

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

PATRICK DEAN LOWRANCE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000494

APPENDIX

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1 **(WHEREUPON,** a bench conference is held off the
2 record.)

3 **BY MR. MARCHANT:**

4 **Q** You called, uh, Norman six times that day?

5 **A** I don't know how many times I was calling
6 people.

7 **Q** You called your wife five times that day?

8 **A** Yeah. I tried to call her. She was in school,
9 I think.

10 **Q** You made multiple phone calls in between the
11 time you were shot and the time you were apprehended,
12 isn't that correct?

13 **A** Yes, sir.

14 **Q** And you testified to this jury that you were
15 not the individual that had this gun that was shooting at
16 the police?

17 **A** No, sir. I was not -- I didn't do the
18 shooting.

19 **Q** But you were, in fact, shot?

20 **A** I was shot.

21 **Q** You heard the testimony from the officers that
22 the exchange of gunfire that morning occurred
23 approximately 9:48 to 9:49 in the morning?

24 **A** I don't know exactly what time it was.

25 **Q** You been in here the whole time. You heard the

1 testimony?

2 **A** Yeah. I heard them say what time it was, but I
3 don't know exactly what time it was that day.

4 **Q** And you got over to Mr. Brockman's house about
5 6:30 that evening, is that correct?

6 **A** I don't know exactly the time.

7 **Q** You were in Mr. Brockman's house for about two
8 hours before law enforcement and Detective Flavell, who
9 was present and testified, had you -- called you out of
10 the home?

11 **A** I was trying to get in touch with my family.

12 **Q** Not what I'm asking you, sir. I'm asking you
13 were over at Mr. Brockman's house approximately two
14 hours?

15 **A** I don't know how long I was over there.

16 **Q** Your testimony to this jury is that in between
17 the time that you were shot, 9:49 in the morning, and the
18 time that you were apprehended at 8:30 in the evening,
19 correct?

20 **A** Yes, sir.

21 **Q** They came to Norman's -- Mr. Brockman's house
22 at 8:30 and called you out?

23 **A** Yes, sir. When they called me out, I came out.

24 **Q** And you done nothing wrong?

25 **A** No, sir. That's why my family told me to turn

1 myself in for my safety because if I didn't do nothing
2 wrong, everything would be alright. So I turned myself
3 in. When he called me out, I came out.

4 Q All right. So let's just round up to 10
5 o'clock in the morning, if you will. So from 10:00 to
6 11:00, 11:00 to 12:00, 12:00 to 1:00, 1:00 to 2:00, 2:00
7 to 3:00, 3:00 to 4:00, 4:00 to 5:00, 5:00 to 6:00, 6:00
8 to 7:00, 7:00 to 8:00 and 8:00 to 8:30, approximately 10
9 and a half hours, correct?

10 A That's in what? 10 and a half hours what?

11 Q The time you were shot to the time you were
12 apprehended. You were shot right before 10:00 a.m. in
13 the morning.

14 A I don't know what time I was shot.

15 Q You heard the testimony, sir.

16 A I heard the testimony.

17 Q You heard when the shots were fired?

18 A Yes, sir.

19 Q Roughly 9:50 in the morning. So from ten
20 o'clock until 8:30 when you were apprehended is ten and a
21 half hours, right?

22 A Yes, sir.

23 Q You had your phone with you the whole time?

24 A Yes, sir.

25 Q Your phone's working?

1 **A** Yes, sir.

2 **Q** You made numerous calls to numerous people?

3 **A** I was trying to call for help.

4 **Q** Did you ever call 911?

5 **A** No, sir. I did not.

6 **Q** You're familiar with 911?

7 **A** Yes, sir. I am.

8 **Q** You get the hospital and you came you don't
9 remember seeing Detective Conroy?

10 **A** The first time I ever seen him --

11 **Q** I'm just asking at the hospital, sir.

12 **A** The first time I seen him is when he came to
13 the trial last time.

14 **Q** Do you or do you not remember seeing Detective
15 Conroy in the hospital? Yes or no.

16 **A** No, I didn't ever see him at the hospital.

17 **Q** You've heard the other testimony about
18 Detective Flavell going back to the Comfort Inn and going
19 into the room you were in, correct?

20 **A** Yes, sir.

21 **THE COURT:** Will the attorneys approach for
22 just one moment?

