

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO RICHLAND COUNTY  
Court of Common Pleas  
Honorable Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2018-000145  
Lower Case No. 2015CP4001658

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Ricky Bowman ..... Petitioner,

vs.

The State of South Carolina ..... Respondent.

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APPENDIX  
VOLUME II

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1 what each one entails.

2 First, we'll do burglary first, which is entering  
3 somebody's home where they live without their permission  
4 with the intent to commit a crime and either being there  
5 at nighttime or being armed with a deadly weapon.

6 By entering, knocking, kicking down the door, busting  
7 open a lock, stepping over the doorframe and coming inside  
8 without the permission and in the hours of darkness, such  
9 as ten, eleven o'clock at night and with a deadly weapon  
10 such as a gun.

11 Ricky Bowman came into Delores Dennis' home with a  
12 gun at nighttime, and she didn't let him inside.

13 Kidnapping is the unlawful seizure of a person, meaning  
14 that you confine or constrain their ability to move, not  
15 that you pick them up and snatch them up in the door of a  
16 van and ride to Oklahoma but any time that you're holding  
17 them and they're not allowed to go where they want to go  
18 when they want to go.

19 Ricky Bowman held a gun to Delores Dennis' head, and  
20 he held her prisoner in her own home. Assault and battery  
21 of a high and aggravated nature, this crime was committed  
22 when Ricky Bowman pistol whipped Delores Dennis with a  
23 weapon.

24 It involves violent injury to somebody else with  
25 circumstances of aggravation. Violent injury is nothing

1 more than a simple touch, and certainly a gash that  
2 requires three staples and a broken finger qualifies as  
3 more than a simple touch. In the circumstances of  
4 aggravation, serious bodily injury or the use of a deadly  
5 weapon like a gun.

6 Armed robbery is using force or intimidation to take  
7 from somebody, their possessions that are in their custody  
8 and control.

9 Now, in this case, even if you're sure that  
10 Mr. Bowman was a participant, understand that under the  
11 laws of the South Carolina, he can be held responsible for  
12 everything that happened as a natural and probable  
13 consequence of that common plan.

14 So whatever anybody else did, anybody else that was  
15 there and whatever crimes they committed, Mr. Bowman is  
16 also responsible. That law is called hand of one, hand of  
17 all, two or more persons with a common plan or purpose.

18 They all went in there with guns intending to steal  
19 drugs and guns, but instead, Delores Dennis' cell phone  
20 was taken, as well as their purses and other people's cell  
21 phones.

22 So even though you might not be sure if Mr. Bowman  
23 took those items, he is responsible for everything else  
24 that everybody did. Finally, possession of a weapon  
25 during the commission of a crime of violence. This is

1 exactly what it sounds like, possessing a firearm or  
2 pretending like you have one, poking your finger under  
3 your shirt.

4 During the commission of a violent crime, when  
5 someone is convicted of attempting or committing a violent  
6 crime.. It is specifically defined in a separate statute.  
7 It includes the offenses of assault and battery high and  
8 aggravated nature, kidnapping, armed robbery and burglary  
9 first.

10 The firearm is defined as all of these things, to  
11 include a pistol or any weapon which will or is designed  
12 to expel a projectile.

13 Now, after this Mr. Schnee will stand up and address  
14 you on behalf of his client, and then Ms. Sampson will  
15 speak to you about the application of these laws that we  
16 discussed in detail regarding the facts, and we'll leave  
17 you've firmly convinced that Ricky Bowman is guilty of  
18 burglary first, kidnapping, assault and battery of a high  
19 and aggravated nature, armed robbery and the possession of  
20 a weapon during the commission of a violent crime.

21 THE COURT: Mr. Schnee?

22 MR. SCHNEE: May it please the Court, Your Honor. If  
23 I could have just one moment, bear with the Court.

24 THE COURT: Sure.

25 (Pause.)

## 1 CLOSING STATEMENT:

2 MR. SCHNEE: Good morning. I told you yesterday that  
3 I wanted you to think about two things throughout this  
4 trial and only two things: Identification, Sean Toran.

5 Now, I would say a little bit more has happened  
6 during this trial. I also asked that you pay more  
7 attention to the details. The details are the most  
8 important parts here. Now, which details are important?

9 First of all, the statements from the victims. You  
10 heard three victims get up and testify. They gave written  
11 statements. They were asked to be as detailed as  
12 possible. Not a single one wrote anything about eyeballs  
13 in their statement, none of them.

14 We have an ophthalmologist assistant, spends eight  
15 years every single day looking at eyes. What does she  
16 remember? "Oh, I just remember the eyes," no details.

17 There's a huge spot in my client's eyes. Now, I had  
18 all of you go down and look at my client, Ricky Bowman.  
19 There is not a single one of you that spent more than  
20 three seconds looking in his eyes, yet you saw that spot,  
21 and it wasn't -- you weren't staring at him for five  
22 minutes, then you already know that identification was  
23 wrong. You already know it's wrong, because you know you  
24 saw that spot. It was as clear as day. It was a huge  
25 spot in his right eye.

1           Now, is that something a normal person might  
2 remember? I don't know. That's certainly something an  
3 ophthalmologists assistant should remember whose specialty  
4 and job is eyes.

5           Now, when they were shown the photo lineups, they  
6 decided they wanted to cover most of the faces. All they  
7 wanted to look at were eyes.

8           Well, where are the notes from Investigator Pegram  
9 that's what happened? Why didn't he write that down?  
10 Twenty-eight years of law enforcement experience, trained  
11 by the FBI, trained by SLED, trained by the Columbia  
12 Police Department.

13          He helps train other officers. He even told you.  
14 When young officers are on the job with him, he explains  
15 how important it is to fill out those reports, how  
16 important it is to write down all of the details.

17          What does he do? Forgets to write it down. That's  
18 just not important. The method of identification is not  
19 important in this investigation? What else is important?

20          Officer Pegram created a search warrant to send to  
21 Myspace wanting information about someone who contacted a  
22 victim to return a purse.

23          In his own text, he said, "This information is needed  
24 to further the investigation and identify the suspect  
25 using this account." That was in 2008.

1       He says they chose not to respond, so he didn't do  
2 anything about it. Well, did he even call to see if they  
3 actually got the search warrant? Did he ever go to the  
4 solicitor and say, "Hey, Myspace isn't cooperating. Get  
5 an out-of-state subpoena."

6       I know I've done that when I've had to subpoena  
7 records from other places. It's easy. You call the  
8 prosecutor in the State where they are. They fill out a  
9 little form signed by a judge, done. It's a 10-minute  
10 process, especially for the government to do.

11       Did they bother at any point to do any of that?  
12 You've got cell phones that are stolen that there are  
13 allegations by Delores Dennis that it was used.

14       Where are her phone records? She didn't bring them  
15 in, so why didn't they just get the records from Verizon?  
16 I've got records from Verizon in lots of cases, and I'll  
17 tell you something: Verizon has more detailed records  
18 than any other phone company, and they give them over  
19 freely. Did they try to get them? Nope, didn't even try.

20       What they do is they get a statement from one person,  
21 Torrell Johnson. Do you see him up here? Did they call  
22 him as a witness to explain what was going on? No, just  
23 have a list of names, so they create photo lineups, and  
24 then they don't even show all of them to people.

25       Where is Torrell Johnson to say, "Yeah, I gave him

1 those names." Why would he not be here if he was going to  
2 say exactly what he wanted? Think about that.

3 Now, the times I have listed up here, this is when  
4 Officer Hamee, along with a whole bunch of other people  
5 were in that apartment complex. This it is time the  
6 robbery happened.

7 Now, I think we can all realize there is a problem  
8 with that in terms of what happened and the exact times.  
9 I'm not going to ask you to concentrate on exactly what  
10 time it happened.

11 What's important for you to remember is that Officer  
12 Hamee testified that he responded within two or three  
13 minutes. That's the important part. He responded.  
14 Richland County responded. Cops all over responded, and  
15 you heard Delores Dennis say, "After the shots were fired,  
16 we waited almost five minutes before leaving."

17 Went to the hospital, she told you she told the  
18 doctor what happened to her head, and she expects you to  
19 believe that a cop didn't come into the room at that point  
20 and say, "Who hit you in the head with a gun?"

21 You go to a hospital and you tell a doctor someone  
22 hit you in the head with a gun, you're talking to a police  
23 officer that night.

24 If you believe anything different, then you really  
25 have fallen for their little guys. It's ridiculous.

1 That's also ridiculous that law enforcement doesn't assign  
2 an investigator to the case for nine days, nine days after  
3 something happens.

4 No one calls and said, "Hey, do you think you  
5 remember anything else? Would you like to give us a  
6 written statement?" I don't understand how that works.

7 Now, Sean Toran, I understand him. He's facing life  
8 plus 95 years, and that's ignoring the drug charges that  
9 he's not even sure what he's charged with. Life plus 95  
10 years is what he's facing.

11 In South Carolina, life means life. You die in  
12 prison. No one wants to go to prison for life, certainly  
13 not him. He was charged with this almost three years ago.  
14 He gave an affidavit saying he doesn't know anything about  
15 these charges. He doesn't know anything about what  
16 happened, but then last week he said, "Oh, you know what?  
17 I'm just going to come clean. I'm going to tell  
18 everything."

19 What did he tell you? He told you exactly what's in  
20 the police reports. He's had three years to read them and  
21 go over them with his lawyer. He knows what every witness  
22 is going to say except for the details that they didn't  
23 write down. He doesn't know any of that.

24 What's most important is what he didn't tell you. He  
25 doesn't know who is sitting where in a car. He doesn't

1 know what kind of car.

2 He can't explain where they started and who got there  
3 first. This is a huge night. If he is claiming that all  
4 these people are busting into this apartment committing an  
5 ultra violent crime and he can't remember the smallest  
6 detail, he's lying. Life plus 95 means he is lying. He  
7 is trying to save his own butt.

8 She is the one who is going to give him a deal.  
9 That's her job. She is prosecuting him. If you remember,  
10 as soon as he walked out of the courtroom with his lawyer,  
11 what did she do? She followed him back there and talked  
12 to him. Take one guess what they talked about.

13 MS. SAMPSON: Objection, Your Honor.

14 THE COURT: Sustained. Confine your arguments to the  
15 facts in evidence.

16 MR. SCHNEE: Speaking of details, what are the  
17 detailed descriptions by Delores Dennis and Shamael Coit?  
18 What do they describe about Ricky Bowman? Brown skin, and  
19 we -- apparently now on the stand, they recognize his  
20 eyes. That's it.

21 Where is a description of anything else? It doesn't  
22 describe any scars, any tattoos. Speaking of tattoos, you  
23 saw Sean Toran. He's had that tattoo for obviously a long  
24 time.

25 He is, according to most of them, not wearing a

1 disguise. He has a great big size tattoo of a cross on  
2 his neck. You're telling me you can't remember that  
3 detail and write it down in a statement. That's not  
4 right. There aren't any details because they don't  
5 remember them. They're not paying close enough attention.

6 It's not that the victims here are trying to lie to  
7 you. I'm not even saying that. They're simply mistaken.  
8 That's the problem. They don't remember the details, and  
9 they don't have the details.

10 Now, your job as jurors is to listen to all of the  
11 evidence, listen to the arguments, and then listen to the  
12 law and then apply the law.

13 One of the things the judge is going to discuss with  
14 you is something called doubt. The State's burden of  
15 proof is to prove everything beyond a reasonable doubt.

16 A reasonable doubt is something that will cause a  
17 person to hesitate to act, not fail to act, not think  
18 well, yeah, it probably happened, a mere hesitation.

19 Every morning when I get ready to come to work, I get  
20 up, I shower. I make a cup of coffee. It's one of my  
21 vices. I just can't go without it.

22 I always go to the fridge, pick up a carton of milk  
23 and pour it in my coffee. Well, this morning I looked at  
24 it, and it expired yesterday.

25 What do I do? What a normal person does. You open

1 it up. You sniff it. Now, the milk was fine yesterday.  
2 Why would it not be fine today? I don't know. I still  
3 sniffed it. That sniff is a hesitation.

4 What the State is trying to sell you today isn't  
5 one-day expired milk. It is rancid, chunky milk that's  
6 been in that fridge for months. They know it. They have  
7 no evidence that Ricky Bowman did nothing.

8 Now, what did I present? Yes, I presented his  
9 mother. Why? Because he was with her. She was being  
10 evicted. She had to move.

11 Now, I'm sure Ms. Sampson is going to get up here.  
12 She tried to question Ricky's mother about where is the  
13 eviction notice.

14 Well, I don't have to prove anything. That's what  
15 the judge will instruct you, as he instructed you  
16 yesterday. They're the ones that have to prove  
17 everything.

18 Where is the clerk of court to come and say, "We  
19 searched the records. There is no eviction"? That's  
20 their job. Where is that person? They could have called  
21 anyone they wanted to refute an eviction. They didn't do  
22 that. It's your job to think about why.

23 There's lots of talk about masks and who had a mask  
24 and who didn't and when someone had a mask. Everyone has  
25 a different story because everyone remembers things

1 slightly differently. It's not because people aren't  
2 trying to lie. It's because they're really not paying  
3 that close of attention to it.

4 One very interesting thing that all the people said  
5 is that the light-skinned male, Sean Toran, he is the  
6 first one in the door.

7 Well, Sean Toran didn't hear any of that testimony.  
8 It's not written down in any of those statements, so what  
9 does he do? He gets up and says that Ricky Bowman is the  
10 first one in the room. He is the only one that said that  
11 because he is trying to blame everything on Ricky.

12 Why would Ricky even want to be the first one in, if  
13 that's what happened? Ricky doesn't have a problem with  
14 Black Shawn. Black Shawn robbed and beat Sean Toran. He  
15 is the one with the problem. He is the one that wants  
16 revenge.

17 It doesn't make any sense. He's not the one trying  
18 to find out where he is. Sean just didn't hear any of the  
19 testimony, so he doesn't know what was said. He just  
20 knows what was in the reports, and he takes his story and  
21 his version of lies to match it. He expects you to  
22 believe that.

23 Now, I'll tell you right now, if you believe that  
24 Sean Toran is telling the truth, you might as well just go  
25 back there and check guilty on every single box, because

1 he is a liar, but if you believe him, I'm just wasting  
2 everyone's time here.

3 Now, I know you have a lot of emotion involved in  
4 this. I know the victims do, and that's just a natural  
5 experience.

6 You should be emotional. Everyone thinks about their  
7 emotion in a case where something violent happens. I'm  
8 asking you to ignore that. I'm begging you to ignore  
9 emotion.

10 I need you to think about the facts, think about the  
11 logic, think about the reason. That is your job. Your  
12 job is to find facts.

13 It's not to say well, these victims, these victims,  
14 oh, it's horrible. We have to get someone to pay. Well,  
15 they already have got someone that's going to pay. It's  
16 going should be Sean Toran. That's what he's facing.  
17 He's not going to get that, but that's what he's facing  
18 because he is trying to help the State. You need to  
19 decide what did and did not happen.

20 Now, you also had two other names: Marcus Williams  
21 and Roy Foster. Investigator Pegram created lineups of  
22 them. In fact, he was at the scene of a drug search  
23 warrant and they were there.

24 Did he even bother to ask them do you know anything  
25 about this? Even try? No. Maybe they would, maybe they

1 wouldn't, but how could you not even ask them, "Do you  
2 know anything about it?" That's ridiculous.

3 There was no investigation into this. There is no  
4 searching for phone records. There is no searching for  
5 Myspace. All of these things are necessary for the  
6 investigation. They do nothing.

7 All they do is take the names they got from one  
8 random person who they wouldn't even put on the stand and  
9 say, "Oh, that's going to be it," and then write nothing  
10 else down and expect you to convict based on just that.

11 We all know Ricky Bowman did not do this, and I'm  
12 hoping that's what you write down because you know it in  
13 your heart that it is the truth.

14 THE COURT: Ms. Sampson?

15 MS. SAMPSON: Thank you, Your Honor.

16 CLOSING STATEMENT:

17 MS. SAMPSON: Fear is defined as the ability to see  
18 danger, recognize it and either have the urge to flee it  
19 or confront it.

20 As children, we have different fears. If you lived  
21 in my house, you would fear a whipping from my dad. In  
22 your house, it might have been a bad grade. It might have  
23 been not telling the truth.

24 As an adult, our fears change. We fear losing our  
25 jobs. We fear letting down our families. We fear not

1 being able to protect our families.

2 For Delores Dennis, Regina Dennis, and Shamael Coit,  
3 their worst nightmare involved the fear of being broken  
4 into and held at gunpoint. That is exactly what happened  
5 to them on November 25th, 2008.

6 We have an entire industry devoted to trying to  
7 protect us while we're in our house, ADT, theft alarm  
8 systems, guard dogs, security guards if you live in an  
9 apartment, gated apartments, gated windows. If you're my  
10 husband, guns. We have all of those things only to  
11 protect us and the sanctity of our home, our castles.

12 Ricky Bowman broke that sanctity for those four  
13 people, including Korey Coit, and the fifth person, who is  
14 not even old enough to be here Minor

15 He broke in, held a gun to their heads, demanded to  
16 know where Black Shawn was, demanded money, demanded  
17 drugs.

18 At that time, they didn't have a choice to flee or to  
19 confront with that fear. All they could do is sit there,  
20 because four men armed to the hilt were standing in their  
21 way between the door and freedom.

22 They told them, "If you call police, we will kill  
23 you. If you call police, we'll know." They're at their  
24 homes. They stole their purses with their IDs in them.

25 That's how we got here today, Korey Coit's ID with

1 his address was found in somebody else's home. Talk about  
2 fear? So no, they neither confronted it, nor possibly  
3 fled from it. What they did instead was get help for  
4 their friend, and once they were safe, then called police.

5 They confronted that fear in front of you all. For a  
6 lot of people, public speaking is a fear. Clearly, I  
7 don't have that fear. I could probably talk in front of  
8 400 strangers. That wouldn't bother me at all.

9 For these people, they were scared. It's scary to  
10 sit up here in talk to a courtroom full of strangers and a  
11 courtroom full of people.

12 They placed their hand on this Bible, swore to tell  
13 the truth and told it. They confronted it, their fear.  
14 They told you how they were afraid of retaliation because  
15 that's what all of this was about, retaliation against  
16 Black Shawn. They were just the unintended target that  
17 day.

18 Now, they are worried about being the intended  
19 target. Look what they did to unintended targets. Who  
20 knows what they do to an intended target, but they  
21 confronted that fear. They told all of you what happened.

22 Now, Mr. Schnee says that's no evidence, so I guess  
23 people testifying is no evidence. We should just ignore  
24 that, because for him to be right, there would have to be  
25 lots of mistakes.

1       For example, Shamael Coit told you, she looked him  
2       dead in the face, dead in the eyes... She saw what he  
3       looked like. Why was she paying attention? Her three  
4       year old is on her lap. She is having to sing to her,  
5       "You Are My Sunshine" to keep her child from screaming  
6       because she doesn't want her to get hurt.

7       They say to her in front of her child, "Do you want  
8       her to see you bleed tonight?" Do you really think she  
9       would ever forget what that person looks like? No.

10       She looked at him for as long as she could, and when  
11       she had the opportunity, she did a six-pack  
12       identification. You're going to have those. You're going  
13       to have these back there with you.

14       I'm going to point out to you something that I don't  
15       think this even bothered. If they were going to make --  
16       if somehow Investigator Pegram was trying to just get them  
17       to pick any old body, anybody in there, just pick somebody  
18       because I got to make a case, by accident when you look at  
19       these photos, he's got the same person in there twice.

20       If they're going to pick the wrong person because  
21       somebody is suggesting it to them, wouldn't they pick that  
22       one? Instead, they picked who did it, Sean Toran and  
23       Ricky Bowman, no doubt in their minds.

24       Now, do they look at the eyes only? Yes, that's all  
25       they saw. Why would they look at the rest of the face?

1 That's not going to help them any. Did they tell  
2 Investigator Pegram and the other officers when they met  
3 with them that that's what they did? He is telling you  
4 they didn't, but you remember what they said.

5 They told everybody they wore bandannas over their  
6 nose. Why would tell them it's over their nose? They  
7 just said they were covered with bandannas and that they  
8 wore hoodies. They didn't need to tell anyone.

9 Now, there is Investigator Pegram right now. Did  
10 they write down every single detail that everybody told  
11 them? No.

12 Then the three page, four-page statements that each  
13 witness made, did they say everything they did? No,  
14 because all he does is, "Tell me what happened."

15 If I asked you to tell your friends today, what  
16 happened when you watched the jury, when you watched the  
17 testimony today -- or the testimony yesterday and the  
18 trial today, you're going to write one thing. He is going  
19 to write one thing. Everybody is going to write something  
20 different.

21 I guarantee you, you're not going to write down every  
22 detail. Somebody is just going to ask you to tell them  
23 what happened, but when I put you on the stand and I'm  
24 asking you questions and I'm stopping you and I'm saying,  
25 "Let's talk about that one little thing," don't you give

1 me more details? That's common sense, and that's what  
2 happened.

3 They weren't making up stories. The way that you  
4 know that. The way that you know they're credible is to  
5 look at these things, their demeanor.

6 Regina Dennis cried. That wasn't made up. I asked  
7 her, "Have I ever talked to you about this?"

8 "No".

9 She tells you what was her fear that she was  
10 confronting, that she would never see her child again.

11 Delores Dennis is very brave and very uncomfortable  
12 being here, but she told you -- he tried to make a mockery  
13 of it. "You didn't go home to check your locked doors to  
14 see if your apartment was getting robbed?"

15 "No. It's already been robbed once. I went to try  
16 to find safety. I went to be with my mama." That's what  
17 she said, because for most of us, including me still at  
18 this age, my safe haven is with my mama. She went and got  
19 safe, and once she was safe, she called the police,  
20 demeanor of the witnesses.

21 Did any of them hesitate with their answers? No.  
22 Did they think about it, take a minute? Yes. When  
23 they're talking to Mr. Schnee, did they argue with him or  
24 just tell him what happened? Demeanor of the witnesses,  
25 forthright witness, testimony consistent. I'm going to

1 walk you through the testimony.

2 At the beginning, my co-counsel came to you and told  
3 you about this nightmare. It started with boom, a door  
4 being broken in. Did anybody say anything different? No.  
5 They all told you where they were. Deloris and Korey are  
6 in the back. Regina is in the hallway, Shamael and her  
7 daughter are in the front. Anything inconsistent about  
8 that?

9 You can look at the pictures when you go back.  
10 You'll see the food on the table, just like Shamael Coit  
11 told you.

12 Now, he talked about details, the devil is in the  
13 details that are left out. She told you what she was  
14 watching on TV. How much more detailed would you like  
15 there to be?

16 She told you she was watching the season finale of  
17 the Real Housewives of Atlanta. Now, I watch that, too,  
18 and I know it doesn't come on until ten o'clock.

19 So for her to be watching it, it was ten o'clock at  
20 night. She told you that. It was dark. I don't think  
21 anybody disagrees this happened at nighttime.

22 Mr. Schnee wants you to look at what time. Were they  
23 sitting there going, "Well, the door got broken down at  
24 10:45"? No. They were minding their own business.

25 All right. Do they know exactly what time it started

1 and exactly what time it stopped? No, but they know  
2 roughly what time it was. Was that consistent? Yeah, it  
3 was.

4 When the four men come in, they're masked. Now, he  
5 talked about that they didn't see this tattoo. Do we know  
6 when he got that tattoo, first of all?

7 He tried to tell you that it's old. Did Sean Toran  
8 tell you it was old? Can you just look at a tattoo and  
9 tell it's old. I got one right there (indicating). Can  
10 you tell me how old it is?

11 I can tell you if you saw me last year, you wouldn't  
12 have seen that tattoo because I just got it. Could you  
13 tell that about his?

14 He says you couldn't tell the eyes? She is an  
15 ophthalmologist. She should see that brown spot. All of  
16 y'all walked up there, so you see what you saw, but if you  
17 have a gun pointed to your face, are you looking for brown  
18 spots, or are you just making sure that the next time  
19 somebody asks you who that is, you'll know who it is?

20 Shamael told you how she remembers. She said, "Can I  
21 tell you anything specific? No, but it's like a song in  
22 your head. You can't remember all the words and you can't  
23 remember the name of the song, but the minute you hear it  
24 on the radio, you know that's the song you were thinking  
25 about."

1 I do that with movies, like I can't necessarily  
2 remember the title, but once you start to talk about it or  
3 it starts playing, that's it. That's what I was talking  
4 about. That's what she did. She saw him and knew only by  
5 covering him up because that's the only way she saw him.

6 The other details might throw he were off because she  
7 didn't see those. That's the smart thing to do. Is that  
8 consistent? For this to be -- for him to be not guilty,  
9 both Shamael and Deloris at separate times would have to  
10 coincidentally pick the wrong person. What is the  
11 likelihood of that?

12 They would have also had to pick Sean Toran I guess  
13 wrong, too, because Sean Toran told you he was there and  
14 with him. Talk about consistency.

15 Now, he says he got it from his discovery. Did he  
16 tell you that? Do you even know if he saw his discovery?  
17 Do you even know if he had conversations with his lawyers  
18 about what was in it? If that were true, don't you think  
19 he would have asked him?

