the jurors knew him, "...but he knew I was also retired..." Roberts Dep. p. 18, ll. 21-25. He stated that the juror in question was Eddie Lewis. Roberts Dep. p. 19, l. 2-3.

Roberts acknowledged that State Witness, Barry Faile, knew of his career in law enforcement, and was himself on the law enforcement team in this case. Roberts Dep. p.

20, l. 14-p. 15, l. 4. He further acknowledged that fellow juror, Eddie Lewis, would have known his background in law enforcement. Roberts Dep. p. 21, ll. 6-8.

The deposition of Juror Roberts reflects that, although he initially claimed Solicitor Justice was the only person he knew from the Solicitor's Office, he eventually admitted that he knew Senior Assistant Solicitor, Doug Barfield, who tried Applicant's case with Solicitor John Justice. He acknowledged that they knew each other by sight. Roberts Dep. p. 21, l. 14- p. 22, l. 3. Interestingly, Juror Roberts revealed that when he received the letter about this deposition, he called and spoke with Barfield about it. Roberts Dep. p. 22, ll. 17-23. Juror Roberts went on to indicate that Barfield actually knew some of his family members. Roberts Dep. p. 23, ll. 9-14. When questioned about his call to the Solicitor's Office after receiving the jury service notice, Roberts claimed he spoke with "whoever answered the phone." Roberts Dep. p. 23, ll. 23-25. He did, however, reveal the gender of the person he spoke with by saying, "I told him" I was retired. Roberts Dep. p. 24, ll. 3-7. See also, Roberts Dep. p. 26, l. 15-17. He also clearly stated, "*I wasn't trying to get out of it*", but noting he didn't "think anybody would let him sit anyway." Roberts Dep. p. 24, ll. 9-11. (Emphasis added). When asked specifically if he would have answered the question concerning knowing or having contact with the Solicitor's Office *if he had heard it*, he responded "yes" and once again noted that this issue was why he called the Solicitor's Office. Roberts Dep. p. 26, ll. 10-19.

When asked directly if he had any cases with the Solicitor's Office while he was Kershaw City Police Chief, he said "no". He subsequently once again, qualified his answer by saying, "I don't think we had any General Sessions or anything that came up

through them.” Roberts Dep. p. 28, ll. 15-17. Juror Roberts admitted that he knew the Defense Attorney would not want a police officer on Applicant’s jury. Roberts Dep. p. 30, ll. 2-5. He said that was why he called the Solicitor’s Office when he got the jury notice. He made it clear he knew how the jury system worked and was aware that either side could use a peremptory strike to remove him from service. Roberts Dep. p. 30, ll. 2-16.

Although Roberts’ deposition testimony indicates he did not know who he spoke with when he called the Solicitor’s Office about jury service, he specifically stated, “*He told me to come up, and he might could release me, but he didn’t. He kept me all week.*” Roberts Dep. p. 29, ll. 8-21 (Emphasis added). *See also*, Roberts Dep. p. 31, l. 15-16. His statements during his deposition clearly indicate that while he went out of his way to let the prosecution know he would be in the jury pool that week, he did nothing to reveal the fact to Defense Counsel, but rather assumed “the defense attorneys did their own leg work and knew.” Roberts Dep. p. 30, ll. 13-18. Despite acknowledging that he knew the defense lawyer wouldn’t want him on their jury, Roberts did nothing to bring his long history as a law enforcement officer to the attention of the Court and Defense Counsel during the jury selection process. He admitted that he did nothing to try and be excused from jury service at Applicant’s trial. Roberts Dep. p. 31, l. 5- p. 32, l. 9. Roberts admitted that when the Court asked if any of the prospective jurors had contact with the Solicitor’s Office he did not disclose his previous work with the Solicitor’s Office, nor did he tell the Court and Defense Counsel about having called the Solicitor’s Office about being called for jury service the week of this trial. Roberts Dep. p. 32, l. 13- p. 33, l. 5.

Attorney Thomas William Holland

Attorney Holland was also deposed on April 22, 2014. He acknowledged having been an Assistant Solicitor in the Sixth Circuit at the time of Applicant's trial. Holland Dep. p. 4, ll. 1-9. He participated in the prosecution of Applicant although he recalled having only handled one witness; the SLED DNA witness. Holland Dep. p. 4, ll. 10-24. Holland stated that he was in and out of the courtroom during the jury selection, but recalled being told by either "a court person" or law enforcement that the jury looked good, and that the foreman was a former Chief [of Police] in Kershaw. Holland Dep. p. 5, l. 17- p. 6, l. 16. Holland admitted that he subsequently heard "other law enforcement officers connected with [Applicant's] case discussing the fact that Mr. Roberts was on the jury." Holland Dep. p. 6, l. 17-p. 7, l. 2.

Holland recalled being shocked that Roberts was on the jury, and admitted he didn't understand why he wasn't struck. He said he heard multiple people, law enforcement and court personnel, discussing it. Holland Dep. p. 7, l. 3- p. 8, l. 12. He acknowledged that these individuals obviously thought it was significant enough to bring to his attention. Holland Dep. p. 8, ll. 14-18. Holland said he brought what he had been told to the attention of one of the two senior prosecutors; either Solicitor John Justice or Senior Assistant Solicitor Doug Barfield. He stated that he "would assume" he would have talked with Doug Barfield rather than Solicitor Justice. Holland Dep. p. 8, l 19- p. 9, l. 6. *See also*, Holland Dep. p. 10, l. 24- p. 11, l. 11. Holland recalled asking how Roberts could have gotten on the jury. He remembered questioning whether the defense lawyer ran out of strikes, and asking whether Defense Counsel knew the foreman was former law enforcement. His deposition confirms that he

was told the defense did not run out of strikes and further, that the senior prosecutor's response to his questions was "I don't know what he knew kind of thing." Holland Dep. p. 9, ll. 6-12. When Holland asked if that was something they should disclose, or should have disclosed, he was told, "No, he answered all the questions." Holland Dep. p. 9, ll. 12-19. Holland explained his questioning the senior prosecutor by stating, " And it would have been a question because I didn't feel like anything was illegal, per se, or a violation of any rules, but, you know kind of more of a policy thing of how you want to run your office kind of thing." Holland Dep. p. 10, ll. 15-19. He acknowledged that with this being a murder case, there would have been 2-3 alternate jurors selected. Holland Dep. p. 11, ll. 12-18.

The record of the jury selection portion of Applicant's trial documents that three (3) alternate jurors were selected in this case. *Voir Dire* Tr. p. 53, l. 13- p. 55, l. 22. The record further documents that the defense had only used three (3) of its ten (10) strikes at the time Roberts was seated. *Voir Dire* p. 47, l. 9- p. 51, l. 12. The *Voir Dire*, record in fact, demonstrates that the defense used only three (3) strikes during the selection of the Applicant's jury. *Voir Dire* p. 47, l. 9- p. 53, l. 10. When asked if he ever considered disclosing the background of this juror to the defense team, Holland stated no, and went on to explain "it was their case..." Holland Dep. p. 11, l. 23- p. 12, l. 6. Although he tried to downplay how pleased the law enforcement officers involved in this case were about getting a former Chief of Police on this jury, he admitted that they were all happy about it. Holland Dep. p. 13, l. 13- p. 14, l. 18. He also acknowledged a defense attorney would be expected to use a peremptory strike to excuse a former law enforcement officer from service provided he had strikes available. Holland Dep. p. 14, l. 19- p. 15, l. 14.

Despite Holland's statements in his deposition which tended to convey that he didn't think there was anything wrong with the way Roberts ended up on Applicant's jury, the fact remains that after he left the Solicitor's Office he conveyed information about this situation to one of his clients who knew Applicant and who in turn set up a telephone conversation between him and Applicant. Holland Dep. p. 12, ll. 7-19. He acknowledged that after his telephone conversation with someone who identified himself as Applicant, he was contacted by the late Dave MacDougal, who identified himself as an investigator hired to investigate rumors that Roberts was former law enforcement. Holland Dep. p 13, ll. 2-9.

III.

Summary of Relevant Testimony from the Evidentiary Hearing

Testimony of Ronnie Roberts

- At the evidentiary hearing held in this matter, Juror Roberts, testified that after receiving notice that he was being called for jury selection he called "the Solicitor's Office and...asked to be dismissed because of I figured they would not let me serve anyway being a former police officer." Hearing Tr. p. 15, ll. 5-13.
- When asked specifically whether he "asked to be dismissed", he answered affirmatively. Hearing Tr. p. 15, ll. 14-15.
- After being reminded of his sworn statement in his deposition that he had not called the Solicitor's Office with the intent to try and get out of jury service, Juror Roberts stated, "I actually can not remember. I called the solicitor's phone number that was in the book and I know I spoke to someone. I can not remember who I spoke with." Hearing Tr. p. 16, ll. 15-17.
- Juror Roberts, after having stated in his deposition that he was not trying to get out of jury service when he called the Solicitor's Office, claimed at this hearing that he actually was. He then backtracked and admitted he had not ever asked to be relieved [from jury service]. Hearing Tr. p. 15, l. 19- p. 16, l. 7.

- Juror Roberts then claimed that he had called to inquire as to whether he would be allowed to serve in light of his lengthy law enforcement career. Hearing Tr. p. 16, ll. 3-10.
- Immediately after his testimony, Juror Roberts qualified his response, saying, "to the best of my knowledge." Hearing Tr. p. 16, l. 12.
- Juror Roberts testified that he did not remember who he had spoken with when he called the Solicitor's Office. He stated, "I actually can not remember. I called the solicitor's phone number that was in the book and I know I spoke to someone. I can not remember who I spoke with." Hearing Tr. p. 16, ll. 15-17.
- Juror Roberts claimed that he told whoever he spoke with about being "a former law enforcement", but said he not to know whether the length of his law enforcement career "came in to play" during the conversation. Hearing Tr. P. 16, ll. 20-25.
- Juror Roberts testified that he could not recall whether the person he spoke with during his call to the Solicitor's Office was someone who already knew him "as a former law enforcement officer." He denied recalling whether he already knew the person prior to that telephone call. Hearing Tr. p. 17, ll. 1-9.
- Juror Roberts testified that he "was told I had to report and that, you know, if they had issues with my background that I would be dismissed or struck. However they call that. That they don't choose you to be on jury." Hearing Tr. p. 17, ll. 11-16.
- Juror Roberts admitted that during his deposition he repeatedly referenced the person he spoke with in his telephone call to the Solicitor's Office as, "he", but reiterated his earlier testimony that he could not recall who the man he spoke with was. Hearing Tr. p. 17, l. 17- p. 18, l. 9.
- Although he claimed not to know who he spoke with during his phone call to the Solicitor's Office, Juror Roberts testified that once they got to Court, he thought Mr. Justice was in charge then." Hearing Tr. p. 18, ll. 9-13.
- Juror Roberts testified that although he assumed the Solicitor knew about his phone call to the Solicitor's Office, he did not know. Hearing Tr. p. 18, ll. 10-20.
- The Respondent stipulated to Juror Roberts' law enforcement background as reflected in the pleadings. Hearing Tr. p. 19, ll. 11-20.
- Juror Roberts claimed he answered all the questions asked during the jury selection and did not stand when the question was asked about any relationships

with the Solicitor's Office because he "did not have any connection with them at that time " Hearing Tr. p. 20, l. 12- p. 21, l. 10.

- Juror Roberts denied having stated in his deposition that he had no recollection of even being asked the *voir dire* question concerning any relationship with the Solicitor's Office. Hearing Tr. p. 21, l. 22- p. 22, l. 1. See also, Deposition Ronnie Roberts p. 12, l. 5- p. 15, l. 14.
- Juror Roberts acknowledged that in his deposition he initially claimed John Justice was the only person he knew in the Solicitor's Office. Hearing Tr. p. 22, ll. 5-20.
- Juror Roberts testified that he did listen to the questions put to him during the *voir dire* by the presiding judge. Hearing Tr. p. 24, ll. 23-25.
- Juror Roberts testified that he could not recall being asked on *voir dire* whether he had any special relationships with any of the potential witnesses. Hearing Tr. p. 23, ll. 1-5.
- Juror Roberts acknowledged that in his deposition he had stated that at the time he was seated he did not know who the State's witnesses would be and did not hear a list of witnesses read out during the *voir dire*. He further testified that he did not recall hearing a list of witnesses. Hearing Tr. p. 23, ll. 6- p. 24, l. 15.
- Juror Roberts acknowledged that during his deposition he stated that he did not recall being asked about any connection with the Solicitor's Office during *voir dire*. He had no explanation for his inability to recall a list of witnesses being read during *voir dire*; save the passage of time. Hearing Tr. p. 25, ll. 1-5.
- At the evidentiary hearing, Juror Roberts testified that he recalled being asked a question during his deposition about whether or not he recalled being asked a *voir dire* question concerning whether or not he had any connection with the Solicitor's Office. He acknowledged that in his deposition he stated he did not recall being asked that question. Hearing Tr. p. 25, ll. 6-22.
- When asked if he also recalled saying during his deposition that if he had heard the question about any connection with the Solicitor's Office, he would have answered and acknowledged that he knew the Solicitor, Juror Roberts, responded "I don't know how to answer that." Hearing Tr. p. 25, l. 23- p. 24, l. 1.
- In his hearing testimony he then went on to claim that if he had heard that question concerning any connection with the Solicitor's Office, he *would not* have answered, "because I had no connection with the Solicitor's Office at that time." Hearing Tr. p. 26, ll. 2-6.

- Earlier in his hearing testimony he had acknowledged knowing both Solicitor John Justice and Deputy Solicitor Doug Barfield. He went on to acknowledge that some of his family members "possibly" were acquainted with Barfield, noting "I don't know, but I'm assume [sic] they did because they were older than [sic] I." Hearing Tr. p. 22, ll. 5-20.
- Thus, Juror Roberts declined to acknowledge that in his deposition he indicated that certain members of his family were acquainted with Barfield. Hearing Tr. p. 22, ll. 16.
- Juror Roberts testified that he called the Solicitor's Office to discuss this matter because, "my concern was that most of the time when a policeman is called and they are not seated --- they're really wasting time to be there as jurors when they are never utilized on the jury. So I assumed nobody would seat me because of that." Hearing Tr. p. 23, ll. 17-21.
- Juror Roberts denied questioning whether he would even be qualified to serve on a jury due to his career background. Hearing Tr. p. 23, ll. 12-17.
- After being read the specific *voir dire* question asked at trial concerning any relationship or contact with the Solicitor or anyone on his staff, Juror Roberts then stated, "I remember if that's what they read, I remember that." Hearing Tr. p. 28, ll. 17-25.
- Juror Roberts testified that he did not respond to this *voir dire* question because, "I had no connection to the solicitor's office or contact with them about this case." Hearing Tr. p. 29, ll. 1-25.
- Juror Roberts acknowledged that in his deposition he stated that the only witness he knew from this trial was Barry Faile. Hearing Tr. p. 30, ll. 4-9.
- Juror Roberts explanation for not responding to the *voir dire* question about witnesses was, once again, that he never heard the witness list read during *voir dire*. Once again, he declined to give any explanation for why he did not hear the list of witnesses. Hearing Tr. p. 30, ll. 10-16.
- Juror Roberts admitted in his hearing testimony that he knew Barry Faile, but added, "I had no relationship with him." Hearing Tr. p. 30, ll. 17-18.
- When asked whether, as the trial progressed, there were other law enforcement officers that he knew, Juror Roberts, gave a qualified answer stating "Not that I remember." Hearing Tr. p. 30, ll. 19-21.
- Juror Roberts admitted that in his deposition he had stated that Barry Faile was the only law enforcement witness at the trial that he "knew by name." Hearing Tr. p. 30, ll. 22-24.

- When asked exactly what he meant by his deposition statement that Barry Faile was the only law enforcement witness that he "*knew by name*" and whether there were others that he saw [and recognized as law enforcement] but he "just did not know their names", Juror Roberts did not directly answer the question, but rather stated, "you asked me if I knew anyone. He is the only one *I knew by name.*" Hearing Tr. p. 31, ll. 3-7 (Emphasis added).
- Despite his earlier qualified answers, as noted above, when pressed, Juror Roberts ultimately answered negatively when asked point blank whether he recognized any other witnesses at this trial as people he "knew before that trial as being law enforcement." Hearing Tr. p. 31, ll. 8-13.
- He added, however, that he "knew the Sheriff, but he did not testify." Hearing Tr. p. 31, ll. 14-15.
- Juror Roberts ultimately testified that he would have disclosed his knowledge of the Solicitor if he had heard the question and "If I had known that was that important I would have made that statement that I did, but I didn't see where it would involve or keep me from, you know, serving on a jury." Hearing Tr. p. 31, ll. 16-22.
- Juror Roberts went on to restate his position, however, that he had no connections to the Solicitor's Office or anyone involved in this case as far as he was concerned. Hearing Tr. p. 31, l. 23- p. 32, l. 4.
- During Juror Roberts's testimony the following question was asked, "Mr. Roberts, is there any question that at the time you placed that phone call to the solicitor's office you knew from your many years experience in law enforcement that no defense lawyer was going to want you on his jury if he knew your background?" Hearing Tr. p. 32, ll. 5-10.
- When pressed to acknowledge his statement in his deposition in which he clearly said he knew nobody was going to want him on their jury if they knew his background, Juror Roberts stated, "I just said that, yes, ma'am " Hearing Tr. p. 32, ll. 11-14.
- After Juror Roberts declined to acknowledge that law enforcement were "basically on the same side" in the judicial system, Juror Roberts was asked why he didn't contact the Public Defender's Office with his concerns about jury service. His response was that he "didn't know how to get in touch with them." When asked if he did anything to advise the Court, about his concerns regarding jury service, he responded, "I notified the only person I knew that would have any control of that. I didn't know anybody else to call." Hearing Tr. p. 32, l. 15- p. 34, l. 15.

- Juror Roberts acknowledged that after twenty-five years in law enforcement he had a good general working knowledge of the Judicial System and the Court Process. Hearing Tr. p. 34, l. 24- p. 35, l. 1.
- Juror Roberts admitted in his PCR testimony that he was familiar with the jury strike procedure. He admitted that he knew Applicant's defense counsel could have struck him from jury service if he had known his background. Hearing Tr. p. 35, ll. 2-10.
- Both during his term as Chief of Police in Kershaw, and his seven (7) years with the Lancaster Police Department, Juror Roberts fell under the umbrella of the Sixth Circuit Solicitor's Office.
- Juror Roberts denied having multiple opportunities during the *voir dire* process to address the judge. Hearing Tr. p. 35, ll. 21-23.
- Juror Roberts admitted that during his time with the Lancaster Police Department he was aware that the Chief Solicitor in that circuit was John Justice. Hearing Tr. p. 37, ll. 5-20.
- Juror Roberts further acknowledged that he knew at least one other juror on Applicant's jury before this jury trial and that person, Eddie Lewis, knew Juror Roberts as someone who had been in law enforcement. Hearing Tr. p. 37, l. 21- p. 38, l. 23.
- Through the evidentiary hearing Juror Roberts consistently claimed that he only knew Deputy Solicitor Barfield by sight and that he only assumed his older brothers knew him "because of his age" and "their similar time in school." He claimed that he did not make these assumptions until later and did not know Deputy Solicitor Barfield "at the time at the court." Hearing Tr. p. 39, ll. 2-22.
- Juror Roberts never directly addressed the inconsistency of his hearing testimony with his sworn statements concerning Barfield in his deposition. Hearing Tr. p. 39, ll. 5-13. *But see*, Deposition p. 21, l. 24- p. 22, l. 3 and Deposition p. 23, ll. 9-14.
- In his deposition, Juror Roberts referenced the person he spoke with when he called the Solicitor's Office by the pronoun "he". Juror Roberts also stated that he did not remember who he spoke with, saying, "[w]hoever answered the phone." He specifically noted, "I told *him* I retired."

Ronnie Roberts' Deposition p. 23, ll. 23-25

Ronnie Roberts' Deposition p. 24, ll. 3-7

Ronnie Roberts' Deposition p. 29, ll. 8-21

Ronnie Roberts' Deposition p. 31, ll. 15-16

- In his hearing testimony, Juror Roberts revealed for the first time that when he called the Solicitor's Office he *"asked to speak with the solicitor."* He went on to renew his claim that he could not remember who he spoke with. Hearing Tr. p. 40, l. 11- p. 41, l. 10. (Emphasis added).
- After admitting one other juror, Lewis, knew him before this trial and was aware he had been a law enforcement officer, Juror Roberts, was asked whether anyone else on the jury knew him as a law enforcement officer. He responded, *"[n]ot as far as I know."* Hearing Tr. p. 41, l. 24- p. 42, l. 2.
- When asked if he discussed his law enforcement experience with anyone on the jury during the deliberations, Juror Roberts stated, *"I don't remember that I did." He then admitted that he could not swear that he didn't."* Hearing Tr. p. 42, ll. 3-8. (Emphasis added).
- Juror Roberts was unable to give any explanation for why he called the Solicitor's Office, rather than the Office of the Clerk of Court, concerning his jury service summons other than, "I'm not sure. That's just who I knew to call. I knew he was over the cases. That's all I knew." Hearing Tr. P. 53, l. 16- p. 54, l. 3.
- At no time during his testimony did Juror Roberts say that when he called the Solicitor's Office he was told they could not discuss his jury service with him nor did he indicate that he was instructed to call the Office of the Clerk of Court about the matter.
- Juror Roberts claimed in his hearing testimony that one of the reasons he called the Solicitor's Office after receiving his jury service summons was that he, "I had a responsible job in Florence and I kind of was under pressure to be at work." He also stated that, "I really didn't think they would let me serve because of my law enforcement background." Hearing Tr. p. 48, ll. 3-12 and Hearing Tr. p. 54, ll. 4-10.
- Juror Roberts acknowledged that he had given sworn testimony that his call to the Solicitor's Office was at least partially motivated by his desire not to miss work. He further admitted that he had also previously testified that he knew no defense lawyer would want him on their jury if they knew his background in law enforcement. Hearing Tr. p. 54, ll. 4-15.
- During the evidentiary hearing reference was made by the Respondent to the fact that it had been "several years" since Juror Roberts deposition was taken in this case. Hearing Tr. p. 47, ll. 3-6.
- It was suggested that, given the passage of time, Juror Roberts might not have a perfect memory of "every line of testimony in the deposition." Hearing Tr. p. 47, ll. 7-11.

- In his hearing testimony, Juror Roberts acknowledged receiving a copy of his deposition from the Court Reporter. He testified that he did not report any errors in the deposition to the Court Reporter. He denied reviewing his copy of the deposition in preparation for the hearing. He was expressly asked whether he had reread his deposition after receiving a subpoena to testify at the evidentiary hearing and answered, "No, Ma'am." Hearing Tr. p. 52, l. 23- p. 53, l. 15.
- After the testimony of Juror Roberts concluded, a bench conference was held, after which this Honorable Court allowed both sides to question Juror Roberts further. Hearing T. p. 56, ll. 4-18.
- Further questioning of Juror Roberts revealed the following:
 - a) When asked by Counsel for Applicant what materials he had with him on the witness stand, he responded, "Letters you sent me." Hearing Tr. p. 56, l. 21- p. 57, l. 1.
 - b) When asked what was in the red folder, Juror Roberts stated, "that's the deposition, statement that I made, I guess." Hearing Tr. p. 57, ll. 2-3.
 - c) When asked to admit that he had in fact been sitting in Court reading his deposition, Juror Roberts testified, "I have not opened it today or yesterday, no, ma'am." Hearing Tr. p. 57, ll. 4-6.
 - d) When asked point blank, "You deny that you have been sitting here reading your deposition?", Juror Roberts responded, "I do." Hearing Tr. p. 57, ll. 7-9.

Juror Roberts was subsequently required to hand Applicant's Counsel the document folder he had with him on the witness stand. Counsel noted for the record that the folder contained a condensed copy of Juror Roberts' deposition dated April 22, 2014. This Honorable Court noted on the record that Counsel for the Attorney General's Office had reported to the Court that he had seen Juror Roberts looking at those materials in the courtroom during the hearing, and that this disclosure prompted the Court to allow further questioning of Juror Roberts inasmuch as he had previously denied reviewing his deposition prior to his testimony. Hearing Tr. p. 57, l. 23- p. 58, l. 15.

Counsel for Applicant asked that the record reflect that Respondent reported that

he observed Juror Roberts looking at a document in a red folder which may or may not have been the deposition in question. This Court noted, at the request of counsel, that the copy of the deposition contained in a red folder could not be seen if it was inside the document folder carried to Court by Juror Roberts. Hearing Tr. p. 58, l. 16- p. 59, l. 2.

This Honorable Court noted that the events which unfolded during this hearing concerning Juror Roberts possession of a copy of the deposition in Court, the observations of Respondent and the Court regarding that deposition and his previous testimony denying he had looked at the deposition, were, "a determination of credibility the Court needs to make." Hearing Tr. p. 58, ll. 2-15.

Testimony of John Clark, Trial Counsel

Applicant's Trial Counsel, John Clark, testified at the evidentiary hearing held in this matter. His testimony reflects that he could not recall how many strikes he utilized in the jury selection process. He confirmed however that he absolutely would have used a strike to remove Juror Roberts from jury service had he known about his twenty-five (25) year background in law enforcement. He testified that there was "no question at all" that he would have struck Juror Roberts from Applicant's jury. He further verified that he did not receive any additional information about Juror Roberts from the Solicitor's Office, Juror Roberts or any other source prior to the jury selection at this trial. Hearing Tr. p. 59, l. 19- p. 61, l. 17. The jury selection sheet submitted to the Clerk of Court in this case was attached to the Post-Conviction Relief Application filed in this matter. Hearing Tr. p. 60, ll. 6-12; Post Conviction Relief Application, Attachment A. This document confirms that only three peremptory strikes were utilized by the defense at Applicant's jury trial.