23 **(WHEREUPON, a bench conference is held off the**
24 **record.)**

25 **MR. MARCHANT:** Thank you, Your Honor.

1 **THE COURT:** Thank you.

2 **BY MR. MARCHANT:**

3 **Q** Mr. Lowrance, you recall the testimony of
4 Detective Flavell finding your driver's license in Room
5 426 [sic], correct?

6 **A** Yes, sir.

7 **Q** You also recall Detective Flavell's testimony
8 about retrieving items out of your bag form the motel
9 room that day, don't you?

10 **A** Yes, sir.

11 **Q** Those items are in evidence, a couple of CDs
12 and a, uh, some sort of documentation from Lewis Blackmon
13 Hospital that's got your name on it.

14 **A** Yes, sir.

15 **Q** This is your bag?

16 **A** Yes, sir.

17 **Q** Everything in it is yours?

18 **A** Yes, sir.

19 **Q** A pair of jeans, black t-shirt, ten pair of
20 underwear, undershirt, gray t-shirt, pair of golf socks,
21 black and red t-shirt, a pair of underwear, white t-
22 shirt, yellow Polo long sleeve Ralph Lauren, paper
23 towels, white t-shirt, pair of black golf socks, pair of
24 black shorts, another pair of black shorts, pair of blue
25 shorts, pair of gray pants, pair of black and white

1 shorts, black short sleeve shirt, pair of golf socks, in
2 a separate bag within that bag, a pair of white thermals,
3 pair of jeans, another pair of golf socks and a pair of
4 underwear, a couple of belts, some deodorant, a pair of
5 socks, various other pair of socks in a second side,
6 deodorant and golf sock in the front. All of those your
7 stuff?

8 **A** Yes, sir.

9 **Q** Now, also heard the testimony of Forensics
10 Officer Shaw who collected this item, which is a gray t-
11 shirt, at Mr. Brockman's house?

12 **A** Yes, sir. This is the shirt I had on.

13 **Q** This is the shirt you were wearing?

14 **A** Yes, sir.

15 **Q** In fact, this is the projectile hole up here on
16 the top left corner?

17 **A** Yes, sir.

18 **Q** That's where you were shot?

19 **A** Yes, sir.

20 **Q** Through this shirt?

21 **A** Yes, sir.

22 **Q** I'm also showing the black hooded sweatshirt.
23 It looks like drawstrings around the front to tighten the
24 hood. There are two holes in this.

25 **A** Yes, sir.

1 Q Where you were shot as well?

2 A Yes, sir.

3 Q You heard the testimony that that's your blood?

4 A Yes, sir.

5 Q You also agree that you held this gun?

6 A Yeah, it was put on me.

7 Q Mr. Lowrance, this seems pretty heavy. How did
8 you carry it from behind the apartments where you claim
9 Mr. Meat gave it to you all the way to your cousin's
10 house?

11 A I just had it on me, just on me.

12 Q This thing must weigh a couple of pounds.

13 A I don't know how much it weigh.

14 Q Did you stick it in your waistband?

15 A I just had it on me. I mean, he put the gun on
16 me.

17 Q This thing is good and heavy. How did you
18 carry it from what you claim, Berkeley Pointe all the way
19 to your cousin's house? This is where the incident
20 happened?

21 A Yes, sir.

22 Q This is where you were apprehended?

23 A Yes, sir.

24 Q You carried it all the way from here to here
25 somehow. You heard Mr. Brockman's testimony that the

1 street that he lives on is not far from where he picked
2 you up.

3 **A** Yes, sir.

4 **Q** You carried it all the way over here. How did
5 you carry it?

6 **A** I don't really recall. I know I had the gun.

7 **Q** The whole time, you'd done nothing wrong?

8 **A** No, sir.

9 **Q** You are a victim of either Lemetrius or Officer
10 Cobb?

11 **A** I don't know who shot me.

12 **Q** Not at one point in time did you seek medical
13 treatment until law enforcement showed up and took you to
14 the hospital.

15 **A** Yeah, I went to the hospital when the police
16 came and got me out of the house.

17 **Q** From the time you got shot to the time they
18 took you to the hospital, you never got medical
19 treatment?

20 **A** After I got shot, I had passed out. Once I
21 woke up or whatever, I got together and was trying to
22 call my family to get help to see about the situation
23 because I didn't really know what to do. I was
24 panicking.

25 **MR. MARCHANT:** I have nothing further.