20 Talk about consistency, he told you the same thing.  
21 Did he give different who went in the door first? Yes,  
22 but is the rest of it the same, that he apologized, that  
23 he realized as soon as he went in it was the wrong place.  
24 That's what the victims told you, that he didn't want her  
25 to get hit in the head. He started trying to push them

1 out the door. He told you.

2 Let's get into this life plus 95 as far as it goes to  
3 the next one how prejudice or bias. He told you, and I  
4 told you, he doesn't have a deal.

5 Before yesterday, there was no statements against  
6 him. The same evidence that was presented in front of you  
7 all today, I would have had to present in a trial against  
8 him with absolutely no testimony from him. It would be  
9 exactly the same, but after yesterday, he provided  
10 everything. He can no longer have a trial.

11 He is now looking at that number with no safety net,  
12 no ability for 12 people to come in and let him go. He  
13 convicted himself, and he did it because it's the truth.

14 There's no deal. I can still right now bring him in  
15 here, bring him in front of that judge and ask for life.  
16 There is nothing he can do about it. He would like you to  
17 forgot all of that; that you're just supposed to believe  
18 his mother.

19 So Sean Toran, according to him, would lie to get out  
20 of life plus 95 but the defendant's mother wouldn't? Now,  
21 let's talk about no corroboration. She tells you that she  
22 was being evicted and he asked -- he said that I'm  
23 supposed to bring you proof that she wasn't.

24 What do I have, a clerk of court in my pocket? The  
25 first time she told us this was today. Had she even

1     bothered to call my office, to call Investigator Pegram to  
2     go to the Columbia Police Department, which is just down  
3     there by Washington Street and say, "Hey, you have got the  
4     wrong person. He was with me all day? I could have  
5     gotten all of that."

6             He is arrested in December of 2009, but the first  
7     time you tell us about it is November of 2011, yet I'm  
8     supposed to have some evidence to show that didn't happen?

9             My law diploma did not come with a magic wand. I  
10    can't do that. If she has to bothered to tell me before,  
11    maybe I could.

12            And if this alibi is so concrete that there is no way  
13    he was there and doing this, she told you, some other  
14    people, where are they?

15            He had the ability to call an officer. He has the  
16    ability to call the mama. She didn't have the ability to  
17    call the other people. She knew him.

18            She said, "I told his other lawyer, and I told this  
19    one." Then where are they?

20            She couldn't provide -- he says look at the details.  
21    What details did she provide us? "It was some pickup  
22    truck. It was some people."

23            Who starts moving at eight o'clock at night in the  
24    dark? In the dark is when they started? Does that make  
25    any sense, and you never once mentioned this to anybody?

1           When your son is facing live plus 95 years, in  
2   December of 2009, you don't say a word, not one single  
3   word until today?

4           Who has bias or prejudice now? You can't say Sean  
5   Toran has it and not say that Wanda Bowman doesn't. It  
6   doesn't work that way.

7           There is absolutely nothing to show that this alibi  
8   even exists except for Wanda Bowman, and again, for her to  
9   be right -- let me see. Go back through this. Shamael  
10   Coit would have to be wrong; Delores Dennis would have to  
11   be wrong; Investigator Pegram would have to be wrong;  
12   Torrell Johnson would have to be wrong.

13           He talks about Torrell Johnson not being here. Don't  
14   you think if Torrell Johnson was going to come in here and  
15   tell you he didn't say that to Investigator Pegram, he  
16   would have called him? He called the witnesses he thought  
17   was important.

18           He called an Officer Hamp to say, "I went there."  
19   Officer Hamp just said he showed up. He didn't talk to  
20   anybody.

21           I guess he's trying to say that there must have been  
22   police there because we all went inside. What did they  
23   all tell you? We left immediately. There was nobody us  
24   outside.

25           Talk about consistency. Officer Hamp finds eight to

1 nine -- he finds nine bullets. What did Sean Toran tell  
2 you? That Ricky shot eight times and that he remembers  
3 where he was sitting that time because he was sitting  
4 right behind him, and he hears the gun go off in his ear,  
5 talk about details that match.

6 Sean Toran came in here despite looking at life and  
7 told you the truth. Does he hope that I give him a deal?  
8 Of course, he does. He would be the stupidest person in  
9 the world if he didn't hope that. Does he have one?  
10 Absolutely not, absolutely not.

11 Shamael Coit, Delores Dennis, Regina Dennis have  
12 absolutely no reason to come up in here and point that man  
13 out to you but they did.

14 Shamael Coit said she'll never forget. Delores  
15 Dennis told you, "He split my head open. I needed three  
16 stitches," three staples, not stitches, staples in her  
17 headed. It broke her finger. She couldn't even write her  
18 statement nine days later when she is with Investigator  
19 Pegram because it's her right hand and her pinky is broke.  
20 So he writes it for her.

21 There is nothing different from what he said then and  
22 what he said now. He tried to say, "Well, here you said  
23 this and here you said something else."

24 There were two in each of their statements, and there  
25 was a three-page statement. He could find two things,

1 two. That's it, out of all those details.

2 Is it more -- does it make more sense that they came  
3 in here and told you the truth that that's the man that  
4 did, it or they just both were mistaken?

5 We're all just liars, I guess. Investigator Pegram  
6 with his 28 years of experience is just going to come in  
7 here and make all this up? Really? To get Ricky Bowman?

8 Does that make any sense whatsoever? That he put his  
9 future on the line like that to just lie. And Sean Toran,  
10 if he is going to make up the details based on his  
11 discovery, get them all right, which he didn't because he  
12 is remembering it the way he remembers it. It's not going  
13 to match.

14 When we sit here and watch a car wreck, we're not  
15 going to remember the same thing. I guarantee you when  
16 you go back there in that jury room and you start  
17 discussing that case, you're going to remember things  
18 differently. That's just how it works. It doesn't mean  
19 anybody is right or wrong. That's just how it works.

20 Ricky Bowman committed this crime. He placed a gun  
21 so hard that it left an impression in Delores Dennis'  
22 forehead the next day. Yes, she has got an impression.  
23 He asked for an impression, she has got an impression all  
24 right, right there on her forehead.

25 There is no doubt this crime happened. They took the

1 cell phones. That's what makes it armed robbery, purses  
2 and the wallets. They took those from those people at  
3 that point. They didn't give it to them. They took them.  
4 It's armed robbery.

5 Now, most people think of kidnapping as we put you  
6 and we move you, as Briton said, to Oklahoma or we move  
7 you in the car and we tie you up. That's kidnapping.

8 In South Carolina, maybe I'm kidnapping y'all by  
9 talking and keeping you from lunch, okay, but kidnapping  
10 is keeping someone from moving when they want to go.

11 Delores Dennis told you she was held at gunpoint,  
12 couldn't move. Shamael Coit told you they actually told  
13 her to put her child down. She said, "Oh no" and she left  
14 that child in her lap. That's kidnapping.

15 Assault and battery happened when he knocked her in  
16 the head because she talked. She was getting snappy with  
17 him, because she was afraid for her goddaughter out there.  
18 So he hit her, not once but twice with the butt of a gun  
19 breaking her finger causing lacerations to her head.

20 Mr. Schnee would like you to believe because the  
21 police didn't show up at the hospital, it must not have  
22 happened; you shouldn't believe them. "I want to go home  
23 to my mama."

24 He makes it sounds like there is this huge time  
25 period between when the incident happened and when they

1 told. What did the officers tell you? This happened at  
2 10:20, 10:25.

3 By two o'clock the following afternoon, they are  
4 telling. What's that, 15, 16 hours later? Not even a  
5 full 24 hours and they're already telling. They didn't  
6 wait. They told.

7 This hooey about, "Oh, it took nine days to get  
8 Investigator Pegram on it." It's Thanksgiving. This  
9 happened the Tuesday before.

10 Is there a little time lag with Thanksgiving, Black  
11 Friday and a weekend? Probably. Is that proper? Maybe  
12 not, but he explained back in 2008, they sometimes would  
13 have that lag, but he did his job.

14 He talks about, "Oh, they didn't get the Myspace  
15 records," so I guess what I introduced into evidence, I  
16 just made up.

17 They did get the Myspace records. Regina gave them  
18 to them. They did get the Verizon records. She told you  
19 they didn't use the cellphone, so there were no records.  
20 They told you that. There is no reason to subpoena  
21 something that doesn't exist.

22 He did his job, and he did it well. He got two  
23 people. He got four. If he had wanted to convict and lie  
24 about it, where are the other two? He had their  
25 photographs.

1       If we're just going to make this up, make it be any  
2 old black man, we would have four, not two, but because  
3 they said, "We can't identify anybody but the one who put  
4 the gun in my face and the light skinned tall one because  
5 he didn't wear the mask the whole time," that's the only  
6 ones he focused on.

7       If the other two walked in here today and said, "I  
8 did it," there wouldn't be anything left to do because my  
9 witnesses can't identify them, can't do it. That's why  
10 there are two.

11       If we wanted to make all this up and let it be  
12 anybody, we would have made up the other two. We didn't.  
13 We presented to you the facts of this case through these  
14 witnesses. They are fully credible.

15       They told the entire story less than 24 hours after  
16 it happened. This alibi business didn't show up until 24  
17 hours before he was looking at a conviction, looking at 90  
18 years to life. Suddenly there is an alibi.

19       Now, I'm about to be quiet, and Judge Cooper is about  
20 to give you some rulings on the law. I ask you to listen  
21 to him, and I ask you to go back in that jury room. Look  
22 at the evidence. Look at all the details.

23       I do ask you to check that guilty box, not because  
24 it's the easy thing to do, but because it's the right  
25 thing to do. Because there is absolutely no reasonable

1 doubt that Ricky Bowman did not commit these crimes.

2 He committed burglary first degree when he broke in  
3 that house in the nighttime. He committed armed robbery  
4 when he held guns to those people and took their cell  
5 phones and purses.

6 He committed a kidnapping, because he wouldn't let  
7 Deloris move. He assaulted her on the head, and he  
8 possessed the gun. We all know that because the clip fell  
9 out, got put back in and shot up a car.

10 Find him guilty because he is guilty. Thank you.

11 JURY CHARGE:

12 THE COURT: All right.

13 Madam forelady, ladies and gentlemen of the jury,  
14 you've now heard all of the testimony in this case.  
15 You've heard the arguments of both the State and the  
16 defendant. You've take with you to the jury room all of  
17 the evidence in this case.

18 Now, from time to time, I've had juries ask me to  
19 send them a copy of what I'm about to go over with you.  
20 I'm not able to do that. In some states that's done, but  
21 it's not done in South Carolina. So I'm going to ask you  
22 to pay close attention as I explain the law as it applies  
23 in this case.

24 I'm going to review some general concepts with you.  
25 First, under our constitution and code of laws, only the

1 MS. SAMPSON: No, sir.

2 THE COURT: From the defense?

3 MR. SCHNEE: No.

4 THE COURT: Have you completed your --

5 MR. SCHNEE: All the evidence is right there.

6 MS. SAMPSON: It's ready to be taken back.

7 THE COURT: Take the alternates to the grand jury  
8 room to eat their lunch.

9 THE BAILIFF: Yes.

10 (WHEREUPON, the jury began their deliberations at  
11 12:40 p.m.)

12 THE COURT: Counsel, when the jurors -- the  
13 alternates have finished their lunch, any objection to  
14 dismissing the alternates, from the State?

15 MS. SAMPSON: No.

16 MR. SCHNEE: No objection.

17 THE COURT: No objection?

18 MS. SAMPSON: No objection.

19 THE COURT: All right. We'll let them eat their  
20 lunch, and I'll probably bring them back in here. If you  
21 care to be present, that's fine. If you're not, that's  
22 fine also.

23 All right. Stand at ease until we hear from the  
24 jury.

25 (WHEREUPON, a short break was taken.)

1           (The alternates entered the courtroom.)

2           Obviously, you were chosen as alternates in this case  
3 and can't deliberate. I know sometimes jurors would like  
4 to stick around and stay with the crowd and see what the  
5 outcome is. You still may.

6           It's a public courtroom, so you're welcome to stay if  
7 you wish. Chances are, I believe you probably have  
8 something else you'd rather be doing.

9           I do want to take this opportunity to thank you for  
10 your service. This week's service gives you an exemption  
11 for the next two calendar years.

12           If you wish to exercise that exemption, so for 2012  
13 or '13, you wouldn't have to serve on a jury if you're  
14 called. I hope you would. I hope you found it to be  
15 somewhat of an educational experience, if not a pleasant  
16 experience.

17           We try to make jurors as comfortable as we can with  
18 what we've got. We don't have a lot, but I do thank you  
19 for helping us.

20           If you were sitting on a jury, you would be helping  
21 us decide the issue. I tell jurors all the time, this  
22 system can do without me. It can do without these  
23 attorneys, but it can't do without jurors, you jurors who  
24 are willing to come sit and serve and resolve these  
25 things.

1        This system has been in effect for some 250 years in  
2 this country. It works but it only works with citizens  
3 who are willing to come and sit as jurors.

4        I thank you for your service. Becky is going to  
5 provide you whatever you need to get out of the building,  
6 take up your IDs, and good luck to all of you. I might  
7 see you down the road somewhere.

8        THE JUROR: Thank you, Judge.

9        (The alternates were excused.)

10       (WHEREUPON, a short break was taken.)

11       (The jury sent a note at 1:52 p.m.)

12       THE COURT: Question from the jury.

13       (WHEREUPON, Court's Exhibit No. 5 was marked for  
14 identification only.)

15       THE COURT: All right. Counsel, the bailiff informs  
16 the Court the jury has reached a decision.

17       Are you ready to receive the decision?

18       MS. SAMPSON: The State is ready, Your Honor.

19       MR. SCHNEE: Defense is ready.

20       THE COURT: All right. Bring the jury, please.

21       (WHEREUPON, the jury returned to open court with the  
22 verdict at 4:03 p.m.)

23       THE BAILIFF: All jurors are seated, Your Honor.

24       THE COURT: All right. Thank you.

25       Madam forelady, has the jury reached a verdict?

1 THE FOREMAN: Yes, we have, Your Honor.

2 THE COURT: Will you hand it to the bailiff, please?

3 (Complies.)

4 All right, Madam forelady.

5 Publish the verdict, please.

6 THE CLERK: The State of South Carolina in the county  
7 of Richland in the matter of the State of South Carolina  
8 vs Ricky Sherod Bowman.

9 We, the jury, by a unanimous verdict find as follows:

10 As to the charge of armed robbery, indictment number  
11 2010-GS-40-1110, we find the defendant, Ricky Sherod  
12 Bowman guilty.

13 As to charge of burglary in the first degree,  
14 indictment number 2010-GS-40-1112, we find the defendant,  
15 Ricky Sherod Bowman, guilty.

16 As to the charge of kidnapping, indictment number  
17 2010-GS-40-1111, we find the defendant, Ricky Sherod  
18 Bowman, guilty.

19 As to the charge of assault and battery of a high and  
20 aggravated nature, indictment number 2010-GS-40-1108, we  
21 find the defendant, Ricky Sherod Bowman, guilty.

22 As to the charge of possession of a weapon during the  
23 commission a violent crime, indictment number  
24 2010-GS-40-1109, we find the defendant, Ricky Sherod  
25 Bowman, guilty.

1 Signed by the foreperson, dated November 9th, 2011.

2 Madam Forelady, is this your verdict and the verdict  
3 of the entire jury?

4 THE FOREMAN: Yes, it is.

5 THE CLERK: Thank you.

6 THE COURT: Any desire to poll the jury?

7 MS. SAMPSON: Not from the State, Your Honor.

8 MR. SCHNEE: Yes, please.

9 THE COURT: Madam clerk, please poll the jury.

10 THE CLERK: Madam Forelady, ladies and gentlemen of  
11 the jury, I'm going to call each your numbers out. I'm  
12 going to ask each of you two questions. I need you to  
13 answer both of these questions.

14 Number 166, was this your verdict?

15 JUROR: Yes, it is.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Thank you.

19 Number 16, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: Number 218, was this your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Thank you.

3 Number 78, was this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Number 41, was this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: Number 179, was this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Number 142, was this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Number 95, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: Number 309, was this your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Number 76, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Number 222, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE COURT: The jury has been polled.

11 All right. Ladies and gentlemen of the jury, I want  
12 to thank you for your service in this matter. These are  
13 difficult matters, and -- but they must be decided in our  
14 community.

15 They only be decided by members of the community in  
16 the formation of the jury. I want to thank you for your  
17 service in this matter.

18 I tell jurors all the time this system can do without  
19 me. It can do without these attorneys. It can't do  
20 without you.

21 You're such an important part of the judicial system  
22 of this county, this State and this nation that your role  
23 was written into the constitution of the United States  
24 some 250 years ago.

25 It's a system that's tried be true, served this

1 country well for many years. I want you to know that we  
2 do appreciate your service.

3 Now, the remaining portion of the trial will consist  
4 of the sentencing of the defendant. That process is going  
5 to take -- will start in a few minutes. We're not going  
6 to start right this minute. There has to be some  
7 paperwork that has to be done. That process will probably  
8 take 15 to 20 minutes, maybe up to 30 minutes. You are  
9 welcome to stay for that.

10 I'm going to ask you to retire to your jury room in  
11 just a minute so the clerk can pick up your badges and  
12 give you work excuses.

13 I want you to know that you are welcome to stay in  
14 the courtroom, either in the jury box. It's probably the  
15 most convenient place for you to stay, or you can go back  
16 into the gallery to sit and watch the sentencing.

17 I find jurors frequently prefer to stay and watch the  
18 sentencing just so they'll understand that part of the  
19 process and will bring closure somewhat to the entire  
20 trial.

21 So if you will now, you can retire to the jury room.  
22 It will be about ten minutes before that procedure starts.  
23 You may leave.

24 The law enforcement, if you want an escort to your  
25 car, law enforcement will certainly be happy to do that.

1 It's not dark yet, but sometimes it's dark and jurors  
2 prefer to have that escort to their cars.

3 You are free to talk to people about this case if you  
4 wish to do so, but you're not required to do so by any  
5 means.

6 If anyone wants to you to you about it, it up to you.  
7 It's your choice to talk to them or not to talk to them.  
8 If anybody would approach you and you did not want to talk  
9 to them and they persist, I hope you will either let law  
10 enforcement or one of the bailiffs know. Bring that to my  
11 attention, and I assure you, I'll deal with it.

12 All right, ladies and gentlemen. Thank you very  
13 much, again, for your service. You're free to go if you  
14 wish to, but you're also free to stay. The bailiffs and  
15 clerk will explain that to you in just a few minutes.  
16 Thank you very much.

17 (WHEREUPON, the jury left open court at approximately  
18 4:11 p.m.)

19 THE COURT: All right. Stand at ease for about ten  
20 minutes.

21 (WHEREUPON, a short break was taken.)

22 All right, Solicitor.

23 MS. SAMPSON: Thank you, Your Honor. You already  
24 heard the facts in the case. The only thing you, at this  
25 point, have not heard is the defendant's record: '98

1 failure to stop for a police command; 2000 open container  
2 and malicious injury to personal property; 2001, simple  
3 possession of marijuana; 2002, driving without a license;  
4 2006, simple possession of marijuana; 2007, unlawful  
5 carrying of a pistol; 2007, driving under suspension.

6 THE COURT: Do what?

7 MS. SAMPSON: Driving under suspension, and 2008,  
8 simple possession of marijuana.

9 The victims actually did not want to be present but  
10 did ask that I let them know. I just let them know about  
11 the verdict.

12 In reading from my phone, they just wanted to let  
13 Your Honor know that they did want him to get significant  
14 jail time, somewhere between the range of 20 and 30 years  
15 is what they would be requesting.

16 All right. Mr. Schnee.

17 MR. SCHNEE: Thank you, Your Honor. May it please  
18 the Court. First, at this time, I would renew all of my  
19 prior motions and objections and also request a new trial.

20 As Your Honor is well aware, probably the most novel  
21 issue in this trial is the identification. I believe that  
22 that justifies a new trial by itself.

23 THE COURT: All right. Well, I've considered the  
24 fact that you may make these motions, and I feel the jury  
25 was well within their province, based on the facts of the

1 case, in finding your client guilty on all charges.

2 I don't feel any rulings made during the course of  
3 the trial were either unconstitutional or illegal or  
4 improper, so I must, therefore, respectfully deny your  
5 motions.

6 MR. SCHNEE: Yes, sir. At this time, a member of my  
7 client's family would like to address the court.

8 THE COURT: Just take them one at a time.

9 THE MOTHER: Your Honor, this is my third oldest  
10 child, and he is the one that mainly takes me to the  
11 doctor, takes me to get my medicine.

12 He's a good father, and he's been missing his son for  
13 quite some time. I just want you to know he's a praying  
14 child. I just want you to know he is a good kid. It was  
15 -- I don't think a good...

16 THE COURT: I couldn't quite hear you.

17 MOTHER: Yes, sir?

18 THE COURT: I couldn't quite hear you.

19 MOTHER: I'm sorry. My son is a brainy child. He  
20 has a child. He's a good father. He's a good uncle. I  
21 have 34 grandchildren, and he's a great uncle to all of  
22 them.

23 It's too much. It wouldn't be like I will -- I just  
24 want you to know that's a good person, and he's my son.  
25 Thank you.

1 THE COURT: Yes, ma'am.

2 THE BROTHER: I'm his brother.

3 MR. SCHNEE: State your name for the record.

4 THE BROTHER: Aaron Brown. I am his older brother.

5 Before this happened, I was actually getting him into  
6 coaching. I coached the football team and, you know,  
7 watched most of my sons play on the football team.

8 I have six sons. He has two so, you know, we try to  
9 pick our own team. So I had him going in the right  
10 direction. He kind of got mixed up with those people. I  
11 just ask, you know, the Court to show some leniency for  
12 him.

13 Thank you, sir.

14 MS. JOHNSON: My name is Tonya Johnson. He was my  
15 brother.

16 (Pause).

17 I am Tonya Johnson. He is my only brother. I'd ask  
18 that you be lenient. We miss him. He has children.  
19 Since...

20 THE COURT REPORTER: I'm sorry. I didn't hear the  
21 last part of what you said.

22 MS. JOHNSON: I'd just ask for some leniency at that  
23 time.

24 THE FATHER: I'm Julius Bowman. He is my son. I  
25 just pray that you give him some leniency so we can come

1 see him. I appreciate it.

2 MS. SIMONS: My name is Lakita (phonetic) Simons.  
3 That's my fiancée. He's a wonderful father, an excellent  
4 provider, excellent father. I'm just asking that you show  
5 leniency.

6 THE COURT: Well, I want all of you to know, and I  
7 I'm sure you do. I'm sure Mr. Schnee has told you, I --  
8 there's certain crimes that he has been convicted of that  
9 have a mandatory sentence. I'm sure Mr. Schnee has  
10 explained that to you.

11 I don't have any discretion on those sentences other  
12 than to sentence him to a greater amount of time than  
13 those mandatory minimums.

14 So unfortunately, it's going to be a long time before  
15 your relative, your brother or your son is released from  
16 custody.

17 MS. SAMPSON: Your Honor, if I may, I forgot to add,  
18 he -- on the kidnapping, this is not a sexual offense, so  
19 we would ask that he not have to register.

20 THE COURT: Well, I understood that.

21 Mr. Schnee.

22 MR. SCHNEE: Yes, Your Honor.

23 THE COURT: Tell me a little bit about your client.

24 MR. SCHNEE: Your Honor, as you heard from my  
25 client's family, he does have two children. He is

1 engaged.

2 I got involved in this case officially by the  
3 February or March, but I've known Mr. Bowman a number of  
4 times before that.

5 The main issue for him has always been, I guess as  
6 you saw through the testimony in terms of the  
7 identifications and the total investigation as to, you  
8 know, my client's position in all of this, he's always --  
9 he's one of the smarter clients I've had, which as you  
10 know, makes it sometimes more difficult to deal with, not  
11 because he is a bad person in any way, but because he is  
12 smart.

13 He is constantly reading things and looking at things  
14 and asking questions. He does have a lot of potential.  
15 He has a tremendous amount of family support. You've  
16 heard the victims' request.

17 Obviously, you have the 15 mandatory for burglary,  
18 and if you're not sentencing to life, there is a 15  
19 mandatory consecutive.

20 THE COURT: I disagree with you on that. My reading  
21 of the statute, unless it was different in 2008, reads  
22 service of the five-year sentence is mandatory unless a  
23 longer mandatory minimum of imprisonment is provided by  
24 law for the violent crime.

25 The Court may impose this mandatory five-year

1 sentence to run consecutively or currently. You disagree  
2 with that?

3 MS. SAMPSON: I do you not disagree with that.

4 THE COURT: I'm reading it.

5 MR. SCHNEE: I thought it was, but if that's the  
6 wording of it. I'm certainly asking, Your Honor, based on  
7 the totality of the circumstances, Your Honor sat through  
8 the whole trial.

9 Obviously, the jury had lot to think about. They  
10 were out there for three-and-a-half hours. I would ask  
11 for something on the lower end.