Relevant *Voir Dire* Questions asked at Trial

The transcript of the jury selection proceeding in this case held on June 2, 2003, reflects that the petite jury panel was specifically asked the following relevant questions by the Court and that Juror Roberts responded to none of them.

IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAVE ANY SPECIAL RELATIONSHIP WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE OF SOUTH CAROLINA? *Voir Dire* Tr. pp. 6-7, p. 3.

Thereafter the State's list of potential witnesses was read to the panel; which list included the name of *Captain Barry Faile*. *Voir Dire* Tr. p. 7-8. Although numerous potential witnesses responded to this question, Juror Roberts was not among them. Hearing Tr. p. 3-10.

ARE ANY MEMBERS OF THE PETIT JURY PANEL CONSCIOUS OF ANY INTEREST OR ANY BIAS OR ANY PREJUDICE FOR OR AGAINST THE STATE OF SOUTH CAROLINA OR THE DEFENDANT, MR. VERNARD JEROME MATHIS? IF SO, PLEASE STAND. (NO RESPONSE). No member of the panel responded to this question. *Voir Dire* Tr. p. 10.

DO ANY MEMBERS OF THE PETIT JURY PANEL HAVE ANY RELATIONSHIP OR CONTACT WITH SOLICITOR JOHN REID JUSTICE OR ANY MEMBER OF THE SIXTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND. (NO RESPONSE). No member of the panel responded to this question. *Voir Dire* Tr. p. 11.

Testimony of Shareka Jones

Ms. Jones testified that she had previously been represented on a forgery charge by Thomas Holland, Esquire. Attorney Holland gave her a ride to Court in September, 2012. During that ride, she brought up the fact that she believed he was one of the prosecutor's in the Applicant's case. She testified that at the time she was represented by Holland she was already a friend of Applicant's family. She testified that she had looked her lawyer, Attorney Holland, up on the internet and saw the references to Applicant's case. She testified that this was how she became aware that her lawyer had been a prosecutor in Applicant's case. Hearing Tr. p. 63, ll. 3-11. Attorney Holland confirmed that he had been and informed her that he handled the DNA part of the case. Hearing Tr. p. 62, l. 5- p. 63, l. 18. Ms. Jones went on to state the following:

And that he did not believe that Mathis was guilty of the charge and that the prosecution knew that Mr. Roberts was a former police officer and they assigned him to be the foreman on the case and they absolutely knew what they were doing as to give him an unfair trial.

Hearing Tr. p. 63, ll. 19-23. Ms. Jones testified that later that day she had a cell phone conversation with Applicant and was able to put him on the phone with Attorney Holland. She heard their entire conversation and heard Attorney Holland convey to Applicant the information concerning one of the jurors in his case having been a career law enforcement person. Attorney Holland was not exploring the possibility of representing Applicant, but rather was just conveying the information concerning the jury to Applicant. Hearing Tr. p. 65, l. 4-7.

Ms. Jones testified that she had neither been given, or promised, any form of compensation for testifying in this matter. Hearing Tr. p. 66, ll. 8-14.

Testimony of Douglas A. Barfield

Douglas A. Barfield, Assistant Solicitor for the Sixth Judicial Circuit at the time of Applicant's trial, also testified at the evidentiary hearing held in this matter. The records before the Court verify that he, along with the late Solicitor John R. Justice and former Assistant Solicitor Thomas J. Holland, prosecuted Applicant at his jury trial held on June 2, 2003.

Barfield testified that he "*had no recollection*" of being contacted by Juror Roberts concerning his receipt of a jury summons prior to this trial. Hearing Tr. p. 76, ll. 1-3. (Emphasis added) He likewise indicated that he had no recollection of receiving a message from anyone in the Solicitor's Office concerning Juror Roberts having called the Solicitor's Office. Hearing Tr. p. 76, ll. 4-7. He testified that he had, "*no recollection of any communication between Juror Roberts and [him] or anybody in [his] office concerning his jury service.* Hearing Tr p. 76, ll. 8-14. (Emphasis added)

When asked if during the course of this trial he had been made aware by Assistant Solicitor Holland that various members of court personnel and law enforcement were talking about the fact that a former Chief of Police was on the jury, and had been made jury foreman, Barfield testified that he did not "recall that it was but I would not be surprised that it was." Hearing Tr. p. 76, ll. 15-21. He asserted that he had no independent recollection of discussing that matter with Tom Holland. Hearing Tr. p. 76, ll. 2-24.

Barfield did acknowledge that he knew who Juror Roberts was, and was aware that he "was retired law enforcement officer when he was selected for this jury." Hearing Tr. p. 76, l. 25- p. 77, l. 5. He testified that he felt no duty to notify the defense of that

fact. Hearing Tr. p. 77, ll. 6-8. The balance of his hearing testimony clearly establishes that he had no problem with the manner in which Juror Roberts answered the *voir dire* questions during this jury selection. He testified to his belief that those questions were all couched in the present tense, and therefore, did not require disclosure of any past connections or relationships. Hearing Tr. p. 80, l. 24- p. 83, l. 20.

Barfield's testimony establishes that regardless of Juror Roberts twenty-five year career in law enforcement, and his service under the umbrella of the Sixth Circuit Solicitor's Office, he felt no obligation to disclose this information to the Court, or the defense, unless a *voir dire* question had been asked about past employment in law enforcement. Hearing Tr. p. 80, ll. 15-23.

Testimony of Thomas J. Holland

Thomas Holland, a former Assistant Solicitor and prosecutor at Applicant's trial, testified at the evidentiary hearing held in this matter. He confirmed that he was part of the prosecution team in this case. He indicated that he was in and out of the court room during the early part of the trial and did not believe he was present for all of the jury selection portion of the trial. Hearing Tr. p. 90, ll. 1-22. Attorney Holland testified that at some point, after the jury was selected, he came back into the court room and one of the deputies told him that we had a good jury and that "*we got a real good foreman*" and I said, "*why is that, and they told me he used to be the former Chief of Police of Kershaw.*" Hearing Tr.p. 91, ll. 1-4. (Emphasis added) When asked specifically who had given him this information, Attorney Holland testified that it was a courtroom deputy, but he could not recall which one. Hearing Tr.p. 91, 5-7. Attorney Holland's testimony indicates that he was surprised that Juror Roberts, had not been struck by defense counsel. He clearly

was surprised that Juror Roberts had been seated and made the foreman of the jury. Hearing Tr. p. 91, ll.8-15.

Attorney Holland testified that at some point after the jury was selected he discussed this issue with either one of the senior prosecutors on the case, or possibly, both together. He stated that he could not remember for certain whether he had taken it up with both, Solicitor Justice and Assistant Solicitor Barfield, or just one of them. He recalled asking whether this was something that needed to be disclosed and being told no that Juror Roberts, *"answered the questions the way they were asked, so he didn't say anything untruthful so no, we don't need to say anything."* Hearing Tr. p. 91, 16-25. (Emphasis added) He did not indicate how this prosecutor could know whether this juror was truthful in answering questions that either required first hand knowledge of what facts were known to the juror or the juror's subjective opinions. When asked if he would have left the decision about disclosure to the senior members of the prosecution team, or made the disclosure himself, if he had felt disclosure was appropriate, Attorney Holland did not give a direct answer. He ultimately testified that, "no, everything was done above board. There was no - - they didn't -- he did not answer anything incorrectly. He answered the questions that were posed to him." Hearing Tr. p. 92, ll.14-16. Once again, his response fails to indicate how he would know who this juror knew or didn't know, or, how he could presume to know a juror answered subjective questions truthfully.

Attorney Holland testified that he left the Solicitor's Office in 2006 and went into private practice in 2011. He verified that he had represented Sharika Jones. Hearing Tr. p. 92, ll. 18-25. He testified that on the day he drove Ms. Jones to Spartanburg, *for her guilty plea*, he was telling her that, "if it was a trial in Spartanburg he would want to

know who the jurors were." Hearing Tr. p. 93, ll.3-7. He went on to recall how he told Ms. Jones that in the case of a jury trial he would have wanted a local lawyer to help him pick the jury. He said he mentioned the Vernard Mathis case to her by way of example; telling her that the foreman of the jury in that case was a former police officer and the defense attorney was from out of town and "would not have had that knowledge." Hearing Tr. p. 93, ll.7-11. Holland admitted that he either referenced Applicant's case by his name or the name of the victim. Hearing Tr. p. 93, ll.14-20. He gave absolutely no explanation for why he would have been randomly using Applicant's case as an example for jury selection issues when Ms. Jones's case was not going to trial. Neither did he explain why it would have been necessary, or appropriate, to have been discussing Applicant's case by name with an individual who was, as far as he knew, unconnected to his case. This fact, begs the observation that his version of how this conversation unfolded, versus the version testified to by Ms. Jones, requires the belief that he just happened to randomly pick Applicant's case to discuss by name with an individual who would coincidentally turn out to be a friend of Applicant's family.

According to Holland, at some point, Ms. Jones made him aware that she knew Applicant and at one point she just walked into his office and handed him a cell phone to talk to Applicant. Hearing Tr. p. 93, ll. 23-25. Attorney Holland denied ever having indicated to Ms. Jones that he felt this information about Juror Roberts was something Applicant needed to know, but he acknowledged that at the time it happened, "if I was the defense attorney I would like to have known." Hearing Tr. p. 94, ll. 1-6.

Attorney Holland acknowledged that in his telephone conversation with Applicant he shared with him the information he knew about the foreman on his jury having been

the former Chief of Police of Kershaw, but wasn't in law enforcement anymore at the time of Applicant's trial. Hearing Tr. p. 94, ll. 9-19. Attorney Holland testified that he felt sure the entire prosecution team knew this information from the beginning. Hearing Tr. p. 94, ll. 20-23. The balance of Attorney Holland's testimony acknowledges that he had a discussion with Applicant concerning what steps he might take to bring this information to the attention of the court. He indicated Applicant had broached the subject of possibly representing him and stated that he had responded to that suggestion by telling Applicant that he would have a conflict of interest since he participated in the original trial. He stated that, "*basically I referred him to get a lawyer.*" Hearing Tr. p. 94, l. 24-p. 95, l. 14.

(Emphasis added) Attorney Holland offered no explanation for why he felt the need to inform Applicant of the information concerning this juror if he in fact believed everything had been "above board", nor did he explain why he would have advised Applicant how to bring this information to the attention of the Court if that was indeed his opinion. Likewise he gave no explanation for advising Applicant to "get a lawyer" if there was, in his opinion, nothing wrong with the way the Solicitor's Office handled this situation, or, with the failure of Juror Roberts to disclose his law enforcement background and relationship with the very Solicitor's Office that was prosecuting the Applicant.

In his deposition, Attorney Holland recalled that in his discussion with one of the other lawyers on the prosecution team, and he assumed it would have been Assistant Solicitor Barfield, he remembered asking how this person had gotten on the jury and whether or not the other attorney had run out of strikes. He specifically remembered whoever he was talking to saying that, "*no, he had some strikes left.*" He also recalled

asking whether the defense attorney knew that this person was a former law enforcement [officer]. He said the other person's response was, "*I don't know what he knew' kind of thing.*" Depo Holland Tr. p. 9, ll. 1-12. (Emphasis added)

Despite having previously pointed out that Applicant was on a cell phone when he talked with him at the request of Ms Jones, Attorney Holland ultimately clarified his testimony to admit that he should have said Jones was on a cell phone when she came in and handed the phone to him to speak with Applicant. He then acknowledged that he could not say under oath whether or not Applicant was on a cell phone or a landline. He admitted that Applicant could have called Ms. Jones from a landline at SCDC. Hearing Tr. p 100, ll. 9-21.

Attorney Holland ultimately admitted that he would expect a peremptory strike to be used to excuse any law-enforcement officer from jury service. More specifically, he stated that "if I was a defense attorney and I had a former law-enforcement officer I would strike him if I had a strike." Hearing Tr. p. 100, l. 22-p. 101, l. 2.

Applicant's Waiver of Testimony

Applicant elected not to testify after Counsel for the State indicated that Respondent did not question the sufficiency of the testimony of Attorney Clark to establish the fact that Juror Roberts would have been stricken from jury service if the defense had known about his twenty-five (25) year law enforcement background. Hearing Tr. p. 70, l. 23- p. 73, l. 1.

Exhibits Introduced

The deposition of Ronnie Ellison Roberts and the deposition of Thomas J. Holland were introduced during the evidentiary hearing as Plaintiff's Exhibits No. 1 and

2. Applicant, with no objection from Respondent, introduced as Plaintiff's Exhibit No. 3, a notarized letter from Solicitor Randy E. Newman, Jr., verifying the names and job titles of all employees of the Solicitor's Office from April 21, 2003 through June 6, 2003. This letter demonstrated that all the men employed by the Sixth Circuit Solicitor's Office were either lawyers or investigators. Hearing Tr. p. 73, ll. 9-25. Other testimony, discussed *infra*, revealed that there was one other male employee at the Solicitor's Office during that time period, and that he was a former head of the Probation Office in Lancaster County. Hearing Tr. p. 78, l. 6- p. 79, l. 18.

IV.

Timeliness of Application

Prior to the most recent hearing held on this PCR Application, the Respondent conceded the timeliness of this Application and agreed that the matter should be scheduled for a hearing on the merits. After a change in designated Counsel for Respondent, the State renewed their Motion to Dismiss on the theory that Applicant could have, through the exercise of due diligence of either himself or his PCR Counsel, could have raised this claim in his PCR action which ended in a dismissal on October 14, 2008. Said Order was affirmed on appeal on December 2, 2010 when Applicant's Petition for Writ of Certiorari was denied.

Notwithstanding the renewal of its Motion to Dismiss, Respondent "*stipulated that the Applicant actually did in fact learn of this issue within one year of filing and would be timely.*" PCR Tr. p. 5, ll. 21-25 (Emphasis added). Nevertheless, Respondent argued the current application is, "excessive [sic] and untimely." PCR Tr. p. 5, ll. 20-21. Respondent essentially argued that while the current PCR action is timely from when

Applicant *did* find out about the problems with this juror, it is not timely from when they believe he could and should have found out. Specifically, Respondent summarized the State's position by saying "*the State contends though that the applicant did not file within one year of being able to reasonably with good effort to find this information out.*" PCR Tr. p. 6, ll. 1-4. Applicant responded to the argument as follows:

With regard to the renewal of the motion for summary judgment concerning timeliness, it is our understanding as I believe respondent has conceded, that the application was filed within one year of the disclosure of the information that started this inquiry to Shareka Jones who was a client of Thomas Holland after he left the solicitor's office and went in to private practice.

It is my understanding that their only remaining contention having conceded that point is that this information concerning the juror, Mr. Roberts, was such that it could have been discovered through the exercise of due diligence prior to the original post conviction relief proceeding.

PCR Tr. p. 6, l. 22- p. 7, l. 10.

...

Your Honor, it's the applicant's position that his right to a fair trial was violated by the intentional withholding of information relevant to a juror who not only served in his case but who ultimately served as foreman at his trial. It's his position that this information was deliberately withheld not only by the juror, Mr. Roberts, but the State's own agents; the solicitors, and investigators, law enforcement officers and even court personnel were aware of this information and no one disclosed it either to the applicant or to his counsel or to the Court, and that that failure to disclose certainly was a violation of his right to due process of law and his right to a fair trial. We are asking for vacation of the judgment and sentence against him on that basis.

Now, with regard to the State's position that this is an issue that could have been and should have been raised in the initial application for post conviction relief, ... the standard, as the Court is well aware, is due diligence. Whether or not the evidence existed at the time of the original proceeding and whether or not it could have been ferreted out by counsel at the time through the exercise of due diligence. In this case that standard would appear to apply somewhat twice in the sense that we are addressing the question of whether or not trial counsel could have ferreted out that

information at the time of the original trial and to a lesser degree and with regard to the State's argument that it should have been raised in the context of the original initial collateral review. Whether or not the applicant acting through his post-conviction relief counsel could have, and should have, raised this issue in the initial PCR proceeding.

It is our position that with the information that was subsequently disclosed to him by a member of the solicitor's own team at this trial after he left the solicitor's office, that post conviction relief counsel had no reason to question the validity of the answers given by sworn jurors at the time of the trial. That there was nothing that hinted of impropriety in the jury selection process until the disclosure to his credit by Tom Holland, and that there was nothing trial counsel and PCR counsel, specifically at the first PCR proceeding, could have done or would have done in the exercise of due diligence short of conducting a background check on every juror. And that I would submit is not being pragmatic.

As the Court knows I do probably more post conviction work than any lawyer in this state. And essentially the Court would be asking – the respondent would be asking the Court to adopt a standard that would say that a lawyer has an obligation to do a background check on all the potential jurors involved in a case at the time of a PCR to determine whether there is potentially any problem with the jury selection process and we would submit that is an untenable burden to expect a defendant in the South Carolina judicial system to bear in the context of collateral review and for that reason we would submit that the State's argument in this regard is not meritorious and ask that the Court allow us to proceed with the merits of the issue before the Court bearing in mind that it's certainly our position that his first opportunity reasonably to raise this issue was after the disclosure was made by the former assistant solicitor who disclosed the misconduct before the Court today.

PCR Tr. p. 10, l. 13- p. 13, l. 8.

This Court took the Motion to Dismiss under advisement and proceeded to hear testimony and evidence concerning the merits of Applicant's claims. PCR Tr. p. 13, ll.

9-15. At the conclusion of the testimony presented at the merits hearing, Respondent argued that:

The fact of the matter is counsel could have found this information out by simply asking the jury or requesting the judge ask the jury if anybody had any prior law enforcement experience.

PCR Tr. p. 112, ll. 19-22. This Court inquired as to whether Trial Counsel's failure to request such a *voir dire* question was raised in the initial PCR action. In response to the Court's inquiry, PCR Counsel summarized Trial Counsel's testimony at the current hearing on that issue.

It was not, Your Honor, and I'm sorry Mr. Clark is no longer here but it is my understanding that – well, and he testified here today if he had known the background of that information he most certainly would have struck him and he has indicated to me that if he had any information concerning that juror that he certainly would have asked that the Court inquire further. But he just had no hint that that problem existed.

PCR Tr. p. 113, ll. 1-9.

As the record reflects, John Clark, Trial Counsel had left the courtroom at the time of this Court's inquiry. The PCR hearing transcript actually reflects that he verified that he had plenty strikes left at the time Juror Roberts was called, and that he absolutely would have used one of his remaining strikes to exclude Juror Roberts from service if he had known about his law enforcement background. His testimony further confirmed that he was never given any additional information concerning the jury pool, prior to the jury selection, by either Juror Roberts or the Solicitor's Office. PCR Tr. p. 60, l. 25- p. 61, l. 13.

Juror Roberts denied even hearing certain questions the Court asked during jury selection. As noted at length above, despite claiming in his PCR testimony that he actually did need to get out of jury service if he could, he claimed to have been so inattentive that he just didn't hear questions to which he could have responded and avoided service. With that in mind, even if the question had been asked, there is ample reason to believe this juror would not have responded to it. He clearly admitted not responding to other *voir dire* questions that he should have responded to if he had heard

them.

Respondent's argument with regard to the timeliness of the application before the court ignores several crucial factors. Applicant could have raised a Sixth Amendment allegation in his first PCR action concerning the failure of trial counsel to request a *voir dire* question concerning current or former law-enforcement employment. In order to successfully raise such a claim however, Applicant would have been required to demonstrate, not only that trial counsel was deficient for neglecting to request that specific *voir dire* question, but also that he was prejudiced by the failure of counsel to make that request.

The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); *Rule 71.1(e), SCRPC*. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Petitioner must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007). Under the *Strickland Standard*, it is not necessary that an

Applicant prove that counsel's deficient performance more than likely altered the outcome of his trial, but rather he is required to establish a probability sufficient to undermine confidence in that outcome. *Strickland, supra*, 466 U.S. at 697.

In *McCoy v. State*, 401 S.C. 363 737 S.E.2d 623 (2013), our Supreme Court dealt with a case involving a juror issue similar to the one before this Court. In that case, the high court clarified its position that a Post-Conviction Relief action is the proper manner in which to raise such claims. In so ruling, the Supreme Court cited *State v. Sheppard*, 155 Vt. 73, 582 A.2d 116, 118 (1990), with approval, for the proposition that an allegation of "juror misconduct discovered post-trial is not properly considered 'after discovered evidence'; rather, it is a separate basis for a new trial." The Supreme Court went on to hold that a new trial is warranted based on such a claim if the Applicant is able to demonstrate that the juror in question intentionally concealed information; and that the information would have supported either a challenge for cause or would have been material to a party's use of its peremptory strikes. *McCoy, supra*, citing, *State v. Woods*, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001). In so ruling, the Supreme Court once again rejected the State's view that a new trial would only be warranted where the Applicant was able to show that he was prejudiced by the juror's failure to disclose the information in question. At the core of the Supreme Court's ruling in both *Woods, supra*, and *McCoy, supra*, is the recognition that both trial judges and attorneys rely on receiving accurate information from the *venire* which they can use to effectively screen out biased jurors. See, *State v. Kelly*, 331 S.C. 132, 145-46, 502 S.E.2d 99, 106-07 (1998).

In *McCoy*, the Supreme Court found that the PCR Judge erred in summarily

dismissing an Application for Post-Conviction Relief dealing with an allegation of juror misconduct where "genuine issues of material fact" existed concerning whether the claim in *McCoy* was time barred and/or successive. The *McCoy* case was remanded for a hearing on these issues. In the present case, a hearing has already been held following this Court's Order denying the State's request for summary dismissal.

At the time of the initial collateral review of his case, Applicant had not received the information ultimately provided to him by former Assistant Solicitor Holland. Therefore, while he could have made an unsupported claim that a *voir dire* question concerning current or former law enforcement employment should have been requested, he would have had absolutely no basis for demonstrating that he was prejudiced by this omission on the part of trial counsel. Adopting Respondent's argument concerning this issue would open an enormous Pandora's Box. Even if a defense attorney could be found ineffective for failing to ask for any particular *voir dire* question, the Applicant could never win relief on the basis of that deficiency without a known factual basis for a finding of prejudice. Adopting the Respondent's position, would effectively place the burden on every Post-Conviction Relief Applicant, convicted by jury, to conduct an independent background check on every member of the jury from their case. This requirement would put an enormous financial burden on PCR applicants and would potentially result in unnecessary invasions of the privacy of jurors. Given the fact that the vast majority of PCR cases are handled by court-appointed lawyers, such a finding would in turn further burden the scarce resources allocated for indigent defense in South Carolina by requiring court-appointed PCR counsel to petition the circuit court for money to fund these background investigations. Such petitions would place an unnecessary burden on the

court's time and resources as well inasmuch as such requests would no doubt necessitate hearings. Not only that, but in some circumstances, virtually no amount of digging could result in the discovery information to support such a claim. The logic advanced by Respondent would require a PCR lawyer to do background checks on all the jurors in his client's case to determine multiple factors; some of which would be far more difficult to investigate than others. For example, counsel would have to cast a very wide net to determine whether a juror, or any of their family members, close friends or colleagues, had ever been the victim of a violent crime. Applying the Respondent's reasoning, such an investigation would be necessary to support a claim that a defense attorney was ineffective for failing to ask for a *voir dire* question designed to get that information out of the members of the jury *venire*. Such an expansive view of due diligence would require such action if the court were to hold that an individual could not bring a second PCR action at a later date upon discovering, by way of example, that a juror's fiancé had been brutally murdered in the same fashion as the victim in his client's trial. If an application raising such an issue were to be deemed untimely even though made within 365 days of discovering facts that would support the claim, PCR counsel in future cases would be left with no choice, but to conduct broad, and very expensive, background checks on all jurors in every case involving a jury trial and a jury *venire* that was not asked every conceivable *voir dire* question. On the other hand, the discovery of such information about a juror *after the fact* is relatively rare and the few successive PCR applications necessitated by such discoveries hardly tax the system in the manner the analysis urged by the State would. Applicant prays that this Court recognize that such an outcome is not reasonable and has the potential to unnecessarily burden PCR applicants,

PCR lawyers, the Indigent Defense System and the circuit court.

Furthermore, in this case, the fact that the Solicitor's Office had direct contact with a member of the pool from which Applicant's jury would ultimately be pulled was not discovered until the depositions were taken on this current application. Since the fact of the telephone conference was not disclosed by the State, there is no way counsel from Applicant's first PCR, or the Applicant himself, could have discovered that it took place prior to the first PCR action.

For all the reasons set forth herein, as well as those articulated at the evidentiary hearing held in this matter, Applicant asserts that on the facts of this case, the issues addressed herein were timely raised.

DISCUSSION

Juror Misconduct

Our Courts have recognized that a juror who intentionally conceals information inquired into is not impartial. *State v. Stone*, 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002); *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001). Utilizing the analysis applied in *Woods, supra*, the initial inquiry is whether the identified concealment was intentional or unintentional. Once the intentional concealment of information is found, the second prong of the *Woods* standard is the question of whether the information at issue would have supported a challenge for cause *or would have been a material factor in the use of peremptory challenges*. Where both factors are present, a new trial should be granted. *Woods*, 345 S. C. at 587, 550 S.E.2d at 284.

All of the testimony presented at the evidentiary hearing, and in the depositions

taken before the hearing, clearly establishes that Juror Roberts was not a credible witness. Throughout these proceedings, Applicant highlighted the numerous ways in which Juror Roberts's testimony was totally inconsistent and lacking in credibility. In his deposition, he originally admitted that it was not his intent to try and get out of jury service when he called the Solicitor's Office to discuss his jury summons. In that same deposition, he stated he had no idea who he had spoken with at the Solicitor's Office and that he had talked to whoever answered the phone. He initially stuck to that claim during the evidentiary hearing, only to eventually let it slip that he had specifically asked for Solicitor Justice when he called. He then retreated, and returned to his position that he could not remember who he talked to during that phone call. Nevertheless, he did consistently refer to the party with whom he had that conversation as "he" or "him."