1 **THE COURT:** Mr. Johnson.

2 **MR. JOHNSON:** Briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. JOHNSON:**

5 **Q** Mr. Lowrance, first of all, he asked you how
6 you carried the gun. I don't know. I mean, do you carry
7 the gun like normal people? If you were carrying the
8 gun, you carried the gun, didn't you?

9 **A** Yes, sir.

10 **Q** Mr. Lowrance, you know what the motion of
11 discovery is, don't you?

12 **A** Yes, sir.

13 **Q** Have you seen that before in this case?

14 **A** Yes, sir. I got it a long time. While I was
15 in jail, they brung -- they brung -- they brung it to me.

16 **Q** Okay. Now, that's something that you and I
17 looked at together at some point?

18 **A** Yes, sir.

19 **Q** You remember going over the cell phone records?

20 **A** I think I might have looked at them a couple of
21 times.

22 **Q** If I showed them to you, would these be the
23 records, the cell phone records?

24 **A** For that day?

25 **Q** Yeah.

1 **A** I guess so if it's got that date on it.

2 **Q** Read over them.

3 **A** Okay. (Reading.)

4 Yes, sir.

5 **Q** All right. Now, on this record, I'm sorry.

6 I'm going to stand right here. It shows incoming calls.

7 **A** Yeah, that's the incoming call from my cousin.

8 **Q** I'm not asking you that. It's showing incoming
9 calls, right?

10 **A** Yes, sir.

11 **Q** It shows outcoming calls -- outgoing calls too,
12 didn't it?

13 **A** Yes, sir.

14 **Q** And 10/28/2011 is the day of the incident,
15 right?

16 **A** Yes, sir.

17 **Q** Now, outgoing calls actually -- that means you
18 made a phone call, right?

19 **A** Yes, sir.

20 **Q** You made calls going out. That means you made
21 a call?

22 **A** Yes, sir.

23 **Q** And call coming incoming, that means somebody
24 called you?

25 **A** That's right.

1 **Q** Now, I want to point here. I want you to tell
2 me if I'm reading this correctly. It looks like --

3 **MR. MARCHANT:** Your Honor, he either
4 remembers the record or he doesn't. Objection to
5 Mr. Johnson reading this information into the record
6 without asking a question.

7 **THE COURT:** If you will just ask him does he
8 -- does he remember these particular calls just like
9 before. If he's familiar with it, then I'll let you
10 ask him about it.

11 **BY MR. JOHNSON:**

12 **Q** Okay. Now, earlier, you stated that at some
13 point, you passed out?

14 **A** Yes, sir.

15 **Q** Okay. And when you were passed out, were you
16 making phone calls while you were passed out?

17 **A** Uh, I really never passed out before. That's
18 the first time I ever passed out.

19 **Q** Now, I asked you if you remember your cell
20 phone records because it shows the last outgoing calls at
21 10:48 a.m. The next one at 6:08 p.m. Does that sound
22 about right to you?

23 **A** The only thing I know is I passed out. It was
24 daylight. It was dark.

25 **Q** I have nothing further.

1 **THE COURT:** Anything else from this witness?

2 **MR. MARCHANT:** None from the State, Your
3 Honor.

4 **THE COURT:** Sir, you can step down.

5 Mr. Johnson, are you intending on calling any
6 other witnesses?

7 **MR. JOHNSON:** No, ma'am.

8 **THE COURT:** All right. So the defense rests?

9 **MR. JOHNSON:** The defense rests, Your Honor.

10 **THE COURT:** Okay. All right. Uh, Mr.
11 Marchant, do you have any reply testimony?

12 **MR. MARCHANT:** Can I have a moment with
13 Detective Conroy?

14 **THE COURT:** Sure.

15 While he's speaking with the detective, I will
16 tell you and I hope that you all do not mind. I
17 took the liberty -- you've worked so hard this week
18 with us, I took the liberty of ordering lunch for
19 you. If you do not want to have lunch, we're going
20 to have a little bit of an abbreviated break because
21 I want the attorneys to be able to argue and get
22 your charge on the law earlier in the afternoon
23 rather than later. If you want to go out and get
24 something different, that's fine. But we've got you
25 -- brought you in lunch from Publix. Lunch from

1 Publix, you can just choose what you want from what
2 all we have. It's sandwiches and whatnot. But if
3 anybody has any dietary concerns and needs to run
4 out, I will let -- allow you certainly to do that as
5 well.