12 I actually think the request by the victims is  
13 relatively reasonable, in the 20 to 30 range. I would ask  
14 that you sentence him accordingly, preferably toward the  
15 lower end of that range.

16 THE COURT: Mr. Bowman, do you have anything you want  
17 to tell me?

18 THE DEFENDANT: I just ask for leniency on the Court,  
19 Your Honor.

20 MR. SCHNEE: Oh, and for the record, my client was  
21 arrested in Georgia on these warrants and nothing else.  
22 That's an extra, I believe, ten or so days. I'm asking  
23 that you give him credit since the time he was arrested in  
24 Georgia.

25 THE COURT: When was that?

1 MS. SAMPSON: December.

2 MR. SCHNEE: December 13th, 2009.

3 THE COURT: That's the total pretrial incarceration  
4 time?

5 MR. SCHNEE: Yes, Your Honor.

6 MS. SAMPSON: Correct.

7 THE COURT: Correct?

8 MS. SAMPSON: Correct.

9 THE COURT: All right. Mr. Bowman, on your  
10 possession of a weapon during the commission of a violent  
11 crime, the sentence of the Court is you be committed to  
12 the Department of Corrections for a period of five years.

13 On your assault and battery of a high and aggravated  
14 nature, the sentence of the Court is you be committed to  
15 the State Department of Corrections for a period of ten  
16 years.

17 On your armed robbery, burglary and kidnapping  
18 charges, the sentence of the Court is you be committed to  
19 the State Department of Corrections for a period of 20  
20 years.

21 All sentences to run concurrent, give him credit for  
22 time served since December 13th, 2009, and your name will  
23 not be listed on the sex offender registry.

24 Thank you very much. Good luck to you, sir.

25 MR. SCHNEE: Thank you, Judge.

1 THE COURT: Court is adjourned.  
2 (Whereupon, the proceedings were concluded.)  
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AFFIDAVIT OF SHAMAEL COIT

November 8, 2011

I, Shamael Coit, was a witness to the home invasion of my friends' apartment. Before the suspects left they told us that if we called the police they would return and kill us.

About a year ago I was contacted via Facebook by someone asking if I was the girl who was broken in on two years ago. I did not respond to this contact.

My brother Korey Coit received contact via Facebook from someone named Joanna who stated that she knew that she wasn't supposed to contact him but she couldn't just stand by and watch her brother go to prison. She further stated that the system doesn't care about him being there and we shouldn't send more black men to jail and to please not send her brother to prison, let him be out so he can be a father.

This contact was made a week to two weeks ago.

SIGNED:

Shamael Coit  
Shamael Coit

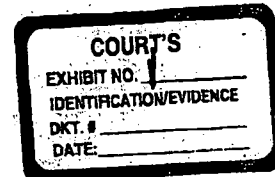
11/08/2011

Date

Sworn to me this 8<sup>th</sup> day of November, 2011

Dawn L. Sloan  
Notary Public for South Carolina

2-5-2020  
My Commission Expires



AFFIDAVIT OF REGINA DENNIS

November 8, 2011

I, Regina Dennis, was a witness to the home invasion of my cousin's apartment. Before the suspects left, they told us that if we called the police they would return and kill us.

I received contact from an unknown source stating they had my purse and they wanted to return it to me right after the home invasion.

This contact was via e-mail on My Space.

My cousin Delores Dennis received contact via Facebook offering her money not to testify in the case against Ricky Bowman, the contact's brother.

SIGNED:

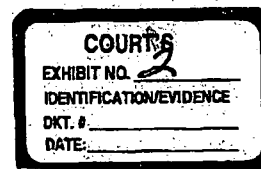
RD  
Regina Dennis

11-8-11  
Date

Sworn to me this 8<sup>th</sup> day of November, 2011

Theresa B. Yarnall  
Notary Public for South Carolina

6-13-2021  
My Commission Expires



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Grand Jurors of Richland County present upon their oath:

**ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE**

That RICKY SHEROD BOWMAN did in Richland County on or about NOVEMBER 25, 2008, commit an assault and battery upon the victim(s), DELORES DENNIS constituting an unlawful act of violent injury to the person of the said victim, accompanied by circumstances of aggravation, to wit: the use of a deadly weapon, and/or the infliction of serious bodily harm and/or with the intent to commit a felony and/or a great disparity between the ages and/or the physical conditions of the parties and/ or a difference in the sexes and/or the purposeful infliction of shame and disgrace and/or resistance to lawful authority; to wit: did beat victim with a pistol and break her finger in front of her child while committing other crimes. All in violation of § 17-25-30 (Common Law), 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.

*W. B. Giese*

WARREN B. GIESE, SOLICITOR

WITNESSES

(S) INV PEGRAM CPD

ARREST WARRANT NUMBER

K373083

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date:

APR 15 2010

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2010-GS-40-

1108

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

102

THE STATE  
vs.

RICKY SHEROD BOWMAN

Indictment for  
ASSAULT AND BATTERY  
OF A HIGH AND  
AGGRAVATED NATURE  
SC Code: 17-25-30 C/L  
CDR Code: 0013  
Class MIS/UNC

After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COURT 11/1/2010 08:53 0030/015720

CRIMINAL RECORDS

PAGE 12/16

**WITNESSES**

(S) INVEGRAM CPD

**ARREST WARRANT NUMBER**

K373078

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date:

APR 15 2010

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2010-GS-40

1109

**The State of South Carolina**  
**County of Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2010**

102

**THE STATE**  
**vs.**

**RICKY SHEROD BOWMAN**

**Indictment for**

**POSSESSION OF WEAPON DURING**  
**COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-0490

CDR Code: 0649

Class FELIF

After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

05/11/2012 08:33

8035761925

CRIMINAL RECORDS

PAGE 09/16

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND }

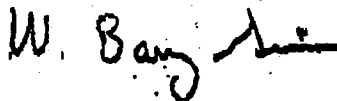
## INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Grand Jurors of Richland County present upon their oath:

**POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT  
CRIME**

That RICKY SHEROD BOWMAN did in Richland County on or about NOVEMBER 25, 2008, possess or visibly display a firearm or visibly display a knife, or visibly display what appeared to be a firearm or knife during the commission or attempted commission of a violent crime (as defined in section 16-1-60), in violation of Code Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided,



WARREN B. GIESE, SOLICITOR

**WITNESSES**

(S) INV PEGRAM CPD

**ARREST WARRANT NUMBER**

K373074

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date:

APR 15 2010

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2010-GS-40-

1110

**The State of South Carolina**

**County of Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2010**

**102**

**THE STATE**

**vs.**

**RICKY SHEROD BOWMAN**

**Indictment for**

**ARMED ROBBERY**

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive my right to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

05/17/2012 08:33

0035761925

CRIMINAL RECORDS

PAGE 07/16

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That RICKY SHEROD BOWMAN did in Richland County on or about NOVEMBER 25, 2008, commit an armed robbery by feloniously taking from the person or presence of DELORES DENNIS, by means of force or intimidation goods or monies of the victim, such goods or monies being described as cell phone and/or purse and/or ID's, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A), (1978, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*W. B. Giese*

WARREN B. GIESE, SOLICITOR

WITNESSES

(S) INV. PEGRAM - RCSD

ARREST WARRANT NUMBER

K373076

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury  
Date:

APR 15 2010

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2010-GS-40-

**The State of South Carolina**

**County of Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2010**

102

**THE STATE  
vs.**

**RICKY SHEROD BOWMAN**

**Indictment for  
KIDNAPPING**

SC Code: 16-3-810  
CDR Code: 0055  
Class FEL(A)(V)

After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

05/17/2012 08:33

8835761925

CRIMINAL RECORDS

PAGE 03/16

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That RICKY SHEROD BOWMAN did in Richland County on or about NOVEMBER 25, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, DELORES DENNIS, by any means whatsoever without authority of law. All 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.

*W. B. Giese*

Warren B. Giese, SOLICITOR

WITNESSES

(s) INV PEGRAM CPD

ARREST WARRANT NUMBER

K373073

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 15 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-40-

1112

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

102

THE STATE

vs.

RICKY SHEROD BOWMAN

Indictment for

BURGLARY/(AFTER 6/20/85)

1<sup>ST</sup> DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
1/11/2010  
CLERK OF COURT  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Grand Jurors of Richland County present upon their oath:

**BURGLARY/(AFTER 6/20/85) - 1<sup>ST</sup> DEG**

That RICKY SHEROD BOWMAN did in Richland County on or about NOVEMBER 11, 2008, unlawfully enter the dwelling of COREY COIT and/or DELORES DENNIS at \_\_\_\_\_, Columbia, South Carolina, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant entered during the hours of darkness and/or while armed with a deadly weapon and/or caused physical injury to non-participant in crime, all in violation of §16-11-311, 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.

*W. B. Giese*

Warren B. Giese, SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATERichlandAKA: Ricky S. BowmanRace: B Sex: M Age: DOB:  SS#: Address: City, State, Zip: DL#:  SID#: In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery High and Aggravatedin violation of 17-25-30 C/L of the S.C. Code of Laws, bearing CDR Code # 0013☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC winner 1<sup>st</sup> or Level Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ARREST:

Capital City 15964WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed  yearsand/or to pay a fine of \$ , provided that upon the service of  days/months/years and/or paymentof \$ , 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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

FTUP

Total: \$  plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPSRecipient: 

|                                        |         |
|----------------------------------------|---------|
| *Fine:                                 | \$      |
| \$14-1-206 (Assessments 107.5%)        | \$      |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100   |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100   |
| \$56-5-2895 (DUI Assessment)           | \$12    |
| \$56-1-289 (DUI Breath Test)           | \$500   |
| \$35-13 (Public Def/Prob)              | \$25    |
| \$73-3, 1B TP (Law Enforce. Funding)   | \$25    |
| \$93-7, 1B TP (Drug Court Surcharge)   | \$100   |
| \$50-21-114(BUI Breath Test Fee)       | \$50    |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| 3% to County (if paid in installments) | \$      |
| \$50-14 TP (SCCJA Surcharge)           | \$6     |
| TOTAL                                  | \$      |

Heather W. McBride  
Clerk of Court/Deputy Clerk  
Court Reporter: R. Ambrose

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010 GS 40-1108AMW: K 379083Date of Offense: 11-25-08S.C. Code §: 17-25-30 C/LCDR Code #: 0013

## SENTENCE SHEET

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. 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 FundOther: \$25☐ Appointed PD or appointed other counsel, §36-13 TP☐ Requires \$500 to be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2126Sentence Date: 11-2-11

SOCA/217 (03/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATEINDICTMENT/CASE#: 2010 GS 40-1109vs.  
Ricky Sherod BowmanAW#: K373076

AKA:

Date of Offense: 11-25-08

Race:

Sex: M

Age:

S.C. Code #: 16-23-0490

DOB:

SS#:

CDR Code #: 0549

Address:

City, State, Zip:

## SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession of Weapon during Commission of Violent Crimein violation of 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45  
(CSC winner 1<sup>st</sup> or Level Aot)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Debra Dampier 15964  
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 5 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 paymentof \$ \_\_\_\_\_, plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Pardon and Parole Services standard conditions of probation,  
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED ☐☐ set by SCDFPPS \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve WVE beginning \_\_\_\_\_

Substance Abuse Counseling ☐

\*Fines:

|                                        |         |
|----------------------------------------|---------|
| \$14-1-206 (Assessments 107.5%)        | \$      |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100   |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100   |
| \$56-5-2995 (DUI Assessment)           | \$12    |
| \$56-1-289 (DUI Breath Test)           | \$500   |
| \$35-13 (Public Def/Prob)              | \$25    |
| \$73-3, 1B TP (Law Enforce. Funding)   | \$25    |
| \$33-7, 1B TP (Drug Court Surcharge)   | \$100   |
| \$50-21-114(BUI Breath Test Fee)       | \$50    |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| 3% to County (if paid in installments) | \$      |
| \$50-11 TP (SCGJA Surcharge)           | \$5     |
| TOTAL                                  | \$      |

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

\$25

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE G. L. [Signature]Judge Code: 2126Sentence Date: 11-4-11Court Reporter: R. Ambrozio

Clerk of Court/Deputy Clerk

SCCA/217 (03/2009)

## STATE OF SOUTH CAROLINA

COUNTY OF Richland  
STATEvs.  
Ricky S. Bowman

AKA: \_\_\_\_\_

Race: B Sex: M Age: \_\_\_\_\_DOB: 1 SSN: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed RobberyIn violation of 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC winner 1<sup>st</sup> or Lower Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST  
[Signature] 15964  
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the (State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 20 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 paymentof \$ \_\_\_\_\_, 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.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections. 12-13-09☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Out-Waites Hearing ☐ Ordered

PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SODPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |                  |
|----------------------------------------|------------------|
| *Fine:                                 | \$ _____         |
| \$14-1-206 (Assessments 107.5%)        | \$ _____         |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100 \$ _____   |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100 \$ _____   |
| \$56-5-2895 (DUI Assessment)           | \$12 \$ _____    |
| \$56-1-288 (DUI Breath Test)           | \$500 \$ _____   |
| \$35.13 (Public Def/Prob)              | \$25 \$ _____    |
| \$73.3, 1B TP (Law Enforce. Funding)   | \$25 \$ _____    |
| \$33.7, 1B TP (Drug Court Surcharge)   | \$100 \$ _____   |
| \$50-21-114(BUI Breath Test Fee)       | \$50 \$ _____    |
| \$56-5-2842(J) (Vehicle Assessment)    | \$40/ea \$ _____ |
| 3% to County (if paid in installments) | \$ _____         |
| \$90.11 TP (SCCA Surcharge)            | \$5 \$ _____     |
| TOTAL                                  | \$ _____         |

Deanne W. McNeill

Clerk of Court/Deputy Clerk

Court Reporter: R. Ambrosiak

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2010 GS 40-1110AW# K328074Date of Offense: 11-25-08S.C. Code §: 16-11-330(A)CDR Code #: 0139

## SENTENCE SHEET

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve WVE 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: \_\_\_\_\_ \$25 \$ \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to clerk during probation.PRESIDING JUDGE 0.1Judge Code: 2126Sentence Date: 11-9-11

SCCA/217 (03/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATEINDICTMENT CASE# 2010-GS-40-1111Ricky S. Bowman  
vs.AW# K873025  
Date of Offense 11-25-08  
S.C. Code §: 16-3-910  
CDR Code #: 0095

## SENTENCE SHEET

Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_  
In disposition of the said incident comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Richland  
in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095  
☐ NON-VIOLENT ☐ VIOLENT ☐ MOST SERIOUS ☐ SERIOUS ☐ MANDATORY GPS ☐ \$17-25-45  
(SCC without 1<sup>st</sup> or Lowed Act)The charge is: ☒ Bag Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (Defendant Initial)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by this StateATTEST: 15964 Defendant: 27111111 Attorney for Defendant: \_\_\_\_\_ SC Bar # 7888  
Richland SC Bar # \_\_\_\_\_WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_, provided 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.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 12-13-08  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Defendant ☐ Det. Waiver Hearing ☐ Ordinal PTUP \_\_\_\_\_

Total \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/months Public Service Employment

## Payment Terms:

☐ Obtain GED ☐☐ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_☐ May serve VME beginning \_\_\_\_\_☐ Substances Abuse Counseling ☐☐ Random Drug/Alcohol Testing ☐☐ Fine may be pd. in equal, consecutive weekly/monthly

prmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

☐ Other: \_\_\_\_\_ paid to Public Defender Fund

|                                        |         |
|----------------------------------------|---------|
| *Fines:                                | \$      |
| \$14-1-208 (Assessments: 107.5%)       | \$      |
| \$14-1-211(AV1) (Conv. Surcharge)      | \$100   |
| \$14-1-211(AV2) (DUI Surcharge)        | \$100   |
| \$56-5-2955 (DUI Assessment)           | \$12    |
| \$56-1-288 (DUI Breath Test)           | \$500   |
| \$35.43 (Public DefProb)               | \$25    |
| \$73.3, 1B TP (Law Enforc. Funding)    | \$25    |
| \$33.7, 1B TP (Drug Court Surcharge)   | \$100   |
| \$50-21-114(BUI Breath Test Fee)       | \$50    |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| 3% to County (if paid in installments) | \$5     |
| \$50.11 TP (SCCJA Surcharge)           | \$      |
| TOTAL                                  | \$      |

Court Reporter: Jeanette W. McBride  
Clerk of Court/Deputy Clerk: R. AmbrosePRESIDING JUDGE: 2126Judge Code: 11-9-15

Sentence Date: \_\_\_\_\_

SCCA/217 (10/2009)

STATE OF SOUTH CAROLINA  
COUNTY OF Richland  
STATE

INDICTMENT/CASE# 2016 GS-40-1112

AKA: Ricky S. Bowman  
Race: B Sex: M Age:   
DOB:  SSN:   
Address:   
City, State, Zip:   
DL#:  SID#:

AW#: K373073  
Date of Offense: 11-25-08  
S.C. Code §: 16-11-311  
CDR Code #: 079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary 1st

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 079

☐ NON-VIOLENT ☐ VIOLENT ☐ MOST SERIOUS ☐ SERIOUS ☐ MANDATORY GPS ☐ §17-25-45  
(CSC with/without 1<sup>st</sup> or Lower Act)

The charge is: ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant initial) 7/7/16  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State  
ATTEST: Dan Sampson 15764 Defendant 7/7/16 Attorney for Defendant SC Bar # 7986  
WHEREFORE, the Defendant is committed to the Electron Department of Corrections, ☐ County Detention Center,  
for a determinate term of 28 days/months/years to  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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections. 12-13-09  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
SPECIAL CONDITIONS:  
☐ RESTITUTION: ☐ Deferred ☐ Del. Waiver Hearing ☐ Ordered PTUP  
Total: \$  plus 20% fee: \$  days/hours Public Service Employment  
Payment Terms:  Obtain GED ☐  
☐ set by SCOPPPS  Attend Voc. Rehab. or Job Corp.   
Recipient:  May serve WVE 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: \$25  
☐ Appointed PD or appointed other counsel, §35-13 TP  
☐ Requires \$500 be paid to Clerk during probation.  
PRESIDING JUDGE E. McCrady  
Judge Code: 2126 11-9-11  
Sentence Date:

COCKTAILS 15764  
TOTAL Joanette W. McBrady  
Clerk of Court/Deputy Clerk  
Court Reporter: R. Embrozak

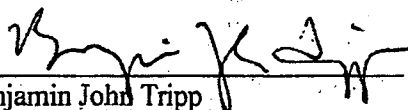
\*Fees:  
\$14-1-208 (Assessments 107.5%)  
\$14-1-211(A)(1) (Conv. Surcharge)  
\$14-1-211(A)(2) (DUI Surcharge)  
\$56-5-2995 (DUI Assessment)  
\$56-1-288 (DUI Breath Test)  
\$35-13 (Public Def/Prob)  
\$73-3, 1B TP (Law Enforce. Funding)  
\$33-7, 1B TP (Drug Court Surcharge)  
\$50-21-114(B)(1) (Breath Test Fee)  
\$58-5-2942(J) (Vehicle Assessment)  
3% to County (if paid in installments)  
\$80-11 TP (SCCA Surcharge)  
TOTAL

SCCA/217 (03/2009)

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 31, 2013

  
Benjamin John Tripp  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

AUG 07 2013

Appeal from Richland County

SC Law of Appeals

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY S. BOWMAN,

APPELLANT

APPELLATE CASE NO. 2011-202926

FINAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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### STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court reversibly erred by closing the courtroom for the testimony of two State witnesses based solely on the fear of the witnesses to testify?

II. Whether the trial court reversibly erred by admitting two out-of-court photographic lineup identifications and subsequent in-court identifications by two State witnesses of Appellant where the only identifying characteristics of Appellant before being shown the lineup was that he wore dark clothes and was dark skinned, where the witnesses covered the faces of the pictures in the lineup to show only the eyes, where Appellant was identified only by his eyes, yet where neither witness could identify any distinguishing characteristics of Appellants eyes despite a large brown scar on Appellant's eye?

### STATEMENT OF THE CASE

Appellant Ricky S. Bowman was indicted by the Richland County grand jury on April 15, 2010, for first degree burglary, armed robbery, kidnapping, common law assault and battery of a high and aggravated nature (ABHAN), and possession of a weapon during the commission of a violent crime. R. 8, lines 2-7; R. 474 – R. 483 (Indictments). The charges arose out of Appellant's alleged participation in a home invasion on the night of November 25, 2008. R. 474 – R. 483 (Indictments).

Appellant's case proceeded to trial before the Honorable G. Thomas Cooper, Jr, and a jury, from November 7 through 9, 2011. Mark Schnee (Counsel) represented Appellant, while April Sampson and Britton All represented the State. R. 1. During trial, Appellant presented alibi and identity defenses. The jury found Appellant guilty on all charges, and the trial court imposed the following concurrent sentences of incarceration: twenty years each for first degree burglary, armed robbery, and kidnapping; ten years for ABHAN; and five years for possession of a weapon during the commission of a violent crime. R. 458, lines 9-25; R. 470, lines 9-24; R. 484 – R. 488 (Sentence sheets).

### STATEMENT OF THE FACTS

Shamael Coit (Shamael), her brother Korey Coit (Korey), Shamael's minor child (Child), and Regina Dennis (Regina) were all at the apartment of Deloris Dennis (Deloris) on the night of November 25, 2008. R. 175, lines 3-22; R. 204, line 5—R. 205, line 3; R. 237, line 16—R. 238, line 17. Sometime between 9:00 pm and 11:00 pm, while watching The Housewives of Atlanta, four armed men broke through the door. One of the men, Sean Toran (Toran) was unmasked, while the remaining three wore hoodies and bandannas to cover their heads and faces. The gunmen questioned the occupants of Deloris' apartment regarding an individual named "Black Shawn," and the location of drugs and guns. R. 176, line 14—R. 177, line 7; R. 184, lines 3-14; R. 198, lines 7-13; R. 205, lines 5-8; R. 207, line 13—R. 209, line 4; R. 241, lines 16—R. 242, line 18.

At a point after the occupants indicated they did not know who Black Shawn was, or the location of any drugs or guns, Deloris was struck twice on the head by one of the three masked assailants whom she described as short and brown skinned. R. 245, lines 1-25. At trial, Deloris indicated she saw the man's eyebrows and eyes for "maybe like a minute or more, two." R. 246, lines 1-23. The same masked assailant also pointed his gun at Shamael while she sat on the couch holding Child, and threatened her. R. 211, line 3—R. 213, line 3. Shamael's trial testimony also indicated she could only see the eyes and eyebrows of the assailant when she looked at him for what she approximated as two to three minutes. R. 213, line 20—R. 214, line 2; R. 277, lines 1-21. After realizing they had entered the wrong apartment, the four gunmen left, taking cell phones, purses, and a wallet on the way out, and threatened to kill the occupants of the apartment if they called the police. Shots were heard outside, and Shamael and Child, Regina, Deloris, and Korey left soon after; Deloris was

taken to the hospital where she stayed overnight. R. 185, R. 187, line 18; R. 196, line 16—R. 197, line 21; R. 214, lines 250, line 22—R. 215, line 2; R. 216, line 22—R. 217, line 17; R. 218, lines 12-18; R. 229, line 5—R. 230, line 8; R. 248, line 21—R. 249, line 2; R. 263, lines 9-16.

Deloris returned to her apartment the following day, as did Regina and Shamael, and called the police. R. 187, line 2—R. 188, line 4; R. 218, lines 1-7; R. 252, lines 12—R. 253, line 23. Over a week later, Shamael, Regina, and Deloris were contacted by then Investigator William Pegram (Pegram) of the Columbia Police Department on December 4, 2008, who asked the three to come to the police station for the purpose of giving statements; the police “also said that we may have the suspects, to come in and do a photo lineup.” R. 188, lines 12-18; R. 218, lines 12-25; R. 254, lines 2-10; R. 330, line 16—R. 331, line 10.

When examining the lineup containing Appellant’s photograph, Shamael and Deloris both covered the top and bottom portions of the image with either paper or their hands such that only the eyes and eyebrows were showing. Based upon this view, they indicated to Pegram that Appellant was the masked assailant that struck Deloris and threatened Shamael. R. 219, line 15—R. 221, line 12; R. 255, line 23—R. 256, line 24; R. 331, -lines 11-17; R. 332, line 16—R. 333, line 14. Although Shamael testified that Appellant’s eyes were brown and set a little further apart from her own, and Deloris indicated at trial that the suspect’s eyebrows were “a little bushy,” neither witness noticed any scars or distinguishing features about Appellant’s eyes themselves, such as a large, dark brown spot on his right eyeball. R. 227, lines 1-21; R. 264, lines 17—R. 265, line 24.