In his deposition, Juror Roberts made it plain that he knew that no defense attorney would ever want him on their jury if they knew about his history in law enforcement. He claimed that was his reason for calling the Solicitor's Office about his juror summons. By the time he testified at the evidentiary hearing, he claimed he was also motivated by the fact that he had a "*responsible job*" and needed to make an effort to be at work. Despite this new explanation for the phone call to the prosecution, he also claimed not to have even heard some of the crucial *voir dire* questions put to the petit panel by the Judge during the jury selection process. In his deposition, he ultimately admitted that if he had heard the question about having a relationship with, or contact with, the Solicitor's Office he would have responded to that question. By the time he testified at the evidentiary hearing however, he claimed he *would not* have responded to that question if he had heard it because he did not have a current relationship with the

Solicitor's Office or any current contact with them. Juror Roberts admitted knowing one of the State's law enforcement witnesses from this trial and yet, claimed that he never heard the *voir dire* question from the bench concerning state witnesses. Despite the fact that he supposedly needed to try to be available for work, rather than having to serve on the jury, and his admission that he knew all along that any defense counsel would likely strike him from jury service if they knew about his law enforcement career, Juror Roberts never took any steps whatsoever to notify either the Clerk of Court's Office or the Court of his extensive law enforcement background. Once he appeared for jury service, not once did he avail himself of multiple opportunities to inform the Court of this information. For this reason, his belated claim that he actually did want to get out of jury service, is not credible. It is apparent that this individual did call the Solicitor's Office to discuss the fact that he had received a jury summons. It is equally clear that the one truthful thing he has said, at least in his deposition, was that he did not make his call to the Solicitor's Office for the purpose of trying to get out of jury service. The very fact that he called the Solicitor's Office to discuss this matter, and then did not reveal the very information that he admits he knew would get him stricken from jury during the *voir dire* process, graphically documents his inherent bias in favor of the of the prosecution.

The fact Juror Roberts was willing to lie under oath was graphically illustrated during the evidentiary hearing in this case. This Court had the opportunity to witness firsthand, this individual deny having looked at his deposition prior to the hearing. This fabrication was exposed when Counsel for the Respondent quite properly reported to the Court, and counsel for Applicant, that he had observed the witness looking at a document in a red cover during this hearing which may have been his deposition. With leave of this

Court, Applicant's Counsel demonstrated that the document bound in red, and contained in a document folder at the witness stand with Juror Roberts, was in fact his deposition. It was further demonstrated that it could not be seen, and observed to be in a red cover as described by Respondent's Counsel, unless it was out of the document folder in which it was brought to Court by Juror Roberts. Even once confronted, and asked what was in the folder he had with him at the witness stand, this witness said it contained the letters Applicant's attorney had sent him; completely failing to disclose that it also contained his deposition.

During his hearing testimony Juror Roberts made an issue out of the fact that, at the time he called the Solicitors Office, he did not know what case would be tried the week during which he was summoned to serve. In actuality, that revelation makes the circumstances of this incident worse. By electing to call the Solicitor's Office to discuss this matter, this individual set up a circumstance whereby the prosecution was alerted that they would have a 25 year veteran of law enforcement, a former Chief of Police in their own judicial circuit, in the jury panel that week. The name Ronald Roberts is far from unusual or unique. The juror survey returned by Juror Roberts to the Clerk of Court's Office disclosed only his current employment and gave no information concerning his 25 year career in law-enforcement and his extensive prior connections to the Solicitor's Office in the same circuit in which this murder case was tried. That being the case, his decision to call the Solicitor's Office to discuss his summons to serve on the petit jury panel for that week, put the State on notice that he would be in the panel during that term of court. That notice in turn created the opportunity for the prosecution to call a particular case that week if they wanted to take advantage of that opportunity to try a

particular case during a term when there was at least a chance that they would have a veteran law enforcement officer, from their circuit, on the jury.

It should also be noted that long time Solicitor John Justice is not available to testify concerning this issue inasmuch as he is now deceased. However, the second most senior prosecutor on the State's team at Applicant's trial, former Assistant Solicitor Barfield, did not deny having either spoken with this individual on the telephone when he called the Solicitor's Office or having been given a message concerning that call to the Solicitor's Office. His testimony reflects only his assertion that he has no present recollection of these matters. What we do know without question, is that former Assistant Solicitor Barfield has admitted that the prosecution knew who Ronald Roberts was and felt no duty to disclose any information concerning his lengthy law enforcement career to defense counsel. Furthermore, he felt no responsibility to disclose this information even after this individual neglected to respond to questions concerning his relationship or contact with the Solicitor's Office and his failure to respond to the Court's question concerning whether any member of the petit jury panel was conscious of any "interest or any bias or any prejudice for or against the State of South Carolina or the defendant, Mr. Vernard Jerome Mathis? " Likewise, he apparently was not in the least concerned by the failure of this individual to respond to the Court's question concerning whether any of the panel knew any of the State's witnesses which included many law enforcement officers from the area.

As noted above, it is Applicant's position that he is not required to demonstrate prejudice arising from the failure of both Juror Roberts, and the State, to disclose this crucial information to the defense. Assuming, for the sake of argument, that prejudice is

required, Applicant would submit that the prejudice to his ability to receive a fair trial and due process of law under the United States Constitution, as well as our own State Constitution, arising from the actions of both Juror Roberts and the prosecution is obvious. Juror Roberts himself admitted that he knew from the beginning that no defense attorney would want a 25 year law enforcement veteran on his jury. The fact of his lengthy law enforcement career, in and of itself, created an inherent danger of bias in favor of the prosecution. The fact that this individual would go out of his way to call the Solicitor's Office to give someone, either an attorney or an investigator, an obvious heads up about the fact that he was going to be on the petit jury panel that week disclosed his bias toward the prosecution. Prior to the week he was required to appear for jury service, he did not disclose this information to the Clerk of Court's Office, or the Court, in an attempt to be released from jury service. He did not disclose this information once he arrived at the courthouse the day he was ordered to appear. The prejudice to Applicant from this non-disclosure was further exacerbated by the fact that this individual had not just been a law enforcement officer, he had been a law enforcement officer in this same judicial circuit, in various capacities, for many years. He knew at least one of the State's law enforcement witnesses in this case. He equivocated concerning whether there were other law enforcement officers who testified in this case that he knew, but not by their names. He did, however, admit that he knew the Sheriff in this county at the time of this trial. Since the record reflects that most of the law enforcement witnesses in this case were from the Lancaster Sheriff's Department, that meant that he was personally acquainted with the boss of most of the State's law enforcement witnesses. Not only did Juror Roberts serve as a juror at Applicant's trial, but he was the foreman of the jury. To

make matters even worse, there was at least one other juror who knew Juror Roberts from before the trial and was aware of his law enforcement background. It is important to note that Juror Roberts was not willing to swear that he had not discussed his law enforcement experience during jury deliberations.

The record in this case makes it abundantly clear that Juror Roberts intentionally concealed information from the defense and the Court which would have prompted either his removal from jury service for cause or the use of a preemptory challenge by the defense to insure that he was not on Applicant's jury. Trial Counsel has testified that he had plenty strikes left at this trial and would definitely have used one of them to keep this law enforcement veteran off Applicant's jury. Where both these factors are present, a new trial should be granted. *Woods, supra*.

Prosecutorial Misconduct

It is well established that lawyers connected with a case are prohibited from communicating with, or causing another to communicate with, a member of the *venire* from which the jury will be drawn. Sup. Ct. Rules, Rule 32, Code of Prof. Resp., DR07-108(A). DR7-108(A) states:

Before the trial of a case a lawyer connected therewith shall not communicate with, or cause another to communicate with, anyone he knows to be a member of the *venire* from which the jury will be selected for the trial of the case.

The case law involving this rule has generally dealt with contacts by lawyers, prosecutors and/or their agents in an effort to "investigate" the position potential jurors would likely take on a given issue or issues. *In the matter of Two Anonymous Members of the South Carolina Bar*, 278 S.C. 477, 298 S.E.2d 450 (1982); *State v. Bryant*, 354

S.C. 390, 581 S.E.2d 157 (S.Ct. 2003); *In the matter of Hal Jerome Warlick*, 387 S.C. 380, 339 S.E.2d 110 (S.Ct. 1985); *In the matter of Harry I Rivers, Jr.*, 285 S.C. 492, 285 S.C. 492 (S.Ct. 1984); *United States v. Hal J. Warlick*, 742 F.2d 113 (1984).

The cases noted above reveal that the issue before this Honorable Court most often comes to light in cases where the improper communication between a lawyer, or his agent, is initiated by the lawyer or said agent. This case brings to light a different form of abuse of Rule 7-108(A). Here, former Deputy Solicitor Barfield admitted under oath that his office routinely fielded calls from *venire* members calling the Solicitor's Office after receiving their summons for jury duty. PCR Tr. p. 84, ll. 10-22. While his testimony concerning such calls characterized such contact as fairly benign, it failed to explain why jurors calling about a jury summons would, under any circumstances, be transferred to a prosecutor or investigator to talk to rather than being immediately screened out and redirected to the Office of the Clerk of Court. Applicant asserts that he, nor any other defendant, should have to take the word of the prosecution concerning the content of such improper conversations; they simply should not occur.

In this instance, the record before the Court includes a letter from the current Solicitor, Randy Newman, verifying that the only male employees of the Solicitor's Office during this time period were lawyers and investigators. Petitioner's Exhibit No. 3. That letter, sent in response to a subpoena by Applicant, did not address an individual named Jimmy Taylor. Barfield's testimony confirms that Taylor was regularly paid "a small monthly check" by the Solicitor's Office to, among other things, "*tell us what he knew about jurors.*" PCR Tr. p. 78, l. 6- p. 79, l. 9. (Emphasis added). Barfield went on to acknowledge that Taylor "*probably was*" involved in the selection of Applicant's jury.

He admitted that Taylor was a former probation agent, and in fact, was the Agent in Charge in Lancaster for several years.

Juror Roberts's testimony reveals that he specifically asked to speak with the late, John Justice when he called the Solicitor's Office. Although Roberts claims not to recall who he ultimately spoke with concerning his jury summons, he consistently referenced the individual, in both his deposition and PCR testimony, by the masculine pronoun "he". Both his PCR testimony, and his earlier deposition, reflect a conversation in which his law enforcement background was discussed as a reason why no lawyer was going to want him on their jury.

The dangers of improper contact with potential jurors is obvious. It gives one side an advantage in their use of preemptory strikes, and perhaps most troubling, it creates the opportunity for one side to improperly influence a potential juror before they ever even get to Court for the trial of a case. It creates an opportunity for the side communicating with the juror to advise them, however subtly, on how to best *avoid getting struck*, or selected, for jury service.

It is particularly important to repeat that in his deposition this juror made it very clear that he *did not* call the Solicitor's Office because he wanted to get out of jury service. Barfield testified that was his *"feeling ... that folks associated the Solicitor's Office with the court system more so then [sic] any other agency..."* Applicant would assert that this explanation for why jurors might call their office simply does not hold water in this case. It is obvious that an individual with decades of law enforcement experience would possess a far better understanding of the judicial system than an ordinary citizen. It is abundantly clear that Juror Roberts called the Solicitor's Office for

the same reason he should never have been on Applicant's jury; that was the side he identified with, it was where his loyalties rested, and it was a glaring demonstration of his inherent bias toward the prosecution.

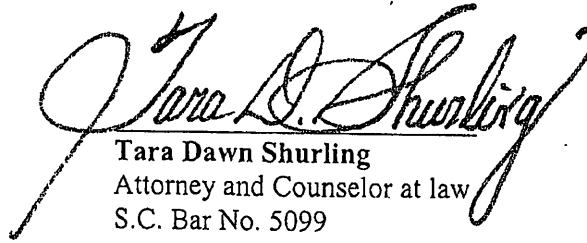
Applicant would respectfully submit that the manner in which calls from jurors in the *venire* panel for an upcoming term were handled by the Lancaster Solicitor's Office during this time period was clearly improper and violated DR 7-108(A). Applicant would further submit that any phone calls by a member of the *venire* to the Solicitor's Office, and the content of the resulting conversations, should have been reported to the Court and disclosed to defense counsel on all cases pending for the term at which that individual was scheduled to serve. Disclosure became even more crucial once this juror failed to respond to the questions from the bench discussed *supra*.

Applicant submits that it was incumbent upon the Respondent to disclose the prosecution's telephone conference with Juror Roberts, as well as the Respondent's knowledge of his lengthy law enforcement career, and the fact that much of that career involved positions in which he would have directly interacted with the Lancaster County Solicitor's Office. For this reason, as well as the actions of Juror Roberts in deliberately concealing this critical information, Applicant should be granted a new trial.

CONCLUSION

Based upon all the arguments and authorities addressed herein, as well as those made at the evidentiary hearing held in this matter, Applicant most respectfully asks that his judgments and sentences be vacated.

Respectfully submitted,

A handwritten signature in black ink, reading "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T" and "S".

Tara Dawn Shurling
Attorney and Counselor at law
S.C. Bar No. 5099

3614 Landmark Drive
Suite A
Columbia, SC 29204
(803)738-8622 Phone
(803)738-1600 Fax
tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)

2013-CP-29-051

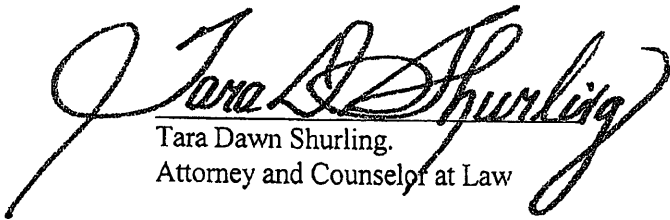
v.)

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned attorney hereby certifies that a copy of the Memorandum in Support of Post-Conviction Relief in the above matter has been served on opposing counsel, DeShawn Mitchell, Assistant Attorney General, this 17th day of April, 2017, by email to:

DeShawn Mitchell
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211
dmitchell@scag.gov


Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 17th day
of April, 2017.


Notary Public for South Carolina

My Commission Expires: 2/28/24

FILED
OFFICE OF CLERK
OF COURT
2017 APR 24 PM 2:37
CLERK OF COURT
LANCASTER, SC

WITNESSES

Lt. Lee Blackmon - LCSO

Blackmon

DOCKET NO. -29-1418

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

DECEMBER TERM 2000

ARREST WARRANT NUMBER

G-216913

THE STATE

vs.

Vernard Jerome Mathis

ACTION OF GRAND JURY

TRUE BILL

W. Reeves
Foreperson of Grand Jury

Date: NOV 30 2000

VERDICT

Indictment for

MURDER

SC Code 16-03-0010

CDR Code 116

Class FEL-EXM

K. H. Mathis
Foreperson of Petit Jury

Date: 6/6/03

Canary - Probation

ARREST WARRANT

G- 216913

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lancaster

THE STATE 00010211

against

2000-1418

Vernard Jerome MATHIS

Address: Lanham, MD 20706

Phone: SSN:
Sex: M Race: B Height: 5'8" Weight: 170 lbs.

DL State: DL #

DOB: Agency ORI #: SC020000

Prosecuting Agency: L.C.S.O.

Prosecuting Officer: Lt. Lee BLACKMON

Offense: MURDER

Offense Code:

Code/Ordinance Sec:

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality ofThe accused
is to be arrested, and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: 8-23-00

RETURN

A copy of this arrest warrant was delivered to
defendant VERNARD JEROME MATHIS
on 8-23-00

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Central Court

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lancaster

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518Personally appeared before me the affiant Lt. Lee BLACKMON who
being duly sworn deposes and says that defendant Vernard Jerome MATHIS
did within this county and state on June 20th, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lancaster
in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts: That the Defendant along with
Co-Defendants, did plan the robbery of McDONALD'S AMUSEMENTS by kidnapping Melvin
STEELE and his wife, Rita STEELE, and during the commission of said crime, did un-
threat of life, place Rita and Melvin STEELE into a van recently purchased by the
Defendant aka Mark PATTERSON, where Melvin STEELE was subsequently shot once in t
left thigh that resulted in his death. This occurred while STEELE was handcuffed
behind his back with his eyes bound by duct tape and while attempting to obtain t
security code and safe combination to the business of McDONALD'S AMUSEMENTS. Blo
found in the van that the STEELES were transported in matches the Victim's and on
the Victims via DNA Testing. All of the foregoing occurred in Lancaster County,
S. C.Sworn to and subscribed before me
on June 29th, 2000

Signature of Issuing Judge

Signature of Affiant

Affiant's Address Sheriff's Office,
Lancaster, S. C.

Affiant's Telephone (803) 283-4136

1250

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on June 20th, 2000 defendant Vernard Jerome MATHIS
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 819

Judge's Address

Judge's Telephone 803-283-3983

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

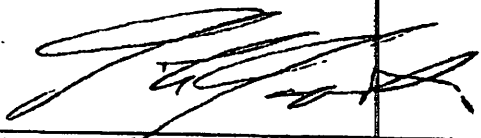
At a Court of General Sessions, convened on November 30, 2000, the
Grand Jurors of Lancaster County present upon their oath:

MURDER

That Vernard Jerome Mathis did in Lancaster County on or about June 20, 2000,
with malice aforethought, kill one Melvin Steele by means of shooting him in the left
thigh and said victim died as a result thereof, all in violation of Section 16-3-10, South
Carolina Code of Laws, (1976, as amended).

JUL 2 '01

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


John R. Justice, SOLICITOR

WITNESSES

Lt. M. Lee Blackmon - LCSO

DOCKET NO. -2001-GS-23- 2SD

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2001

ARREST WARRANT NUMBER

G-216892

THE STATE

vs.

ACTION OF GRAND JURY

Vernard Jerome Mathis

1252

Elaine C. Cornwell

Foreperson of Grand Jury

Date: FEB 8 2001

UE BILL VERDICT

Guilty

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

Class FEL-C(V)

[Signature]

Foreperson of Petit Jury

Date: 5/10/03

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on February 8, 2001 the Grand Jurors of Lancaster County present upon their oath:

ARMED ROBBERY

That Vernard Jerome Mathis did in Lancaster County on or about June 20, 2000, while armed with a deadly weapon, feloniously take from the person or presence of Melvin Steele and Rita Steele, by means of force or intimidation goods or monies of the Melvin Steele and Rita Steele, all in violation of §16-11-330, 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.


John R. Justice, SOLICITOR

ARREST WARRANT
G- 216892

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
LancasterTHE STATE
against

01-250

Vernard Jerome Mathis

Address: _____
Lanham, Maryland

Phone: _____ SSN: _____

Sex: M Race: B Height: _____ Weight: _____DL State: MD ni # _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: LCSOProsecuting Officer: Lt. M. Lee BlackmonOffense: Armed Robbery

Offense Code: _____

Code/Ordinance Sec. 16-11-330This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of
LancasterThe accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge (L.S.)

Date: 6-25-00

RETURN

A copy of this arrest warrant was delivered to
defendant Vernard Jerome Mathis
on 6/25/2000

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Central Court

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lancaster

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518Personally appeared before me the affiant Lt. M. Lee Blackmon who
being duly sworn deposes and says that defendant Vernard Jerome Mathis
did within this county and state on June 20, 2000 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lancaster

in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: the defendant did, along with co-defendants, plan the robbery of McDonald's Amusements by unlawfully kidnapping Melvin and Rita Steele from their residence at gunpoint. During this kidnapping, the defendant, along with co-defendants, did enter the Steele's residence and remove an unspecified amount of money from a chest of drawers inside the residence. The defendant and co-defendants did duct tape and handcuff Melvin and Rita Steele, forcibly remove them from their residence, and place them into a Ford van recently purchased by the defendant under an assumed name (Mark Patterson). Melvin Steele was subsequently shot once in the left thigh inside the Ford van which resulted in his death. Blood found in the Ford van purchased by the defendant matches Melvin Steele's blood and only Melvin Steele's blood via DNA testing. The above described incident occurred in Lancaster County.

Sworn to and subscribed before me
on 07-05-00Signature of Affiant
Jacqueline M. Poyner
Signature of Issuing Judge

Signature of Affiant

Affiant's Address 1941 Pageland Hwy.Lancaster SCAffiant's Telephone (803) 283-4136

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on June 20, 2000 defendant Vernard Jerome Mathis
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE:

Armed Robbery

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge
Jacqueline M. PoynerJudge Code: 879

Judge's Address

101 S. Wayne St.Lancaster SC 29720

Judge's Telephone

803 283-3983Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

COUNTY OF LANCASTER
STATE VS.

IN THE COURT OF GENERAL SESSION:
INDICTMENT/CASE#:

Vernon Jerome Mathis

OF COURT 01-GS-29-250

AKA: _____
Race: D Sex: M Age: 39

A/W#: G216892
Date of Offense: 6.20.00

DOB: _____

S.C. Code § 16.1.330(A)

Address: _____

CDR Code #: 01/1/3/19

DL# _____

SID#: _____

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIAL

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery
in violation of § 16.1.330(A) of the S.C. Code of Laws, bearing CDR Code # 01/1/3/19

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

Fine: _____

14-1-206 (Assessments 100%) \$ _____

14-1-211(A)(1) (Surcharge) \$ _____

14-1-211(A)(2) (Surcharge) \$ _____

56-5-2995 (DUI Assessment) \$ _____

% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE

Judge Code: 0101417

Sentence Date: 6-6-03

[Signature]
Clerk of Court/ Deputy Clerk

urt Reporter: [Signature]

WITNESSES

Lee Blackmon-LCSO #

ARREST WARRANT NUMBER/DOA

DI (DOA-)

ACTION OF GRAND JURY

TRUE BILL

MAY 29 2003

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date: 6/6/03

DOCKET NO. 2003 GS-29-524

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2003

THE STATE
VS.

Vernard Jerome Mathis

Indictment for

Burglary, First Degree

SC Code: §16-11-311(A)(1)(a)
CDR Code: 0079
Class: Felony, EXM

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

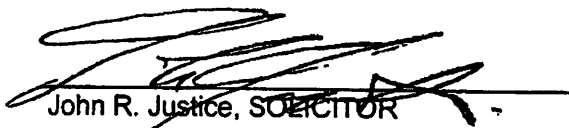
INDICTMENT

At a Court of General Sessions, convened on May 29, 2003, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Vernard Jerome Mathis did in Lancaster County on or about June 20, 2000, enter the dwelling of Melvin and Rita Steele with the intent to commit a crime and while armed with a deadly weapon and caused physical injury to the persons therein and did so in the nighttime without consent and with intent to commit in violation of §16-11-311(A)(1)(a), *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.


John R. Justice, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.Vernard Jerome Mathis

AKA: _____

Race: B Sex: M Age: 39

DOB: _____ SS#: _____

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

03 -GS- 29 - 524A/W#: Direct IndictmentDate of Offense: 6.20.00S.C. Code §: 16.11.31CDR Code #: 0 / 0 / 1 / 9☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st Degreein violation of § 16.11.31 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)\$ _____

§14-1-211(A)(1) (Surcharge)\$ _____

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment)\$ _____

3% to County (if paid in installments)\$ _____

TOTAL\$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE Paul E. ShorttJudge Code: 01014171Sentence Date: 6-6-03Court Reporter: Nancy Wenteith

White - Clerk

Green - Corrections

1258

Canary - Probation

Pink - Defendant

WITNESSES

Lt. M. Lee Blackmon-LCSO

DOCKET NO. 2003-GS-29-525

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2003

ARREST WARRANT NUMBER/DOA

DI (DOA-)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

VERDICT

[Signature]
Foreperson of Petit Jury
Date: 6/6/13

**THE STATE
vs.**

Vernard Jerome Mathis

Indictment for

Kidnapping

SC Code: § 16-3-910
CDR Code: 0095
Class: Felony, A

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

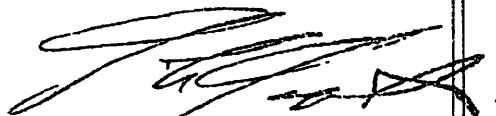
INDICTMENT

At a Court of General Sessions, convened on May 29, 2003, the Grand Jurors of Lancaster County present upon their oath:

KIDNAPPING

That Vernard Jerome Mathis did in Lancaster County on or about June 20, 2000, by any means whatsoever unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, the victim, Melvin Steele without authority of law in violation of § 16-3-910, *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.



John R. Justice, SOLICITOR

GENERAL SESSIONS DOCKET REPORT FOR LANCASTER COUNTY

REPORT RUN DATE - 06/12/2003

INDICTMENT NUMBER: 2003GS2900525

DEFENDANT NAME: MATHIS, VERNARD JEROME

AKA:

ADDRESS:

CITY: LANHAM

STATE: MA ZIP 00000

SOCIAL SECURITY NUMBER: 888-88-8888

SEX: 1 MALE

RACE: 2 BLACK

DATE OF BIRTH:

/ DRIVERS LICENSE STATE / NO.: SC / 9999999999

MARITAL STATUS:

ARRANT OR TICKET NUMBER: 03GS00525 COUNTS: 01 OFFENSE CODE: 0095

0 WARRANT? 0 NAME OF OFFENSE: KIDNAPPING/KIDN

DATE OF ARREST: 09/15/2000 DATE RECD BY CLERK: 06/06/2003

JMMARY JUDGE:

ISP DATE: 06/06/2003 DISP TYPE: 2 TRIAL/GUILTY

ISP TYPE EXPLANATION:

JUDGE CODE/NAME: 047 SHORT. PAUL E JR

COURT REPORTER: NANCY MONTEIT

CONVICTION: CTS: 01 OFFENSE: 0095 KIDNAPPING/KIDN

SENTENCE:

LIFE SENTENCE

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY: JOHN JUSTICE

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.Vernard Jerome Mathis

AKA: _____

Race: B Sex: M Age: 35

DOB: _____ SS#: _____

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:03 -GS- 29 - 525A/W#: Direct IndictmentDate of Offense: 6-20-00S.C. Code §: 16-3-910CDR Code #: 0101915☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor_____
Defendant_____
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years; and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

JUL 2 2003

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

Recipient: _____

*Fine:\$ _____

\$14-1-206 (Assessments 100%)\$ _____

\$14-1-211(A)(1) (Surcharge)\$ _____

\$14-1-211(A)(2) (Surcharge)\$ _____

\$56-5-2995 (DUI Assessment)\$ _____

5% to County (if paid in installments)\$ _____

TOTAL\$ _____

PRESIDING JUDGE [Signature]Judge Code: 0101417

Clerk of Court/ Deputy Clerk

1262

DOCKET NO. 2003-GS-29-526³

WITNESSES

Lt. M. Lee Blackmon-LCSO

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2003

ARREST WARRANT NUMBER/DOA

DI (DOA-)

THE STATE
vs.

Vernard Jerome Mathis

ACTION OF GRAND JURY

TRUE BILL

MAY 29 2003

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

Kidnapping

SC Code: § 16-3-910
CDR Code: 0095
Class: Felony, A

Foreperson of Petit Jury
Date: 6/6/03

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

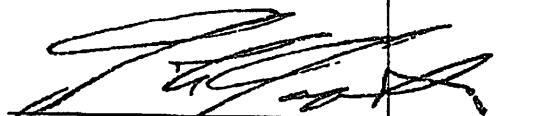
INDICTMENT

At a Court of General Sessions, convened on May 29, 2003, the Grand Jurors of Lancaster County present upon their oath:

KIDNAPPING

That Vernard Jerome Mathis did in Lancaster County on or about June 20, 2000, by any means whatsoever unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, the victim, Rita Steele without authority of law in violation of § 16-3-910, *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.


John R. Justice, SOLICITOR

6670

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/30/13
OMCOMITA RELEASE DATE SCREEN C023981
SCDC# > 297034 LOC: MCCORMICK
MATHIS, VERNARD - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 08/22/2000
PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999 CURRENT EWC ..
YOA SIX YEAR DATE: CURRENT EEC ..
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000000 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES
4-© 1 Sess-1 167.7.50.33 SCDC1380 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/30/13

C0239

MATHIS, VERNARD - FBI # 226960EA0 SID# SC01504170 SCDC # 297034

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... MCCORMICK CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ

SOCIAL SECURITY #....: -----

DORM.....: F30286B

RACE....: B SEX...: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: GENERAL WORKER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: BLDING DETAIL BLDG.

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 49 DATE OF BIRTH...: -----

PREVIOUS NUMBERS:

00005175

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
BURGLARY-1ST DEGREE	999	99	999	LANCASTER	8/22/20	0	V		4
ARMED ROBBERY	999	99	999	LANCASTER	8/22/20	0	V		4
KIDNAPPING	999	99	999	LANCASTER	8/22/20	0	V		5
MURDER	999	99	999	LANCASTER	8/22/20	0	V		5

PRIOR COMMITMENTS OVER 90 DAYS:

11/29/88	*BURGLARY-1ST DEGREE	20 YRS	0 MOS	0 DYS
4/15/87	MARIJUANA POSSESS	1 YRS	0 MOS	0 DYS
4/14/87	*ILLEGAL DRUGS DISTRIBUTN	0 YRS	12 MOS	0 DYS
9/ 9/85	*STRONG ARM ROBBERY	0 YRS	0 MOS	120 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

FUGITIVE FROM JUSTICE	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
MURDER	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 5
COCAINE DISTRIBUTION	HOLD	PRESIDING JUDGE	CATEG: 2
NO DETAINERS			

ESCAPES:

9/ 1/ 0	OTHER ESCAPE RELATED CODE NOT IN TABLE
6/20/86	OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

12/16/ 7 A & B OF AN EMP, ETC W/I DROPPED	MAJOR STAFF
2/14/ 6 STRIKING AN EMPLOYEE WIT CONVICTED	MAJOR INMATE

NON-ASSAULTIVE DISCIPLINARIES:

6/ 9/12 POSS. OR/ATTEMPT TO POSS DROPPED	MAJOR	
7/ 8/11 DAMAGE, DESTROY, PROP. VALU DROPPED	CHARG	
4/ 3/ 7 POSS. OR/ATTEMPT TO POSS CONVICTED	MAJOR	
11/21/ 6 REFUSING OR FAILING OBEY	OTHER	
5/23/ 5 POSS. OR/ATTEMPT TO POSS DROPPED	MAJOR	
6/29/ 2 POSSESSION OF CONTRABAND	OTHER	00005175
4/23/ 2 POSSESSION OF CONTRABAND	OTHER	00005175
10/ 6/ 1 REFUSING OR FAILING OBEY	OTHER	00005175

HISTORY OF MOVEMENTS:

6/10/13	MCCORMICK	INCARCERATED	ADMINISTRATIVE
6/10/13	KIRKLAND	INCARCERATED	MEDICAL
5/22/13	MCCORMICK	INCARCERATED	ADMINISTRATIVE
5/22/13	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
5/22/13	MCCORMICK	INCARCERATED	RETURN FROM COURT
5/22/13	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
5/ 6/13	MCCORMICK	INCARCERATED	ADMINISTRATIVE
5/ 6/13	KIRKLAND	INCARCERATED	MEDICAL
11/21/12	MCCORMICK	INCARCERATED	ADMINISTRATIVE
11/20/12	KIRKLAND	INCARCERATED	MEDICAL

8/ 6/12 MCCORMICK

INCARCERATED

ADMINISTRATIVE

MATHIS, VERNARD - FBI # 226960EA0 SID# SC01504170 SCDC # 297034 (CONTINUED)

8/ 6/12	KIRKLAND	INCARCERATED	MEDICAL
4/ 5/12	MCCORMICK	INCARCERATED	ADMINISTRATIVE
4/ 5/12	KIRKLAND	INCARCERATED	MEDICAL
1/23/12	MCCORMICK	INCARCERATED	ADMINISTRATIVE
1/23/12	KIRKLAND	INCARCERATED	MEDICAL
12/21/11	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/21/11	KIRKLAND	INCARCERATED	MEDICAL
12/ 8/11	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/ 8/11	PALMETTO RCHLAN	AUTH ABSENCE (AWL)	MEDICAL
9/ 1/11	MCCORMICK	INCARCERATED	ADMINISTRATIVE
8/ 2/11	PERRY	INCARCERATED	ADMINISTRATIVE
2/ 2/11	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/ 2/11	SUMTER CO	AUTH ABSENCE (AWL)	MEDICAL
1/20/11	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/17/10	LEE	INCARCERATED	ADMINISTRATIVE
12/17/10	TUOMEY REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
12/10/10	LEE	INCARCERATED	ADMINISTRATIVE
12/10/10	TUOMEY REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
12/ 9/10	LEE	INCARCERATED	ADMINISTRATIVE
9/28/10	PERRY	INCARCERATED	ADMINISTRATIVE
1/13/ 9	MCCORMICK	INCARCERATED	ADMINISTRATIVE
1/13/ 9	KIRKLAND	INCARCERATED	MEDICAL
1/ 7/ 9	MCCORMICK	INCARCERATED	ADMINISTRATIVE
1/ 6/ 9	KIRKLAND	INCARCERATED	MEDICAL
12/22/ 8	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/22/ 8	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
12/18/ 8	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/18/ 8	PALMETTO RCHLAN	AUTH ABSENCE (AWL)	MEDICAL
12/ 2/ 8	MCCORMICK	INCARCERATED	ADMINISTRATIVE
12/ 2/ 8	KIRKLAND	INCARCERATED	MEDICAL
12/ 1/ 8	MCCORMICK	INCARCERATED	RETURN FROM COURT
12/ 1/ 8	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
11/19/ 8	MCCORMICK	INCARCERATED	ADMINISTRATIVE
11/19/ 8	KIRKLAND	INCARCERATED	MEDICAL
9/ 4/ 8	MCCORMICK	INCARCERATED	ADMINISTRATIVE
8/26/ 8	LIEBER	INCARCERATED	ADMINISTRATIVE
8/25/ 8	KIRKLAND	INCARCERATED	RETURN FROM COURT
8/22/ 8	LANCASTER CO	AUTH ABSENCE (AWL)	TO COURT
8/21/ 8	KIRKLAND	INCARCERATED	ADMINISTRATIVE
2/25/ 8	LIEBER	INCARCERATED	ADMINISTRATIVE
2/21/ 8	KIRKLAND	INCARCERATED	ADMINISTRATIVE
2/12/ 8	LIEBER	INCARCERATED	ADMINISTRATIVE
2/12/ 8	SUMTER CO	AUTH ABSENCE (AWL)	MEDICAL
12/ 5/ 7	LIEBER	INCARCERATED	ADMINISTRATIVE
12/ 5/ 7	SUMTER CO	AUTH ABSENCE (AWL)	MEDICAL
6/ 5/ 6	LIEBER	INCARCERATED	ADMINISTRATIVE
5/26/ 5	BROAD RIVER	INCARCERATED	RETURN FROM COURT
5/26/ 5	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
3/16/ 5	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/10/ 3	EVANS	INCARCERATED	RETURN FROM COURT
11/10/ 3	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
11/ 4/ 3	EVANS	INCARCERATED	ADMINISTRATIVE
10/15/ 3	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	09/06/11	0/ 0/ 0		3F5
WARDKEEPER ASSISTANT	06/07/11	7/12/11	1269 PLACED IN ST/SP CUSTODY	3F5

FOOD SERVICE AIDE
LAULER

01/25/11
05/07/09

6/ 6/11
9/28/10

INMATE REQUEST
INSTIT TRANSFER

3F5
3F5

MATHIS, VERNARD - FBI # 226960EA0 SID# SC01504170 SCDC # 297034 (CONTINUED)

GENERAL WORKER	09/10/08	5/ 6/ 9	LATERAL TRANSFER	3F5
WARDKEEPER ASSISTANT	04/29/08	8/21/ 8	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	07/20/07	2/21/ 8	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	01/15/07	4/16/ 7	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	06/08/06	1/14/ 7	CUSTODY REVIEW	5F5
WARDKEEPER ASSISTANT	06/23/05	2/14/ 6	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	03/17/05	5/23/ 5	PLACED IN ST/SP CUSTODY	3F5
CUSTODIAL WORKER	11/07/03	3/16/ 5	INSTIT TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
BONUS 4-7 HRS/WK	10/24/06	2/15/ 7	INMATE REQUEST
BONUS 4-7 HRS/WK	06/26/06	7/26/ 6	INMATE REQUEST

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.Verward Jerome Mathis

AKA:

Race: B Sex: M Age: 39

DOB: SS#:

Address:

DL# SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#03 -GS- 29 - 525A/W#: Direct IndictmentDate of Offense: 6.20.00S.C. Code §: 16.3.910CDR Code #: 0 / 0 / 9 / 5☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Kidnappingin violation of § 16.3.910 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 9 / 5☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years, and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ The Defendant is to be given credit for days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$\$14-1-206 (Assessments 100%) \$\$14-1-211(A)(1) (Surcharge) \$\$14-1-211(A)(2) (Surcharge) \$\$56-5-2995 (DUI Assessment) \$3% to County (if paid in installments) \$TOTAL \$PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund.Other: PRESIDING JUDGE [Signature]Judge Code: 010141Sentence Date: 6-6-03Court Reporter: [Signature]

White - Clerk

Green - Corrections

1272

Canary - Probation

STATE OF SOUTH CAROLINA

REGISTER OF DEEDS

PAGE 04

COUNTY OF LANCASTER
STATE VS.

Vernard Jerome Mathis

AKA: _____

Race: B Sex: M Age: 39

DOB: _____ SS#: _____

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

03 -GS- 29 - 526

A/W#: Direct Indictment

Date of Offense: 6.20.00

S.C. Code §: 16.3.910

CDR Code #: 0 / 0 / 9 / 5

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIAL

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping
in violation of § 16.3.910 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 9 / 5

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☒ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

Recipient: _____

*Fine: _____ \$

\$14-1-206 (Assessments 100%) _____ \$

\$14-1-211(A)(1) (Surcharge) _____ \$

\$14-1-211(A)(2) (Surcharge) _____ \$

\$56-5-2995 (DUI Assessment) _____ \$

5% to County (if paid in installments) _____ \$

TOTAL _____ \$

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

PRESIDING JUDGE [Signature]

Judge Code: 0101417

Sentence Date: 6-6-03

1273

STATE OF SOUTH CAROLINA

REGISTER OF DEEDS

PAGE 06

COUNTY OF LANCASTER
STATE VS.

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

Vernard Jerome Mathis

AKA: _____

Race: A Sex: MA Age: 39

DOB: _____ SS#: _____

Address: _____

DL# _____ SID# _____

00 -GS- 29 - 1418

A/W#: G216913

Date of Offense: 6.20.00

S.C. Code §: 16.3-10, 20

CDR Code #: 0 / 1 / 1 / 6

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: MURDER

in violation of § 16.3-10, 20 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 6

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☒ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 12 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPS

Recipient: _____

Fine: \$ _____

14-1-206 (Assessments 100%) \$ _____

14-1-211(A)(1) (Surcharge) \$ _____

14-1-211(A)(2) (Surcharge) \$ _____

56-5-2995 (DUI Assessment) \$ _____

% to County (if paid in installments) ... \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]

Judge Code: 01417

Sentence Date: 6-6-03

1274

Canary - Probation

Pink - Defendant

Court Reporter: [Signature]

White - Clerk

Green - Corrections

STATE OF SOUTH CAROLINA

REGISTER OF DEEDS

PAGE 05

COUNTY OF LANCASTER
STATE VS.

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

Vernard Jerome Mathis
AKA: _____
Race: D Sex: M Age: 39
DOB: _____ SS#: _____
Address: _____
DL# _____ SID#: _____

01 -GS- 29 - 250
A/W#: G216892
Date of Offense: 6.20.00
S.C. Code §: 16.11.330(A)
CDR Code #: 01/1/3/19
☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery
in violation of § 16.11.330(A) of the S.C. Code of Laws, bearing CDR Code # 01/1/3/19
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-4

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State
ATTEST: _____

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions;
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard. ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
Fine: _____
14-1-206 (Assessments 100%) \$ _____
14-1-211(A)(1) (Surcharge) \$ _____
14-1-211(A)(2) (Surcharge) \$ _____
56-5-2995 (DUI Assessment) \$ _____
% to County (if paid in installments) ... \$ _____
TOTAL \$ _____

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: _____

PRESIDING JUDGE

Judge Code: 01/01/4/7

Sentence Date: 6-6-03

Court Reporter: Nancy Merrill

White - Clerk

Green - Corrections

Canary - Probation

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.Vernard Jerome Mathis

AKA:

Race: B Sex: M Age: 39DOB: SS#

Address:

DL#

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:03 -GS- 29 - 524A/W#: Direct IndictmentDate of Offense: 6.20.00S.C. Code §: 16.11.311CDR Code #: 0/0/7/9☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st Degreein violation of § 16.11.311 of the S.C. Code of Laws, bearing CDR Code # 0/0/7/9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ The Defendant is to be given credit for days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$§14-1-206 (Assessments 100%) \$§14-1-211(A)(1) (Surcharge) \$§14-1-211(A)(2) (Surcharge) \$§56-5-2995 (DUI Assessment) \$3% to County (if paid in installments) \$TOTAL \$PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund.Other: PRESIDING JUDGE Paul E. ShorttJudge Code: 0101417Sentence Date: 6-6-03Court Reporter: Nancy Monteith

White - Clerk

Green - Corrections

1276
Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Vernard Mathis, # 297034,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

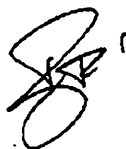
Case No.: 2013-CP-29-0951

ORDER OF DISMISSAL

FILED
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OF COURT
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CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 9, 2013. Respondent made its Return and Motion to Dismiss on January 30, 2014. An evidentiary hearing into the matter was convened on November 22, 2016, at the Lancaster County Courthouse before the Honorable Brian M. Gibbons. Tara Dawn Shurling, Esquire, represented Applicant. Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The following people also testified at the hearing: Ronnie Roberts, Applicant's trial counsel, John Clark, Esquire, Shareka Jones, Doug Barfield, Esquire and Tom Holland, Esquire. Applicant did not testify at this hearing.

At the hearing, this Court had before it a copy of the records of the Lancaster County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and Motion to Dismiss dated January 30, 2014, and the State's Amended Return and Motion to Dismiss filed July 1, 2014, the Order denying Motion to Dismiss filed October 29, 2014, the PCR Hearing Exhibits, Applicant's Memorandum in Support of PCR Application filed on October 29, 2014, the appellate records (including the Record on Appeal and the briefs filed by both parties), the trial transcript, a transcript of the November 22, 2016 PCR hearing, the certified original depositions of Thomas William Holland, Esq.



and Ronnie Ellison Roberts, both dated April 22, 2014, and all documents pertaining to Applicant's previous PCR file which were filed in the Court of Common Pleas and the Supreme Court of South Carolina.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary – First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Paul E. Short, Jr., after which the jury convicted him as indicted. On June 6, 2003, Judge Short sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to *Anders v. California*, 386 U.S. 738 (1967) on Applicant's behalf. Applicant also submitted a *pro se* brief. On June 13, 2005, the South Carolina Court of Appeals dismissed the appeal. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in an order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an Application for PCR on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, before the Honorable Kenneth G. Goode. Applicant was present and represented by Tricia Blanchette, Esquire. Michelle Parsons,

Esquire, of the South Carolina Attorney General's Office, represented Respondent. By order dated October 14, 2008, Judge Kenneth G. Goode denied and dismissed the application with prejudice. Applicant appealed this order and filed his Petition for Writ of Certiorari. By order dated December 2, 2010, the Supreme Court denied the petition. The Remittitur was sent on January 7, 2011.

Applicant filed a Petition for Writ of Habeas Corpus with the District Court of South Carolina on September 6, 2011. On July 12, 2012, the Honorable Shiva V. Hodges, United States Magistrate Judge, filed her Report and Recommendation, which recommended summary dismissal of the Applicant's habeas petition on the merits on two of the claims raised, and recommended summary dismissal of the Appellant's habeas petition due to procedural bars on two of the claims raised. Applicant timely filed objections to this Report. On August 23, 2012, the Honorable Richard M. Gergel, United States District Judge, filed an Order which largely adopted Judge Hodges' Report and granted the State's motion for summary judgment.

Applicant filed this application for post-conviction relief on July 9, 2013, and subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland,

Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. After these depositions, Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. Respondent's Motion for Dismissal was denied and an evidentiary hearing was granted by Order signed by Judge Brian M. Gibbons and filed with the Clerk of Court's Office on October 29, 2014.

ALLEGATIONS

In his current application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.
 - a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. *See*, Attachment A. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff this juror failed to respond. *See*, Attachment B. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:
 - i. Kershaw Police Department from June 26, 2000 through December 31, 2000.
 - ii. York Police Department from July 14, 1998 until April 7, 2000.
 - iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
 - iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
 - v. University of South Carolina Police Department starting in 1989.
 - vi. Lancaster Police Department starting in 1982.



In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006. *See*, Attachment C.

- b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.
 - c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court or Counsel for the Applicant.
 - d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office. *See*, Attachment D.
2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

SUMMARY OF DEPOSITIONS

Ronnie Roberts

Roberts testified he was an officer with the Lancaster Police Department from 1975 until 1982. He testified that after he left the Lancaster Police Department, he went to work as the Director of Public Safety for the Lancaster branch of the University of South Carolina Police Department until 1986. Roberts testified that he served as the Chief of the University of South Carolina Police Department in Columbia from 1986 until 1989. From 1989 until 1996, Roberts was employed as an instructor with the South Carolina Criminal Justice Academy in Columbia. In 1996, Roberts left the Criminal Justice Academy to serve as the Chief of Police for Lake City, South Carolina. He testified he remained in Lake City until 1998 when he became the Police

Chief for the city of York, South Carolina. Roberts testified he held that position until his retirement on April 7, 2000. Finally, Roberts testified he served as the Police Chief for the town of Kershaw from July, 2000 through December, 2000, at which point the town of Kershaw disbanded its police department and entered a service agreement with the Lancaster County Sheriff's Department. Roberts testified that after leaving the Kershaw Police Department, he retired from law enforcement. (Roberts Dep. 6-10). Roberts testified that at the time of Applicant's trial in 2003, he was employed by a mortgage insurance company called Assurant Group in Florence, South Carolina. (Roberts Dep. 4:4-5.)

Roberts testified at the deposition that he did not disclose his background in law enforcement because he was never asked about it, and he was only asked about his present occupation. He further testified that he would have answered any question that was asked of him. He testified that jurors are "not supposed to volunteer a bunch of stuff you're not asked to do." (Roberts Dep. 11:16-23). Roberts testified at the deposition that at the time of Applicant's trial, he had no relationship with the Sixth Circuit Solicitor's Office. He testified that during his tenure as Kershaw Police Chief, he did not have any cases that went to the solicitor's office, and he had no contact with the solicitor's office. (Roberts Dep. 12:10-11, 16-17). He testified that during his time with the Lancaster Police Department, he only met the Solicitor, John Justice, once. It was also the only time he testified as a witness during his tenure with the Lancaster Police Department. (Roberts Dep. 13:16-20). Roberts testified the trial and the meeting with Solicitor Justice took place over twenty (20) years before Applicant's trial. (Roberts Dep. 12:21-22). Roberts further testified at the deposition that during his tenure with the Lancaster branch of the USC Police Department, his department only dealt with parking and disorderlies. He testified that the Lancaster Police Department handled all criminal matters, and that nothing he was

involved in ever went to court. He testified that at the time, his employees were security guards and had no arrest powers. (Roberts Dep. 14:3-8, 15-20).

Roberts testified that when he received his summons for jury duty, he called the Sixth Circuit Solicitor's Office and asked if his background would disqualify him from jury duty. (Roberts Dep. 15:18-22). Roberts testified he did not remember with whom he spoke. (Roberts Dep. 16:2-3). Roberts testified he moved away from Lancaster in 1986. (Roberts Dep. 25:6-7). He testified he was living at the beach at the time of Applicant's trial (Roberts Dep. 18:9-10). Roberts testified he knew one of the officers who testified at the trial: Barry Faile, currently the Lancaster County Sheriff. He testified he did not recall being asked during *voir dire* if he knew any of the witnesses. (Roberts Dep. 16:13-14, 17: 1-2). Roberts testified he was not close friends with Barry Faile. (Roberts Dep. 21:4-5). He further testified he did not speak to anyone from the solicitor's office or any members of law enforcement during the trial. (Roberts Dep. 18:12-14). Roberts testified he did not disclose his background to anyone on the jury, but that he did know one juror. That juror, Eddie Lewis, did not discuss Roberts' background. (Roberts Dep. 18-19). Applicant attempted to ask Roberts about the jury's deliberation, to which Respondent objected. Roberts responded,

"There wasn't a lot of deliberation in the room. Like I say, we asked for an explanation and we got that. We came back and voted. I think it was fairly quick. I can't - It's been a long time. I can't remember. I don't know, but I did not want to use my background to entice someone to vote my way, you know what I'm saying. So I didn't. I let everyone make up their own mind. Nobody was enticed to vote. I was the most fair person in that jury room."

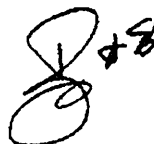
(Roberts Dep. 20:2-12).

Roberts subsequently testified that he knew who Solicitor Doug Barfield was, but he did not know him personally. He testified he knew him by sight, saying "I just - he dresses a certain kind of way. That's how I knew him. Everybody knows him ... He's got the mustache thing and

all that going on. That's all I know ... I've just seen him around. I knew he worked in the Solicitor's office. I didn't know him that well. He knows some of my older family but he's older than I am." (Roberts Dep. 23:1-14). Roberts testified that he had no relationship with Barfield. (Roberts Dep. 24:12-15). He further testified that he had no relationship with anyone at the solicitor's office. (Roberts Dep. 25:18-25). Roberts testified that his knowledge of law enforcement officials did not impact his ability to be a fair and impartial juror. (Roberts Dep. 29:1-3). Finally, Roberts testified that he would have disclosed his law enforcement background, had he been asked about it. (Roberts Dep. 33:15-18).

Tom Holland

At his deposition, Thomas Holland testified he was employed as an Assistant Solicitor in the Sixth Circuit from 2001-2006. (Holland Dep. 4:8-9). Holland testified his only involvement in the case was to question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. (Holland Dep. 4-5). He testified John Justice and Doug Barfield prosecuted the case. (Holland Dep. 4:15-21). Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. (Holland Dep. 6:1-5). Holland testified he heard similar comments from other people in the courthouse, but there was never any long discussion of the fact. (Holland Dep. 6:20-25). Holland testified it is typical to ask how a jury looks. (Holland Dep. 18:8-11). He further testified Roberts' status as a juror was not the topic of the day. (Holland Dep. 22:2-7). Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts'



background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire* and the jury questionnaire only asked about current employment. Thus, Holland testified Barfield said the law was followed. (Holland Dep. 9:1-19). Holland testified he brought the subject up with Barfield out of an abundance of caution, and he did not remember whether he brought it up prior to the start of testimony in Applicant's trial. (Holland Dep. 10:1-9). Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. (Holland Dep. 10:15-19). Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. (Holland Dep. 12:1-6). Holland testified he was not aware that a potential juror had called the solicitor's office and asked if his background would disqualify him, and that he did not receive such a call. (Holland Dep. 19-20). He further testified he would never talk to anyone who called about jury duty; he would refer them to the clerk's office. (Holland Dep. 20:20-21). Holland further testified that seating a law enforcement officer on the jury is not always good for the prosecution. He testified that people involved in law enforcement could possibly overanalyze the prosecution's case. (Holland Dep. 21:3-10). Holland further testified that he did not know anything about Roberts. (Holland Dep. 29:23-24).