On the day of Appellant’s trial, the State made a pre-trial motion to close the courtroom to the public for the testimony of three of its witnesses: Shamael, Regina, and

Deloris. The State argued the witnesses were afraid to testify due to alleged threats. R. 28, line 13—R. 29, line 2. Specifically, the State asserted the following to why the courtroom should be closed due to the fears of Shamael and Regina: (1) the threats made during the incident itself in 2008; (2) that postings were allegedly made on Facebook approximately one year before the trial “asking if [Shamael] was the girl who was broken in on;” (3) that her brother Korey received a contact on Facebook from Joanna indicating “she couldn’t just stand by and watch her brother go to prison. She further stated that the system doesn’t care about him being there and we shouldn’t send more black men to jail and to please not send her brother to prison, let him be out so he can be a father;” that Regina received a contact from an unknown source on MySpace in 2008 stating that they had her purse and wanted to return it to her. R. 28, line 13—R. 29, line 2; R. 472 – R. 473 (Court’s Ex. Nos. 1 and 2).<sup>1</sup>

Over Counsel’s repeated objections, and without examining any of the alleged documents containing purported threats, the trial court agreed to close the courtroom for the pre-trial and trial testimony of both Regina and Shamael, holding “I don’t know who is making all of these alleged threats, but I’ll grant the motion.” R. 29, lines 3—R. 31, line 25.<sup>2</sup> Immediately prior to Deloris’ testimony pre-trial hearing, the trial court ordered the courtroom cleared of all nonessential personnel, which remained closed for the pre-trial

---

<sup>1</sup> The following day, the State produced affidavits from both Regina and Shamael, which were signed and notarized on the second day of trial: November 8, 2013. R. 472 – R. 473 (Court’s Ex. Nos. 1 and 2).

<sup>2</sup> Counsel again objected when the State indicated in opening statements that Korey would not testify due to fear; Counsel asserted this further exacerbated the prejudice flowing from the trial court’s closure of the courtroom for the testimony of the first two witnesses before the jury. R. 165, line 19—R. 166, line 11; R. 170, line 13—R. 172, line 12. Counsel also renewed his objections at the close of the State’s case, at the close of evidence, and again after the jury returned its verdict. R. 381, line 25—R. 382, line 2; R. 419, line 19—R. 420, line 3; R. 464, lines 17-22.

testimony Shamael, who testified immediately after Deloris, and was later closed again for Regina. R. 51, lines 3-15; R. 70, lines 3-10; R. 119, line 10—R. 120, line 13.

The court also held a pre-trial hearing pursuant to Neil v. Biggers. Pegram made six-pack photographic lineups with Appellant and Toran. R. 87, line 18-2—R. 88, line 15; R. 330, lines 16-25. Deloris stated that she was called by Pegram, who asked her “would I come and see if I could identify them.” R. 60, lines 16-17. Pegram later admitted at trial that the only identifying characteristics given regarding Appellant’s alleged appearance was that the suspect was a short, brown skinned man; prior to the lineup, nothing was ever stated about the eyes of the assailants. R. 331, line 21-25. Only Shamael and Deloris identified Appellant in the lineup, based solely upon his eyes; Toran was also identified. R. 53, lines 23-24; R. 60, line 18—R. 63, line 18; R. 76, line 22—R. 79, line 23. Afterward, Pegram told Shamael and Deloris that the suspects they identified were Appellant and Toran. R. 232, lines 10-16. Yet, even when the witnesses gave statements to Pegram after the photographic lineup was finished, neither Shamael nor Deloris mentioned any description of Appellant’s eyes. R. 98, line 1—R. 99, line 12; R. 101, lines 6-20; see also R. 367, lines 14-21; R. 362, line 12—R. 366, line 4.

Over Counsel’s objections, the trial court held that the lineups were not unduly suggestive; further, the court indicated that even the lineups were unduly suggestive, the Biggers factors supported admission of the evidence. R. 136, line 7—R. 139, line 7. Accordingly, the trial court allowed the out-of-court identifications by Shamael and Deloris, and ruled that their in-court identifications “would not be objectionable.” R. 139, lines 9-14. During trial, the court permitted in and out-of-court identifications of Appellant. R. 220, line 16—R. 224, line 23; R. 255, line 23—R. 258, line 17.

At the end of Appellant's trial, the jury found him guilty as charged. R. 458, lines 9-25. The trial court sentenced Appellant to a total of twenty years incarceration. R. 470, lines 9-24; R. 484 – R. 488 (Sentence sheets).

This appeal follows.

## ARGUMENT

### **I. The trial court reversibly erred by closing the courtroom for the testimony of two State witnesses based solely on the fear of the witnesses to testify.**

The trial court reversibly erred by closing the courtroom during the pre-trial testimony of three State witnesses, and the trial testimony of two State witnesses. Such action by the court violated Appellant's right to a public trial through the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, Section 14 of the State Constitution of South Carolina.

"The Sixth Amendment directs, in relevant part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." Presley v. Georgia, 558 U.S. 209, 130 S.Ct. 721, 722 (2010); see also State v. Sinclair, 275 S.C. 608, 611, 274 S.E.2d 411, 413 (1981) (acknowledging the right to an open trial under both state and federal constitutions). Further, "[t]he Court in In re. Oliver, 333 U.S. 257, 273, 68 S.Ct. 499 (1948), made it clear that this right extends to the States. The Sixth Amendment right, as the quoted language makes explicit, is the right of the accused." Presley, 558 U.S. 209, 130 S.Ct. at 722. In this vein, "[o]ur cases have uniformly recognized that the public-trial guarantee as one created for the benefit of the defendant." Id. 558 U.S. 209, 130 S.Ct. at 724. Also, "to the extent there is an independent public interest in the Sixth Amendment public-trial guarantee, it applies with full force to suppression hearings." Waller v. Georgia, 467 U.S. 39, 65 n.5, 104 S.Ct. 2210, 2216 n.5 (1984).

"In addition to ensuring that judge and prosecutor carry out their duties properly, a public trial encourages witnesses to come forward and discourages perjury." Waller, 467 U.S. at 65, 104 S.Ct. at 2215. "And without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter what the

offense he may be charged.” Oliver, 333 U.S. at 271-72, 68 S.Ct. at 507. Therefore, “[i]n view of this nation’s historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment’s guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison.” Oliver, 333 U.S. at 273, 68 S.Ct. at 507.

Although “the right to an open trial may give way in certain cases to other rights or interests, such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information,” instances such as these “will be rare . . . and the balance of the interests must be struck with special care.” Waller, 467 U.S. at 45, 104 S.Ct. at 2215; see also Presley, 558 U.S. 209, 130 S.Ct. at 724. Thus, the presumption of openness may be overcome only under certain stringent circumstances: (1) “the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;” (2) “the closure must be no broader than necessary to protect that interest;” (3) “the trial court must consider reasonable alternatives to closing the proceeding;” and (4) “it must make findings adequate to support the closure.” See Presley, 558 U.S. 209, 130 S.Ct. at 724; see also Waller, 467 U.S. at 48, 104 S.Ct. at 2216 (citing Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501, 511-12, 104 S.Ct. 819, 824 (1984)).

In the present case, the trial court erroneously granted the State’s motion, and closed the courtroom for testimony of Deloris, Shamael, and Regina during the Biggers suppression hearing, as well as during the trial testimony of Regina and Shamael. First, the only interest offered by the State in support of its motion was the naked assertion that the witnesses were afraid based on prior contacts through social media which they speculated

were related to the defendant. Specifically, the State asserted the following to why the courtroom should be closed due to the fears of Shamael and Regina: (1) the threats made during the incident itself in 2008; (2) that postings were allegedly made on Facebook approximately one year before the trial “asking if [Shamael] was the girl who was broken in on;” (3) that her brother Korey received a contact on Facebook from Joanna indicating “she couldn’t just stand by and watch her brother go to prison.”<sup>3</sup> She further stated that the system doesn’t care about him being there and we shouldn’t send more black men to jail and to please not send her brother to prison, let him be out so he can be a father;” that Regina received a contact from an unknown source on MySpace in 2008 stating that they had her purse and wanted to return it to her. R. 28, line 13—R. 29, line 2; R. 472 – R. 473 (Court’s Ex. Nos. 1 and 2).

However, as to the first concern, the alleged threat was made three years prior to Appellant’s trial, and Appellant was in jail. Thus, even if Appellant threatened the witnesses during the incident, such a threat was far too attenuated, and the ability to carry it out implausible. Further, the right to a public trial would be too easily eroded if any person subjected to a home invasion or armed robbery, accompanied by a threat, could have the courtroom closed simply because they have a fear of testifying. As indicated above, the right to a public trial belongs to the defendant, and cannot be overcome by the discomfort of the accuser to testify in public absent some pressing, overriding interest.

Next, the alleged posting to a witness’ Facebook page was likewise too attenuated to be a pressing threat. Moreover, the content of the purported contact belies the notion that

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<sup>3</sup> Although the affidavit of Regina also indicated a sibling of Appellant purportedly attempted to contact Deloris through Facebook and offer money not to testify, no such affidavit was provided by Deloris regarding the alleged contact. R. 473 (Court’s Ex. # 2).

was even a threat at all, much less that it was done by Appellant or at his direction. Finally, the third reason advanced by the State also falls well short of being a threat. Even assuming without conceding that the person making the contact was Appellant's sister, the content of the message was not a threat; rather, it was a plea for mercy. Also, it was purportedly made on Korey's social media page, not one belonging to Regina, Shamael, or Deloris. Therefore, the State's proffered reasons for closing the courtroom during the testimony of critical State witnesses failed to advance an overriding interest that is likely to be prejudiced. Presley, 558 U.S. 209, 130 S.Ct. at 724.

Second, the closure was broader than necessary to protect the interest offered by the State. Assuming without conceding that the State's facts actually advanced an overriding interest, the only people whom it believed it could identify as threatening the witnesses were Appellant (during the incident three years before the incident), and Appellant's sister. However, Appellant was shackled during his trial; thus, any residual "threat" he posed from his alleged words to the witnesses during the incident three years before the trial was effectively neutralized. R. 10, line 13—R. 11, line 13. Additionally, had Appellant's sister actually made a plea for mercy to Korey on his Facebook page, it was to Korey, not to any of the testifying witnesses. Thus, trial court erred because the closure was broader than necessary to protect the interest offered by the State.

Third, the trial court failed to consider any reasonable alternatives to closing the proceedings. For example, the trial court could have simply removed Appellant's sister during the testimony of Korey's sister, Shamael, rather than clearing the entire courtroom for the testimony of multiple, critical State witnesses both during the pre-trial suppression

hearing, and during the trial itself before the jury. Yet, without making an attempt to seek reasonable alternatives to closing the pre-trial Biggers hearing during the testimony of Regina, Shamael, and Deloris, or the trial testimony of Regina and Shamael, the trial court simply agreed with the State to close the proceedings. R. 30, lines 3-4. Consequently, the trial court erred by failing to consider any reasonable alternatives to closing the proceedings.

Fourth, the trial court failed to make findings adequate to support the closure. The only indication of the trial court's findings before it was actually done was as follows:

I don't know who is making all of these alleged threats, but  
I'll grant the State's motion.

R. 30, lines 3-4. Based on the Court's ruling, (1) admitted it did not know who allegedly made contact with the State's witnesses, and (2) admitted the "threats" were merely alleged rather than substantiated; in other words, it did not even determine whether the purported contacts constituted threats to the State's witnesses before taking the drastic measure of closing the courtroom to the public during testimony of critical State witnesses. Thus, the trial court erred as a matter of law by failing to make findings adequate to support closure.

Indeed, the only glimpse of the trial court's reasoning appeared after Regina and Shamael testified at trial when the State again sought closure immediately before Toran testified. Specifically, the court denied closure for Toran because he was not a female with a child, and anonymity was not a concern because Toran was already charged with the same offenses:

I understand this is not a case of seeking anonymity as were  
the first two, correct?

.....

[Toran] is a different—in a different situation than the  
previous two women, and you know, we've got women with  
children and here we have a codefendant.

R. 271, line 9—R. 272, line 24. As an initial matter, these findings by the trial court were made in support of its decision denying the State its motion to close the court for Toran's testimony, and not in support of its decision prior to closing the courtroom for Regina, Shamael, and Deloris.

Yet, even assuming without conceding that these findings were made in support of its decision to close the courtroom for Regina, Shamael, and Deloris, the identities of Regina, Shamael, and Deloris were already a matter of public record since they were included in the incident reports, and the trial transcript of the present case. Succinctly stated, this case is fundamentally different than one where the identity of a government witness is unknown and must be protected due to ongoing concerns. Accordingly, anonymity cannot suffice as an adequate concern under the circumstances of the present case where, as discussed under the first prong, the witnesses faced no actual or credible threat, nor were they undercover government assets involved in an ongoing investigation. Furthermore, the gender and status as a parent are likewise insufficient as an adequate or legitimate concern; if it did, then countless trials could likewise close the courtroom simply because a witness was a female parent. Therefore, the trial court erred by failing to make findings adequate to support the closure.

Thus, none of the four conjunctive factors required for closing a courtroom during a criminal trial were satisfied in Appellant's case. As a result, the trial court erred by closing the courtroom during the pre-trial Biggers hearing testimony of Regina, Shamael, and Deloris, and during the trial testimony of Regina and Shamael.

Further, Appellant was prejudiced by the trial court's erroneous closure of the courtroom. First, although the South Carolina Supreme Court in State v. Sinclair, 275 S.C.

608, 614, 274 S.E.2d 411, 414 (1981) applied the harmless error standard in 1981 to a case where the courtroom was closed, the United States Supreme Court in 1984 acknowledged and specifically agreed with the analysis applied in federal courts viewing inappropriate closures of the courtroom as errors falling outside of the harmless error analysis.

Specifically, in Waller v. Georgia, the Court noted the following:

The general view appears to be that of the Court of Appeals for the Third Circuit. It noted in an en banc opinion that a requirement of prejudice be shown "would in most cases deprive {the defendant} of the [public-trial] guarantee, for it would be difficult to envisage a case in which he would have evidence available of specific injury." While the benefits of a public trial are frequently intangible, the Framers plainly thought them nonetheless real.

Waller, 467 U.S. at 2217 n.9, 104 S.Ct. at 50 n.9 (quoting United States ex rel. v. Rundle, 419 F.2d 599, 608 (1969)). Therefore, prejudice is presumed due to the trial court's erroneous and improper closure of the courtroom during the pre-trial and trial testimony at Appellant's trial.

Moreover, Appellant was prejudiced by the trial court's erroneous closure of the courtroom even under the harmless error standard. A constitutional error may be harmless only where the reviewing court is able to declare a belief "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 828 (1967); see also Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986).<sup>4</sup> "No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be

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<sup>4</sup> Additionally, it is the burden of the party benefitting from the trial error to prove it was harmless beyond a reasonable doubt. See, e.g., Chapman, 386 U.S. at 24, 87 S.Ct. at 828.

determined from its relationship to the entire case.” State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990).

Here, the State was permitted to present the only two people that personally identified Appellant in an out-of-court photographic lineup as one of their masked assailants before the jury without the pressure of public scrutiny; to say that their testimony and credibility were critical is an understatement. Waller, 467 U.S. at 65, 104 S.Ct. at 2215. Additionally, the State’s theme running throughout the trial—from its opening statements, through to its closing argument—was fear felt by the occupants of Deloris’ apartment. R. 155, lines 16—R. 156, line 8; R. 165, line 19—R. 166, line 11; R. 437, line 17—R. 440, line 11. Thus, the highly irregular action of closing the courtroom for the testimony of these witnesses, even if cleared out of the jury’s presence,<sup>5</sup> served to heighten the importance of witnesses’ testimony, and validate the State’s argument. Therefore, the error was not harmless beyond a reasonable doubt, as it likely contributed to the verdict.

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<sup>5</sup> R. 31, lines 7-9.

II. The trial court reversibly erred by admitting two out-of-court photographic lineup identifications and subsequent in-court identifications by two State witnesses of Appellant where the only identifying characteristics of Appellant before being shown the lineup was that he wore dark clothes and was dark skinned, where the witnesses covered the faces of the pictures in the lineup to show only the eyes, where Appellant was identified only by his eyes, yet where neither witness could identify any distinguishing characteristics of Appellants eyes despite a large brown scar on Appellant's right eye.

The trial court reversibly erred by failing to suppress the out-of-court and in-court identifications of Appellant by Shamael and Deloris during Appellant's trial.

"A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (citing State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)). Thus, the general rule concerning identification "is that a trial court must hold an in camera hearing when the State offers a witness whose testimony identifies the defendant as the person who committed the crime, and the defendant challenges the in-court identification as being tainted by a previous identification or confrontation." State v. Ramsey, 345 S.C. 607, 613, 550 S.E.2d 294, 297 (2001) (citing State v. Cash, 257 S.C. 249 185 S.E.2d 525 (1971)).

The two-prong inquiry used to determine the admissibility of an out-of-court identification is as follows: (1) whether the identification process was unduly suggestive; and if so, (2) whether the out-of-court identification was so nevertheless so reliable that no substantial likelihood of misidentification existed. See Moore, 343 S.C. at 287, 540 S.E.2d at 447; see also Neil v. Biggers, 409 U.S. 188, 198-200, 93 S.Ct. 375, 382 (1972).

In the present case, the identification process was unduly suggestive due to the circumstances under which the witnesses were called to the police station. For example, when the witnesses were called to the station more than a week after the incident, Deloris

stated that she was called by Pegram, who asked her "would I come and see if I could identify them." R. 60, lines 16-17. Thus, the witnesses were told by law enforcement to come to the police station with the expectation that suspects were arrested and only needed to be identified. Therefore, the identification process was unduly prejudicial because the witnesses were tainted by the investigator who called them prior to even being shown the photographic lineups.

Moreover, a substantial likelihood of misidentification of Appellant existed in this case. Several factors should be considered when evaluating the totality of the circumstances to determine the likelihood of misidentification, including the following: (1) the witness' opportunity to view the perpetrator at the time of the offense; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the offense and confrontation. See Manson v. Braithwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 2253 (1977) (citing Biggers, 409 U.S. at 199-200, 93 S.Ct. at 382); Traylor, 360 S.C. at 82, 600 S.E.2d at 527. "Only after a determination as to the reliability of a witness' identification has been made by the trial court may the witness testify before the jury." Moore, 343 S.C. at 289, 540 S.E.2d at 449 (citing State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999)). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." Traylor, 360 S.C. at 81, 600 S.E.2d at 526.

In the case at bar, the witnesses did not have sufficient opportunity to view the perpetrator at the time of the offense. Shamael and Deloris saw three assailants whose heads and faces were covered with "hoodies" and bandannas through the entirety of the incident;

Shamael also saw Toran, who became unmasked at some point. R. 53, lines 15-24; R. 72, lines 6-7; R. 73, lines 16-24. In fact, Deloris described the assailant later identified as Appellant as wearing the bandanna "across his eyes," and was brown skinned. R. 57, lines 2-13. Further, although Shamael indicated she saw the masked gunman for "a few minutes," she also admitted that she did not notice any scars or tattoos (despite the fact that Appellant has a large brown burn mark on his right eye). R. 81, lines 6-11; R. 227, lines 1-21; R. 264, lines 23—R. 265, line 7; R. 401, lines 13-19. Therefore, although both witnesses had an opportunity to see the assailant they identified as Appellant, they only had an opportunity to see at most a small area of the eyes, which was without the remainder of the context of the entire face.

Next, Shamael's and Deloris' degree of attention would have been low due to the factual scenario of the incident itself. As all described, four armed assailants barged into Deloris' apartment shouting and looking for someone—Black Shawn—whom none of the occupants knew. When Deloris purportedly "saw" Appellant, it was over the difficult circumstances with the barrel of a gun pointed at her, and eventually with blood in her eyes. As for Shamael, she allegedly "saw" Appellant while holding Child and singing a song to Child, with a gun pointed at her head, and over the threats of her assailant. And, as the prosecution repeatedly emphasized, the occupants were stricken with fear. Under such circumstances, the degree of attention of Shamael and Deloris would likely have been low.

Moreover, the description of the assailant purported to be Appellant was exceedingly vague: brown skinned with dark clothes. R. 331, line 21-25. This is unsurprising given the coverings over the assailant's head and face, as well as the circumstances of the incident itself. In fact, neither Deloris nor Shamael ever told law enforcement anything about the

assailant's eyes either before or after the photographic lineup. R. 98, line 1—R. 99, line 12; R. 101, lines 6-20; see also R. 367, lines 14-21; R. 362, line 12—~~Tr. 339~~, line 16. The first inkling that police had was when both witnesses covered the top and bottom of the faces in the six-pack photographic lineup containing Appellant's picture. R. 53, lines 23-24; R. 60, line 18—R. 63, line 18; R. 76, line 22—R. 79, line 23; see also R. 219, line 15—R. 221, line 12; R. 255, line 23—R. 256, line 24; R. 331, lines 11-17; R. 332, line 16—R. 333, line 14. Yet, even using this method, neither witness was able to identify the most distinguishing characteristic of Appellant's eyes: the large brown burn mark on his right eye. Accordingly, the witness' prior description of the perpetrator—particularly the primary characteristic by which he was identified—was inaccurate.

Additionally, although both witnesses appeared certain about the identifications they made, it was nonetheless made looking only at a small portion of the pictures: the eyes. Therefore, given the concealment of the assailant's head and face, the circumstances under which the witnesses saw the assailant, and the lack of either detail or accuracy in their identification of the assailant—particularly his eyes—all created a substantial likelihood of misidentification when Shamael and Deloris identified Appellant on December 5, 2013, as one of the three masked assailants from the incident on November 25, 2008. Accordingly, the trial court erred in admitting the out-of-court identifications, as well as the in-court identifications of Appellant by Shamael and Deloris at Appellant's trial.

Further, Appellant was prejudiced by admission of testimony from Martin and Vaught regarding pre-trial identification, as well as admission of the photographic line-up. As previously indicated, a constitutional error may be harmless only where the reviewing court is able to declare a belief "beyond a reasonable doubt that the error complained of did

not contribute to the verdict obtained.” Chapman, 386 U.S. at 24, 87 S.Ct. at 828; see also Van Arsdall, 475 U.S. at 681, 106 S.Ct. at 1436. “No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” Reeves, 301 S.C. at 193-94, 391 S.E.2d at 243.

In the case at bar, the State relied upon the identification of Appellant by Shamael and Deloris to prove its case. Without these two witnesses, there would be no independent identification of Appellant to corroborate Toran’s trial testimony, which he admittedly gave in hopes of securing a deal for himself. Moreover, the State repeatedly referenced the identification of Appellant by Shamael and Deloris in its closing argument. R. 440, line 1—R. 442, line 25. Indeed, the State expressly reminded the jury it would have the six-pack lineup with them during deliberations:

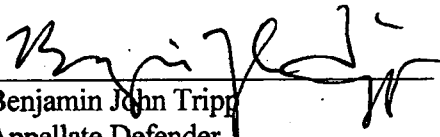
She looked at him for as long as she could, and when she had the opportunity, she did a six-pack identification. You’re going to have these back there with you.

R. 440, lines 10-13. Finally, the error struck to the heart of the defense itself: identity. Therefore, the error was not harmless beyond a reasonable doubt because it likely contributed to the verdict obtained.

CONCLUSION

For the foregoing reasons, Appellant Ricky Bowman respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender

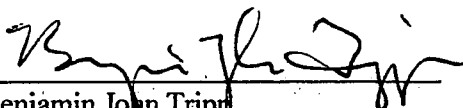
ATTORNEY FOR APPELLANT

This 7th day of August, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 7, 2013

  
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County  
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case No. 2011-202926

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RICKY S. BOWMAN,

APPELLANT.

\_\_\_\_\_  
**FINAL BRIEF OF RESPONDENT**  
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### STATEMENT OF ISSUES ON APPEAL

- I. The argument raised on appeal regarding a violation of Appellant's constitutional right to a public trial is not preserved for review because Appellant never raised this argument below. However, assuming the issue was preserved for review, Appellant's right to a public trial was not violated.**
- II. The specific arguments Appellant raises on appeal regarding the victims' identifications of Appellant are not preserved for review because these arguments were not made to the trial judge below. In any event, Appellant's argument that the trial court erred in admitting the victims' identifications is without merit where the identification process was not suggestive in any way and where the identifications were reliable under the totality of the circumstances.**

### STATEMENT OF THE CASE

Appellant was indicted in Richland County in April 2010 for burglary in the first degree, armed robbery, kidnapping, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. On November 7-9, 2011, Appellant proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury. The jury found Appellant guilty as indicted, and Judge Cooper sentenced Appellant to a total of twenty years. A timely notice of appeal was served and filed.

## ARGUMENT

### Background Facts

Appellant and three accomplices, including Sean Toran, decided to rob a drug dealer named "Black Shawn" because Black Shawn had recently robbed Toran at gunpoint and because Appellant had engaged in unsatisfactory dealings with Black Shawn in the past. (R. p. 276-79). On the evening of November 25, 2008, Appellant and his cohorts donned bandannas and hoodies, armed themselves with guns, and proceeded to the apartment they believed belonged to Black Shawn. (R. p. 279-81). Unfortunately for the victims, Appellant got the wrong apartment. (R. p. 281-88). When Appellant and his accomplices burst into the apartment they believed was Black Shawn's, they encountered Delores, Delores's cousin Regina, Delores's friend Shamael, Shamael's three-year-old daughter, and Shamael's brother Korey. (R. p. 173-291). At first, the robbers were unsure about whether they were in the right apartment or not. (R. p. 281-87). They questioned the occupants about the whereabouts of Black Shawn and the "guns and drugs and weed," but the occupants all denied any knowledge of Black Shawn and any illicit items. (R. p. 243). Some of the robbers took the personal possessions of the occupants, including cell phones and purses. (R. p. 196; p. 288, lines 14-25).