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

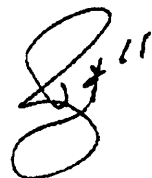
Ronnie Roberts' Testimony

Ronnie Roberts, the foreman of the jury testified in this evidentiary hearing. Roberts testified he had been called for jury service in the trial of the Applicant. PCR tr. 15. Roberts testified that upon receiving notification he had been called for jury service he telephoned the



solicitor's office and asked to be dismissed because he figured they would not let him serve anyway being a former police officer. PCR tr. 15. He testified he asked to be dismissed. PCR tr. 15. Roberts testified it was not his intent to try to get out of jury service but he figured they would not allow him to serve. PCR tr. 16. Roberts then testified he could not remember who he spoke to when he called the solicitor's office. PCR tr. 16. He testified he told the person he spoke to from the solicitor's office he had previously been in law enforcement but could not remember if he told them how many years. PCR tr. 16. Roberts testified he did not recall who he spoke with and he did not recall if they knew he was former law enforcement already. PCR tr. 17. Roberts testified the person from the solicitor's office told him he had to report and if they had issues with his background he would be dismissed or struck. PCR tr. 17. Roberts testified he recalled his prior deposition and saying he was told as a result of the telephone conversation he had to show up and he might be able to be let go but he ended up being kept all day. PCR tr. 17. Roberts testified he did not know who the person was that he was talking to on the telephone but when he arrived at jury duty, the solicitor, Mr. Justice was in charge. PCR tr. 18. He testified he did not know whether Solicitor Justice knew about his prior phone call to the solicitor's office. PCR tr. 18. Roberts testified after having his deposition taken he was told the solicitors who tried the case were Mr. Justice, Mr. Barfield and Mr. Holland. PCR tr. 18. Roberts testified when asked if he knew John Justice that he had one previous case in general sessions when he was a young officer with Mr. Justice. PCR tr. 19. Roberts was then asked about his law enforcement career. PCR tr. 19. Respondent stipulated to Roberts' law enforcement background as reflected in prior pleadings. PCR tr. 19. Roberts then testified he had retired after twenty-five years and was retired a couple of years before Applicant's trial. PCR tr. 20. Roberts testified he had worked for six and a half years with Lancaster and six months for Kershaw. PCR tr. 20. When asked what

effort did you make to make the Court, the presiding judge, aware of the law enforcement background that had caused you to be concerned enough to call the solicitor's office, Roberts testified as a juror he did not have any interaction with the Court. PCR tr. 20. Roberts testified during jury selection there were numerous points where questions were asked and jurors were asked to stand if they were pertinent to them, and if they stood they were then addressed individually by the court. PCR. tr.20. He testified he answered every question the court asked him. PCR tr. 21. Roberts testified he did not have any connection with the Sixth Circuit Solicitor's Office at the time of trial and this was the reason he did not stand when asked this question during *voir dire*. PCR tr. 21. Roberts testified he had no connection with any law enforcement agency at that time as he had retired in 2000. PCR. tr. 22. Roberts then testified during the *voir dire* he knew Mr. Justice and Mr. Barfield by sight. PCR tr. 22. Roberts testified he recognized Mr. Barfield by sight because of his long, different type mustache. PCR tr. 22. Roberts testified he guessed he had older siblings who knew or were acquainted with Mr. Barfield because they were older than him. PCR tr. 22. Roberts testified he did not recall being asked on *voir dire* whether he had any special relationship with any of the witnesses after solicitor Justice read a list of the potential witnesses. PCR tr. 23. Roberts testified he was not concerned he was not qualified to serve as a juror when he got notice but was concerned that most of the time when a policeman is called and they are not seated so they're really wasting time to be there as jurors when they are never utilized on the jury. PCR tr. 23. Roberts testified he did not remember hearing a complete list of witnesses during the *voir dire*. PCR tr. 24. When asked if he had any explanation why he could not recall a long list of the State's potential witnesses being read out by Solicitor Justice if he was listening, Roberts testified no saying it had been a long time ago and he did not remember a lot of things that happened that far back. PCR

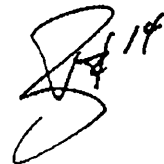


tr.25. Roberts testified he remembered being asked on *voir dire* about whether or not he had any connection with the solicitor's office during his deposition but he did not have any independent memory of it. PCR. tr. 25. Roberts then testified that if he had heard the question about having any connection with the solicitor's office, he would not have stood and answered because he had no connection with the solicitor's office at the time. PCR tr. 26. Roberts testified to acknowledging he believed at the time of his phone call to the solicitor's office that no one, no defense attorney would want him on their jury if they knew his background. PCR tr. 26. Roberts then testified he was never asked about his background only if he had any connection that would prevent him from issuing a fair verdict as a juror. PCR tr. 26. Roberts then testified he did not have any connection with the solicitor's office or contact about the case after being asked the question from *voir dire* which asked "Do any members of the petit jury panel have any relationship or contact with Solicitor John Reed Justice or any member of the Sixth Circuit Solicitor's Office, if so please stand.". PCR tr. 29. Roberts testified he had not contacted the solicitor's office about this case. PCR tr. 29. Roberts then testified that in his deposition he stated the only witness he knew was the one who was now the sheriff and his name was Barry Faile. PCR tr. 30. Roberts testified he did not hear the question during *voir dire* which asked whether or not he had any relationship to any of the witnesses. PCR tr. 30. Roberts then testified he knew Barry Faile by name but had no relation with him. PCR tr. 30. Roberts testified he did not know any other trial witnesses. PCR tr. 30. Roberts again testified he did not have any connections with the solicitor's office as he had been retire since 2000. PCR tr. 32. Roberts further testified he had no connections to anyone involved in the case as far as he was concerned. PCR tr. 32. Roberts testified he knew there was a distinct possibility no defense lawyer wanted him on the jury panel if they knew he was a former law enforcement officer. PCR tr. 32. Roberts testified

when asked if law enforcement and prosecutors were on the same side, that they all want justice. PCR tr. 32. Roberts testified law enforcement presents the facts and the judge or jury makes a decision about guilt or innocent. PCR tr. 33. When asked if he called the public defender's office, Roberts testified "I didn't know how to get in touch with them. I didn't know who the defense attorneys were. Did not know which jury I would be called to serve on. I made that call specifically because I was called to a jury pool. There was no specific trial mentioned or I had no idea what trial would be coming up." PCR tr. 33. Roberts testified he notified the only person he knew would have control over jury duty when asked if he did anything to advise the court about his concerns about his law enforcement background. PCR tr. 34. Roberts testified he had a good general working knowledge of the judicial system and the court process. PCR tr. 35. Roberts testified he admitted in his previous deposition he was familiar with jury strikes and it was very possible a defense attorney would have struck him from the jury if they had known his background. PCR tr. 35. Roberts testified that at the time of his call to the solicitor's office he kind of was trying to get out of jury duty thinking he did not think they would let him serve. PCR tr. 36. Roberts testified that during the period when he was chief of police in Kershaw, this area was under the umbrella of the Sixth Circuit Solicitor's Office as well as the time he spent working for Lancaster county. PCR tr. 36. Roberts testified he had one case in general sessions with John Justice but his captain presented all cases and he never came as a witness. PCR tr. 36. Roberts testified that by 1982 he knew John Justice was the chief solicitor for the circuit. PCR. tr. 37. Roberts testified he knew one person on the jury before the trial took place and his name was Eddie Lewis. PCR tr. 37. Roberts then testified again he knew Doug Barfield by sight. PCR tr. 39. Roberts testified he assumed because of Doug Barfield's age that some of his older brothers knew him. PCR. tr. 39. Roberts again testified he was told when he called the solicitor's

office that he might be released from jury duty but he was kept all week. PCR tr. 40. Roberts testified he did not remember who he spoke to when he called the solicitor's office but he knew Mr. Justice was over the solicitor's office. PCR tr. 41. Roberts testified he did not know how he came to be selected as the jury foreman. PCR tr. 41. Roberts then testified the judge told him you are now the foreman and he was appointed. PCR tr. 41. Roberts testified other than Mr. Lewis no one on the jury panel knew he had a law enforcement background. PCR tr. 42. Roberts testified he could not remember if he told any jury members about his law enforcement background. PCR tr. 42. Roberts testified he worked for Assurant Group as a training department manager in insurance during this time. PCR tr. 42. Roberts then testified he trained people to operate the computers to input people's information into their insurance. PCR tr. 42. Roberts testified he did not know any members of the Steele family or Jimmy Taylor prior to trial. PCR tr. 44-45. Roberts testified in his job in law enforcement he interacted with people in the probation office. PCR tr. 45. Roberts testified when asked if he had any recollection of a Mr. Jimmy Taylor who he may have interacted with in probation, that many years ago there was a person in probation but he only knew him by nickname. PCR tr. 46. Roberts testified he did not know if Jimmy Taylor was the same guy or not but the guy he knew nickname was Bull. PCR tr. 46.

On cross-examination, Roberts testified he was sixty-nine years old and that it had been a long time since this trial took place, almost thirteen years. PCR tr. 46-47. Roberts then testified it had been a long time too since he was deposed. PCR tr. 47. Roberts testified he did not have a perfect memory of every line of his testimony in the trial or the deposition. PCR tr. 47. Roberts testified he got a letter in the mail concerning jury duty. PCR tr. 47. Roberts testified once he got the letter in the mail he looked up the phone number for the solicitor's office in Lancaster County and he called the office. PCR tr. 48. Roberts testified his reason for calling the solicitor's



office was twofold. PCR tr. 48. He testified he did not seem to think they would let him serve, but he also had a responsible job in Florence and he kind of was under pressure to be at work however, he really didn't think they would let him serve because of his law enforcement background. PCR tr. 48. Roberts testified he did not know of any cases that were coming up and that he could give the defendant a fairer trial than most people. PCR tr. 48. Roberts testified he thought law enforcement in general should be able to serve on juries. PCR tr. 49. Roberts testified he did not know why the judge asked each of the questions he did during *voir dire* and he did not stop and ask. PCR tr. 49. Roberts testified the question of whether there were any prior law enforcement officers on the jury was never asked and if it has been he would have answered fairly and honestly. PCR tr. 49. Roberts testified he did not when asked during *voir dire* if he had any special relationship by blood or marriage or otherwise any special relationship with any of the witnesses called to trial. PCR tr. 50. Roberts testified if someone asked him today if he had any relation or contact with the Sixth Circuit Solicitor's Office he would say he has none. PCR tr. 50. Roberts testified he had contact with John Justice once for a case when he interviewed him for five minutes before trial and then he testified which was twenty five years before this trial. PCR tr. 51. Roberts testified he worked as the chief of police for the town of Kershaw for six months during which time he did not have any cases go to the Sixth Circuit Solicitor's Office. PCR tr. 51. Roberts testified he was not trying to get on the jury. PCR tr. 52. Roberts then testified he answered all the questions from the *voir dire* as honestly as he could. PCR tr. 52. Roberts further testified he told the truth during his deposition. PCR tr. 52. Finally Roberts testified he tried to tell the truth as best as he could remember it during this hearing. PCR tr. 52.

On redirect Roberts testified he received a copy of his deposition from the court reporter

and he testified that he did not report any errors in the deposition to the court reporter. PCR tr. 53. Roberts testified he did not review his copy of the deposition in preparation for this hearing. PCR tr. 53. He testified had not reread his deposition after receiving a subpoena to testify at the evidentiary hearing. PCR tr. 53.

After Roberts's testimony concluded, a bench conference was held. PCR tr. 56. This Court allowed both sides to question Roberts further. PCR tr. 56. Upon further questioning, it was revealed Roberts had documents with him on the stand. PCR tr. 56. Roberts testified he had letters Applicant's counsel sent him and also a red folder which contained a copy of his deposition. PCR tr. 57. Roberts then testified he had not opened it today or yesterday and denied he had been sitting on the witness stand reading it. PCR tr. 57. Roberts was then required to give Applicant's counsel the folder of documents he had with him on the witness stand. Applicant's counsel noted for the record the folder contained a condensed copy of Juror Roberts' deposition dated April 22, 2014. PCR tr. 57-58. This Court noted on the record that counsel for the Respondent had reported to the Court he had seen Roberts looking at those materials in the courtroom during the hearing, and this disclosure prompted the Court to allow further questioning of Roberts as he had previously denied reviewing his deposition prior to his testimony. PCR tr. 57-58. Counsel for the Applicant asked the record reflect counsel for Respondent reported he observed Roberts looking at a document in a red folder which may or may not have been the deposition in question. PCR tr. 58. This Court noted, at the request of counsel for Applicant, the copy of the deposition contained in a red folder could not be seen if it was inside the document folder. PCR tr. 58-59.

Trial Counsel's Testimony

Applicant's Trial Counsel, John Clark, testified at the evidentiary hearing held in this

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matter. Trial counsel testified he recalled representing the Applicant during his trial. PCR tr. 60. Trial Counsel testified he could not recall how many strikes he utilized in the jury selection process. PCR tr. 60. He testified he absolutely would have used a strike to remove Ronnie Roberts from jury service had he known about his twenty-five year background in law enforcement. PCR tr. 61. He testified that there was "no question at all" that he would have struck Roberts from Applicant's jury. PCR tr. 61. Trial counsel testified that he did not receive any additional information about Roberts from the Solicitor's Office, Roberts or any other source prior to the jury selection at this trial. PCR tr. 61.

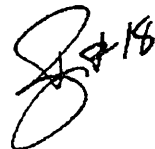
Shareka Jones' Testimony

Ms. Jones testified that she had previously been represented on a forgery charge by Thomas Holland, Esquire. PCR tr. 62. Attorney Holland gave her a ride to court in September, 2012. PCR tr. 63. Ms. Jones testified that during that ride, she brought up the fact she believed he was one of the prosecutor's in the Applicant's case. PCR tr. 63. She testified at the time she was represented by Holland she was already a friend of Applicant's family PCR. tr. 62. She testified she had looked her lawyer, Attorney Holland, up on the internet and saw the references to Applicant's case. PCR tr. 63. Ms. Jones testified Attorney Holland confirmed he had been one of the prosecutors and informed her he handled the DNA part of the case. PCR tr. 63. Ms. Jones then testified Attorney Holland told her he did not believe Applicant was guilty of the charge and the prosecution knew that Mr. Roberts was a former police officer and they assigned him to be the foreman on the case and they absolutely knew what they were doing as to give him an unfair trial. PCR tr. 63. Ms. Jones testified later that day she had a cell phone conversation with Applicant and was able to put him on the phone with Attorney Holland. PCR tr. 65. She testified she heard their entire conversation and heard Attorney Holland convey to Applicant the

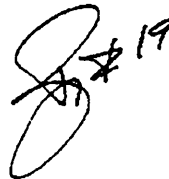
information concerning one of the jurors in his case having been a career law enforcement person. PCR tr. 65. Ms. Jones testified that she had neither been given, nor promised, any form of compensation for testifying in this matter other than the witness fee and mileage money given by Applicant's counsel. PCR tr. 66.

Doug Barfield's Testimony

Douglas A. Barfield, Assistant Solicitor for the Sixth Judicial Circuit at the time of Applicant's trial, also testified at the evidentiary hearing held in this matter. He testified he remembered being one of the prosecutors who tried Applicant case. PCR tr. 75. Attorney Barfield testified he had no recollection of being contacted by Roberts concerning his receipt of a jury summons prior to this trial. PCR tr. 76. He further testified he had no recollection of receiving a message from anyone in the solicitor's office concerning Roberts having called the solicitor's office. PCR tr. 76. When asked if during the course of this trial had it been brought to his attention by Assistant Solicitor Holland that various members of court personnel and law enforcement were talking about the fact that a former chief of police was on the jury, and had been made jury foreman, Attorney Barfield testified he did not "recall that it was but I would not be surprised that it was. This was 13 years ago". PCR tr. 76. He testified he had no independent recollection of discussing that matter with Tom Holland. PCR tr. 76. Attorney Barfield testified he knew who Roberts was, and was aware he was retired law enforcement officer when he was selected for this jury. PCR tr. 77. He further testified he did not feel it was in any way incumbent upon him to notify defense counsel of that fact. PCR tr. 77. When asked whether he was concerned about Roberts failure to respond to the question about having any connection with the solicitor's office, Attorney Barfield testified that the question at *voir dire* was asked in the present tense and Roberts answered it truthfully and that did not give him any concern. PCR tr.



78. He went on to testify that a clear reading of the *voir dire* question demonstrated it was limited to the present tense. PCR tr. 78. Attorney Barfield testified about Jimmy Taylor a retired agent in charge of the Lancaster County Office of Probation and Parole who hung around the solicitor's office and watched them in court. PCR tr. 78. He testified Mr. Taylor received a small monthly check for sitting in court with the office and telling them what he knew about jurors as he grew up in Lancaster County and knew everybody there. PCR tr. 78. He further testified he had no recollection of whether Mr. Taylor was involved in Applicant's jury selection. PCR tr. 78. Attorney Barfield again went on to testify he had no independent recollection he and Tom Holland had a conversation about Roberts or whether he had one with Solicitor Justice. PCR. tr. 80. He further testified that if he thought there was an ethical dimension or obligation to disclose information about Roberts he would have. PCR tr. 80. Attorney Barfield testified had Roberts been asked the question, has anybody -- any member of the jury panel a present or former law enforcement officer and he had not stood up then he would have if Solicitor Justice had not. PCR tr. 80. He testified it was probably fair to say generally defense attorneys in criminal cases do not want current or former police on the jury. PCR tr. 81. He further testified he believed he has had former law enforcement officers on criminal juries in Lancaster County. PCR tr. 81. Attorney Barfield testified in his experience defense attorneys utilize strikes to get rid of people with law enforcement careers, school teachers and principals. PCR tr. 82. He testified after Roberts was subpoenaed in Applicant's PCR Roberts called him and wanted to know what it was all about. PCR tr. 82. He further testified he did not know what it was about because he had not heard of the filing of Applicant's PCR as of the time Roberts was going to be taking his deposition. PCR tr. 82. Attorney Barfield testified he did not give Roberts any advice concerning the scope of his testimony or statements to be made in the deposition. PCR tr. 83. Finally, he testified looking

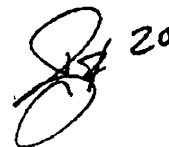
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back at the time the jury in Applicant's trial was being selected, he had no issue with Roberts' lack of response to the *voir dire* question. PCR tr. 83.

On cross-examination, Attorney Barfield testified he had been with the solicitor's office for thirty years in some capacity. PCR tr. 84. Finally, he testified there was nothing unusual about Roberts calling the solicitor's office when he got his summons as he was not the first and certainly was not the last person to do that. PCR. tr. 84.

Tom Holland's Testimony

Thomas Holland, a former Assistant Solicitor and prosecutor at Applicant's trial, testified at the evidentiary hearing held in this matter. Attorney Holland testified he tried the case along with Solicitor John Justice and Assistant Solicitor Doug Barfield. PCR tr. 90. Attorney Holland testified he and Doug Barfield handled a DNA witness and that was the extent of his involvement in the actual trial. PCR tr. 90. He testified he was in and out of the court room during the early part of the trial and did not believe he was present for all of the jury selection portion of the trial. PCR tr. 90. Attorney Holland testified at some point, after the jury was selected, he came back into the court and one of the deputies told him we have a good jury and we got a real good foreman. PCR tr. 91. He testified he asked the deputy why he thought that and the deputy responded he used to be the former Chief of Police of Kershaw. PCR tr. 91. Attorney Holland testified he was surprised the defense did not strike Roberts. PCR tr. 91. Attorney Holland testified at some point after the jury was selected he discussed this issue with either one of the senior prosecutors on the case, or possibly, both together. PCR tr. 91. He testified he could not remember for certain whether he had taken it up with both, Solicitor Justice and Assistant Solicitor Barfield, or just one of them. PCR tr. 91. He testified he asked whether this was something that needed to be disclosed and he was told no. PCR tr. 91. Attorney Holland

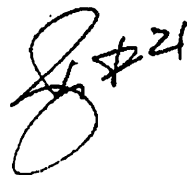


testified he was told Roberts, "answered the questions the way they were asked, so he didn't say anything untruthful so no, we don't need to say anything." PCR tr. 91. When asked if he would have left the decision about disclosure to the senior members of the prosecution team, or made the disclosure himself, if he had felt disclosure was appropriate, Attorney Holland testified:

Well, yeah, they had been doing this a whole lot longer than I had. I think that was my first year that I was in Lancaster and I think I only was a prosecutor for only two years at the time and the question was more of I guess a learning thing. I was seeing if that was, you know, do we have to do this or is that something, you know -- it wasn't that I thought anybody was being unethical. I was just asking the question and they said no. I don't know who said it. I don't know if it was Doug or John. No, everything was done above board. There was no -- they didn't -- he didn't answer anything incorrectly. He answered the questions that were posed to him. So, I don't know if that is responsive to your question or not.

PCR tr. 92.

Attorney Holland testified he left the Solicitor's Office in 2006 and went into private practice in 2011. PCR tr. 93. He testified at some point he represented Shareka Jones. PCR tr. 92. Attorney Holland testified on the day he drove Ms. Jones to Spartanburg, for her guilty plea, he was telling her "if it was a trial in Spartanburg he would want to know who the jurors were." PCR tr. 93. He further testified in the case of a jury trial he would have wanted a local lawyer to help him pick the jury because they know the potential jurors. Attorney Holland testified he mentioned Applicant's case to her by way of example. PCR tr. 93. He testified he told her the foreman of the jury in that case was a former police officer and the defense attorney was from out of town and would not have had that knowledge. PCR tr. 93. Attorney Holland testified Ms. Jones made him aware she knew Applicant either in the car ride or later on when she walked into his office and handed him a cell phone to talk to Applicant. PCR tr. 93. Attorney Holland testified he did not feel this information about Roberts was something Applicant needed to know, but testified at the time it happened, if he was the defense attorney he would like to have known.

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PCR tr. 94. He testified he had a telephone conversation with Applicant and told him the foreman on his jury was a former chief of police of Kershaw, but wasn't in law enforcement anymore at the time of Applicant's trial. PCR tr. 94. Attorney Holland testified he felt sure the entire prosecution team knew this information from the beginning. PCR tr. 94. He testified Applicant asked him to represent him and he offered him a fee. PCR. tr. 95. He testified he told Applicant he could not represent him because it would be a conflict of interest as he participated in the original trial. PCR tr. 95. ~~Attorney~~ ^{Pursue} Holland testified he might have told him what steps he could take to ~~pursue~~ this but Applicant may have had a lawyer at the time. PCR tr. 95. He testified after being questioned about his deposition, he did not know how many strikes the defense had left doing jury selection of Applicant's trial. PCR tr. 96.

On cross-examination, Attorney Holland testified he had one witness in Applicant's trial. PCR tr. 98. He testified he saw bits and parts of *voir dire* ultimately testifying he probably would not have sat through it. PCR tr. 98. When asked whether he disclosed the information about Roberts out of an ethical obligation, Attorney Holland testified:

Well, right. What I talked with the client it was learning opportunity. When I approached John or Doug, or both, it wasn't out of sense that they were -- I assumed they weren't doing anything unethical. I never saw them do anything unethical, so there was never a question about ethics. It was just about whether or not we should or shouldn't from a practical standpoint if -- because sometimes things you can err on the side of caution and sometimes you don't have to do things over.

PCR tr. 99.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

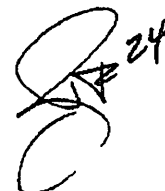
When allegations arise concerning a juror's failure to reveal information in response to *voir dire* questions, courts look to whether the concealment was intentional and consider the nature of the information concealed. *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001); *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004). Provided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *See State v. Woods*, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001); *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 627-28 (2013). The first part of the *Woods* test requires a showing of intentional concealment because it is not a juror's responsibility to anticipate what an attorney might be seeking by asking a particular question. *Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 760 S.E. 2d 111 (2014). A determination that a juror did not intentionally conceal the information ends the court's inquiry. *State v. Sparkman*, 358 S.C. 491, 497, 596 S.E.2d 375, 377-78 (2004). "[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Woods*, 345 S.C. at 588, 550 S.E.2d at 284. On the other hand, unintentional concealment occurs "where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Id. Lynch*, 409 S.C. at 154, 760 S.E. 2d at 116.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations juror and prosecutorial misconduct. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel and due process violation:

Initially, this Court finds Applicant has failed to show he filed this application within one year of discovering the alleged misconduct. Applicant's allegations of juror and prosecutorial misconduct require that Applicant file his Application within one year of discovering the alleged misconduct, or within one year of the date the facts could have been discovered by the exercise of reasonable diligence. *S.C. Code Ann. § 17-27-45(C)* reads:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

This Court finds because Roberts' law enforcement background was discoverable at the time of Applicant's trial, Applicant should have raised this issue at his first PCR hearing. Roberts' made no attempts to hide his background. At no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background nor did the jury questionnaire ask about their former occupations. The questionnaire merely asked their current occupation which Roberts answered truthfully. The responsibility for obtaining sufficient background information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E. 2d 111 (2014). Just because no one thought to ask him what his



background was does not mean the information was not discoverable. As such, this Court finds Roberts' background could easily have been discovered by the exercise of reasonable diligence.

Second, assuming *arguendo* this Court deems the information was not discoverable at the time of trial, Applicant's application is still untimely because he has not satisfied his burden of proving that he filed this application within one year of discovering the information, or when it could have been discovered. Thomas Holland was an assistant solicitor in the Sixth Circuit during Applicant's trial. At his deposition, he testified he did very little work on Applicant's case but he and the other solicitors handling the case were made aware by court personnel that Roberts had a background in law enforcement. Holland testified at his deposition some years later, after he entered private practice, he was taking a client to enter a plea in Spartanburg when a discussion came up regarding jury selection. Holland's former client was familiar with Applicant's case, and at some point the client handed Holland a cell phone with Applicant on the other end of the line. At that point Applicant apparently asked Holland about Roberts' seating on his jury.¹ This Court finds the date of that telephone conversation, or sometime prior to it, starts the timeline of when Applicant learned of the facts on which he is basing the current PCR application. Holland testified that subsequent to his conversation with Applicant, at some point he was contacted by Applicant's private investigator, Dave McDougal. Holland testified that his contact with McDougal took place one and a half to two years prior to the deposition. The deposition occurred on April 22, 2014. Applicant's PCR application was filed on July 9, 2013. In order for his claim to be timely, Applicant's discovery of the alleged new evidence would have to have occurred after July 9, 2012. This Court finds given the timeline of events testified to by

¹ This Court notes that Applicant had to have been incarcerated at the time of the cellular phone conversation. This witness, however, conceded he had no way of knowing whether Defendant was on a cell phone.