Before Appellant was satisfied he had indeed picked the wrong apartment, he questioned both Delores and Shamael at gunpoint. (R. p. 207-216; p. 241-50). Appellant held Delores at gunpoint in her bedroom and told her he "could take [her] breath away." (R. p. 245). When Delores told him she wasn't afraid to die, Appellant hit her in the head with his gun twice, the second time fracturing Delores's pinky when she tried to block the blow with her hand. (R. p. 245). Appellant held Shamael at gunpoint in the living room while Shamael's three-year-old daughter was in her lap. (R. p. 211-213). Appellant

ordered Shamael to tell him where Black Shawn was and asked her if she wanted her child to see her bleed. (R. p. 211, lines 14-16). Appellant's accomplice Toran, who was the only robber not wearing a mask, told Appellant to leave the child alone and apologized for "hit[ting] the wrong spot." (R. p. 214-15). Toran then rounded up all the robbers and they left the apartment. (R. p. 216). However, before leaving, the men told the victims that if they called the police, they would come back and kill them. (R. p. 187, lines 15-18). Shortly after they left, Delores and her guests heard several gunshots from outside and, in response, they "hit the floor." (R. p. 216-17). They waited a brief period of time to be sure the robbers had left, then Shamael took Delores to the hospital where Delores had to have three staples on the top of her head and had to have a splint placed on her broken finger. (R. p. 217; p. 250). Delores was released from the hospital the next day, and she then returned to her apartment and called the police to report the incident. (R. p. 251-53).

After Investigator Pegram of the Columbia Police Department was assigned to the case, he realized there was a connection between the burglary/robbery at Delores's apartment and a previous robbery of Sean Toran by a drug dealer known as "Black Shawn." (R. p. 324-25). About nine days after the robbery at Delores's apartment, Investigator Pegram helped execute a search warrant at 716 Washington Street, an apartment complex where Sean Toran lived. (R. p. 325). During a search of the apartment of Torrell Johnson, police discovered items that had been stolen from Delores and her guests during the robbery. (R. p. 327). Investigator Pegram then had a conversation with Torrell Johnson, who "just started giving it up," telling Investigator Pegram that he knew about the robbery at Delores's apartment and telling him that Appellant and Sean Toran, who also lived at the 716 Washington Street apartment

complex, were involved. (R. p. 328). Mr. Johnson knew details about the crime that had not been released to the public, so Pegram believed Mr. Johnson knew what he was talking about. (R. p. 328-29).

After receiving Appellant and Sean Toran's names from Torrell Johnson, Investigator Pegram immediately put together two photo lineups. (R. p. 330-31). One of the lineups contained Appellant's picture and one contained Sean Toran's picture. (R. p. 330-31). The next day, December 5, 2008, the victims came to the police station to give written statements and view the photo lineups. (R. p. 254, lines 3-4; p. 331). The victims were separated and placed in different rooms for the duration of the lineup procedure. (R. p. 332). Both Delores and Shamael identified Appellant after using pieces of paper to cover up all but the eye area of the persons in the photographs. (R. p. 332, lines 22-25). Both Delores and Shamael also identified Sean Toran from the other photo lineup. (R. p. 331). Regina and Korey were not able to identify Appellant, but they did both identify Sean Toran. (R. p. 331, lines 13-17).

Subsequently, Investigator Pegram obtained arrest warrants for Appellant and for Sean Toran. (R. p. 333, lines 15-25). Appellant was arrested about a year later after United States Marshals located him in Savannah, Georgia. (R. p. 334). Sean Toran, who was already in jail on drug charges, was also arrested, and he eventually decided to cooperate with the State and testify against Appellant at trial. (R. p. 334; p. 273-91). After rejecting the alibi testimony presented by Appellant, the jury convicted Appellant of armed robbery, burglary in the first degree, kidnapping, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. (See R. p. 400-11; p. 458, lines 6-25). The trial judge sentenced Appellant to a total of twenty years. (R. p. 470, lines 9-21).

- I. The argument raised on appeal regarding a violation of Appellant's constitutional right to a public trial is not preserved for review because Appellant never raised this argument below. However, assuming the issue was preserved for review, Appellant's right to a public trial was not violated.

#### Relevant Facts

In a pre-trial motion, the State requested that the courtroom be cleared during the Neil v. Biggers hearing. (R. p. 28, line 10 – p. 29, line 2). The solicitor explained that one of the witnesses, Mr. Toran, had “received threats all weekend,” and that the victims had received e-mails from Appellant's sister offering them money not to testify and asking them not to send Appellant to jail. (R. p. 28, lines 16-24). The solicitor stated that, because of the threats, the victims were in fear and asked that “the court be cleared just while they testify.” (R. p. 28, line 25 – p. 29, line 2). In response, Appellant's counsel stated as follows:

Judge, I would object to any clearing of the court. While there have been some allegations, my client and his family maintain they have not done anything of the sort. There is no proof that I've seen, no evidence of e-mails. I certainly haven't been provided copies of any. I believe it's unfair to clear the courtroom, particularly in front of the jury. . . In terms of singling out my client's family, not anyone else. . . Obviously, in front of the jury, I would object to having anyone removed on the basis that it appears that people are leaving from my client's side. If they have any inclination that they're in fear, that prejudices my clients. He has been incarcerated, so it's certainly not from my client himself. (R. p. 29, lines 3-13; p. 31, lines 1-6).

The solicitor agreed that no one would be required to get up and walk out in the presence of the jury. (R. p. 30-31). The trial judge ruled, “I don't know who is making all of these alleged threats, but I'll grant the State's motion.” (R. p. 30, lines 3-4). The courtroom was thereafter cleared during the Neil v. Biggers pre-trial hearing testimony of Delores, Shamael, and Regina. (See R. p. 51, lines 3-8; p. 115, lines 13-25; p. 119, line 14 – p. 120, line 2). No further objections or arguments were raised on Appellant's

behalf when the courtroom was cleared during the pre-trial Neil v. Biggers hearing. (See R. p. 51, lines 3-8; p. 115, lines 13-25; p. 119, line 14 – p. 120, line 2).

Later, during trial, the State again raised the issue of clearing the courtroom during the testimony of Regina and Shamael. (R. p. 144-45). The solicitor presented the judge with affidavits from these two victims detailing their fears about testifying. (See R. p. 144, line 22 – p. 145, line 5; Court's Exhibit # 1 & 2). The judge stated he would clear the courtroom "over the objection of the defendant." (R. p. 145, lines 8-9). Appellant's counsel then stated that "in terms of these affidavits, there is nothing in here saying that there is any threats or that there's any fear or any reason for them to believe that there are threats or a reasonable fear from either my client or his family, and I would object to clearing the courtroom **on that basis.**" (R. p. 145, lines 15-23). The judge reiterated that the clearing of the courtroom would be for two witnesses only. (R. p. 145, lines 24-25).

Following the parties' opening statements, the State made a formal request that the courtroom be cleared during the testimony of its first two witnesses. (R. p. 170, lines 13-17). Appellant's counsel then stated he had "a couple of issues regarding clearing the courtroom." (R. p. 171, lines 4-5). First, Appellant's counsel moved for a mistrial on the ground that the solicitor's opening statement brought up the fact that "there is an alleged fear of retaliation" on the part of the victims and that if the courtroom were cleared at this point, "all that is doing is validating the arguments to the jury that my client and his family are somehow a threat." (R. p. 171, lines 11-20). Counsel argued that "the prejudicial value of that is now incredibly enhanced based on those arguments in the opening statement." (R. p. 171, lines 20-23). The trial judge overruled the motion and cleared the courtroom, outside the presence of the jury, "just for these first two witnesses." (R. p. 172, lines 10-13). However, the judge allowed a person seeking to

obtain his Rule 403, SCACR, trial experiences to remain in the courtroom and also allowed a victim's advocate to remain in the courtroom. (R. p. 172, lines 13-20).

Subsequently, the State moved to also close the courtroom during the trial testimony of Sean Toran, a co-defendant of Appellant. (R. p. 271, line 9 – p. 273, line 1). The solicitor stated that Mr. Toran had completed an affidavit detailing the threats he had received and indicated Mr. Toran had received threatening phone calls. (R. p. 271, lines 14-22). The solicitor also stated that Mr. Toran was concerned about his safety and “would feel more free in his testimony” if Appellant’s family members were not in the courtroom “staring him down.” (R. p. 272, lines 12-16). The trial judge denied the request to close the courtroom, finding that Toran and the two victims were in entirely different positions since the victims were “women with children” and Toran was a co-defendant. (R. p. 272, lines 3-24). Appellant’s counsel made no comment during this exchange. (See R. p. 271-73).

After the close of all the testimony, Appellant’s counsel renewed his motion for mistrial based upon the solicitor’s comments in her opening statement regarding the fear of the victims, stating that he believed the solicitor’s comments, coupled with the fact that Appellant’s family members were removed during the testimony of two of the victims, warranted a mistrial. (R. p. 419-20). In response, the solicitor pointed out that the courtroom was cleared “without the jury even knowing what had happened,” and therefore, Appellant had not been prejudiced. (R. p. 420, line 23 – p. 421, line 2). The trial judge denied the motion for mistrial for the reasons he stated on the record previously. (R. p. 421, lines 10-12).

### Issue Preservation

Appellant now argues on appeal that the trial judge erred by closing the courtroom during the pre-trial testimony of three State witnesses, and during the trial testimony of two State witnesses, because doing so violated Appellant's constitutional right to a public trial. This argument is not preserved for appellate review. The only two points Appellant raised below to the trial judge when he opposed the closure of the courtroom were that there was insufficient proof of threats by Appellant or his family members and that closure of the courtroom was prejudicial to Appellant because, if done in the presence of the jury, it would reinforce the notion that the witnesses were afraid of Appellant. (See R. p. 28-31; p. 144-45; p. 170-72; p. 420-21). Appellant never once mentioned a violation of his right to a public trial and never once mentioned the Sixth Amendment. Consequently, the issue raised on appeal regarding a violation of Appellant's constitutional right to a public trial is not preserved for appellate review. See In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal."); State v. McWee, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (where defendant failed to cite to a constitutional basis for his objection at trial, the constitutional issue raised on appeal was not preserved for review); State v. Carlson, 363 S.C. 586, 598, 611 S.E.2d 283, 289 (Ct. App. 2005) (constitutional arguments are not exempt from the error preservation rules); State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (citation omitted) (in order to preserve an alleged error for review, a specific objection must be made to alert the court regarding the precise nature of the error); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (citations omitted) (a party may not argue one ground at trial and an alternate ground on

appeal). Therefore, this Court must dismiss Appellant's Issue I on error preservation grounds.

#### The Sixth Amendment was not Violated

Even if the issue had been preserved, the State submits that there was no violation of Appellant's Sixth Amendment right to a public trial where there was no "closure" of the courtroom to the public as contemplated by Presley v. Georgia, 558 U.S. 209 (2010). See also Waller v. Georgia, 467 U.S. 39 (1984) and In re Oliver, 333 U.S. 257 (1948). In Presley, the judge closed the courtroom to all members of the public during the jury voir dire. See Presley at 210; see also United States v. Villagomez, 708 F.Supp.2d 1105, 1125 (D.N. Mariana Islands 2010). In Appellant's case, at least one member of the public - a lawyer watching the proceedings to obtain his Rule 403 trial experiences - was present during all of the proceedings, and Appellant's family members were excused from the courtroom for only a limited period of time.<sup>1</sup> (See R. p. 172, lines 13-20). See State v. Lormor, 172 Wash.2d 85, 93, 257 P.3d 624, 629 (2011) (holding that "a 'closure' of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave"). Thus, Appellant's trial was not a "secret trial" as proscribed by our Constitution. See In re Oliver at 266-73 (discussing the long-standing fear of secret trials as the foundation for the Sixth Amendment right to public trials); see also Caudill v. Peyton, 368 F.2d 563, 565 (4<sup>th</sup> Cir. 1966) (disapproving an *in camera* trial in the judge's chambers). Accordingly, since there was not a total "closure" of the courtroom to the public, Appellant's Sixth Amendment rights were not violated.

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<sup>1</sup> Notably, Appellant's family members could have been sequestered had they been potential witnesses. See Rule 615, SCRE ("Exclusion of Witnesses").

Even if this Court finds that there was a closure in this case triggering the Sixth Amendment's protection, the test set forth in Presley v. Georgia may not be the appropriate test since any closure in this case was only partial and temporary. Inasmuch as partial closures do not implicate the same Sixth Amendment concerns as do total closures, and since there are no U.S. Supreme Court cases indicating how a court should address a partial closure, the U.S. Circuit Courts have developed a test specifically tailored to partial and temporary closures. See United States v. Deluca, 137 F.3d 24, 33-34 (1<sup>st</sup> Cir. 1998); Nieto v. Sullivan, 879 F.2d 743, 753 (10<sup>th</sup> Cir. 1989); United States v. Sherlock, 865 F.2d 1069, 1077 (9<sup>th</sup> Cir. 1989); Judd v. Haley, 250 F.3d 1308 (11<sup>th</sup> Cir. 2001); Woods v. Kuhlmann, 977 F.2d 74 (2d Cir. 1992); United States v. Osborne, 68 F.3d 94, 98-99 (5th Cir.1995); United States v. Farmer, 32 F.3d 369, 371 (8th Cir. 1994); see also Bell v. Jarvis, 236 F.3d 149, 168 (4<sup>th</sup> Cir. 2000). This test varies only slightly from the test set forth in Presley v. Georgia. Under the Presley test, (1) there must be an "overriding interest" that is likely to be prejudiced; (2) the closure must be no broader than necessary to protect that interest; (3) the trial judge must consider reasonable alternatives to closing the proceeding; and (4) the trial judge must make adequate findings to support the closure. Presley v. Georgia at 214 (citing Waller). The partial closure test created in the U.S. Circuit Courts is the same as the Presley test except that a "substantial reason" for the closure is required rather than an "overriding interest." See, e.g., United States v. Sherlock, 865 F.2d at 1076-77.

In Appellant's case, it is clear from the record that the trial judge agreed to partially close the courtroom during some of the testimony because he was concerned that the presence of Appellant's family members in the courtroom would inhibit the witnesses' truthful testimony, considering that the witnesses felt threatened by improper

pre-trial contact. A trial judge is accorded broad discretion in conducting a criminal trial, and the trial judge has a duty to help to ensure that the truth is ascertained. See State v. Vickers, 226 S.C. 301, 306, 84 S.E.2d 873, 876 (1954) (“The purpose of a trial in a criminal case is to ascertain the truth of the matters charged against the defendant, and it is a part of the business of the trial judge to see that this end is attained.”) (quoting State v. Furtick et al., 147 S.C. 82, 144 S.E. 839, 840 (1928)); State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007). (“[A] trial court is given enormous discretion in conducting a criminal trial.”); State v. Hawkins, 300 S.C. 225, 226, 387 S.E.2d 251 (1989); (“The wide discretion accorded presiding judges, embedded in the law of South Carolina, is essential to the orderly administration of justice.”); State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (“A trial judge has the inherent power to maintain order and decorum in his courtroom.”) (citations omitted).

Here, the “overriding interest” or “substantial reason” justifying a partial closure was ensuring that the witnesses felt free to testify truthfully regarding the facts without being inhibited by the presence of persons by whom they felt threatened. Similar concerns have been held to be sufficiently compelling reasons justifying closure of a proceeding. See, e.g., State v. Gee, 262, S.C. 373, 384-85, 204 S.E.2d 727, 731-32 (1974); State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981); United States Ex Rel. Laws v. Yeager, 448 F.2d 74, 80-81 (3d Cir. 1971); Woods v. Kuhlmann, 977 F.2d 74 (2d Cir. 1992); Nieto v. Sullivan, 879 F.2d 743, 753-54 (10<sup>th</sup> Cir. 1989); United States v. Farmer, 32 F.3d 369, 371 (8th Cir. 1994); U. S. ex rel. Bruno v. Herold, 408 F.2d 125 (2d Cir. 1969); Lowe v. State, 141 Ga.App. 433, 436, 233 S.E.2d 807, 809-810 (Ga. App. 1977); State v. Rusin, 153 Vt. 36, 40-41, 568 A.2d 403, 406 (1989); Hackett v.

State, 266 Ind. 103, 110-11, 360 N.E.2d 1000, 1004 (1977); People v Mack, 178 A.D.2d 661, 577 N.Y.S.2d 892 (2d Dep't 1991).

Second, the "closure" in this case was partial and only lasted for as long as was necessary. Further, arguably, there were no reasonable alternatives except for closure of the courtroom during the witnesses' testimony, and the judge closed the courtroom outside the presence of the jury so that Appellant would not be prejudiced. Finally, although the trial judge could have been more explicit in his ruling, his intent is apparent from the record. However, if this court determines that the judge's findings are insufficient, Respondent submits that a remand to the trial judge for further findings would be appropriate rather than reversal of the entire trial. See State v. Colf, 337 S.C. 622, 629, 525 S.E.2d 246, 249 (2000); Timothy C. Doughtie Advertising, Inc. v. Nelsen Steel and Wire Co., Inc., 284 S.C. 27, 324 S.E.2d 329 (Ct. App. 1984); Golden Strip Motors, Inc. v. Pennsylvania Nat. Mut. Cas. Ins. Co., 288 S.C. 548, 343 S.E.2d 659 (Ct. App. 1986) (all holding that remand for further factual findings was appropriate where the trial court failed to rule on an issue); see also United States v. Galloway, 937 F.2d 542, 546-47 (10<sup>th</sup> Cir. 1991) (remanding Sixth Amendment issue to the district court with directions to supplement the record with the facts and reasoning upon which a partial closure of the courtroom was based, since granting a new trial without such findings being made would constitute a windfall and would not be in the public interest, especially where the defendant failed to object to the lack of findings by the district court); Yung v. Walker, 341 F.3d 104 (2d Cir. 2003) (remanding Sixth Amendment public trial issue to the district court for further findings); Kendrick v. State, 661 N.E.2d 1242 (Ind.App. 1996) (since the lower court failed to make adequate findings on the record regarding his

partial closure of the courtroom, case was remanded for trial court to enter specific findings).

Finally, even if this Court finds that the trial court committed error in closing the courtroom, this Court should conclude that this error was too trivial to violate the Sixth Amendment. Such a conclusion would not be without support. Some of the U.S. Circuit Courts, and some state courts, have adopted a “triviality exception” to the Sixth Amendment’s public trial guarantee. See, e.g., United States v. Perry, 479 F.3d 885, 889-91 (D.C. Cir. 2007); United States v. Gupta, 650 F.3d 863, 867-72 (2d Cir. 2011); Com. v. Alebord, 80 Mass.App.Ct. 432, 439-40, 953 N.E.2d 744 (Mass.App.Ct. 2011); Barrows v. U.S., 15 A.3d 673, 676-81 (D.C. 2011); Kelly v. State, 195 Md.App. 403, 420-29, 6 A.3d 396, 406-11 (Md.App. 2010). Further, in United States v. Gupta, the Second Circuit Court of Appeals determined that the triviality exception is consistent with the United States Supreme Court’s opinion in Presley v. Georgia. Gupta, 650 F.3d 863, 867-72 (2d Cir. 2011). Under the triviality exception, a court looks to whether the actions of the court, and the effect such actions had on the conduct of the trial, deprived the defendant – whether innocent or guilty – of the protections of the Sixth Amendment. See Gupta at 867. Thus, a determination that the exclusion was trivial means that the error was not significant enough to rise to the level of a constitutional violation. See id. The core values protected by the Sixth Amendment are examined, and whether a particular closure implicates the Sixth Amendment depends upon whether the closure undermines these values. Id. These core values are as follows: (1) to ensure a fair trial; (2) to remind the prosecutor and the judge of their responsibility to the accused and the importance of their functions; (3) to encourage witnesses to come forward; and (4) to

discourage perjury. Peterson v. Williams, 85 F.3d 39, 41-43 (2d Cir. 1996) (citing Waller at 46-47).

As discussed previously, a partial and temporary closure does not implicate the same Sixth Amendment concerns as does a total closure of the courtroom for the entire duration of a trial. In this case, the partial and temporary closure was too trivial to constitute a violation of Appellant's Sixth Amendment rights. The trial was not conducted in secret since at least one member of the public was present, and the core values of the Sixth Amendment were not subverted. In fact, the partial and temporary closure arguably furthered these core values because it allowed the witnesses to testify freely and fully without being inhibited by the presence of persons by whom they felt threatened. Accordingly, this Court should conclude that any error with respect to the closure of the courtroom in this case was trivial and did not violate Appellant's Sixth Amendment right to a public trial.

- II. The specific arguments Appellant raises on appeal regarding the victims' identifications of Appellant are not preserved for review because these arguments were not made to the trial judge below. In any event, Appellant's argument that the trial court erred in admitting the victims' identifications is without merit where the identification process was not suggestive in any way and where the identifications were reliable under the totality of the circumstances.**

Unduly Suggestive Identification Procedure

Appellant now asserts that the trial court should have suppressed the victims' identifications of Appellant, first arguing that "the identification process was unduly suggestive due to the circumstances under which the witnesses were called to the police station." (Brief of Appellant, p. 18). Specifically, Appellant contends that, where victim Delores testified that Investigator Pegram called her and asked her to come to the police station to "see if I could identify them," the identification process was "unduly

prejudicial” because the witnesses were “tainted by the investigator” who gave them the “expectation that suspects were arrested and only needed to be identified.” (Brief of Appellant, p. 19). However, Appellant never made this argument to the trial judge below.<sup>2</sup> (See R. p. 132-39). Accordingly, since the issue presented on appeal was not raised or ruled upon below, this issue is not preserved for appellate review. See, e.g., State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (argument not preserved for appeal where precise issue not presented to the trial court); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party may not argue one ground at trial and another ground on appeal).

Even if the issue had been properly preserved, Appellant’s contention that the lineup procedure was unduly suggestive is without merit. Appellant cites no case law supporting the proposition that Investigator Pegram’s comment to Delores regarding the reason for her coming to the police station - to see if she could identify the perpetrators - was improper.<sup>3</sup> Appellant also fails to adequately explain why this comment would be “unduly suggestive,” especially considering that Investigator Pegram never told the victims that the perpetrator was necessarily in the photo lineup and never in any manner suggested which of the photographs the witnesses should pick. (See R. p. 60-64; p. 76-84; p. 88-92). Notably, in State v. Davis, our Supreme Court held that an officer’s instruction to the witness, made while handing a witness a photographic lineup, to “see if

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<sup>2</sup> In fact, the only argument made below that *might* be construed as an argument that the lineup was unduly suggestive was counsel’s assertion that “[t]here is nothing on the record that shows that based on the description of the eyes that lineups were done in order to show anything of similar eyes for any possible suspects. I believe the out-of-court lineup has been tainted.” (R. p. 132, lines 20-24; see also p. 133, lines 10-11).

<sup>3</sup> Appellant points to the testimony of Delores during her pre-trial testimony paraphrasing what Investigator Pegram said to her when he contacted her about coming to view the photo lineup; however, Appellant does not specifically contend that any of the comments made to the other identification witness, Shamael, were improper. (See R. p. 60, lines 12-17; p. 76, lines 18-23). Also, notably, at trial, Delores testified that when Investigator Pegram contacted her, he merely “asked if I would come by the office and write a statement.” (R. p. 253-54).

she recognized anyone,” was not unduly suggestive since there was no suggestion in the record that the police officer insinuated which photograph belonged to the defendant and since witnesses are “clearly” aware that “the reason [they are] requested to view [a] photographic lineup [i]s because the police ha[ve] a suspect.” State v. Davis, 309 S.C. 326, 339, 422 S.E.2d 133, 141 (1992), *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); State v. Mansfield, 343 S.C. 66, 74-76, 538 S.E.2d 257, 261-62 (Ct. App. 2000) (it was apparently not suggestive for the police to tell a witness that they “have a suspect” for the witness to look at in a one-man show-up); see also Clark v. State, 271 Ga. 6, 13, 515 S.E.2d 155, 162 (Ga. 1999) (although a police officer displaying a lineup to a witness should avoid expressly telling the person that the lineup contains the police officer’s suspect, “such a statement does not make a lineup impermissibly suggestive since the very fact that a lineup is being conducted suggests that a suspect is contained therein”); Rimmer v. State, 825 So. 2d 304, 317 (Fla. 2002) (“the fact that the police told [the witness] prior to his viewing the physical lineup that they had included a suspect in the lineup does not taint [the witness’s] identification” where the photo spread consists of six men with similar characteristics and there is no evidence that the police directed the victim’s attention to the defendant’s photograph); Kelly v. State, 18 S.W.3d 239, 243 (Tex. App. 2000) (“a lineup is not rendered impermissibly suggestive merely because the complainant is informed that it contains a ‘suspect,’ because a complainant would ‘normally assume that to be the case.’”) (quotation omitted); State v. Timmons, 956 S.W.2d 277, 283 (Mo. App. 1997) (“Mr. Timmons further argues that the lineup was suggestive because the police had stated to the victims that a possible subject was in the lineup. Whether the police suggested a suspect was present is moot, however, as ‘it is implicit in a line-up or photographic array

that one of the persons shown is a suspect.”) (quotation and citation omitted); State v. Smith, 681 So.2d 980, 986 (La. App. 1996) (“Even if the officers told the witnesses a suspect would be in each lineup, such a statement does not, in itself, constitute suggestiveness as it is assumed that, when a person is asked to view a lineup, a suspect will be included.”) (citation omitted); State v. Boutte, 447 So. 2d 1229, 1231 (La. App. 1984) (“The defendant claims that the lineup was suggestive since the victims were told that a suspect would be in the lineup. This, in itself does not constitute suggestiveness, for it is generally assumed that when one is called to examine a physical lineup there is a suspect in the crowd.”) (citations omitted); State v. Garcia, 235 Neb. 53, 59-60, 453 N.W.2d 469, 474 (Neb. 1990) (“Though Detective Salak advised Otto that a suspect was pictured in the photographic array, a police officer's comment that a lineup or photographic array contains a suspect or a suspect's picture does not render the identification procedure unduly suggestive inasmuch as a witness would assume that to be the case.”) (citations omitted); People v. Williams, 117 Ill. App. 2d 34, 43, 254 N.E.2d 81, 86 (Ill. App. 1969) (“When a witness is asked to view a line-up, there is, necessarily, an implied suggestion that the police investigation has led them to believe that one of the persons exhibited in the line-up may have committed the crime. . . . The remarks complained of in the instant case were not unfairly suggestive or prejudicial to defendants; they merely verbalized the obvious.”).