Holland at his deposition and evidentiary hearing Applicant has failed to show that this PCR application was timely filed.

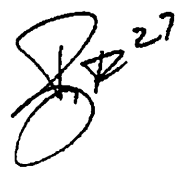
Juror Misconduct

Applicant has failed to uncover any evidence of misconduct by Mr. Roberts. In order for his claim to be granted, Applicant must show that Roberts intentionally concealed information during *voir dire*. See State v. Kelly, 331 S.C. 132 (1998). However, Roberts truthfully filled out the jury questionnaire, which only asked about his occupation and "Present or Former Employer". Additionally, at no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background, or if they were related to anyone involved in law enforcement. Roberts testified at the deposition and the evidentiary hearing that he would have disclosed his background, if the question had been asked. A potential juror has no duty to disclose background information when he is not asked to do so; rather, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E. 2d 111 (2014). Roberts testified that he retired from law enforcement when he left the Kershaw Police Department in 2000 and was working as a training manager for a mortgage insurance company at the time of Applicant's trial. Certainly that would not qualify as any type of law enforcement work.

Applicant further argues Roberts committed misconduct by not responding affirmatively when the petit jury panel was asked, "Do any members have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit Solicitor's Office? If so, please stand." However, Roberts testified he had no relationship with the Solicitor's Office. Roberts testified repeatedly the call he made to the Solicitor's Office was the only contact he had

with anyone from that office since he testified in a trial over twenty years before. Roberts testified at his deposition that he moved away from Lancaster in 1986 and was living at the beach at the time of the trial. Roberts testified that he had no idea who he spoke to at the solicitor's office, and he further testified that once he was told to appear for jury duty, he did not have any more contact with the solicitor's office. Applicant claims Roberts was involved in cases prosecuted by the Sixth Circuit Solicitor, but Roberts testified that when he was with the Kershaw Police Department, he did not have any cases that went to the solicitor's office. Before his brief stint with the Kershaw Police Department (July-December, 2000), the last time Roberts was employed in any law enforcement capacity within the Sixth Circuit was in 2000, when he was in charge of security guards at USC Lancaster. Certainly Roberts' testimony that he did not have any type of relationship or contact with the Sixth Circuit Solicitor's Office, or with any employee thereof, at the time of Applicant's trial was credible.

Applicant also alleges Roberts intentionally hid a relationship he had with one of the prosecution's witnesses (Barry Faile). However, Roberts did not stand when the potential witnesses were named because he did not have a special relationship with Faile. The question asked by the trial judge was, "Is any member of the petit jury panel related by blood or connected by marriage or have any special relationship with any of the potential witnesses for the state of South Carolina?" (Tr tr. 6-7). Roberts testified at the evidentiary hearing he did not hear the question during *voir dire* which asked whether or not he had any relationship to any of the witnesses. PCR tr. 30. Roberts then testified he knew Barry Faile by name but had no relation with him. PCR tr. 30. Moreover, Roberts testified he had no special relationship with Faile. At the deposition, Roberts testified he was not close friends with Faile, and they had no special relationship. As such, Applicant has failed to elicit any evidence supporting the existence of a



relationship between Roberts and Faile, much less a special relationship. The fact that Faile and Roberts knew of each other is not evidence any kind of special relationship, and even if Roberts had heard the question he did not need to stand up. Accordingly, Applicant has failed to show any intentional concealment by Roberts.

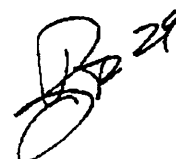
Prosecutorial Misconduct

Applicant claims the solicitors involved in the case committed misconduct by failing to divulge Roberts' background to the judge or the defense. Even, assuming *arguendo*, that anyone involved in Applicant's prosecution was aware of Roberts' background during jury selection, the solicitors involved in the case were under no duty to disclose Roberts' background to Applicant or to the Court. Again, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See *Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 760 S.E. 2d 111 (2014) nor did the non-disclosure amount to a *Brady* violation. The holding in *Brady v. Maryland* requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." 373 U.S. 83 (1963). The prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial. *United States v. Agurs*, 427 U.S. 97, 108, (1976). The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. See *Agurs*, 427 U.S. at 109-10.

Applicant failed to elicit any testimony at the depositions or evidentiary hearing to show the prosecution's non-disclosure of Roberts' background was improper. At his deposition and testimony from his evidentiary hearing, Holland testified his only involvement in the case was to

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question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. He testified John Justice and Doug Barfield prosecuted the case. Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts' background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire*, and the jury questionnaire only asked about current employment. Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. Furthermore, Attorney Barfield testified he knew who Roberts was, and was aware he was retired law enforcement officer when he was selected for this jury. He further testified he did not feel it was in any way incumbent upon him to notify defense counsel of that fact. When asked whether he was concerned about Roberts failure to respond to the question about having any connection with the solicitor's office, Attorney Barfield testified that the question at *voir dire* was asked in the present tense and Roberts answered it truthfully and that did not give him any concern. He went on to testify that a clear reading of the *voir dire* question demonstrated it was limited to the present tense. Attorney Barfield testified had Roberts been asked the question, has anybody -- any member of the jury panel a present or



former law enforcement officer and he had not stood up then he would have if Solicitor Justice had not. As such, Holland's and Barfield's testimonies failed to elicit any evidence of prosecutorial misconduct.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. There was no juror or prosecutorial misconduct. Additionally, Applicant's application was filed untimely. Therefore, this PCR application must be denied and dismissed with prejudice.

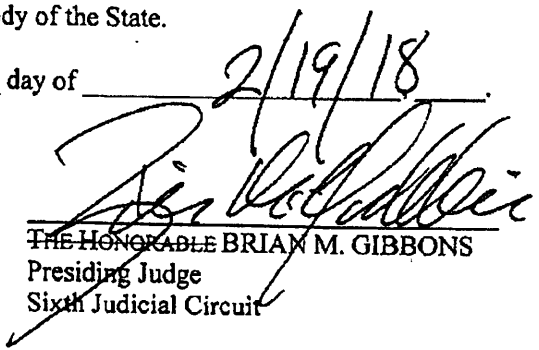
The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this _____ day of _____ 2/19/18

Alonso, SC


THE HONORABLE BRIAN M. GIBBONS
Presiding Judge
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)

2013-CP-29-051

Applicant,)

RULE 59(e) SCRPC, MOTION
TO ALTER OR AMEND

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

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CLERK OF COURT
LANCASTER, SC

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed on February 22, 2018, and received by Counsel on February 28, 2018. Applicant's Rule 59(e) is timely based upon the date his PCR Counsel was served with a clocked copy of the Order of dismissal entered in this matter. Opposing Counsel, DeShawn Mitchell, Assistant Attorney General, has been timely served with this motion by U.S. mail on today's date. *See*, Attached Certificate of Service.

The Application for Post-Conviction Relief in this matter was filed on July 9, 2013. The State filed its Return on filed its Return and Motion to Dismiss on January 30, 2014. Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. An evidentiary hearing was convened on November 22, 2016, during which proceedings Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Former Assistant Attorney General, Patrick Schneckpeper. The Respondent is currently represented in this matter by DeShawn Mitchell, Assistant Attorney General. Applicant most respectfully asks this Court to reconsider the rulings found in the Order of Dismissal found in this matter and ask that relief be

granted on the grounds raised by him and thoroughly supported by both the PCR testimony, PCR Exhibits, the depositions taken in this case and admitted as part of this record, the extensive Memorandum in Support of PCR filed by Applicant as well as the detailed Proposed Order submitted by Applicant with leave of Court. The Applicant would show unto this Honorable Court the following.

Summaries of the Depositions Filed and the PCR Hearing Testimony

Applicant asks this Court to note that the proposed order submitted by Respondent fails to thoroughly and fairly summarize all the relevant testimony in this case and consistently leaves out all portions thereof that are favorable to Applicant's positions. In instances too numerous to recount, portions of the testimony directly relevant to the issues raised by Applicant were totally ignored by the analysis of Respondent in their proposed order which has now been adopted by the Court and filed as its ruling. By way of example Applicant would note that the Order of Dismissal, states that, "[Attorney Holland] testified after being questioned about his deposition, he did not know how many strikes the defense had left doing (sic) jury selection of Applicant's trial." Order, pg. 22, para. 1. The Order correctly states that Attorney Holland stated in his PCR testimony that he did not know how many strikes the defense had used during the jury selection. The Order cites to page 96 of the PCR Hearing record for that statement. What the Order completely fails to mention are Holland's statements during his deposition referenced above and his acknowledgment, on the *very same page of the PCR hearing record noted in this portion of the Order*, that his deposition statements admitted he had verified with someone on the prosecution team that the Defense had some strikes left. Holland then admitted that this conversation with someone on the prosecution team established at least that the defense still had strikes left when Juror Roberts was seated; stating, "I believe so." Tr. 96, ll. 5 – 15. This is but one of many instances where the testimony summarized

in the Order, while not technically inaccurate, leaves out related testimony that presents a far more accurate record of the testimony and evidence that was before this Court.

Rather than burden this Court with repetitious coverage of the many portions of the testimony that are cited in the Order in a similarly misleading fashion, Applicant asks that this Court review once again the fairer and more comprehensive summary of the depositions and PCR testimony presented in both Applicant's Memorandum and his proposed Order inasmuch as Applicant, has provided the Court with a complete and accurate summary of all the relevant testimony in those documents. He urges this Honorable Court to utilize those summaries of the depositions and PCR testimony in considering his prayer for reconsideration of its Order denying relief.

Timeliness of Current Application

With reference to what Petitioner submits is the only legitimate statute of limitations issue properly before the Court, the operative question boils down to whether or not Applicant (or his first PCR attorney) could have found out this information earlier through the exercise of due diligence. Applicant's position concerning this issue is extensively covered in both his Memorandum in Support of Post-Conviction Relief and his subsequent Proposed Order submitted with leave of Court on February 15, 2015. Applicant stands on the arguments and authorities presented therein, however, he would specifically point out the following points in response to the language of the Order of Dismissal filed in this matter.

Essentially, the operative question whether it is reasonable to expect any attorney handling a Post-Conviction Relief case to conduct a full background check on every juror who served in a case involving a jury trial in order to determine whether his client can meet the

prejudice prong of the *Strickland v. Washington*¹ standard on a question of whether Trial Counsel was ineffective for neglecting to request a *voir dire* question addressing prior law enforcement employment. Undersigned PCR Counsel would argue that any trial attorney should always request that *voir dire* question and notes that in recent years that has actually become a fairly standard *voir dire* question.

It is one thing to raise such an allegation and quite another to be prepared to meet the *second* prong of the standard; the *prejudice* which is necessary for a successful Sixth Amendment challenge. Obviously, Applicant's attorney in his first Post-Conviction Relief case could have raised an allegation that Trial Counsel was ineffective for failing to request such a *voir dire* question. He *could not*, however, have been prepared to demonstrate prejudice unless he had conducted a full background check on every person who served on that jury. Without any hint of evidence that someone on the jury had previously worked in law enforcement industry, PCR Counsel would have no real reason to raise the allegation much less to conduct such an investigation. Such an exercise would not be cheap. PCR Counsel, who practices extensively in this area of the law, would assert that by conservative estimates, it would cost a minimum of \$6,000.00 to \$12,000.00; to conduct background checks on the previous employment history of all 12 persons who served on a given Applicant's jury. That estimate assumes that you have some idea that the prior employment of the members of the jury should be the focus of your investigation. Such a background check can not be compared with a basic criminal record check where anyone can on line to the SLED website and request such a criminal record check for a modest fee of \$25.00. If you add to that investigation concerning whether any jurors have been the victims of similar crimes to that for which your client was tried, and other such potential issues, the price tag for such investigations would skyrocket. Assuming the Applicant were

¹ 466 U.S. 668, (1984).

indigent, and the vast majority are, court-appointed PCR Counsel would have to petition the court for the funding to conduct such background checks. At this point the logic in this argument becomes somewhat circular. If there was nothing in the responses to *voir dire* questions that were asked to hint of a prior background in law enforcement, then it would be fairly predictable for any circuit judge to rule that there was no evidence to support the request for such funding, and PCR Counsel would be highly unlikely to be granted funding for such an investigation. Even in a case where an Applicant has retained PCR Counsel, most of those individuals have barely been able to afford the cost of their attorney's legal fees, and would not have the resources to pay for a private investigator to conduct background checks on all the jurors who served in his case. If such an Applicant applied for State funding, he would likely be told that the judge could not approve funding for him to conduct "a fishing expedition." The Order of Dismissal finds that, "because Roberts' law enforcement background was discoverable at the time of Applicant's trial, Applicant should have raised this issue in his first PCR hearing." Order, pg.24, para. 3. That conclusion presupposes that Trial Counsel had the funding to conduct a broad background check on every single juror in the group of prospective jurors announced for that upcoming term of court before jury selection for the term began.

Applicant asks this Court to consider that this ruling would no doubt result in every court-appointed PCR lawyer, and many retained ones, feeling compelled to request public funding to conduct background checks on every juror in every single Post-Conviction Relief case involving a jury trial. Applicant would submit that this would put an unreasonable financial burden on any PCR Applicant. In short order, application of this expectation with regard to what is reasonable preparation for jury selection, would create the demand for adequate time and sufficient funding to conduct such investigations *in advance of every single jury trial*. Applicant

respectfully asserts such an expectation is not reasonable and the judicial system would buckle under that burden.

The operative question is not whether or not Applicant could have raised an ineffective assistance of counsel allegation against his trial attorney, John D. Clark, for failing to request this *voir dire* question, but rather, whether or not, *through the exercise of due diligence*, he, and/or his PCR Counsel in his first PCR, could and should have raised this issue in his 1st PCR. Applicant submits that most, if not all, circuit judges would have found that there was no reason to have done so based on the information on the juror questionnaires *and* the responses to the *voir dire* questions asked by the Court. Obviously, even if the juror questionnaires did not give rise to the request for this question in advance of jury selection, Trial Counsel still could have requested it *if* any of the *voir dire* responses had provided a hint that the inquiry was necessary. Theoretically, an Applicant could even have alleged that such a *voir dire* question should be requested by any competent lawyer when selecting a jury for any trial. In the PCR context, the next question becomes whether they could and should have conducted background checks on all the jurors in this case in order to “dig up” evidence to supply a foundation for raising the allegation *and* for showing prejudice from Trial Counsel not asking this question if the allegation was raised.

Applicant raised this allegation in a timely manner after the first time he had any information that there was a problem with one of the jurors who served in his case. He urges this Court to recognize that ruling that this Application was not timely based on the analysis argued by the State, is not only unfair to him to a degree that it raises a viable due process challenge, but this holding would open a Pandora’s Box of monumental proportions when it comes to any future PCR (dealing with a jury trial) where there is any *voir dire* question that the PCR lawyer

thinks should've been requested and wasn't. Applicant further submits that the merit of his position on the timeliness issue in this case, is confirmed by the Supreme Court of South Carolina's decision in *Robertson v. State*, 418 S.C 505, 795 S.E.2d 29 (S.Ct. filed December 14, 2016) wherein the PCR Application was filed within one year of Applicant Robertson's discovery that his previous PCR Counsel was not qualified to represent him in a death penalty PCR pursuant to S.C. Code § 17-27-160(B). In ruling that Robertson's Second PCR action was procedurally proper, our Supreme Court did not see fit to find that Robertson, or his court-appointed attorney in his first PCR action, could have discovered this information in time to raise it in the first PCR effort. Admittedly, Robertson was indigent and was represented by court-appointed Counsel whereas Applicant was represented by retained counsel in his first PCR action. Applicant would note, however, that our Supreme Court has never before set a lower standard for due diligence by court-appointed lawyers versus retained ones. In addition, the factor that Robertson and or his first PCR Counsel would have needed to research and investigate was far simpler and easier to investigate than the matter currently before this Court. Literally all Robertson, or his first PCR Counsel, would have needed to do in order to raise his claim in the first PCR was to have looked at the statutory provisions pertaining to an Applicant's rights with regard to PCR Counsel in a death penalty case and then asked the Court to confirm that the lawyer appointed to him met those requirements before moving forward with his collateral review. Obviously court-appointed PCR Counsel in a capital case could have, and arguably should have, looked up the appropriate statutory provisions and determined whether he was in fact qualified under the required mandated by South Carolina law. If that attorney had any question concerning whether his experience met those requirements set by §17-27-160, he could easily have put the question to the Court prior to proceeding to represent Robertson in that action. If he did not meet the experience requirements set by law, it would have

been incumbent upon him, as an officer of the court, to ask to be relieved on that ground. Toward that end, Robertson himself could certainly have asked his court-appointed lawyer, prior to the case being heard, what experience he had that met the requirements of the operative statutory provision. Notwithstanding these factors, the Supreme Court declined to find Robertson's second PCR was procedurally barred his failure to raise the claim in his first PCR. Here, in order to have raised and prevailed on this issue in his first PCR, Applicant and/or his first PCR Counsel would have had to do full background checks on all twelve (12) of his jurors to see what if anything they could discover about them and their backgrounds to support a claim that trial counsel was ineffective for neglecting to request any number of potential *voir dire* questions that were not asked during the selection of his trial. As the Supreme Court concluded in *Robertson, supra*, the appropriate ruling in this case is that Applicant's second PCR was procedurally proper.

Furthermore, the Order of Dismissal adopts the Respondent's reasoning that Applicant's current PCR was untimely filed *even if* the Court applies the date upon which Applicant became aware of the problems with Juror Roberts. Applicant respectfully submits that the ruling of this Honorable Court on this issue is predicated on a faulty timeline first argued by the State in its Proposed Order of Dismissal. The discussion of this issue at the PCR hearing consisted of the following. Notwithstanding the renewal of its Motion to Dismiss, Respondent "*stipulated that the Applicant actually did in fact learn of this issue within one year of filing and would be timely.*" Hearing Tr. p. 5, ll. 21-25 (Emphasis added). Nevertheless, Respondent continued, adding that, "*with that regard the State contends though that the Applicant did not file one year of being able to reasonably with good effort to find this information out.*" Hearing Tr. p. 5, l. 25 - 4. Respondent argued the current application is, "*excessive [sic] and untimely.*" PCR Tr. p. 5, ll. 20-21. Respondent essentially argued that while the current PCR action is timely from when Applicant

did find out about the problems with this juror, it is not timely from when they believe he could and should have found out. As noted above, Respondent summarized the State's position by saying *"the State contends though that the applicant did not file within one year of being able to reasonably with good effort to find this information out."* PCR Tr. p. 6, ll. 1-4. Subsequently, in Respondent's Proposed Order submitted to this Court in September, 2017, the State framed a ruling directly contradicting it's on the record stipulation and stating that because Attorney Holland said he had spoken with an investigator hired by Applicant about this potential juror issue. Virtually that identical language, now in the Order entered by this Honorable Court states,

Holland testified at his deposition some years later, after he entered private practice, he was taking a Client to enter a plea in Spartanburg when a discussion came up about jury selection. Holland's former client was familiar with Applicant's case, and at some point the client handed Holland a cell phone with Applicant on the other end of the line. At that point, Applicant apparently asked Holland about Roberts' seating on his jury. *This Court finds that the date of that telephone conversation, or sometime prior to it, starts the timeline of when Applicant learned of the facts on which he is basing the current PCR application.* Holland testified that subsequent to his conversation with Applicant, at some point he was contacted by Applicant's private investigator, Dave McDougal. Holland testified that his contact with McDougal took place one and a half to two years prior to the deposition. The deposition occurred on April 22, 2014. Applicant's Application was filed on July 9, 2013. In order for his claim to be timely, Applicant's discovery of the alleged new evidence would have to have occurred after July 9, 2012. this Court finds given the timeline of events testified to by Holland at his deposition and evidentiary hearing Applicant has failed to show that this PCR application was timely filed. Order, pp. 25 – 26, (Emphasis added).

Applicant now respectfully asks this Court to recognize that there is no factual basis for this ruling inasmuch as the factual findings asserted therein are in error. The record below supports Applicant's position that the State conceded that this Application was timely filed if the Court applied the date when the Applicant found out the information about this juror through Holland during his representation of an acquaintance of Applicant. As previously noted, at the PCR hearing, Respondent *"stipulated that the Applicant actually did in fact learn of this issue within one year*

of filing and would be timely." Hearing Tr. p. 5, ll. 21-25 (Emphasis added). Notwithstanding this stipulation, Applicant presented testimony from Holland's former client, Shareka Jones, which verified that her conversation with Holland about Applicant's jury took place as they were riding together to Spartanburg for her guilty plea proceeding. PCR Tr. p. 62, l. 2 – p. 66, l. 14. In light of the State's stipulation as to the timely filing of this application based upon when Applicant found out from Holland's former client about the problems with Juror Roberts having been on his jury, Applicant did not introduce documentation concerning the date that plea was entered and did not object to this witness being excused following her testimony. PCR Tr. p. 66, ll. 15 – 22. Applicant now asks that this Court take judicial notice of the data concerning Witness Shareka Jones' guilty plea to one count of Forgery on *September 17, 2012*, found on the Spartanburg Country Seventh Judicial Circuit's Public Index. This entry addressing her plea of guilty on Indictment No. 2012-GS-42-04801 further documents that Ms. Jones' attorney on that charge was Thomas William Holland, Sr. *See, Attachment A, submitted for the Court's convenience.* As the Court is aware, the Application for Post-Conviction Relief currently before the Court was filed on July 9, 2013; well before the filing deadline of September 16, 2013, if the deadline date is properly calculated as 365 days from the date of the conversation Holland had with Applicant on the date of Jones' Spartanburg guilty plea. Applicant asserts that this Court can take judicial notice of this public record and ask that it do so, however, in the event the Court finds that it would be necessary for Applicant to introduce copies of the plea and sentencing records on this charge in order to prove that the public index is accurate, Applicant asks that he either be permitted to submit certified true copies to the Court for filing as Applicant's Exhibits in this PCR action, or, in the alternative that the hearing in this matter be reopened in order to afford Applicant the opportunity to make a record concerning the date of Ms. Jones' guilty plea in Spartanburg Country at which she was represented

by Holland. Had Respondent made an amendment to the State's position concerning the timeliness of this Application following Holland's testimony, PCR Counsel would have had the opportunity to introduce copies of these court documents at the hearing.

Curiously, as noted above, the Order states, "*This Court finds that the date of that telephone conversation, or sometime prior to it, starts the timeline of when Applicant learned of the facts on which he is basing the current PCR application.*" One can only assume the statement, "*or sometime prior to it*" is based upon Holland's estimate that his conversation with Applicant's Investigator, the late Dave McDougal, *took place one and a half to two years before the depositions* taken in this case on April 22, 2014. Respondent did not reference this time estimate in its summary of Holland's Deposition in its Proposed Order which has now been signed and entered as the Order in the case. Order, pp. 8 – 9. Neither does the Order provide a page cite to the location of this time estimate in either Holland's deposition or his PCR hearing testimony. The deposition testimony in question is found at Holland Depo p. 22, l. 17 – p. 23, l. 1. The Order goes on to state that, "Applicant has failed to show that his application was timely filed." Order, p. 25, l. 21 – p. 26, l. 2. Applicant respectfully notes that this finding is not accurate. After Holland's estimate concerning when his conversation with Investigator Dave McDougal took place, he was specifically questioned further by Respondent's own Counsel concerning the order in which the events occurred. That colloquy specifically clarifies that that he first disclosed the information about what happened to his client as they were driving to her guilty plea proceeding in Spartanburg. That conversation took place before Holland subsequently spoke with Applicant, and the conversation with Applicant took place before Holland's conversation with Investigator Dave McDougal. Holland Depo p. 22, l. 17 – p. 24, l. 9. This portion of the deposition expressly acknowledges that Holland spoke with his client

about the matter first, then he talked with Applicant and that the conversation with Applicant came before he spoke with Dave McDougal. Holland Depo p. 24, ll. 5 – 9.

At no time following Holland's deposition did Respondent ever suggest that the date of contact with Investigator Dave McDougal provided a basis for claiming Applicant did not timely file is Application for Post-Conviction Relief. The Respondent in fact subsequently stipulated that the Application was timely based upon when Applicant found out the information about Juror Roberts from Holland. Had Respondent ever made this assertion following the deposition and had they not stipulated to the timeliness of the Application based upon when Application discovered this information, Applicant would have introduced documentary evidence to demonstrate that Investigator McDougal did not contact Holland until after Holland's conversation with Applicant. Applicant was not put on notice of this position until it received Respondent's Proposed Order. Even the language in this Court's order acknowledges that, "Holland testified that *subsequent to his conversation with Applicant*, at some point he was contacted by Applicant's private investigator, Dave McDougal. Order, p. 25, ll.16-17. There is abundant testimony before this Court that Holland's conversation with Applicant occurred on, or shortly after, the date of Jones' guilty plea in Spartanburg County. The only real point of contention is that Jones' testimony indicates that telephone conversation took place on the date Holland gave her a ride to Spartanburg for her plea hearing, PCR Tr. p. 63, l. 12 – p. 65, l. 20, whereas Holland testified that he remembered Jones' coming by his office sometime "a couple weeks later" and handing him a cell phone with Applicant on the other end of the line. PCR Tr. p. 93, ll. 23 – 25. This discrepancy between their recollections concerning when Holland ultimately spoke with Applicant has no impact on the timeliness issue inasmuch as the Application was timely filed even if Applicant spoke with Holland and learned of this information the date of her guilty plea; September 17, 2012. If, as Holland recalled, his

conversation with Applicant did not take place until “a couple weeks later”, then Applicant arguably had even more time to file pursuant to §17-27-45 (C).