Therefore, Appellant's argument that the identification process was unduly suggestive based upon Investigator Pegram's comment to victim Delores is plainly without merit, and this Court need not reach the second prong of the Biggers test.

### Substantial Likelihood of Misidentification

Appellant also argues that a substantial likelihood of misidentification of Appellant existed under the totality of the circumstances, including that the witnesses did not have sufficient opportunity to view the perpetrator at the time of the offense; the witnesses' degree of attention was low due to the circumstances of the incident; the description given of Appellant was exceedingly vague and inaccurate; and the identifications were made looking only at the eyes in the photographic lineup. (See Brief of Appellant, p. 19-21). However, in the pre-trial Neil v. Biggers hearing, Appellant's only arguments were based upon the accuracy of the victims' prior descriptions of the perpetrator (R. p. 132, lines 14-24; p. 133, lines 10-11) and that the time period between the crime and the showing of the lineup was "11 days." (R. p. 132, line 25 – p. 133, line 2). Appellant's counsel also argued that "the procedure is unreliable based on covering the majority of the face only looking at eyes when that's not how the lineups were originally set up." (R. p. 133, lines 6-9). Because Appellant's arguments below were different than the ones he raises on appeal, his issue regarding a "substantial likelihood of misidentification" is not preserved for appellate review. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

Assuming this issue was preserved for review, the trial judge did not err in admitting the victims' identifications of Appellant. Under Neil v. Biggers, 409 U.S. 188 (1972), there is a two-prong inquiry used to determine the admissibility of out-of-court identifications. State v. Brown, 356 S.C. 496, 503, 589 S.E.2d 781, 784 (Ct. App. 2003). First, the court must determine if the identification process was unduly suggestive. Id. (citing State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)). If the court finds that a suggestive procedure has in fact been used, the court should then determine whether the

identification was nonetheless reliable, and therefore admissible in evidence, under the totality of the circumstances. Id. (citations omitted). The following factors are normally considered to determine the reliability of an identification: “(1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the confrontation.” Id. at 503, 589 S.E.2d at 784 (citation omitted).

The decision to admit eyewitness identifications is within the trial judge's discretion and will not be disturbed on appeal absent an abuse of that discretion or the commission of prejudicial legal error. State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000).

In this case, contrary to Appellant's assertions on appeal, the victims' testimony supported that their identifications were reliable under the totality of the circumstances. Delores was the first victim who identified Appellant from a photographic lineup. (R. p. 51-69). Delores indicated that she had a good opportunity to view Appellant because he was standing “right in [her] face” for a full minute or two, had a gun pointed at her head, and eventually hit her with the gun two times after she talked back to him. (R. p. 56-57). Delores described Appellant as a black male who was shorter than co-defendant Sean Toran, brown-skinned (about the same complexion as herself), and testified he had on dark clothes with a bandanna across his face, but she could see his eyes and eyebrows. (R. p. 54-57; p. 60; p. 87-88; p. 98, lines 8-12; p. 246; p. 330, lines 16-22; p. 345, lines 15-16). She testified that she specifically remembered his eyes and recalled that his eyes were “dilated” and his eyebrows were “a little bushy.” (R. p. 66, lines 7-8; p. 265, lines

8-12). Delores made her identification of Appellant ten days after the crime. (R. p. 331, lines 8-10). Delores covered up the lower portion of each man's face in the lineup since, during the crime, the perpetrator had that portion of his face covered. (R. p. 61, line 22 – p. 62, line 3; p. 67, lines 9-15; p. 69, lines 7-8). Finally, Delores was “100 percent” sure of her identification of Appellant despite the fact that she identified him solely based on his eyes. (R. p. 69, lines 9-10; p. 90, lines 16-23; p. 256, lines 17-21; p. 258, lines 6-17).

Shamael was the second victim to identify Appellant in a pre-trial photo lineup. Shamael got a good look at Appellant because Appellant stood less than two feet from her, “right in front of [her] face,” while making threatening statements to her and pointing a gun at her and her daughter. (R. p. 72-75). Although Appellant had on dark, baggy clothes and had a bandanna over the lower part of his face, Shamael stared at Appellant's eyes the whole time he was in front of her, which was “for a few minutes.” (R. p. 72-76; p. 81, lines 9-12). Shamael testified that she had been an ophthalmological assistant for the past eight years and that she “know[s] people's eyes.” (R. p. 80, lines 15-23). She stated that she “studied” Appellant's eyes that night and remembered them, and stated she was able to see Appellant's eyes and his eyebrows despite the bandanna. (R. p. 80; p. 213, lines 20-24). Shamael described Appellant as a black male who was shorter than co-defendant Sean Toran, brown-skinned, and wearing dark clothes and a bandanna across his face. (R. p. 76, lines 12-17; p. 98, lines 8-12; p. 218; p. 345, lines 15-16). Like Delores, Shamael made her identification of Appellant ten days after the crime. (R. p. 331, lines 8-10). Also like Delores, Shamael covered the lower portions of the faces in the lineup photos.<sup>4</sup> (R. p. 77-78). Shamael testified that she was “110 percent sure” of

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<sup>4</sup> As mentioned previously, the lineups were shown separately while the victims were in different rooms, and the victims did not have contact with one another during this time. (R. p. 88-92).

her identification of Appellant “because those were the same eyes I saw that night.” (R. p. 77, line 14; p. 78, lines 11-13).

In sum, both victims had a good opportunity to view Appellant, who stood in front of them for at least a couple of minutes with a gun pointed at them while threatening them. Both victims had a high degree of attention focused on Appellant during this time. See, e.g., State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999) (a victim in fear for his life has a heightened degree of attention). Further, although the descriptions given by both victims were not detailed, they were indeed accurate, and the fact that neither victim noticed the burn mark in one of Appellant’s eyes is not fatal. See State v. Mansfield, 343 S.C. 66, 79–80, 538 S.E.2d 257, 264 (Ct. App. 2000) (finding eye witness identification “on the whole was accurate” even though the witness described the perpetrator as having plaits in his hair and wearing tennis shoes while the defendant actually had an afro and wore boots); see also Manson v. Brathwaite, 432 U.S. 98, 117 (1977) (the reliability of an identification is a jury issue despite the fact that there may be elements of untrustworthiness in the identification because “[j]uries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature”). Each victim was absolutely certain about her identification of Appellant, and both identifications took place only ten days after the crime. See State v. Patterson, 337 S.C. 215, 230-31, 522 S.E.2d 845, 853 (Ct. App. 1999) (noting that the identification took place “only two weeks” after the crime). Finally, despite the fact that Appellant had much of his face covered during the crime, *both* of the victims who had direct, face-to-face contact with Appellant that night were able to identify him based upon his eyes. Clearly, the fact that both victims picked the same eyes solidifies the accuracy and reliability of the identifications.

In conclusion, since there was testimony supporting the trial judge's determination that the identifications of Appellant were reliable under the totality of the circumstances, the admission of the victims' out-of-court and in-court identifications must be upheld. (See R. p. 174, line 6 – p. 175, line 14). See Patterson at 228, 522 S.E.2d at 851 (a trial court's rulings on admissibility of identification evidence should not be reversed on appeal absent abuse of discretion or prejudicial legal error).

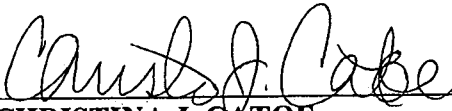
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General

  
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**ATTORNEYS FOR RESPONDENT**

August 22, 2013

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Richland County  
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case No. 2011-202926

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

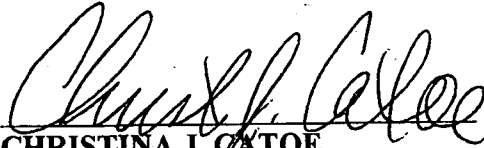
v.

RICKY S. BOWMAN,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.

  
CHRISTINA J. CATOE

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ATTORNEYS FOR RESPONDENT

August 22, 2013

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AUG 22 2013

**SC Court of Appeals**



ALAN WILSON  
ATTORNEY GENERAL

January 30, 2014

**VIA HAND-DELIVERY**

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: State of South Carolina v. Ricky S. Bowman**  
**Appellate Case No. 2011-202926**  
**SUPPLEMENTAL CITATION**

Dear Ms. Kitchings:

Oral argument in the above referenced case is scheduled for Wednesday, February 5, 2014, in Courtroom 2. Pursuant to Rule 208(b)(7), SCACR, I am notifying the Court of following supplemental citation, which is pertinent to an issue discussed on page 14 of the Final Brief of Respondent:

United States v. Gupta, 699 F.3d 682 (2<sup>nd</sup> Cir. 2012).

Thank you for your attention to this matter, and please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Christina J. Catoe  
Assistant Attorney General  
SC Bar No. 73562

cc: Benjamin J. Tripp, Esquire  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211-1589

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JAN 30 2014

**SC Court of Appeals**

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Ricky S. Bowman, Appellant.

Appellate Case No. 2011-202926

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Appeal From Richland County  
G. Thomas Cooper, Jr., Circuit Court Judge

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Unpublished Opinion No. 2014-UP-132  
Heard February 5, 2014 – Filed April 2, 2014

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**AFFIRMED**

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Appellate Defender Benjamin John Tripp, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Christina J. Catoe, both of Columbia,  
for Respondent.

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**PER CURIAM:** Ricky S. Bowman appeals his convictions for first-degree burglary, armed robbery, kidnapping, common law assault and battery of a high and aggravated nature, and possession of a firearm during the commission of a

violent crime, arguing the circuit court erred in (1) closing the courtroom for the testimony of certain State witnesses and (2) admitting two photographic lineup identifications. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Bowman's argument regarding closing of the courtroom: *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("An issue may not be raised for the first time on appeal, but must have been raised to the [circuit court] to be preserved for appellate review." (internal quotation marks omitted)); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("In order to preserve for review an alleged error[,], an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the [circuit court]."); *In the Matter of Care & Treatment of Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the [circuit] court to be preserved for appeal.").

2. As to Bowman's argument regarding the photographic lineups: *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) ("A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification."); *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 447 (2000) (noting the two-prong inquiry requiring the circuit court to determine (1) whether the identification process was unduly suggestive and if so, (2) whether the out-of-court identification process was nevertheless so reliable that no substantial likelihood of misidentification existed); *State v. Davis*, 309 S.C. 326, 339, 422 S.E.2d 133, 141 (1992), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) (finding that a police officer's instruction to a witness to "see if she recognized anyone" did not render the lineup unduly suggestive because there was no suggestion the "officer in any manner insinuated which photograph belonged to [the defendant]" and "the [witness] was [clearly] aware that the reason she was requested to view the photographic lineup was because the police had a suspect"); *Clark v. State*, 515 S.E.2d 155, 162 (Ga. 1999) (finding that, while a police officer displaying a lineup to a victim or witness should avoid telling the person that the lineup contains the suspect, "such a statement does not make a lineup impermissibly suggestive since the very fact that a lineup is being conducted suggests that a suspect is contained therein"); *Rimmer v. State*, 825 So. 2d 304, 317 (Fla. 2002) (noting that "the fact that the police told [the witness] prior to his viewing the physical lineup that they had included a suspect in the lineup does not taint [the witness]'s identification").

**AFFIRMED.**

**WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.**

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

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SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

RICKY S. BOWMAN,

APPELLANT

APPELLATE CASE NO. 2011-202926

Unpublished Opinion No. 2014-UP-132

**PETITION FOR REHEARING**

Appellant respectfully petitions the Court for a rehearing of Opinion No. 2014-UP-132 pursuant to Rule 221(a), SCACR based on the following points overlooked or misapprehended by the Court.

**BACKGROUND**

Prior to Appellant's trial and a *Neil v. Biggers*<sup>1</sup> hearing, the State moved to close the courtroom for the testimony of some of its witnesses, alleging they had received threats and other undue influence from Appellant's family members. R. 28, ln. 13—R. 29, ln. 2. Counsel for Appellant objected, "There is no proof that I've seen, no evidence of [threats to the witnesses]. .

<sup>1</sup> 409 U.S. 188 (1972).

... I believe it's unfair to clear the courtroom ... [i]n terms of singling out my client's family ...

.”<sup>2</sup> R. 29, ll. 3-13. The trial judge granted the State's motion, stating, “I don't know who is making all of these alleged threats, but I'll grant the motion.” R. 29, lines 3—R. 31, line 25. The judge closed the courtroom for two witnesses during the *Neil v. Biggers* hearing and for another witness during the trial. R. 51, ll. 3-15; R. 70, ll. 3-10; R. 119, ln. 10—R. 120, ln. 13.

### DISCUSSION

#### **COUNSEL SUFFICIENTLY URGED THAT CLOSING COURT TO APPELLANT'S FAMILY MEMBERS WITHOUT VERIFICATION OF THE THREATS ALLEGED BY THE STATE UNFAIRLY TOPPLED A LONGSTANDING PROTECTION OF HIS BASIC RIGHT TO AN OPEN TRIAL.**

Counsel for Appellant preserved for review the issue of whether closing the courtroom for testimony from two State witnesses constituted reversible error. Counsel sufficiently urged the points that closing the court to the individuals having the greatest interest in Appellant's plight without any reliable justification was unfair, against sound judicial discretion, and unacceptably infringed his right to an open trial. In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-780 (2004). A party must object with sufficient specificity to inform the trial court of the point being urged. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

“Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue.” *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). The

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<sup>2</sup> In its Brief of Respondent, the State presented this argument by Counsel and a follow-up argument as one and the same. Final Brief of Respondent at 6 (citing R. 29, ll. 3-13 and R. 31, ll. 1-6). However, the record shows two distinct arguments: (1) the initial argument by Counsel and the ruling of the judge upholding the closure and (2) an argument concerning what procedures were proper for closing the court.

Court's good practice is to reach the merits when error preservation is doubtful. *See Atl. Coast Builders & Contractors v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012); *see also State v. Parler*, 217 S.C. 24, 26, 59 S.E.2d 489, 489 (1950) (“[A]s the conviction and sentence involve the liberty of the appellant, this Court in accord with its liberal policy under such circumstances, waives his failure to comply with the Rule, and will consider the question on its merits.” (citing *State v. Lyles*, 211 S.C. 334, 45 S.E.2d 181 (1947); *State v. Stevens*, 116 S.C. 210, 107 S.E. 906 (1921))).

The Sixth Amendment directs in part that in all state and federal criminal prosecutions, the accused shall enjoy the right to a public trial, and this right encompasses suppression hearings. *Waller v. Georgia*, 467 U.S. 39 (1984). The Fifth and Fourteenth Amendments’ guarantee of due process also subsumes this right. *See, e.g., In re Oliver*, 333 U.S. 257, 273 (1948) (“In view of . . . the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment’s guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison.”). The touchstone of due process in criminal prosecutions is fundamental fairness. *State v. Hutton*, 358 S.C. 622, 631, 595 S.E.2d 876, 882 (Ct. App. 2004) (citing *California v. Trombetta*, 467 U.S. 479, 485 (1984)).

Only in rare and carefully selected situations can the presumption of openness be overcome by specific findings that a sufficient interest is likely to be prejudiced by openness and that any closure is narrowly tailored to serve that interest. *Waller* at 45 (citing *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 511-12 (1984)). In *Waller*, the United States Supreme Court quoted *Oliver* in edifying the justification for open criminal trials:

The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not

unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.

In addition to ensuring that judge and prosecutor carry out their duties properly, a public trial encourages witnesses to come forward and discourages perjury.

*Waller* at 46 (quotations omitted). In *Oliver*, the Supreme Court first reflected on the principle that a “public trial” should be open to spectators whose interests in the proceedings align with those of the accused—first and foremost, family and similarly-related supporters. Citing, inter alia, *People v. Hall*, 64 N.Y.S. 433 (1900), the Court stated, “[W]ithout exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter what the offense he may be charged.” *In re Oliver* at 271-72. See also, e.g., *Bucci v. U.S.*, 677 F. Supp.2d 406, 416 (D. Mass. 2009) (“The presence of the defendants’ closest family members vindicated their public trial rights by ensuring that the defendants were ‘fairly dealt with and not unjustly condemned’ and by ‘keep[ing] [the defendants]’ triers keenly alive to a sense of their responsibility and to the importance of their functions.” (quoting *Waller* at 46)), *aff’d on other grounds*, 662 F.3d 18 (4th Cir. 2011).

In *Hall*, the Appellate Division of the New York Supreme Court stated that ensuring that an accused has been afforded an adequately open trial is inherently a matter of judicial discretion:

**To make effectual the . . . requirement, the court must necessarily exercise its discretion. . . . [T]he court must decide whether or not the defendant has been denied a “public trial.”** That is a term of some elasticity . . . . In a time of political or local excitement, if the trial judge permitted the court room to be packed exclusively with men opposed to the defendant on trial, the trial would not be public in fairness to the defendant. Every seat and all the standing room might be occupied, but the character of the spectators present, and the friendliness to the accused of those who failed to gain admittance . . . are to be considered in deciding whether the rights of the defendant have been trampled upon.

*Hall* at 436-37 (emphasis added). The United States Court of Appeals for the Fourth Circuit confirmed the discretionary nature of this type of decision in *Bell v. Jarvis* decided in 2000:

[T]he Supreme Court has recognized that there is a presumption in favor of open trials. Yet the right is not absolute, and **the Supreme Court has long recognized that trial judges have discretion to impose reasonable limitations on access to a trial** when overriding interests, “such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information,” are likely to go unprotected if closure is not employed.

*Bell v. Jarvis*, 236 F.3d 149, 165 (4th Cir. 2000) (emphasis added) (internal citations omitted) (quoting *Waller* at 45 and citing *Bell v. Evatt*, 72 F.3d 421, 433 (4th Cir. 1995)).

A trial court abuses its discretion by making a ruling based on factual conclusions that are without evidentiary support. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). A trial court also abuses its discretion by a failure to exercise discretion itself. *Id.* Thus, an abuse of discretion occurs when a trial court rules on an issue without engaging in a particular inquiry prescribed by controlling authority. *See State v. Collins*, 398 S.C. 197, 213, 727 S.E.2d 751, 760 (Ct. App. 2012) (holding trial court’s failure to perform analysis of photographs required under Rule 403, SCRE constitutes abuse of discretion (quoting *State v. Mansfield*, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (“The failure to exercise discretion, however, is itself an abuse of discretion.”))).

In this case, the State moved to close the court. Thus, the State put into issue whether a rare situation existed in which the presumption of openness should be overcome by specific findings that a sufficient interest was likely to be prejudiced by openness. Counsel objected, “There is no proof that I’ve seen, no evidence of [threats to the witnesses]. . . . I believe it’s unfair to clear the courtroom . . . [i]n terms of singling out my client’s family . . . .” R. 29, ll. 3-13. Counsel specifically stated the point that it was unfair to Appellant to exclude his family members based on

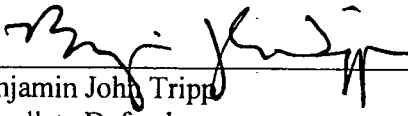
mere allegations without any verification whatsoever that one of them had threatened a witness. The expression was squarely within the due process guarantee of fundamental fairness, and a "Fourteenth Amendment" appellation would have added nothing of substance to the analysis at hand. Further, that the presence of Appellant's family members was critical for a truth-exacting atmosphere during testimony from the State's witnesses—who provided the only direct, but objectively equivocal, evidence of Appellant's involvement in the crime—was self-evident. Similarly, Counsel urged the point held in *Waller* and *Press-Enterprise* that specific findings were necessary to overcome the strong presumption of openness and support closure of the courtroom. Counsel stated that the State provided no verification that any threats occurred or Appellant's family members made them. The trial judge plainly understood the point in directly confronting and ruling against it: "**I don't know who** is making all of these **alleged** threats, but I'll grant the State's motion."

Finally, Counsel sufficiently urged the point that granting the State's motion without any verification of the allegations was an abuse of discretion. On its very face, the trial court's ruling was based on factual conclusions without support. The court also failed to undertake the prescribed inquiry under in *Waller* and *Press-Enterprise*. By calling the presumption into the focus of the trial court, Counsel thereby invoked the longstanding prophylactic having the one and only purpose of protecting Appellant's basic Constitutional right to an open trial.

### CONCLUSION

For these reasons, Appellant respectfully requests that the Court withdraw the Opinion, reverse the ruling of the trial court, and remand the case for a new trial.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of April, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

APR 16 2014

SC Court of Appeals

Appeal from Richland County  
G. Thomas Cooper, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

RICKY S. BOWMAN,

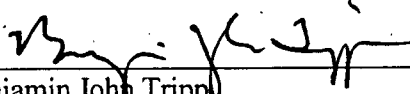
APPELLANT

APPELLATE CASE NO. 2011-202926

Unpublished Opinion No. 2014-UP-132

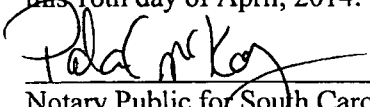
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of April, 2014.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 16th day of April, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Ricky S. Bowman, Appellant.

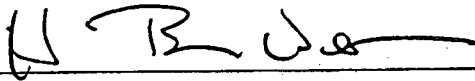
Appellate Case No. 2011-202926

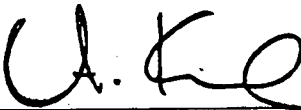
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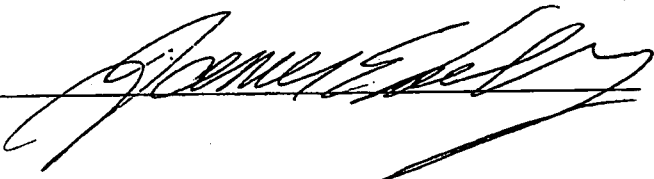
## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Christina J. Catoe, Esquire

Benjamin John Tripp, Esquire

The Honorable G. Thomas Cooper, Jr.

**FILED**  
6/2/14

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

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Opinion No. 2014-UP-132 (S.C. Ct. App. filed 4/2/2014)

10-GS-40-01108-01112

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THE STATE,

RESPONDENT,

V.

RICKY S. BOWMAN,

PETITIONER

APPELLATE CASE NO. 2011-202926

---

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

---

BENJAMIN JOHN TRIPP  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER.

## INDEX

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**CERTIFICATE OF COUNSEL**

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on June 2, 2014.

**QUESTION PRESENTED**

Whether counsel for Petitioner preserved for review his objection to the State's motion to close the courtroom to Petitioner's family members and the public on grounds of a due process violation where counsel stated that no evidence existed to support the closure and that "it's unfair to clear the courtroom . . . [i]n terms of singling out my client's family."

## STATEMENT OF THE CASE

On April 15, 2010, the Richland County Grand Jury indicted Petitioner Ricky S. Bowman for first degree burglary, armed robbery, kidnapping, common law assault and battery of a high and aggravated nature (ABHAN), and possession of a weapon during the commission of a violent crime. The charges arose out of Petitioner's alleged participation in a home invasion on the night of November 25, 2008. R. 474 – R. 483.

On November 7, 2011, Petitioner proceeded to trial before The Honorable G. Thomas Cooper, Jr. and a jury. Mark Schnee represented Petitioner and April Sampson and Britton All represented the State. R. 1.