Merits of Applicant’s Claims

With regard to the merits of the underlying claim, the Applicant submits that the reasons why this claim is meritorious are set forth clearly in the memorandum previously submitted to this Court, and filed with the Lancaster Court of Common Pleas. Applicant would note that much of that analysis was adopted by this Honorable Court in its own Order denying the Respondent’s Motion for Summary Dismissal *filed on October 29, 2014*, and he urges this Honorable Court to consider its own rulings therein when considering his prayer that the Court reconsider its decision to deny relief in this case. With regard to the accuracy and completeness of the Order as it addressed the merits of Applicant’s claims, he would point out the following problems with the Order of dismissal and ask that they be considered in the Court’s reconsideration of its ultimate ruling. In the event the Court does not see fit to amend the Order to grant relief, Applicant asks that these inaccuracies and/or omissions be corrected in an Amended Order of Dismissal.

Specifically, Applicant notes that the Order of Dismissal does not address his position that the Respondent should have disclosed Juror Robert’s recent telephone contact with the Solicitor’s Office during which he discussed his upcoming jury service with a male member of that staff after admittedly asking to speak with Solicitor John Justice himself. This issue developed during the depositions in this matter when Juror Roberts disclosed his telephone conversation with a male individual at the Solicitor’s office after receiving his jury summons and bore direct relevance to this juror’s failure to respond to a *voir dire* question which asked,

DO ANY MEMBERS OF THE PETIT JURY PANEL HAVE ANY RELATIONSHIP OR CONTACT WITH SOLICITOR JOHN REID JUSTICE OR ANY MEMBER OF THE SIXTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND. (NO RESPONSE). (Emphasis added).

No member of the panel responded to this question. *Voir Dire* Tr. p. 11. Juror Robert's failure to disclose his recent contact with the Solicitor's Office in response to this *voir dire* question was relevant not only to his own misconduct in failing to reveal his recent "contact" with the Solicitor's Office about his jury service, but also was relevant to the State's subsequent failure to disclose this "contact" after Juror Roberts failed to. This aspect of Applicant allegations is not expressly ruled upon in this Order of Dismissal.

Also noticeably lacking in the Order of Dismissal is a discussion and ruling on the issue of Juror Roberts' failure to respond to the *voir dire* question which asked,

ARE ANY MEMBERS OF THE PETIT JURY PANEL CONSCIOUS OF ANY INTEREST OR ANY BIAS OR ANY PREJUDICE FOR OR AGAINST THE STATE OF SOUTH CAROLINA OR THE DEFENDANT, MR. VERNARD JEROME MATHIS? IF SO, PLEASE STAND. (NO RESPONSE).

No member of the panel responded to this question. *Voir Dire* Tr. p. 10. Applicant has strongly asserted that Juror Roberts was guilty of willful misconduct for failing to disclose his 25 year *plus* career in law enforcement during the *voir dire* process. Certainly, his failure to disclose that background in response to this *voir dire* question evidences his intent to conceal his career long relationship to the prosecution's side of the judicial system, i.e. a basis for a prejudice in favor of the State of South Carolina.

While he claimed not to recall who specifically he spoke with, he did consistently reference that individual as "he" and "him". Applicant thereafter obtained documentation from the sixth Circuit Solicitor's office verifying that during this time period the only male employees on staff were either lawyers or investigators. *See*, Applicant's Ex. No. 3 introduced at App. Tr.

p. 75, without objection from the State. Ultimately, in his PCR Hearing testimony, Juror Roberts admitted that when he called the Solicitor's Office he specifically asked to speak with head Solicitor John Justice. Applicant argued this issue at length in his Memorandum in Support of PCR which the Court allowed Counsel to file in lieu of closing arguments following the lengthy PCR hearing held in this matter.

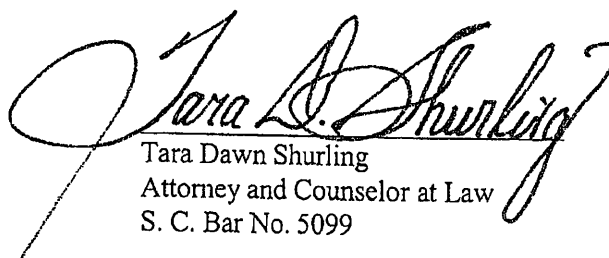
Likewise, the Order of Dismissal fails to address Applicant's claim, developed based upon the revelations made in Juror Roberts' deposition and his PCR Hearing testimony, that the misconduct of the Solicitor's Office included their failure to disclose their improper contact with prospective Juror Roberts when he called their Office to discuss the fact that no one was going to want him on their jury once they found out his law enforcement background. This issue was addressed at length in Applicant's Memorandum submitted, with leave of Court, in lieu of closing arguments in this matter. The Order of Dismissal, as entered, neglects to address the State's failure to disclose its contact with Juror Roberts, fails to make rulings based on the open admission by the former Deputy Solicitor that the Solicitor's Office routinely engaged in such contact with persons summoned for jury duty if they called after being summoned to serve at an upcoming term of Court and fails to address the ethical arguments asserted by Applicant on this issue argued in his Memorandum in response to this testimony and that of Juror Roberts.

CONCLUSION

For all the above reasons, the Applicant now asks that this Court amend its Order pursuant to Rule 59(e), SCRCP, grant relief and remand the Applicant's case to the Lancaster County Court of General Sessions for a new trial. Applicant asks for this Court's Amended Order making appropriate findings of fact and rulings of law addressing all the issues raised and argued by him both in his pleadings and in his memorandum in response to testimony developed during the

depositions taken in this case and the PCR proceedings. In the alternative, the Applicant would respectfully request that this Honorable Court issue an Amended Order of Dismissal acknowledging that this Application was timely filed and that relief has been denied solely on the merits of the claims raised.

Respectfully submitted,


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Attorney for the Applicant

This ____ day of March, 2018.



Spartanburg County Seventh Judicial Circuit Public Index



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The State of South Carolina VS Shareca Latoya Jones					
Case Number:	M757071	Court Agency:	General Sessions	Filed Date:	12/21/2011
Case Type:	Criminal-Clerk	Case Sub Type:	180 Day Track		
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Cole, D. Darnam
Disposition:	Pled Guilty				
Disposition Date:	09/17/2012	Date Received:	12/21/2011	Arrest Date:	12/15/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2012GS4204801	Waiver Date:	
Probation Case:					

Case Parties

Click the icon to show associated parties

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Boyd, Wes	Seventh Circuit Solicitors Office 180 Magnolia Street Spartanburg SC 29306				Solicitor		01/26/2012
Burgess, John D	145 West Broad Street Spartanburg SC 29306				Officer		12/21/2011
Butler, Aileen	125 E. Floyd Baker Blvd Gaffney SC 293403170				Court Reporter		09/17/2012
☒ Holland, Sr., Thomas William	P. O. Box 2005 Lancaster SC 297212005				Defendant Attorney		04/17/2012
☒ Jones, Shareca Latoya	624 E Church St Kershaw SC 29067	Black	F	1983	Defendant		03/03/2016
R & R Bail Bonding/Ruby L. Rice/Pr	P O Box 3332 Spartanburg SC 29304				Bond Entity		12/21/2011

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Jones, Shareca Latoya	3436-Forgery / Forgery, value less than \$10,000	3436-Forgery / Forgery, value less than \$10,000	09/17/2012

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	5 YRS SUS 90 DYS OR						

200.00, 3 YRS PROB, CONSECUTIVE TO ANY OTHER SENTENCE; REST 22.00							

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Spartanburg Magistrate	M757071	Y		Associated by Case Transfer	02/28/2012	03/22/2012	Disposed	Preliminary Hearing Waived

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Jones, Shareca Latoya	Order of Termination of Probation	Order		05/30/2012-10:52		
Jones, Shareca Latoya	Filing image indictment and sent sheet	Filing		09/18/2012-00:00		
Jones, Shareca Latoya	Active - Probation	Filing		09/17/2012-10:44		
	Notice of Bond Letter Sent	Filing		08/22/2012-00:00	09/17/2012-00:00	
Holland, Sr., Thomas William	Notice of Case Roster Publication Sent	Action		08/21/2012-15:23	09/17/2012-15:23	
Boyd, Wes	Notice of Case Roster Publication Sent	Action		08/21/2012-15:23	09/17/2012-15:23	
Jones, Shareca Latoya	Bond Letter Mailed 6-15-12 for Plea Hearing July 9, 2012 @ 9	Filing		06/19/2012-10:47	09/17/2012-10:47	
Boyd, Wes	Notice of Case Roster Publication Sent	Action		06/14/2012-09:21	09/17/2012-09:21	
Holland, Sr., Thomas William	Notice of Case Roster Publication Sent	Action		06/14/2012-09:21	09/17/2012-09:21	
Boyd, Wes	Notice of Case Roster Publication Sent	Action		04/18/2012-09:32	09/17/2012-09:32	
Holland, Sr., Thomas William	Notice of Case Roster Publication Sent	Action		04/18/2012-09:32	09/17/2012-09:32	
Jones, Shareca Latoya	Bench Warrant / Arrest Warrant Recalled	Filing		03/22/2012-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	BW RECALLED FAXED TO JAIL	Filing		03/16/2012-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Affidavit/Affidavit of Service by Mail and/or Internet Email	Filing		03/08/2012-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Filing/Filing Of Requests for Disclosure 3-7-12	Filing		03/07/2012-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Filing edwards notice; motion	Filing		02/27/2012-00:00	09/17/2012-00:00	

	discovery; cert of serv;					
Jones, Shareca Latoya	BW ISSUED FOR FTA FOR 1ST APPEARANCE ON 2-22-2012	Filing		02/24/2012-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Initial Appearance letter mailed 1/31/12 for Feb. 22nd @ 9	Filing		01/31/2012-16:04	09/17/2012-16:04	
Jones, Shareca Latoya	Filing/Filing Of Original bond - IMAGE	Filing		12/21/2011-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Filing/Filing Of GS Initial Case File - IMAGE	Filing		12/21/2011-00:00	09/17/2012-00:00	
Jones, Shareca Latoya	Filing/GS Initial Case File	Filing		12/16/2011-12:52	09/17/2012-12:52	

Financials					
Summary					
Fine/Costs:	\$551.00	Total Paid for fine/costs:	\$551.00	Balance Due:	\$0.00

Costs				
Description	Cost Code	Amount	Charge Action	Disbursed Amount
Fine to State 44%	AFINES	\$88.00		\$88.00
Fine to General Fund	AFNEGF	\$112.00		\$112.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$76.00		\$76.00
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$100.00		\$100.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$25.00
SC Criminal Justice Academy Training	SCCJAT	\$5.00		\$5.00
State Assessment	STAASM	\$139.00		\$139.00
Collection Fee 3%	CFEE3%	\$6.00		\$6.00

Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
03/03/2016	250806	C42CWHYTEN	PY	\$551.00

Bonds								
Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2011BD4210215860	12/17/2011		Sherlin	Surety Bond	\$2,500.00	Cash Bond	\$2,500.00	

Post Information				
Bond Id	Bond Type	Amount	Date Posted	Posted By
2011BD4210215860	Surety Bond	\$2,500.00	12/18/2011	R & R Bail Bonding/Ruby L. Rice/Pr

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)

2013-CP-29-051

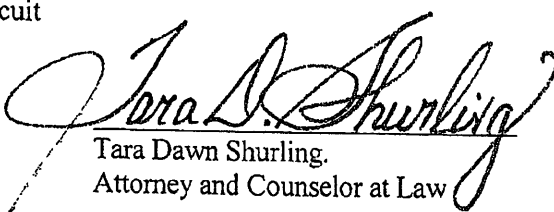
v.)

CERTIFICATE OF SERVICE

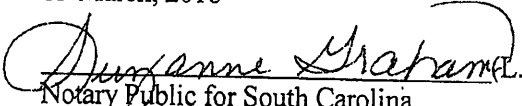
THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned attorney hereby certifies that a copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on the Honorable Brian M. Gibbons, Circuit Court Judge, this 12th day of March, 2018, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable Brian M. Gibbons
Circuit Court Judge for the Sixth Circuit
P. O. Box 580
Chester, S. C. 29706


Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 12th day
of March, 2018


Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)

2013-CP-29-051

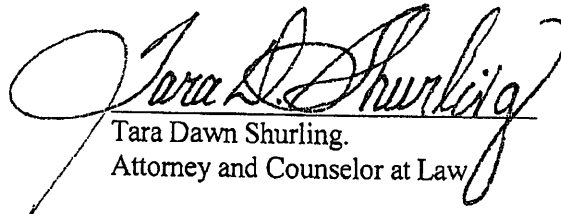
v.)

CERTIFICATE OF SERVICE

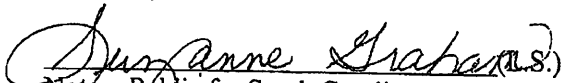
THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned attorney hereby certifies that a copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel, DeShawn Mitchell, Assistant Attorney General, this 12th day of March, 2018, by U.S. Mail to:

DeShawn Mitchell
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211


Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 12th day
of March, 2018.


Notary Public for South Carolina
My Commission Expires: 2/28/24

FILED
OFFICE OF CLERK
OF COURT
2018 MAR 15 AM 11:47
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Vernard Jerome Mathis, 297034)
Applicant,)

vs.)

State of South Carolina,)
Respondent.)

IN THE COMMON PLEAS COURT
FOR THE SIXTH JUDICIAL CIRCUIT

C.A. #: 2013-CP-29-00451

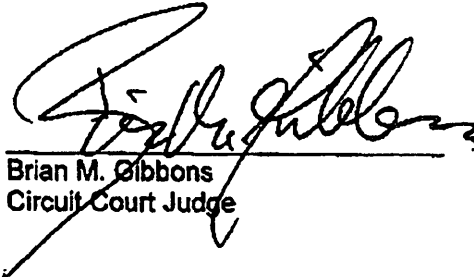
**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

After having considered Applicant's motion to alter or amend its Order of Dismissal in this case and after reviewing all of the submissions and the Court's notes, applicable statutory law, case law and evidence presented, I respectfully deny Applicant's motion.

AND IT IS SO ORDERED.

Chester, SC

March 21, 2018


Brian M. Gibbons
Circuit Court Judge

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OF COURT
2018 MAR 26 PM 1:10
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, #297034,

Applicant,

v.

STATE OF SOUTH CAROLINA,

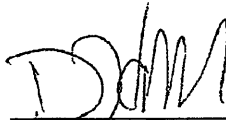
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order Denying Applicant's Motion to Alter or Amend** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tara D. Shurling, Esquire
Law Offices of Tara Dawn Shurling, P.A.
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

This 4th day of April, 2018.



DESHAWN MITCHELL
Attorney for Respondent

SWORN to before me this 4th day of April, 2018.

Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

2013-CP-29-051

VERNARD JEROME MATHIS, #297034

Applicant,

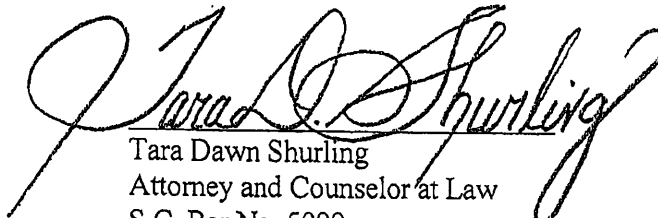
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned Counsel, giving notice of his appeal from the Final Order of Dismissal denying his Application for Post-Conviction filed on February 22, 2018, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was filed with the Lancaster County Clerk of Court on March 26, 2018 and received by Counsel on March 29, 2018.


Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

This 23rd day of April, 2018.

ATTORNEY FOR APPLICANT

Other Counsel of Record:

DeShawn Mitchell, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

2013-CP-29-051

VERNARD JEROME MATHIS, #297034

Applicant,

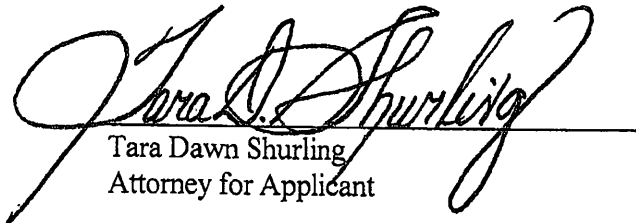
v.

THE STATE OF SOUTH CAROLINA,

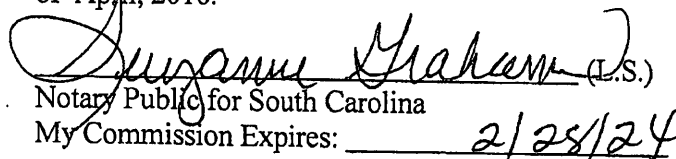
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, DeShawn Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 23rd day of April, 2018.


Tara Dawn Shurling
Attorney for Applicant

SWORN TO BEFORE me this 23rd day
of April, 2018.


Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

MAY 11 2018

S C. SUPREME COURT

Appellate Case No. 2018-000779
Lower Case No. 2013-CP-29-00951

VERNARD JEROME MATHIS, #297034

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

MEMORANDUM IN SUPPORT OF TIMELINESS OF
APPLICATION FOR POST-CONVICTION RELIEF

Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR PETITIONER

I.

PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Petitioner was indicted for Murder (200-GS-29-1418), Armed Robbery (2001-GS-29-0250), First Degree Burglary (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented Petitioner in the Court of General Sessions on these charges. Following trial by jury, Petitioner was convicted on all counts. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr. then circuit court judge, to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

A direct appeal was filed on Petitioner's behalf. Appellate Counsel submitted a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Petitioner submitted a *pro se* brief in response to the no-merit submission by his court-appointed appellate counsel. The appeal was subsequently dismissed. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. Filed June 13, 2005). Petitioner filed a Petition for Rehearing. The Court of Appeals issued orders denying the Petition for Rehearing and denying Petitioner's Petition for Rehearing *en banc* on September 20, 2005. Petitioner next petitioned the South Carolina Supreme Court of South Carolina for a Writ of Certiorari. His petition was denied by order dated November 2, 2006. The Remittitur was returned to the lower court on November 6, 2006.

Petitioner initially filed an Application for Post-Conviction Relief hereafter (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on that

application on August 25, 2008, before the Honorable Kenneth G. Goode at which Petitioner was present and represented by Tricia Blanchette, Esquire. By order dated October 14, 2008, Judge Goode denied and dismissed the application with prejudice. A PCR appeal was filed in that matter, and a Petition for Writ of Certiorari was filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Petitioner filed his most recent application for Post-Conviction Relief on July 9, 2013, and docketed at 2013-CP-29-051. In that PCR Application he alleged that:

1. The Petitioner's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.

a. Ronnie E. Roberts served as a juror at the Petitioner's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Petitioner's jury. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. The Petitioner has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:

- i. Kershaw Police Department from June 26, 2000 through December 31, 2000.
- ii. York Police Department from July 14, 1998 until April 7, 2000.
- iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
- iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
- v. University of South Carolina Police Department starting in 1989.

vi. Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

c. The Petitioner has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Petitioner's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court or Counsel for the Petitioner.

d. The juror information form completed by this juror disclosed no facts which would have put the Petitioner, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Petitioner's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Petitioner.

During the evidentiary held in this matter testimony came to light, as will be discussed *infra*, which supports the following additional claim.

3. The State improperly failed to report direct communication between the Solicitor's Office and Juror Roberts after he was summoned for jury duty, but before Petitioner's trial.

Petitioner subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Petitioner's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law

enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.

2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Petitioner.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Petitioner deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Petitioner was present during these depositions and represented by undersigned counsel. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. After these depositions, Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. Respondent's Motion for Dismissal was denied and an evidentiary hearing was granted by Order signed by Judge Brian M. Gibbons and filed with the Clerk of Court's Office on October 29, 2014.

An evidentiary hearing was convened in this matter on November 22, 2016 before the Honorable Brian M. Gibbons at the Lancaster County Courthouse. The Petitioner was present at this hearing and was represented by undersigned counsel, Tara Dawn Shurling. The Respondent was represented by Patrick Schneckpeper, Assistant Attorney General. At the conclusion of this evidentiary hearing the Court granted leave to submit memoranda on the respective positions of both parties in lieu of full closing arguments.

The Petitioner's Application for Post-Conviction Relief was Dismissed by Order dated***. Petitioner filed a Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP, on ***. Said motion was denied by Order filed on ***. Petitioner's Notice of Appeal from both orders was filed with this Honorable Court on ***. Petitioner now sets forth herein the

reasons why his appeal should be allowed to move forward, his position concerning the timeliness of his PCR Application and the reasons why, he most respectfully submits that the lower court erred in finding that his application was not timely filed.

II.

Timeliness of Application

Prior to the most recent hearing held on this PCR Application, the Respondent conceded the timeliness of this Application and agreed that the matter should be scheduled for a hearing on the merits. After a change in designated Counsel for Respondent, the State renewed their Motion to Dismiss on the theory that Petitioner could have, through the exercise of due diligence of either himself or his PCR Counsel, could have raised this claim in his PCR action which ended in a dismissal on October 14, 2008. Said Order was affirmed on appeal on December 2, 2010 when Petitioner's Petition for Writ of Certiorari was denied.

Notwithstanding the renewal of its Motion to Dismiss, at the evidentiary hearing held on this Application Respondent *"stipulated that the Petitioner actually did in fact learn of this issue within one year of filing and would be timely."* PCR Tr. p. 5, ll. 21-25 (Emphasis added). Nevertheless, Respondent argued the current application is, *"excessive [sic] and untimely."* PCR Tr. p. 5, ll. 20-21. Respondent essentially argued that while the current PCR action is timely from when Petitioner *did* find out about the problems with this juror, it is not timely from when they believe he could and should have found out. Specifically, Respondent summarized the State's position by saying *"the State contends though that the Petitioner did not file within one year of being able to reasonably with*

good effort to find this information out." PCR Tr. p. 6, ll. 1-4. Petitioner responded to the argument as follows:

With regard to the renewal of the motion for summary judgment concerning timeliness, it is our understanding as I believe respondent has conceded, that the application was filed within one year of the disclosure of the information that started this inquiry to Shareka Jones who was a client of Thomas Holland after he left the solicitor's office and went in to private practice.

It is my understanding that their only remaining contention having conceded that point is that this information concerning the juror, Mr. Roberts, was such that it could have been discovered through the exercise of due diligence prior to the original post conviction relief proceeding.

PCR Tr. p. 6, l. 22- p. 7, l. 10.

...

Your Honor, it's the Petitioner's position that his right to a fair trial was violated by the intentional withholding of information relevant to a juror who not only served in his case but who ultimately served as foreman at his trial. It's his position that this information was deliberately withheld not only by the juror, Mr. Roberts, but the State's own agents; the solicitors, and investigators, law enforcement officers and even court personnel were aware of this information and no one disclosed it either to the Petitioner or to his counsel or to the Court, and that that failure to disclose certainly was a violation of his right to due process of law and his right to a fair trial. We are asking for vacation of the judgment and sentence against him on that basis.

Now, with regard to the State's position that this is an issue that could have been and should have been raised in the initial application for post conviction relief, ... the standard, as the Court is well aware, is due diligence. Whether or not the evidence existed at the time of the original proceeding and whether or not it could have been ferreted out by counsel at the time through the exercise of due diligence. In this case that standard would appear to apply somewhat twice in the sense that we are addressing the question of whether or not trial counsel could have ferreted out that information at the time of the original trial and to a lesser degree and with regard to the State's argument that it should have been raised in the context of the original initial collateral review. Whether or not the Petitioner acting through his post-conviction relief counsel could have, and should have, raised this issue in the initial PCR proceeding.

It is our position that with the information that was subsequently disclosed to him by a member of the solicitor's own team at this trial after he left the solicitor's office, that post conviction relief counsel had no reason to question the validity of the answers given by sworn jurors at the time of the trial. That there was nothing that hinted of impropriety in the jury selection process until the disclosure to his credit by Tom Holland, and that there was nothing trial counsel and PCR counsel, specifically at the first PCR proceeding, could have done or would have done in the exercise of due diligence short of conducting a background check on every juror. And that I would submit is not being pragmatic.

As the Court knows I do probably more post conviction work than any lawyer in this state. And essentially the Court would be asking – the respondent would be asking the Court to adopt a standard that would say that a lawyer has an obligation to do a background check on all the potential jurors involved in a case at the time of a PCR to determine whether there is potentially any problem with the jury selection process and we would submit that is an untenable burden to expect a defendant in the South Carolina judicial system to bear in the context of collateral review and for that reason we would submit that the State's argument in this regard is not meritorious and ask that the Court allow us to proceed with the merits of the issue before the Court bearing in mind that it's certainly our position that his first opportunity reasonably to raise this issue was after the disclosure was made by the former assistant solicitor who disclosed the misconduct before the Court today.

PCR Tr. p. 10, l. 13- p. 13, l. 8.

This Court took the Motion to Dismiss under advisement and proceeded to hear testimony and evidence concerning the merits of Petitioner's claims. PCR Tr. p. 13, ll. 9-

15. At the conclusion of the testimony presented at the merits hearing, Respondent argued that:

The fact of the matter is counsel could have found this information out by simply asking the jury or requesting the judge ask the jury if anybody had any prior law enforcement experience.

PCR Tr. p. 112, ll. 19-22. This Court inquired as to whether Trial Counsel's failure to request such a *voir dire* question was raised in the initial PCR action. In response to the

Court's inquiry, PCR Counsel summarized Trial Counsel's testimony at the current hearing on that issue.

It was not, Your Honor, and I'm sorry Mr. Clark is no longer here but it is my understanding that – well, and he testified here today if he had known the background of that information he most certainly would have struck him and he has indicated to me that if he had any information concerning that juror that he certainly would have asked that the Court inquire further. But he just had no hint that that problem existed.

PCR Tr. p. 113, ll. 1-9.