Before a pretrial *Neil v. Biggers*<sup>1</sup> hearing, the State made a motion to close the courtroom for the testimony of its witnesses, alleging they had received threats and other undue influence from Petitioner's family members. R. 28, line 13—R. 29, line 2. Counsel for Petitioner opposed the motion, arguing, "There is no proof that I've seen, no evidence of [threats to the witnesses]. . . . I believe it's unfair to clear the courtroom . . . [i]n terms of singling out my client's family . . . ."<sup>2</sup> R. 29, lines 3-13. The trial judge summarily granted the motion, stating, "I don't know who is making all of these alleged threats, but I'll grant the motion." R. 29, lines 3—R. 31, line 25.

The judge closed the courtroom for the State's two identification witnesses during the *Neil v. Biggers* hearing. R. 51, line 3—R. 69, line 10; R. 70, line 3—R. 80, line 23. Later, during trial, the judge again closed the courtroom for the testimony of the witnesses; however, the judge did

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<sup>1</sup> 409 U.S. 188 (1972).

<sup>2</sup> In its Brief of Respondent, the State presented this argument by Counsel and a follow-up argument as one and the same. Final Brief of Respondent at 6 (citing R. 29, ll. 3-13 and R. 31, ll. 1-6). However, the record shows two distinct arguments: (1) the initial argument by Counsel and the ruling of the judge upholding the closure and (2) an argument concerning what procedures were proper for closing the court.

allow a law-student observer and the solicitor's "victim's advocate" working with the witnesses to remain in the courtroom.<sup>3</sup> R. 172, lines 11-23; R. 202, line 2—R. 224, line 25; R. 235, line 4—R. 259, line 7.

Petitioner's defense throughout the trial focused on misidentification and alibi. Nevertheless, on November 9, 2011, the jury found Petitioner guilty on all charges, and the trial court imposed the following concurrent sentences of incarceration: twenty years each for first degree burglary, armed robbery, and kidnapping; ten years for ABHAN; and five years for possession of a weapon during the commission of a violent crime. R. 1; R. 458, lines 9-25; R. 470, lines 9-24; R. 484 – R. 488.

Petitioner filed a timely notice of appeal and submitted a final brief to the Court of Appeals on August 7, 2013. Final Brief of Petitioner. The State filed its final brief on August 22, 2013. Final Brief of Respondent. After hearing oral arguments, on April 2, 2014, the Court of Appeals issued an unpublished opinion affirming Petitioner's convictions, citing *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("An issue may not be raised for the first time on appeal, but must have been raised to the [circuit court] to be preserved for appellate review." (internal quotation marks omitted)); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("In order to preserve for review an alleged error[,] an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the [circuit court]."); and *In the Matter of Care & Treatment of Corley*, 365 S.C. 252, 258, 616

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<sup>3</sup> Later in the trial, the solicitor attempted to close the courtroom for the testimony of Petitioner's codefendant because "[h]e has received phone calls where someone hangs up or yells at him, calls him 'snitch' and 'faggot' and hang[s] up." The solicitor said the codefendant had concerns about his safety and "would feel more free in his testimony if they weren't here staring him down." The trial judge denied the motion saying he was "in a different situation than the

S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the [circuit] court to be preserved for appeal."). App. 1-3. On April 16, 2014, Petitioner filed a petition for rehearing, App. 4-11, which the Court of Appeals denied by order filed June 2, 2014, App. 12.

### ARGUMENT

**COUNSEL SUFFICIENTLY URGED THAT CLOSING COURT TO PETITIONER'S FAMILY MEMBERS WITHOUT VERIFICATION OF THE THREATS ALLEGED BY THE STATE UNFAIRLY TOPPLED THE LONGSTANDING AND FUNDAMENTAL RIGHT TO AN OPEN TRIAL.**

Counsel for Petitioner preserved for review the issue of whether closing the courtroom for testimony from two identification witnesses for the State constituted reversible error. Counsel sufficiently urged the points that closing the court to Petitioner's family—the individuals having the greatest interest in Petitioner's plight—without any reliable justification was unfair, against sound judicial discretion, and unacceptably infringed his right to an open trial. In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-780 (2004). A party must object with sufficient specificity to inform the trial court of the point being urged. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

"Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). Issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function." *Atl. Coast Builders & Contractors v. Lewis*, 398 S.C. 323, 329-30, 730 S.E.2d 282, 285 (2012). While the Court should

---

previous [witnesses]" because "it's not like his identity needs to be protected." R. 271, line 9—

resolve an issue on preservation grounds when it is clearly unpreserved, the Court's good practice is to reach the merits when error preservation is doubtful. *Id.*; see also *State v. Parler*, 217 S.C. 24, 26, 59 S.E.2d 489, 489 (1950) ("[A]s the conviction and sentence involve the liberty of the Petitioner, this Court in accord with its liberal policy under such circumstances, waives his failure to comply with the Rule, and will consider the question on its merits." (citing *State v. Lyles*, 211 S.C. 334, 45 S.E.2d 181 (1947); *State v. Stevens*, 116 S.C. 210, 107 S.E. 906 (1921))).

The Sixth Amendment directs in part that in all state and federal criminal prosecutions, the accused shall enjoy the right to a public trial, and this right encompasses suppression hearings. *Waller v. Georgia*, 467 U.S. 39 (1984). The Fifth and Fourteenth Amendments' guarantee of due process also subsumes this right. See, e.g., *In re Oliver*, 333 U.S. 257, 273 (1948) ("In view of . . . the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison."). The touchstone of due process in criminal prosecutions is fundamental fairness. *State v. Hutton*, 358 S.C. 622, 631, 595 S.E.2d 876, 882 (Ct. App. 2004) (citing *California v. Trombetta*, 467 U.S. 479, 485 (1984)).

Only in rare and carefully selected situations can the presumption of openness be overcome by specific findings that a sufficient interest is likely to be prejudiced by openness and that any closure is narrowly tailored to serve that interest. *Waller* at 45 (citing *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 511-12 (1984)). In *Waller*, the United States Supreme Court quoted *Oliver* in edifying the justification for open criminal trials:

The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.

In addition to ensuring that judge and prosecutor carry out their duties properly, a public trial encourages witnesses to come forward and discourages perjury.

*Waller* at 46 (quotations omitted). In *Oliver*, the Supreme Court first reflected on the principle that a “public trial” should be open to spectators whose interests in the proceedings align with those of the accused—first and foremost, family and similarly-related supporters. Citing, inter alia, *People v. Hall*, 64 N.Y.S. 433 (1900), the Court stated, “[W]ithout exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter what the offense he may be charged.” *In re Oliver* at 271-72. See also, e.g., *Bucci v. U.S.*, 677 F. Supp.2d 406, 416 (D. Mass. 2009) (“The presence of the defendants’ closest family members vindicated their public trial rights by ensuring that the defendants were ‘fairly dealt with and not unjustly condemned’ and by ‘keep[ing] [the defendants]’ triers keenly alive to a sense of their responsibility and to the importance of their functions.” (quoting *Waller* at 46)), *aff’d on other grounds*, 662 F.3d 18 (4th Cir. 2011).

In *Hall*, the Appellate Division of the New York Supreme Court stated that ensuring that an accused has been afforded an adequately open trial is inherently a matter of judicial discretion:

To make effectual the . . . requirement, the court must necessarily exercise its discretion. . . . [T]he court must decide whether or not the defendant has been denied a “public trial.” That is a term of some elasticity . . . . In a time of political or local excitement, if the trial judge permitted the court room to be packed exclusively with men opposed to the defendant on trial, the trial would not be public in fairness to the defendant. Every seat and all the standing room might be occupied, but the character of the spectators present, and the friendliness to the accused of those who

failed to gain admittance . . . are to be considered in deciding whether the rights of the defendant have been trampled upon.

*Hall* at 436-37 (emphasis added). The United States Court of Appeals for the Fourth Circuit confirmed the discretionary nature of decision in *Bell v. Jarvis*, decided in 2000:

[T]he Supreme Court has recognized that there is a presumption in favor of open trials. Yet the right is not absolute, and the Supreme Court has long recognized that trial judges have discretion to impose reasonable limitations on access to a trial when overriding interests, "such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information," are likely to go unprotected if closure is not employed.

*Bell v. Jarvis*, 236 F.3d 149, 165 (4th Cir. 2000) (emphasis added) (internal citations omitted) (quoting *Waller* at 45 and citing *Bell v. Evatt*, 72 F.3d 421, 433 (4th Cir. 1995)).

A trial court abuses its discretion by making a ruling based on factual conclusions that are without evidentiary support. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653,656 (2006). A trial court also abuses its discretion by a failure to exercise discretion itself. *Id.* Thus, an abuse of discretion occurs when a trial court rules on an issue without engaging in a particular inquiry prescribed by controlling authority. See *State v. Collins*, 398 S.C. 197, 213, 727 S.E.2d 751, 760 (Ct. App. 2012) (holding trial court's failure to perform analysis of photographs required under Rule 403, SCRE constitutes abuse of discretion (quoting *State v. Mansfield*, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) ("The failure to exercise discretion, however, is itself an abuse of discretion."))).

In this case, the State made a motion to close the courtroom. Thus, the State put into issue whether a rare situation existed in which the presumption of openness should be overcome by specific findings that a sufficient interest was likely to be prejudiced by openness. Counsel objected, "There is no proof that I've seen, no evidence of [threats to the witnesses]. . . . I believe

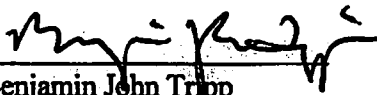
it's unfair to clear the courtroom . . . [i]n terms of singling out my client's family . . . ." R. 29, ll. 3-13. Counsel specifically stated the point that it was unfair to Petitioner to exclude his family members based on mere allegations without any verification whatsoever that one of them had threatened a witness. The expression was squarely within the notion of due process's guarantee of fundamental fairness, and a "Fourteenth Amendment" appellation would have added nothing of substance to the analysis at hand. Further, that the presence of Petitioner's family members was critical for a truth-exacting atmosphere during testimony from the State's witnesses—who provided the only direct, but objectively equivocal, evidence of Petitioner's involvement in the crime—was self-evident. Similarly, Counsel urged the point held in *Waller* and *Press-Enterprise* that specific findings were necessary to overcome the strong presumption of openness and support closure of the courtroom. Counsel stated that the State provided no verification that any threats occurred or Petitioner's family members made them. The trial judge plainly understood the point in directly confronting and ruling against it: "I don't know who is making all of these alleged threats, but I'll grant the State's motion."

Finally, Counsel sufficiently urged the point that granting the State's motion without any verification of the allegations was an abuse of its discretion. On its face, the trial court's ruling was based on factual conclusions without evidentiary support. The court also failed to undertake the prescribed inquiry under in *Waller* and *Press-Enterprise*. The State moved to close the courtroom. A longstanding presumption, rooted in the Constitution, provided a bulwark designed to operate without breastwork from Petitioner. Counsel sufficiently drew the court's attention to the lack of evidence to overcome the presumption. This Court should confirm that position and not allow the lower court to gloss over Petitioner's Constitutional right to an open trial.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER.

This 2nd day of July, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

---

Opinion No. 2014-UP-132 (S.C. Ct. App. filed 4/2/2014)  
10-GS-40-01108-01112

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THE STATE,

RESPONDENT,

V.

RICKY S. BOWMAN,

PETITIONER

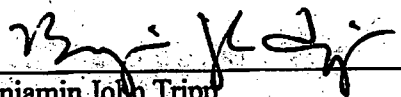
APPELLATE CASE NO. 2011-202926

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CERTIFICATE OF SERVICE

---

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Christina J. Catoe, Esquire, and the S.C. Court of Appeals this 2nd day of July, 2014.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day  
of July, 2014.

Palal Mkey

(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

# The Supreme Court of South Carolina

The State, Respondent,

v.

Ricky S. Bowman, Petitioner.

Appellate Case No. 2014-001437

Lower Court No. 2011-GS-40-01108 to -01112

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## ORDER

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Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *State v. Bowman*, Op. No. 2014-UP-132 (S.C. Ct. App. filed Apr. 2, 2014). The petition is denied.



C.J.  
FOR THE COURT

Columbia, South Carolina

January 15, 2015

cc:

The Honorable Jenny Abbott Kitchings

The Honorable Jeanette W. McBride

Benjamin John Tripp

Alan M. Wilson

Christina J. Catoe

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Bicky Sherad Bowman 348625  
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2015C P4001658

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2015 MAR 17 PM 2:06  
FILED  
RICHLAND COUNTY  
CLERK OF COURT  
C.D. 2.2.15

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention detention
2. Name and location of Court which imposed sentence 1701 Main St. Richland County Court
3. Name(s) of co-defendant(s) (if any) Shawn Telford
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) K- 373073 Burglary First 20 yrs, K- 373074 Armed Robbery 20 yrs,
  - (b) K- 373075 Kidnapping 20 yrs, K- 373076 Poss Fir/Arm during vio crime
  - (c) 5 yrs, K- 373083 ABHMAN 10 yrs
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Nov, 9, 2011 20 yrs 85% Concurrent
  - (b) \_\_\_\_\_

Revised 3/2003

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes \_\_\_\_\_
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate Defence \_\_\_\_\_
- ii. Supreme Court \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Appellate Defence denied \_\_\_\_\_
- ii. Supreme Court denied \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Appellate 4-2-2014 \_\_\_\_\_
- ii. Supreme Court 1-15-15 \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Revised 3/2003

- (a) 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendment rights was violated, Ineffective trial  
 (b) Counselor, Out of court photo line-up, Improper Warrants, legal  
 (c) arrest, Forced to stay in shackles during jury <sup>selection</sup> withheld Evidence etc.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See PACTS Attached
- (a) Amendment rights violations clearing Courtroom under false evidence, Counsel did  
 (b) not raise objection under my 5, 6, 14 Amendment rights, line-up, I was only one in six  
 (c) pack lineup with 360 shirt others all white, Never was probable cause for warrants,
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No  
 (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- Petition for Habeas
  - Petition for Oral argument
  - \_\_\_\_\_
  - \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- Appellate Defense, South Carolina Commission on Juvenile Defense
  - Division of Appellate Defense
  - Post OFFICE BOX 11589
  - Columbia, S.C. 29211-1589
- (c) the disposition thereof:
- Both denied
  - \_\_\_\_\_
  - \_\_\_\_\_

Revised 3/2003

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

\_\_\_\_\_

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel South Carolina requires IRC be brought
- (b) on PCR
- (c) \_\_\_\_\_

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

Revised 3/2003

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:
  - i. Mark shenee Address Not sure
  - ii. Benjamin John Tripp Division of Appellate Defense 1330 4th St, Suite 401 Columbia
  - iii. S.C. 29201-3332 Before him MC. STEVENS / BREEN R. STEVENS
- (b) the proceedings at which each such attorney represented you:
  - i. MC. Tripp Appellate defense, MC. Shenee Trial lawyer
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Convictions and Sentences be vacated

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

NO

STATE OF SOUTH CAROLINA

County of

)  
)  
)

VERIFICATION

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

SWORN to and subscribed before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

Counselor failed to put Terrell Johnson on the stand in front of the jury. To impeach the detective testimony. Tp. 61 line 8-11 it was said Mr. Terrell implicated the defendant and codefendant. That's how this process got started. Tp. 78 line 7-16 line 12 solicitor asked Johnson who he implicated. Quote Johnson said Shawn Torran, Tp. 77 line 13 Solicitor asked Mr. Johnson did he tell the detective about petitioner. Tp. 17 line 16 "Quote" I told him I didn't know who he was. Tp. 121 line 19-25 to Tp. 122 line 19 Tp. 121 how did you determine petitioner or Shawn Torran were suspects in this case. Tp. 121 line 21-23 detective states individual name petitioner and Shawn Torran. Tpg 122 line 1-11 detective claim he received petitioner's name from Terrell Johnson. Tpg 123 line 14-16 detective agree Mr. Terrell Johnson gave him four names Tpg 123 line 15 Roy Foster, Marcus Williams, Sean Torran and petitioner. Also see line 17-24 claim he put petitioner in a lineup cause he was "distinctive" See Six pack lineup petitioner was the "only one" eyes wide open with RED shirt. Everyone else had on white shirts. (DISTINCTIVE) Back to Tpg 77 line 13 Mr. Johnson "only" implicated Sean Torran not three others. Tp 173 line 25 to Tp 174 line 25 petitioner in red shirt others white. Tp 174 line 1-5 Counselor never argued the fact of my shirt being the only one RED. Ineffective trial Counseling. "Distinctive" There was never any "proof" of probable cause. To issue warrants for petitioner arrest. Nor was it probable cause for petitioner to be placed in a photo line up. Counselor Error by not placing Mr. Johnson back on the stand. In front of jury Prejudice petitioner. An without ERROR Outcome of trial would have been different. SEE STRICKLAND v Washington also see Illegal arrest Brown v. Illinois 95 S. CT. 2254 My 5<sup>th</sup> Amendment right was also violated Right to due process, Protection from self-incrimination. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers and disposal. SEE also Beck v Ohio 379 U.S. 89, 91, 85 S. CT 823, 825, 13 L. Ed. 2d 142 (1964) A court must consider "whether, at the moment the 'FACTS' and circumstances within their knowledge and of which they had reasonably 'trustworthy' information" were sufficient to warrant a prudent man in believing that Appellant had committed an offense. He why wasn't it any proof of probable cause!!! SEE Appellant ~~affidavit~~ "Affidavit" of proof. A search warrant may issue only upon a finding of probable cause. State v Bellamy 519 S. 2d 347 The duty of the reviewing court is to ensure the

the issuing magistrate had a substantial basis upon which to conclude that probable cause existed  
State v Adams 352 S.E.2d 483 (1987) In Illinois v Gates 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d  
327 (1983) the United States Supreme Court adopted a "totality of the circumstances" test for probable  
cause determinations: In South Carolina search warrants may be issued "only upon affidavit  
sworn to before the magistrate . . . establishing the grounds for the warrant." S.C. Code Ann. 17-13-  
140 (2003) see also State v McKnight 352 S.E.2d 471 (1987) The affidavit must set forth  
particular "FACTS" and circumstances "underlying the existence of probable cause to allow  
the magistrate to make an independent evaluation of the matter. Franks v. Delaware 57  
U.S. 667 (1978) In appellant case the affidavit was "defective because it set forth  
no facts" as to why police believed appellant had anything to do with a crime. It's also  
"Mere conclusory statements which give the magistrate no basis to make a judgment re-  
garding probable cause are insufficient". See also State v Weston 494 S.E.2d 801 (1997)  
The affidavit fails to set forth any "facts as to why police believed Appellant committed  
a crime. In appellant case there was no probable cause to issue warrants. Nor was  
it proof of how detective came up with Appellant name. See Tp. 77 line 16...

Petitioner argues trial Counselor was Ineffective

On trial Councils "Contract for legal Services" he states I acknowledge and specifically agree that the legal FEE paid to his law firm does not include any cost for experts, investigators or process serves. However being that my case was high profiled, and required the aforementioned, Council failed to render me adequate and effective assistance by not investigating the jurisdiction in which Richland County Sheriff's Dept. covers the area where the alleged crimes occurred. But rather the City of Columbia Police Dept. Investigated and charged applicant for the crime. See Tp 418 line 5-21 to Tp 430 line 1-8. IF Counselor would have investigated my case. He would of knew who had jurisdiction. By council not doing so was "error which also prejudice Applicant". Council further accerts that in his Contract for legal Services. That "failure to pay attorney fees in full before trial will result in the WITHDRAWAL of his law firm". Thus he didn't "WITHDRAW" but rather failed to perform diligently see Copy of Contract.

Applicant was denied the right to effective assistance of trial counsel. As guaranteed by the 6<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution and by article I, Section 3 and section 14 of the South Carolina Constitution. Trial Counsel performance was unreasonable and prejudicial. SEE Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 474 (1984)

Petitioner argues trial Counsel was Ineffective

Counselor failed to put in a motion for testimony of Codefendant to be excused do to the fact that a synopsis from the state regarding the codefendants testimony for the state was in violation of defendants rights of having documents of testimony. When a synopsis is clearly not a document. Counsel Ineffectiveness prejudice petitioner. And was it not for Counsel's error there's a reasonable probability the outcome would have been different. SEE Strickland v Washington. Courts also erred by allowing this. SEE Tpy 59,60: 2-25, 1-5

Petitioner argues trial counselor was Ineffective

Trial Counsel failed to bring up the issue of petitioner's Amendment rights being violated. Do to closer of the courtroom. Sixth Amendment, "Right to a public trial also a violation to petitioner's due process or fourteenth, Constitutional rights. Do to counsel error petitioner didn't receive a fair trial. Counselor never made a "objection" based on petitioner Constitutional rights being violated. Do to counsel error petitioner conviction was affirmed. Court of appeals issued an unpublished opinion *State v Carlson* 611 S.E.2d 283 (2005) An issue may "not" be raised for the first time on appeal, but must have been raised to the [circuit court] to be preserved for appellate review. *State v Prioleau* 348 S.E.2d 213 (In order to "preserve for review an alleged error so it can be reasonably understood by the "circuit court." In the matter of care and treatment of Corley 616 S.E.2d 441, 444 (Ct. App 2005) Constitutional issues, like most others, "Must be raised to and ruled on by the ("circuit court") to be preserved for appeal. Do to Counsel "error" petitioner Rehearing, oral argument, an direct appeal was denied. IF Counselor would have "objected" to petitioner Constitutional rights being violated. The outcome of trial could have been different. See *Strickland v Washington*. Trial counselor never brought any case law regarding the Sixth Amendment - right to a public trial. To the judges attention to provide him with appropriate framework for a sixth Amendment analysis. *Elam v. S.C. Dept of Transp* 602 S.E.2d 772, 779-80 (2004) "Issues and arguments are preserved for appellate review, only when they are raised to and ruled on by the lower court. Which is why petitioner direct appeal was denied. See Writ of Certiorari, also again *Strickland v Washington* Ineffective counsel. IF the objection was raised the outcome of trial would of been different.

Petitioner argues that the photo line-up was unduly suggestive.

At trial the Detective testified that he created a line-up of petitioner because he was distinctive. Trax 423 L-15-25 further plaintiff's eyes was significantly different than the others Tpg 173 L-3-8, And in photo line-up petitioner had on a red shirt while the others had on white shirts Tpg 174 L-1-5 . . .

In *Neil v. Biggers* the courts enunciated five factors to be considered in evaluating the likelihood of misidentification 1) Opportunity of witness to view criminal at time of crime, 2) Witness degree of attention 3) Accuracy of witness prior description of the criminal 4) Level of certainty demonstrated by witness at the confrontation 5) And length of time between the crime and the confrontation. Petitioner argues that he was misidentified and the photo line-up was unduly suggestive. 1) Witness could not identify the suspect at the time of the crime 2) Witness degree of attention was not attentive Tpg 264 L-9-12 Tpg 263 L-17 witness states her attention wasn't focused 3) Prior description of petitioner was wrong. 4) Petitioner argues the witness demonstrated a level of certainty but the facts of the case refute that. Being it wasn't no description of petitioner eyes period. Nor was anything mentioned about eyes period three yrs prior. Petitioner has a burn a spot in his right eye. That would of been noticable and unforgettable description. Especially to any (optha eye doctor) one that's been a optha eye specialist for eight years Tpg 263 L-5-11.

5) Petitioner argues that the time frame of this crime to the actual photo line-up procedure, was ten to eleven days with both witnesses. With in that time frame, Petitioner argues nothing was said about eyes period Tpg 399 L-1-14 also 14-18, Jclorex dennis Tpg 403 L-4-28

Petitioner argues trial Counselor was Ineffective

Trial Counselor agreed to the "Amendment of my Burglary <sup>Indictment</sup> ~~Indictment~~". Due to the Amendment of the , Indictment the "DATE" was changed and petitioner was unable to acquire alibi witness, it prejudiced petitioner because petitioner was unable to prepare a defense for that date. See Tpg 9 line 9-14. The over all ending of the preceding would have been different see state v Moore 349 S.E. 641, 732 S.E. 2d 871. My trial attorney didn't inform me that he was going to agree to the Amendment of my Indictment. Grand jury knew nothing about dates being changed. In the present case entry at 42 see also picture v state 338 S.E. 2d 222 (2000) We are concerned not with the sufficiency of a particular indictment, but with the legality and sufficiency of the process of the state grand jury which issued the indictment. In Florida v Nixon, 543 U.S. 115, 187, 125 S.Ct. 551, 160, 4 E 2d 565 (2004). This does not require Counselor to obtain the defendant's "consent" on every strategic decision, but certain decisions "REGARDING the waiver of basic trial rights cannot be made for the defendant by surrogate". A defendant has the "ultimate authority" to determine whether to plead guilty, waive a jury, testify on his own behalf, or take an appeal. A defendant knowing and waiver of Statutory or Constitutional rights must be established by a complete Record and may be accomplished by a colloquy between the court and defendant. Between the court and defendant's counsel or both. Roddy v. State 528 S.E. 2d 418, (2000) Tpg 9 lines 9-14 was a violation of petitioner fourteenth and fifth Amendment rights. If not for Counselor ERROR outcome of trial would have been different. If Counselor would of put in a motion to "Quash" the Indictment. When that indictment is presented, that accusation made that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; OR waiving them he, may put in issue the truth of the accusation, and demand the judgement of his peers on the merits of the charge.