As the record reflects, John Clark, Trial Counsel had left the courtroom at the time of this Court's inquiry. The PCR hearing transcript actually reflects that he verified that he had plenty strikes left at the time Juror Roberts was called, and that he absolutely would have used one of his remaining strikes to exclude Juror Roberts from service if he had known about his lawn enforcement background. His testimony further confirmed that he was never given any additional information concerning the jury pool, prior to the jury selection, by either Juror Roberts or the Solicitor's Office. PCR Tr. p. 60, l. 25- p. 61, l. 13.

Juror Roberts denied even hearing certain questions the Court asked during jury selection. As noted at length above, despite claiming in his PCR testimony that he actually did need to get out of jury service if he could, he claimed to have been so inattentive that he just didn't hear questions to which he could have responded and avoided service. With that in mind, even if the question had been asked, there is ample reason to believe this juror would not have responded to it. He clearly admitted not responding to other *voir dire* questions that he should have responded to if he had heard them.

Respondent's argument with regard to the timeliness of the application before the court ignores several crucial factors. Petitioner could have raised a Sixth Amendment allegation in his first PCR action concerning the failure of trial counsel to request a *voir dire*

question concerning current or former law-enforcement employment. In order to *successfully* raise such a claim however, Petitioner would have been required to do demonstrate, not only that trial counsel was deficient for neglecting to request that specific *voir dire* question, but also that he was prejudiced by the failure of counsel to make that request.

The burden of proof is on the Petitioner in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); *Rule 71.1(e), SCRPC*. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Petitioner must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007). Under the *Strickland Standard*, it is not necessary that an Petitioner prove that counsel's deficient performance more than likely altered the outcome of his trial, but rather he is required to establish a probability sufficient to undermine confidence in that outcome. *Strickland, supra*, 466 U.S. at 697.

In *McCoy v. State*, 401 S.C. 363 737 S.E.2d 623 (2013), our Supreme Court dealt with a case involving a juror issue similar to the one before the score. In that case, the high court clarified its position that a Post-Conviction Relief action is the proper manner in which to raise such claims. In so ruling, the Supreme Court cited *State v. Sheppard*, 155 Vt. 73, 582 A.2d 116, 118 (1990), with approval, for the proposition that an allegation of "juror misconduct discovered post-trial is not properly considered 'after discovered evidence'; rather, it is a separate basis for a new trial." The Supreme Court went on to hold that a new trial is warranted based on such a claim if the Petitioner is able to demonstrate that the juror in question intentionally concealed information; and that the information would have supported either a challenge for cause or would have been material to a party's use of its peremptory strikes. *McCoy, supra*, citing, *State v. Woods*, 345 S.C. 583, 587-89, 550 S.E.2d 282, 284 (2001). In so ruling, the Supreme Court once again rejected the State's view that a new trial would only be warranted where the Petitioner was able to show that he was prejudiced by the juror's failure to disclose the information in question. At the core of the Supreme Court's ruling in both *Woods, supra*, and *McCoy, supra*, is the recognition that both trial judges and attorneys rely on receiving accurate information from the venire which they can use to effectively screen out biased jurors. See, *State v. Kelly*, 331 S.C. 132, 145-46, 502 S.E.2d 99, 106-07 (1998).

In *McCoy*, the Supreme Court found that the PCR Judge erred in summarily dismissing an Application for Post-Conviction Relief dealing with an allegation of juror misconduct where "genuine issues of material fact" existed concerning whether the claim in *McCoy* was time barred and/or successive. The *McCoy* case was remanded for a hearing on

these issues. In the present case, a hearing has already been held following this Court's Order denying the State's request for summary dismissal.

At the time of the initial collateral review of his case, Petitioner had not received the information ultimately provided to him by former Assistant Solicitor Holland. Therefore, while he could have made an unsupported claim that a *voir dire* question concerning current or former law enforcement employment should have been requested, he would have had absolutely no basis for demonstrating that he was prejudiced by this omission on the part of trial counsel. Adopting Respondent's argument concerning this issue would open an enormous Pandora's Box. Even if a defense attorney could be found ineffective for failing to ask for any particular *voir dire* question, the Petitioner could never win relief on the basis of that deficiency without a known factual basis for a finding of prejudice. Adopting the Respondent's position, would effectively place the burden on every post-conviction relief Petitioner, convicted by jury, to conduct an independent background check on every member of the jury from their case. This requirement would put an enormous financial burden on PCR Petitioners and would potentially result in unnecessary invasions of the privacy of jurors. Given the fact that the vast majority of PCR cases are handled by court-appointed lawyers, such a finding would in turn further burden the scarce resources allocated for indigent defense in South Carolina by requiring court-appointed PCR counsel to petition the circuit court for money to fund these background investigations. Such petitions would place an unnecessary burden on the court's time and resources as well inasmuch as such requests would no doubt necessitate hearings. Not only that, but in some circumstances, virtually no amount of digging could result in the discovery information to support such a claim. The logic advanced by Respondent would require a PCR lawyer to do

background checks on all the jurors in his client's case to determine multiple factors; some of which would be far more difficult to investigate than others. For example, counsel would have to cast a very wide net to determine whether a juror, or any of their family members, close friends or colleagues, had ever been the victim of a violent crime. Applying the Respondent's reasoning, such an investigation would be necessary to support a claim that a defense attorney was ineffective for failing to ask for a *voir dire* question designed to get that information out of the members of the jury *venire*. Such an expansive view of due diligence would require such action if the court were to hold that an individual could not bring a second PCR action at a later date upon discovering, by way of example, that a juror's fiancé had been brutally murdered in the same fashion as the victim in his client's trial. If an application raising such an issue were to be deemed untimely even though made within 365 days of discovering facts that would support the claim, PCR counsel in future cases would be left with no choice, but to conduct broad, and very expensive, background checks on all jurors in every case involving a jury trial and a jury *venire* that was not asked every conceivable *voir dire* question. On the other hand, the discovery of such information about a juror *after the fact* is relatively rare and the few successive PCR applications necessitated by such discoveries hardly tax the system in the manner the analysis urged by the State would. Petitioner prays that this Court recognize that such an outcome is not reasonable and has the potential to unnecessarily burden PCR Petitioners, PCR lawyers, the Indigent Defense System and the circuit court.

Furthermore, in this case, the fact that the Solicitor's Office had direct contact with a member of the pool from which Petitioner's jury would ultimately be pulled was not discovered until the depositions were taken on this current application. Since the fact of the

telephone conference was not disclosed by the State, there is no way counsel from Petitioner's first PCR, or the Petitioner himself, could have discovered that it took place prior to the first PCR action.

With reference to what Petitioner submits is the only legitimate statute of limitations issue properly before the Court, the operative question boils down to whether or not Petitioner (or his first PCR attorney) could have found out this information earlier through the exercise of due diligence. Petitioner's position concerning this issue is extensively covered in both his Memorandum in Support of Post-Conviction Relief, his subsequent Proposed Order submitted with leave of Court on February 15, 2015 and the Rule 59(e) Motion to Alter or Amend, SCRCR, filed by Petitioner in response to the Order of Dismissal filed in this matter. In addition to those arguments set forth above, Petitioner would specifically point out the following points in response to the language of the Order of Dismissal filed in this matter.

Essentially, the operative question is whether it is reasonable to expect any attorney handling a Post-Conviction Relief case to conduct a full background check on every juror who served in a case in order to determine whether his client can meet the prejudice prong of the *Strickland v. Washington*¹ standard on a question of whether Trial Counsel was ineffective for neglecting to request a *voir dire* question addressing prior law enforcement employment, or, any other *voir dire* inquiry which might have been neglected. Undersigned PCR Counsel would argue that any trial attorney should always request the *voir dire* question at issue and notes that in recent years that has actually become a fairly standard *voir dire* question. Where such a *voir dire* question is not requested by trial counsel, it is one thing to raise an allegation addressing that omission

¹ 466 U.S. 668, (1984).

and quite another to be prepared to meet the *second* prong of the standard; the showing of *prejudice* which is necessary for a successful Sixth Amendment challenge. Obviously, Petitioner's attorney in his first Post-Conviction Relief case could have raised an allegation that Trial Counsel was ineffective for failing to request such a *voir dire* question. He *could not*, however, have been prepared to demonstrate prejudice unless he had conducted a full background check on every person who served on that jury. Without any hint of evidence that someone on the jury had previously worked in law enforcement industry, PCR Counsel would have no real reason to raise the allegation much less to conduct such an investigation. Such an exercise would not be cheap. PCR Counsel, who practices extensively in this area of the law, would assert that by conservative estimates, it would cost a minimum of \$6,000.00 to \$12,000.00; to conduct background checks on the previous employment history of all 12 persons who served on a given Petitioner's jury. That estimate assumes that you have some idea that the prior employment of the members of the jury should be the focus of your investigation. Such a background check can not be compared with a basic criminal record check where anyone can on line to the SLED website and request such a criminal record check for a modest fee of approximately \$25.00. If you add to that investigation questions concerning whether any jurors have been the victims of similar crimes to that for which your client was tried, and other such potential issues, the price tag for such investigations would skyrocket. Assuming the Petitioner were indigent, and the vast majority of PCR Petitioners are, court-appointed PCR Counsel would have to petition the court for the funding to conduct such background checks. At this point the logic in this argument becomes somewhat circular. If there was nothing in the responses to *voir dire* questions

that *were* asked to hint of a prior background in law enforcement, then it would be fairly predictable for any circuit judge to rule that there was no evidence to support the request for such funding, and PCR Counsel would be highly unlikely to be granted funding for such an investigation. Even in a case where an Petitioner has retained PCR Counsel, most of those individuals have barely been able to afford the cost of their attorney's legal fees, and would not have the resources to pay for a private investigator to conduct background checks on all the jurors who served in his case. If such an Petitioner applied for State funding, he would likely be told that the judge could not approve funding for him to conduct "a fishing expedition." The Order of Dismissal in Petitioner's case finds that, "because Roberts' law enforcement background was discoverable at the time of Petitioner's trial, Petitioner should have raised this issue in his first PCR hearing." Order, pg.24, para. 3. That conclusion presupposes that either Trial Counsel should have requested the *voir dire* inquiry in question even if there was no evidence to suggest that one of more jurors may have had a law enforcement background, or, that Trial Counsel had the funding to conduct a full background check *on the entire jury pool* announced for that upcoming term of court before jury selection for the term began. As discussed above, where the *voir dire* question related to current or prior law enforcement employment was not requested, based on the State's position, as adopted by the lower court, the inquiry on collateral review would require PCR Counsel to conduct a full background check on all the juror's who served.

Petitioner asks this Court to consider that this ruling would no doubt result in every court-appointed PCR lawyer, and many retained ones, feeling compelled to request public funding to conduct background checks on every juror in every single Post-

Conviction Relief case involving a jury trial. Petitioner would submit that this would put an unreasonable financial burden on any PCR Petitioner. In short order, application of this expectation with regard to what is reasonable preparation for jury selection, would create the demand for adequate time and sufficient funding to conduct such investigations *in advance of every single jury trial*. Petitioner respectfully asserts such an expectation is not reasonable and the judicial system would buckle under that burden.

The operative question is not whether or not Petitioner could have raised an ineffective assistance of counsel allegation against his trial attorney, John D. Clark, for failing to request this *voir dire* question, but rather, whether or not, *through the exercise of due diligence*, Petitioner, and/or his PCR Counsel, could and should have raised this issue in his first PCR. Petitioner submits that most, if not all, circuit judges would have found that there was no reason to have done so based on the information on the juror questionnaires *and* the responses to the *voir dire* questions asked by the Court. Obviously, even if the juror questionnaires did not give rise to the request for this question in advance of jury selection, Trial Counsel still could have requested it *if* any of the *voir dire* responses had provided a hint that the inquiry was necessary. Theoretically, an Petitioner could even have alleged that such a *voir dire* question should be requested by any competent lawyer when selecting a jury for any trial. In the PCR context, the next question becomes whether they could and should have conducted background checks on all the jurors in this case in order to “dig up” evidence to supply a foundation for raising the allegation *and necessary to a demonstration of prejudice* flowing from Trial Counsel’s failure to ask for this *voir dire* question.

Petitioner raised this allegation in a timely manner after the first time he had any information that there was a problem with one of the jurors who served in his case. He urges this Court to recognize that ruling that this Application was not timely based on the analysis argued by the State, is not only unfair to him to a degree that it raises a viable due process challenge, but this holding would open a Pandora's Box of monumental proportions when it comes to any future PCR (dealing with a jury trial) where there is any *voir dire* question that the PCR lawyer believes should have been requested and wasn't.

Petitioner further submits that the merit of his position on the timeliness issue in this case, is confirmed by the Supreme Court of South Carolina's decision in *Robertson v. State*, 418 S.C 505, 795 S.E.2d 29 (S.Ct. filed December 14, 2016) wherein the PCR Application was filed within one year of Petitioner Robertson's discovery that his previous PCR Counsel was not qualified to represent him in a death penalty PCR pursuant to S.C. Code § 17-27-160(B). In ruling that Robertson's Second PCR action was procedurally proper, this Honorable Court did not see fit to find that Robertson, or his court-appointed attorney in his first PCR action, could have discovered this information in time to raise it in the first PCR effort. Admittedly, Robertson was indigent and was represented by court-appointed Counsel whereas Petitioner was represented by retained counsel in his first PCR action. Petitioner would note, however, that our Supreme Court has never before set a lower standard for due diligence by court-appointed lawyers versus retained ones. In addition, the factor that Robertson, and or his first PCR Counsel, would have needed to research and investigate was far simpler and easier to investigate than the matter currently before this Court. Literally all Robertson, or his first PCR Counsel, would have needed to do in order to raise his claim in the first PCR was to have looked at the statutory provisions pertaining to

an Petitioner's rights with regard to PCR Counsel in a death penalty case and then asked the Court to confirm that court- appointed counsel met those requirements before moving forward with his collateral review. Obviously court-appointed PCR Counsel in a capital case could have, and arguably should have, looked up the appropriate statutory provisions and determined whether he was in fact qualified under the required mandated by South Carolina law. If that attorney had any question concerning whether his experience met those requirements set by §17-27-160, he could easily have put the question to the Court prior to proceeding to represent Robertson in that action. If he did not meet the experience requirements set by law, it would have been incumbent upon him, as an officer of the court, to ask to be relieved on that ground. Toward that end, Robertson himself could certainly have asked his court-appointed lawyer, prior to the case being heard, what experience he had that met the requirements of the operative statutory provision. Notwithstanding these factors, this Court declined to find Robertson's second PCR was procedurally barred his failure to raise the claim in his first PCR. Here, in order to have raised *and had any chance of prevailing* on this issue in his first PCR, Petitioner and/or his first PCR Counsel would have had to do full background checks on all twelve (12) of his jurors to see what if anything they could discover about them and their backgrounds to support a claim that trial counsel was ineffective for neglecting to request any number of potential *voir dire* questions that were not asked during the selection of his trial. As the Supreme Court concluded in *Robertson, supra*, the appropriate ruling in this case is that Petitioner's second PCR was procedurally proper.

Furthermore, the Order of Dismissal adopts the Respondent's reasoning that Petitioner's current PCR was untimely filed *even if* the Court applies the date upon which

Petitioner became aware of the problems with Juror Roberts. Petitioner most respectfully submits that the ruling of the lower court on this issue is predicated on a faulty timeline first argued by the State in its Proposed Order of Dismissal. The discussion of this issue at the PCR hearing consisted of the following. Notwithstanding the renewal of its Motion to Dismiss, Respondent *"stipulated that the Petitioner actually did in fact learn of this issue within one year of filing and would be timely."* Hearing Tr. p. 5, ll. 21-25 (Emphasis added). Nevertheless, Respondent continued, adding that, *"with that regard the State contends though that the Petitioner did not file one year of being able to reasonably with good effort to find this information out."* PCR Tr. p. 5, l. 25 – 4. Respondent argued the current application is, *"excessive [sic] and untimely."* PCR Tr. p. 5, ll. 20-21. Respondent essentially argued that while the current PCR action is timely from when Petitioner *did* find out about the problems with this juror, it is not timely from when they believe he could and should have found out. As noted above, Respondent summarized the State's position by saying *"the State contends though that the Petitioner did not file within one year of being able to reasonably with good effort to find this information out."* PCR Tr. p. 6, ll. 1-4. Subsequently, in Respondent's Proposed Order submitted to this Court in September, 2017, the State framed a ruling directly contradicting it's on the record stipulation and stating that because Attorney Holland said he had spoken with an investigator hired by Petitioner about this potential juror issue approximately one and a half to two years prior to his deposition in this PCR, the Application was not timely. Virtually that identical language, was ultimately adopted by the lower court in its Order of Dismissal, wherein it states,

Holland testified at his deposition some years later, after he entered private practice, he was taking a Client to enter a plea in Spartanburg when a discussion came up about jury selection. Holland's former client was familiar with Petitioner's case, and at some point the client handed Holland a

cell phone with Petitioner on the other end of the line. At that point, Petitioner apparently asked Holland about Roberts' seating on his jury. *This Court finds that the date of that telephone conversation, or sometime prior to it, starts the timeline of when Petitioner learned of the facts on which he is basing the current PCR application.* Holland testified that subsequent to his conversation with Petitioner, at some point he was contacted by Petitioner's private investigator, Dave McDougal. *Holland testified that his contact with McDougal took place one and a half to two years prior to the deposition. The deposition occurred on April 22, 2014.* Petitioner's Application was filed on July 9, 2013. In order for his claim to be timely, Petitioner's discovery of the alleged new evidence would have to have occurred after July 9, 2012. This Court finds given the timeline of events testified to by Holland at his deposition and evidentiary hearing Petitioner has failed to show that this PCR application was timely filed. Order, pp. 25 – 26, (Emphasis added).

Petitioner now respectfully asks this Honorable Court to recognize that there was no factual basis for this ruling inasmuch as the factual findings asserted therein are in error. The record below supports Petitioner's position that the State conceded that this Application was timely filed if the Court applied the date when the Petitioner found out the information about this juror through Holland during his representation of an acquaintance of Petitioner. As previously noted, at the PCR hearing, Respondent *"stipulated that the Petitioner actually did in fact learn of this issue within one year of filing and would be timely."* Hearing Tr. p. 5, ll. 21-25 (Emphasis added). Notwithstanding this stipulation, Petitioner presented testimony from Holland's former client, Shareka Jones, which verified that her conversation with Holland about Petitioner's jury took place as they were riding together to Spartanburg for her guilty plea proceeding. PCR Tr. p. 62, l. 2 – p. 66, l. 14. In light of the State's stipulation as to the timely filing of this application based upon when Petitioner found out from Holland's former client about the problems with Juror Roberts having been on his jury, Petitioner did not introduce documentation concerning the date that plea was entered and did not object to this witness being excused following her testimony. PCR Tr.

p. 66, ll. 15 – 22. Petitioner now asks that this Court take judicial notice of the data concerning Witness Shareka Jones' guilty plea to one count of Forgery on *September 17, 2012*, found on the Spartanburg County Seventh Judicial Circuit's Public Index. This entry addressing her plea of guilty on Indictment No. 2012-GS-42-04801 further documents that Ms. Jones' attorney on that charge was Thomas William Holland, Sr. As the Court is aware, the Application for Post-Conviction Relief currently before the Court was filed on July 9, 2013; well before the filing deadline of September 16, 2013, if the deadline date is properly calculated as 365 days from the date of the conversation Holland had with Petitioner on the date of Jones' Spartanburg guilty plea. In his Rule 59(e) Motion to Alter or Amend, Petitioner asserted that the lower court should take judicial notice of this public record and ask that it do so. He further requested however, that he either be permitted to submit certified true copies to the Court for filing as Petitioner's Exhibits in this PCR action, or, in the alternative that the hearing in this matter be reopened in order to afford Petitioner the opportunity to make a record concerning the date of Ms. Jones' guilty plea in Spartanburg County at which she was represented by Holland, in the event the lower court found that it was necessary for Petitioner to introduce copies of the plea and sentencing records of Shareka Jones on this charge in order to prove that the public index is accurate. Had Respondent made an amendment to the State's position concerning the timeliness of this Application following Holland's testimony, PCR Counsel would have had the opportunity to introduce copies of these court documents at the hearing.

Curiously, as noted above, the Order states, "*This Court finds that the date of that telephone conversation, or sometime prior to it, starts the timeline of when Petitioner learned of the facts on which he is basing the current PCR application.*" One can only

assume the statement, "*or sometime prior to it*" is based upon Holland's estimate that his conversation with Petitioner's Investigator, the late Dave McDougal, *took place one and a half to two years before the depositions* taken in this case on April 22, 2014. Respondent did not reference this time estimate in its summary of Holland's Deposition in its Proposed Order which was adopted by the lower court as its Order in the case. Order, pp. 8 – 9. Neither does the Order provide a page cite to the location of this time estimate in either Holland's deposition or his PCR hearing testimony. The deposition testimony in question is found at Holland Depo p. 22, l. 17 – p. 23, l. 1. The Order goes on to state that, "Petitioner has failed to show that his application was timely filed." Order, p. 25, l. 21 – p. 26, l. 2. Petitioner respectfully notes that this finding is not accurate. After Holland's estimate concerning when his conversation with Investigator Dave McDougal took place, he was specifically questioned further by Respondent's own Counsel concerning the order in which the events occurred. That colloquy specifically clarifies that that he first disclosed the information about what happened to his client as they were driving to her guilty plea proceeding in Spartanburg. That conversation took place before Holland subsequently spoke with Petitioner, and the conversation with Petitioner took place before Holland's conversation with Investigator Dave McDougal. Holland Depo p. 22, l. 17 – p. 24, l. 9. *This portion of the deposition expressly acknowledges that Holland spoke with his client, Shareka Jones, about the matter first, then he talked with Petitioner and that the conversation with Petitioner came before he spoke with Dave McDougal.* Holland Depo p. 24, ll. 5 – 9.

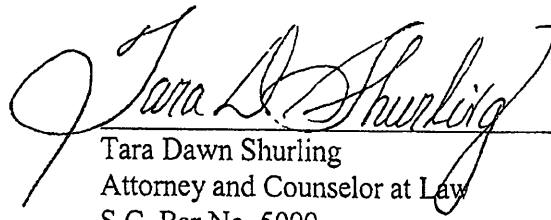
At no time following Holland's deposition did Respondent ever suggest that the date of contact with Investigator Dave McDougal provided a basis for claiming Petitioner

did not timely file is Application for Post-Conviction Relief. The Respondent in fact subsequently stipulated that the Application was timely based upon when Petitioner found out the information about Juror Roberts from Holland. Had Respondent ever made this assertion following the deposition and had they not stipulated to the timeliness of the Application based upon when Application discovered this information, Petitioner would have introduced documentary evidence to demonstrate that Investigator McDougal did not contact Holland until after Holland's conversation with Petitioner. Petitioner was not put on notice of this position until it received Respondent's Proposed Order. Even the language in the lower court order acknowledges that, "Holland testified that *subsequent to his conversation with Petitioner*, at some point he was contacted by Petitioner's private investigator, Dave McDougal. Order, p. 25, ll.16-17. There is abundant testimony before this Court that Holland's conversation with Petitioner occurred on, or shortly after, the date of Jones' guilty plea in Spartanburg County. The only real point of contention is that Jones' testimony indicates that telephone conversation took place on the date Holland gave her a ride to Spartanburg for her plea hearing, PCR Tr. p. 63, l. 12 – p. 65, l. 20, whereas Holland testified that he remembered Jones' coming by his office sometime "*a couple weeks later*" and handing him a cell phone with Petitioner on the other end of the line. PCR Tr. p. 93, ll. 23 – 25. This discrepancy between their recollections concerning when Holland ultimately spoke with Petitioner has no impact on the timeliness issue inasmuch as the Application was timely filed even if Petitioner spoke with Holland and learned of this information the date of her guilty plea; September 17, 2012. If, as Holland recalled, his conversation with Petitioner did not take place until "*a couple weeks later*", then Petitioner arguably had even more time to file pursuant to §17-27-45 (C).

III.

CONCLUSION

Based upon all the arguments and authorities set forth herein, Petitioner asserts that this PCR Application was timely filed and asks that he be granted leave to proceed with his PCR appeal on the merits of the claims raised below.


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Attorney and Counselor at Law
S.C. Bar No. 5099

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ATTORNEY FOR PETITIONER

This 9th day of May, 2018.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

Appellate Case No. 2018-000779
Lower Case No. 2013-CP-29-00951

RECEIVED

MAY 11 2018

S.C. SUPREME COURT

VERNARD JEROME MATHIS, #297034

Petitioner,

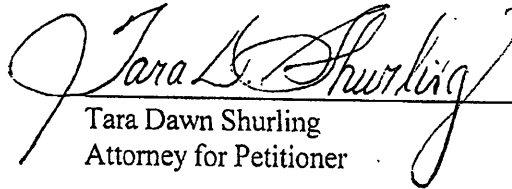
v.

THE STATE OF SOUTH CAROLINA,

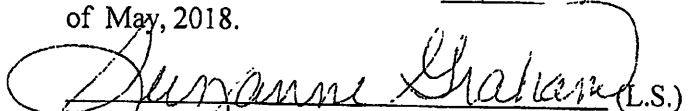
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Memorandum in Support of the Timeliness of Post-Conviction Relief Application in the above-entitled cause has been served upon opposing counsel, DeShawn Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 9th day of May, 2018.


Tara Dawn Shurling
Attorney for Petitioner

SWORN TO BEFORE me this 9th day
of May, 2018.


Dyanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

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December 28, 2018

Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia SC 29204

Re: Vernard Mathis v. State
Appellate Case No. 2018-000779

Dear Counsel:

Please be advised the appeal filed by you in the above entitled matter will proceed in accordance with the South Carolina Appellate Court Rules.

The Petition for a Writ of Certiorari and Appendix should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

CHIEF DEPUTY CLERK

cc:
Samuel Leonard Key, Esquire