Repetition argues trial counsel was ineffective

Counsel failed to quash the Kidnapping Indictment. When the indictment did not allege the essential elements of kidnapping. Specifically, that the applicant acted "KNOWINGLY". De to counsel failing to quash indictment. Prejudice applicant on if not for "trial counsel error". The outcome of trial would have been different. The existence of evidence of material facts, not presented or heard requires vacation of the Kidnapping Indictment.

The Applicant next moves to vacate the INDICTMENT for kidnapping. As insufficient applicant argues that the INDICTMENT is defective for "failing to allege an essential element of the offense knowingly. See (LOR) v State not Reported in S.E. 2d, 2003 WL 23279830 S.C. COM. 81

2003

Petitioner argues trial Counselor was Ineffective

Counsel never raised any motions regarding my warrants. State v Hill 245 S.C. 76, 138 S.E.2d 829  
Taking judicial notice that substantial part of police effort in criminal detection is generated by  
information afforded by informers, and ruling that to require that names of such informers appear  
on all search and arrest warrants would have adverse and unanticipated effect on law en-  
forcement. Affidavit can comply with statutory provisions as to affiant's source of inform-  
ation without identifying an informer or informers. Code 1962 § 34-4-14 / 4-415. Affidavit  
which disclosed no source of information other than an unidentified informer contained  
no ~~fact~~ fact or facts as to source of affiant's information. A belief for the judicious  
consideration of officer issuing search warrants was INADEQUATE. SEE State v Covert  
628 S.E.2d 482 "Indorsement signature"! Du BOSE v Du BOSE 90 S.C., 87, 72 S.E. 645 (1911)  
The court held that warrant was not issued as required by law and conferred no  
authority on the sheriff to make the arrest. because the magistrate did not sign at the  
foot as he intended to do. And because he did not intend the "ENDORSEMENT on the  
back as his signature of the Warrant. The investigator or judge could have discovered  
both errors on all five warrants. Simply by looking at the warrants itself.  
Therefore, we find there was no good faith effort to comply with the statute

Petitioner argues Solicitor tainted the jury in opening statement

Solicitor tainted the jury, in opening statement, by speaking for a witness, who refused to attend trial. By giving comments why witness refused to attend trial!! Tpg. 201 L-13-25 also Tpg 202 L-1-6 Court should of granted a miss trial. Trial lawyer put in a motion see Tpg 207 L-10-25 also Tpg 208 L-1-10 over ruled. See Walker at 185-86 also see. state v Linder 276 S.C. 304, 278 S.C. 2d 355 (1981) The duty of a prosecutor is to see that justice is done rather than to merely obtain a conviction; see accord, state v Lapeland 321 S.C. 318, 468 S.E. 2d 620 (1996) The solicitor's argument must be carefully tailored and not calculated to arouse the passions and prejudices of the jurors. Petitioner asserts that his fourteenth Amendment right to a fair trial was violated see Jonnelly v Dechristoforo 416 us 437 (1974) Lawyer reserved motion for miss trial. see Tpg 455 L-19-25 Tpg 456 L-1-3. Tpg 202 line 1-8 Korey Loit he felt he had to stick on the line. Plain out thought it was too risky for him and his family to testify. Yet. Has a right to challenge and defend himself against any witness. See Rule 403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Judge was prejudice against me. for not granting lawyer motion for mistrial. [REDACTED] See Tpg 202 L-8 after objection Judge Quotes Just confine your argument -- I mean your opening statement to the facts in this case. "After the damage was already done.

Petitioner argues trial Counsel was Ineffective.

Tpg 251- lines 13-23 Ms. Coit gives full detail of Sean eyes. On same page line 3-10 claim he didn't have anything on his face. Tpg 263- line 22-25 to Tpg 264 Quote: my lawyer asked Tpg 263- 22-25 "when he had his bandanna off, what do you remember about him". Tpg 264 lines 1-8 but line 3 Quotes "I cant pinpoint anything". This is the same lady that just gave details to the solicitor about his eyes. But cant pinpoint anything when Applicant lawyer asks. Do to the fact council failed to raise the above issue. Prejudice Applicant and if not for that error outcome of trial could have been different. With it pointed out and clear to the jury, Ms. Coit lied under oath which was "PERJURY". Council failed to have ms. Coit testimony dismissed see Strickland v. Washington

Petitioner argues that his right to a fair trial was violated, when forced to wear shackles during jury selection. The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. Estelle v. Williams 96 S.Ct 1691 citing Drop v. Missouri 95 S.Ct 896. The trial judge abused its discretion by denying defendants Motion to not appear in front of the jury in shackles. Tp. 10 L-13-85 to Tp. 11 L-1-11 case cited Deck v. Missouri favored this motion in "U.S. Supreme Court". To implement the presumption, courts must be alert to factors that may undermine the fairness of the fact finding process. In the administration of criminal Justice, courts must carefully guard against the guilt principle that guilt is to be established by probative evidence and beyond a reasonable doubt. EN RE Winship 397 U.S. 358, Estelle v. Williams 96 S.Ct 1691 !!!

In (Illinois v. Allen) the courts expressly recognized that "the sight of shackles and gags might have a significant effect on the jury's feelings about the defendant" ... 90 S.Ct at 1061 yet the court upheld the practice when necessary to control a CONTUMACIOUS defendant from the courtroom. Petitioner argues that the Record does not reflect any unruly or contumacious behavior from the defendant thus, there was no reason for defendant to stand before a jury in shackles. Petitioner argues that the "PREJUDICIAL EFFECT" outweighs the probative value thus rendering the trial UNFAIR. (VIOLATING PETITIONERS SIXTH AND FOURTEENTH AMENDMENT RIGHTS) Jury members walked pass Petitioner right side. To come speak before the court seeing defendant in shackles. Petitioner's presumptions of innocence as guaranteed by our Constitution was removed and his rights violated by the wearing of shackles in the sight of the jury. A defendant's rights to a fair trial proceeds and exceeds testimony and other elements of the judicial process that may tend to project an accused in an unfair light before his peers or test the public citizens confidence in our justice system and its workings.

Petitioner argues trial Counselor was Ineffective

Tp. 84-85 Trial Counsel failed to ask Officer Pegram is it normal "Procedure for officers to write statements while getting them from witnesses, victims, or suspects, and get them signed from the above mentioned. And if the witness testified there was a statement, then why is there no copy, or record of this 'statement OFFICER' Pegram testified happened? Do to the fact Officer Pegram testified. He had probable cause to put applicant in a photo lineup etc. Do to Terrell Johnson giving him applicants name. Tp 61, line 9-11 also see Mr. Johnson statement Tp. 76 line 22-25 to Tp. 77 lines 1-5 yet its no record of it. See also lines 8-17. Quote on line 16 states he didn't know who applicant was. Counsel didn't put in a motion to suppress "Probable Cause" on how applicant name came about. Which also prejudice applicant. IF not for Counsel "errors" out come of trial could have been different. SEE STRICKLAND v Washington

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Ricky Bowman, #348625,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2015-CP-40-01658

**RETURN**

RICHLAND COUNTY  
FILED  
2015 JUL -9 AM 10:22  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed March 17, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2010 term of the Court of General Sessions for Richland County for Assault and Battery of a High and Aggravated Nature (ABHAN) (2010-GS-40-1108), Poss. of a Weapon during the Commission of a Violent Crime (2010-GS-40-1109), Armed Robbery (2010-GS-40-1110), Kidnapping (2010-GS-40-1111), and Burglary First Degree (2010-GS-40-1112). Applicant was represented by Mark E. Schnee, Esq. Applicant preceded to trial on November 7-9, 2011. He was convicted as indicted. The Honorable G. Thomas Cooper, Jr. sentenced Applicant to twenty (20) years' imprisonment for Burglary First Degree, Armed Robbery, and Kidnapping; ten (10) years' for ABHAN; and five (5) years' for Poss. of a Weapon during the Commission of a Violent Crime. These sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Benjamin Tripp, Esq. Following the submission of briefs by both sides, the South Carolina

Court of Appeals dismissed the appeal. State v. Bowman, No. 2014-UP-132 (filed April 2, 2014). Applicant's request for rehearing was denied on June 2, 2014. Applicant subsequently and timely submitted a Petition for Writ of Certiorari. The Supreme Court of South Carolina denied the petition on January 15, 2015. The Remittitur was issued on February 17, 2015.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

## II.

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

1. Ineffective Assistance Counsel, in that;
  - a. Counsel "did not raise objection under my 5,6,14 Amendment rights",
2. Due Process Violation, in that;
  - a. "Improper Warrants",
  - b. "Out of Court Photo Line-up",
  - c. "Legal Arrest"
  - d. "Forced to stay in shackles during jury selection",
  - e. "withheld evidence",
  - f. "I was only one in six pack lineup with red shirt other all white",
  - g. "Never was probable cause for warrants"

## III.

Applicant's first claim is an allegation of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided

representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact

that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must specifically set forth the grounds upon which the application is based. Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### V.

Respondent therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

(signature on following page)

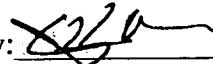
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

J. CLAYTON MITCHELL  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

July 8<sup>th</sup>, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
2015-CP-40-1658

Ricky Bowman, )  
Applicant, )

vs. )

AMENDED APPLICATION  
FOR POST CONVICTION RELIEF

State of South Carolina, )  
Respondant. )

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows to include in addition to prior grounds stated in the original application for post-conviction relief:

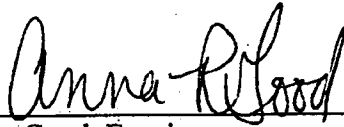
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of trial counsel – trial counsel failed to properly object to hearsay and bolstering of Torrell Johnson, a witness who never testified;
- (b) Ineffective assistance of trial counsel—trial counsel failed to request a hearing quashing the indictments as a result of Torrell Johnson failing to testify;
- (c) Ineffective assistance of trial counsel—trial counsel failed to move for a mistrial due to Witness Torrell Johnson not testifying and the State mentioning his testimony, as well as witnesses being scared to come to court during opening statements;
- (d) Ineffective assistance of trial counsel—trial counsel failed to impeach witness Sean Toran with letter written to Applicant;
- (e) Ineffective assistance of trial counsel—trial counsel failed to consult with Applicant regarding statement of Witness Sean Toran, as Applicant would have

taken the plea deal if he had known of such testimony;

- (f) Ineffective assistance of counsel—trial counsel failed to argue for the prosecution to enforce a previous plea agreement; and
- (g) Ineffective assistance of counsel—trial counsel failed to move for a new trial based on the fact only 11 jurors were polled after the verdict.

LAW OFFICE OF ANNA GOOD, LLC



Anna Good, Esquire  
Attorney for Applicant  
PO Box 7284  
Columbia, SC 29202  
803-661-6758  
803-403-8752 (fax)

Columbia, South Carolina  
This 21st day of September, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-40-1658

RICKY SHEROD BOWMAN (SCDC# 348625)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

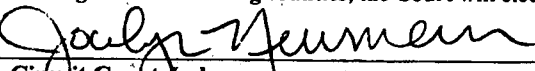
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2757  
Judge Code

January 30, 2018  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of Jan, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

*Francine W. McBride*  
**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Ricky Bowman (SCDC #348625),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-40-1658

ORDER OF DISMISSAL

FILED  
JAN 31 AM 8:28  
C.C.P. OF  
FIFTH JUDICIAL CIRCUIT

This matter comes before the Court upon Application for Post-Conviction Relief filed by Applicant Ricky Bowman ("Applicant") on March 17, 2015. Respondent filed its return on July 9, 2015. Applicant filed an Amended Application for Post-Conviction Relief on September 21, 2015. On January 30, 2017, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Anna Good Browder, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

#### **FINDINGS OF FACT**

At the April 2010 term of the Richland County Grand Jury, Applicant was indicted for assault and battery of a high and aggravated nature, possession of a weapon during the commission of a violent crime, armed robbery, kidnapping, and burglary in the first degree. Mark Schnee, Esquire ("trial counsel") was appointed to represent him. Applicant was tried by a jury from

November 7 to November 9, 2011. He was convicted of all charges and was sentenced to twenty years' imprisonment.<sup>1</sup>

Applicant appealed his conviction to the South Carolina Court of Appeals, which was denied by Order dated April 2, 2014. Rehearing was denied on June 2, 2014. Applicant then filed a Petition for Writ of Certiorari. The South Carolina Supreme Court denied the Petition on January 15, 2015, and issued its Remittitur on February 17, 2015.

Applicant subsequently filed the instant Application for Post-Conviction Relief and Amended Application for Post-Conviction Relief ("PCR"). In those filings, Applicant alleges that he is being unlawfully detained due to ineffective assistance of counsel and due process violations. Specifically, Applicant contends that trial counsel failed to make certain objections, failed to file motions, and failed to discuss evidence with him. He also alleges his due process rights were violated in that the arrest warrants were not based upon probable cause,<sup>2</sup> that an improper photo lineup identification was done, that evidence was withheld from him, and that he was improperly shackled within the view of the jury.

#### **I. Applicant's Testimony**

At the evidentiary hearing on January 30, Applicant testified on his own behalf and expounded on his written allegations. He said that the State extended two plea offers to him – one for seven years' incarceration for a non-violent offense, and another for ten years' incarceration for a violent offense. Applicant testified that he accepted the seven-year offer and signed all required

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<sup>1</sup> The Court sentenced Applicant to ten years for assault and battery of a high and aggravated nature, five years for possession of a weapon during the commission of a violent crime, twenty years for armed robbery, twenty years for kidnapping, and twenty years for burglary in the first degree. All sentences were to be served concurrently.

<sup>2</sup> During the evidentiary hearing, Applicant withdrew this allegation as well as his allegation; that trial counsel was ineffective for failing to move to quash the indictments in his case.



plea paperwork, but before he could enter the plea, trial counsel told him that the offer had been rescinded once the State learned that Applicant's codefendant was willing to testify against him at trial. Applicant now complains that trial counsel was ineffective for failing to request that the court require the State to honor the plea offer.

Applicant also testified that he only met with trial counsel four times while he was in jail. He alleges that during those meetings, he was never shown any written statement made by his codefendant and instead was only told a synopsis of what the codefendant's testimony might be. Additionally, the codefendant testified in pre-trial hearings; the State alluded to the codefendant's testimony in its opening statement; and at least one witness mentioned the codefendant in his own testimony. However, the codefendant never testified during trial. Applicant contends that before the trial began, trial counsel knew that the codefendant had decided not to testify and, therefore, trial counsel was ineffective in failing to object to the State's opening statement and the witness's testimony and in failing to move for a mistrial on the same grounds.

According to Applicant, witness Sean Toran wrote a letter to him while he was in jail, and that letter could have been – and should have been – used to impeach Toran's testimony. Applicant also contends that trial counsel was ineffective for failing to fully inform him of Toran's intended testimony. Applicant testified that if he had known that such testimony was forthcoming, he would have accepted a plea offer instead of having a jury trial.

Applicant contends that after the jury returned its verdict, only eleven of the twelve jurors were polled by the court. Applicant argues that trial counsel should have moved for a mistrial but failed to do so. Finally, Applicant alleges that during the trial, the courtroom was closed to the public. He believes the closure to be a violation of his Sixth and Fourteenth Amendment rights.

## II. Testimony of Trial Counsel

Trial counsel also testified during the evidentiary hearing. He explained that after he was retained by Applicant, he met with Applicant "a number of times" and had long, detailed conversations with him. During those meetings, Applicant gave him a list of potential witnesses for his defense. Trial counsel stated that he gave the witnesses' names to a private investigator so that they could be located and interviewed but that the list "didn't pan out" because it lacked sufficient information such as witnesses' full names and addresses.

Trial counsel testified that he had sufficient time to prepare for trial and that Applicant had always wanted a jury trial rather than a plea offer. His trial strategy was to challenge the State's case by showing that the State had no physical evidence against Applicant. He was surprised by the codefendant's decision not to testify and the closure of the courtroom to the public. Trial counsel also testified that he reviewed the letter to Applicant from witness Sean Toran but determined that it wasn't sufficiently specific to be helpful to Applicant's defense. Specifically, trial counsel stated that despite Applicant's contentions, he didn't believe that the Toran letter could be used effectively in the witness's cross-examination.

Trial counsel acknowledged that only eleven of the twelve jurors were polled after the verdict was returned. He had no explanation as to why that occurred or why he didn't notice its occurrence at the time. Finally, trial counsel testified that he was surprised by the trial judge's decision to close the courtroom, but he gave no explanation about why he failed to challenge the closure or the effect of that decision on Applicant.

### III. Other Evidence

The Court also reviewed the transcript of Applicant's trial, the letter purportedly mailed to Applicant by witness Sean Toran, a typewritten statement of Sean Toran, and the Affidavit of codefendant Torrell Johnson.

#### CONCLUSIONS OF LAW

In a PCR action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP. Where it is alleged that trial counsel was ineffective, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Additionally, "any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." *Id.* at 692. "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691.

#### I. Plea Offer

Applicant's complaint about the State's rescission of a plea offer is without merit. Even assuming Applicant's contention to be true, he has failed to prove that he detrimentally relied on the State's offer.

"A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea." *Reed v. Becka*, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999). "A defendant accepts the 'offer' by pleading guilty." *Id.* "Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court." *Id.* (citing *Harden v. State*, 453 So.2d 550 (Fla. Dist. Ct. App. 1984) (until formal acceptance of plea has occurred, plea binds no one, not defendant, prosecutor, or court; formal acceptance of plea occurs when trial court affirmatively states to parties, in open court and for the record, court accepts the plea)).

The exception to this rule is when the accused shows that they have detrimentally relied upon the State's plea offer. *Id.* at 688-89, 511 S.E.2d at 402-03 (citations omitted). "A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer." *Id.* at 689. 511 S.E.2d at 403 (citation omitted). "Reliance may not be shown 'by the mere passage of time.'" *Id.* (citation omitted). "Also, it may not be shown where the defendant stopped preparing his defense, absent a showing of specific prejudice." *Id.* (citation omitted). "Nor may detrimental reliance be shown by the prospect of a longer sentence." *Id.* (citation omitted).

Here, Applicant has shown no prejudice. Rather, it appears that Applicant regrets losing the opportunity to receive a shorter prison sentence. Such regret is not a sufficient basis upon which to grant PCR. Therefore, this allegation is dismissed.

## **II. Deficiencies in Jury Polling and Closed Courtroom**

According to both Applicant and trial counsel, the courtroom was closed to the public during the trial. Additionally, upon the jury's pronouncement that Applicant was guilty, eleven of the twelve jurors were polled. However, Applicant's contention that counsel was ineffective for

failing to move for a new trial on these grounds is unfounded, as Applicant has not shown any resulting prejudice.

"A trial judge polls the jury to ensure the verdict is unanimous." *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (citation omitted). However, trial counsel has no affirmative duty to request that a trial jury be polled. *Id.* Further, even when a poll is taken and there is some anomaly in the results, the PCR court cannot speculate as to any conclusions to be drawn from that anomaly. *Id.* Rather, an applicant must successfully argue that the outcome of his trial would have been different if the jury polling procedure had gone differently. *Id.*

Similarly, prejudice must be shown in order to demonstrate that the closure of the trial court to the public resulted in violation to Applicant's constitutional rights. "[T]he right to an open courtroom protects the rights of the public at large, and the press, as well as the rights of the accused." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1910 (2017) (citations omitted). "[W]hen a defendant raises a public-trial violation via an ineffective-assistance-of-counsel claim, *Strickland* prejudice is not shown automatically." *Id.* at 1911. Instead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or ... to show that the particular public-trial violation was so serious as to render his or her trial fundamentally unfair." *Id.*

Applicant in this case is unable to show how he was prejudiced by the failure to poll the twelfth juror in his trial or by the closure of the courtroom. Because this court cannot assume that any prejudice occurred, this claim is dismissed.

### III. Remaining Allegations

Applicant's remaining allegations must be dismissed as well. Applicant has not only failed to prove that trial counsel's actions were anything other than strategic, but he has also failed to offer evidence of any resulting prejudice.

As the United States Supreme Court has recognized, "Representation [of clients] is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Strickland*, 466 U.S. at 691. "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Here, Applicant complains of trial counsel's failure to call Sean Toran ("Toran") to testify as a witness at trial. According to trial counsel, however, he made a calculated decision not to call Toran as a witness. Specifically, trial counsel stated that he read the letter than Toran had written to Applicant and determined that it was not sufficiently specific to have any impact on this case. Trial counsel also testified that he did not believe, in his professional opinion, that the letter would have been useful in any effective cross-examination.

Applicant also complains of trial counsel's failure to object when Torrell Johnson ("Johnson") testified during pre-trial hearings but did not testify as a witness during trial. Specifically, Applicant contends that trial counsel should have objected to any mention of Johnson during the State's opening statement and in the State's examination of a police investigator, as trial counsel knew before trial began that Johnson would not testify. Trial counsel – who this court finds to be credible – denies this, stating that he was unaware that Johnson would not testify in trial; therefore, he had no reason to lodge such objections. Trial counsel testified that Johnson's

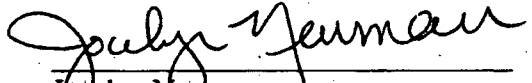
failure to testify during trial was "a curveball" and that, strategically, he knows of no better way to have handled the situation.

Finally, trial counsel explained that his trial strategy was to "poke holes in the State's case" and show that the State had no physical evidence upon which to convict Applicant. According to trial counsel, each of his decisions was made with that strategy in mind. Because this court must accept the valid, calculated, strategic decisions made by trial counsel and because Applicant has failed to demonstrate that any of these decisions was the cause of the trial having an unjust result, Applicant's remaining allegations are dismissed as well.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Ricky Bowman be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.

  
Jocelyn Newman  
Presiding Judge

January 30, 2018  
Columbia, South Carolina.

IN THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
JOCELYN NEWMAN, CIRCUIT COURT JUDGE  
2015-CP-40-1658

RICHLAND COUNTY  
FILED  
2018 FEB - 1 PM 2:16  
JEANNETTE W. MCBRIDE  
C.C.P. & C.S.

Ricky Bowman,.....Petitioner  
vs  
The State of South Carolina,.....Respondent.

**NOTICE OF APPEAL**

Ricky Bowman appeals the Honorable Jocelyn Newman's January 31, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on December 31, 2018. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



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Law Office of Anna Browder, LLC  
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Telephone: (803) 661-6758  
Fax: (803) 403-8752

Attorney for the Petitioner.

February 1, 2018

OTHER COUNSEL OF RECORD:  
Jessica Kinard, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

2011202926

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

PM 11-15-11  
POS 11-15-11

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

G. Thomas Cooper, Jr., Circuit Court Judge

JEANETTE W. McBRIDE  
C.C.P. & G.

2011 NOV 15 PM 3:04

RICHLAND COUNTY  
FILED

Case No. 2010-GS-40-01108, 2010-GS-40-01109, 2010-GS-40-01110,  
2010-GS-40-01111, 2010-GS-40-01112

State of South Carolina, ..... Respondent.

v.

Ricky S. Bowman, ..... Appellant

**RECEIVED**

NOV 15 2011

NOTICE OF APPEAL

**SC Court of Appeals**

Ricky S. Bowman appeals his conviction and sentence in this case. The sentence was imposed by the Honorable G. Thomas Cooper, Jr. on November 9, 2011.

2010-GS-40-01108 – Assault and Battery High and Aggravated (common law) – 10 years, concurrent to all others, credit for time served since December 13, 2009

2010-GS-40-01109 – Possession of Weapon During Commission of Violent Crime – 5 years, concurrent to all others, credit for time served since December 13, 2009

2010-GS-40-01110 – Armed Robbery – 20 years, concurrent to all others, credit for time served since December 13, 2009

2010-GS-40-01111 – Kidnapping – 20 years, concurrent to all others, credit for time served since December 13, 2009, no sex offender registry

2010-GS-40-01112 – Burglary 1<sup>st</sup> Degree – 20 years, concurrent to all others, credit for time served since December 13, 2009

November 15, 2011



Mark Schnee  
The Schnee Law Firm  
1720 Main Street, Suite 202  
Columbia, South Carolina 29201  
(803) 771-0075  
Attorney for Appellant

Other Counsel of Record:

Assistant Solicitor April Sampson  
Office of the Solicitor, Fifth Judicial Circuit  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201

# The Supreme Court of South Carolina

Ricky Bowman, Petitioner,

v.

State of South Carolina, Respondent.

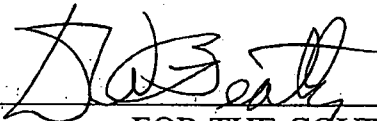
Appellate Case No. 2018-000145

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## ORDER

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C. Rauch Wise moves to be substituted as counsel for petitioner in this case, having been retained by petitioner for that purpose. Robert Dudek, petitioner's current counsel, consents to the motion. The motion is granted. Mr. Dudek is hereby relieved as counsel and Mr. Wise is substituted as counsel of record for petitioner.

  
\_\_\_\_\_  
FOR THE COURT C.J.

Columbia, South Carolina

April 16, 2018

cc:

Clarence Rauch Wise, Esquire

Lindsey Ann McCallister, Esquire

Robert M. Dudek, Esquire