6 Yes, sir.

7 **MR. MARCHANT:** Your Honor, the State does not
8 have any reply.

9 **THE COURT:** All right. All right. Well, uh,
10 these attorneys said that they thought they would
11 have all the testimony and evidence to you before
12 lunch on Thursday and they have done it. They came
13 close but they've done it. When we come back, we're
14 going to hear final arguments from the attorneys.
15 Let's break --

16 Is 45 minutes enough for you all to get some
17 lunch? If you need an hour --

18 **MR. MARCHANT:** Your Honor, that's a fair
19 amount of time.

20 **MR. JOHNSON:** Uh, yeah. Yeah, 45 minutes is
21 fine.

22 **THE COURT:** You think so? Okay.

23 We're going to break for 45 minutes. Please
24 don't discuss the case with anyone. Until we've
25 heard final arguments, you can't begin your

1 deliberations. Thank you.

2 (WHEREUPON, the jury exits at approximately
3 1:06 p.m.)

4 THE COURT: I'm not trying to rush y'all to
5 death. And I did do a copy of my charge for each of
6 you to have over the lunch break if you want to
7 argue from it.

8 MR. MARCHANT: Your Honor, the only
9 additional charge, I guess, I would request at this
10 time is this defendant has testified he was present
11 at the scene. It's the State's position, I believe,
12 that it would be appropriate hand-of-one/hand-of-all
13 compass liability charge.

14 MR. JOHNSON: I don't believe that's any
15 testimony, you know, there's been no testimony that
16 he participated.

17 THE COURT: I'll think that one over on the
18 lunch break. But I will tell you before you do your
19 final arguments.

20 MR. MARCHANT: Thank you, Your Honor.

21 THE COURT: I'll take a look at that. Mere
22 presence is in there. It's in there. I put it in
23 there. I'll hear arguments from either side. Okay.

24 MR. MARCHANT: Thank you, Your Honor.

25 THE COURT: Thank you. We'll be in recess

1 until a little before 2:00. Just before 2:00. Just
2 two o'clock. Two o'clock.

3 **MR. MARCHANT:** Mr. Pringle was still under
4 subpoena and I did not have the court release him.
5 Can I do that at this time, unless there is an
6 objection?

7 **THE COURT:** Any objection?

8 **MR. JOHNSON:** No objection.

9 **THE COURT:** All right.

10 **MR. MARCHANT:** Thank you, Judge.

11 **THE COURT:** Oh, and you renew all your
12 previous motions and your motion for directed
13 verdict as well?

14 **MR. JOHNSON:** I guess I should do that.

15 **THE COURT:** Okay. They are noted for the
16 record and preserved. I respectfully deny. Thank
17 you.

18 (WHEREUPON, a lunch recess is taken.)

19 **MR. JOHNSON:** I guess I'm concerned primarily
20 because I've thought about it. I guess the jury --
21 the jury probably were able to see your face and see
22 the --

23 **THE COURT:** That's why I had y'all stand
24 right where you stood. I had Mr. Marchant blocking
25 me here and then I -- remember I placed you in a

1 certain place to say it.

2 **MR. JOHNSON:** Okay.

3 **THE COURT:** I did it so the jury specifically
4 could not -- could not see me. I think I said it
5 very, very low.

6 **MR. JOHNSON:** Okay. I guess if I could
7 really make an objection on the record. Actually,
8 it just happens that I move for a mistrial on the
9 record.

10 **THE COURT:** All right. I don't think there
11 was any prejudice to the defendant that, first, he
12 didn't bring on himself to begin with. But, uh,
13 when I -- but when I warned him, I think I did it in
14 a very low tone. I would be shocked to know any
15 juror saw it. If you do remember -- I will say for
16 the record, if you do remember, Mr. Marchant, when
17 you came up, I asked you to stand in a particular
18 spot. Then I asked, Mr. Johnson, for you to stand
19 right next to him. You were standing right here. I
20 said, no, I want you more over here. I did not want
21 the jury to be able to see me in any way.

22 **MR. JOHNSON:** Yes, ma'am, Your Honor.

23 **MR. MARCHANT:** That's the State's
24 recollection, Your Honor.

25 **THE COURT:** Your motion is respectfully

1 denied.

2 **MR. JOHNSON:** Thank you, Your Honor.

3 (WHEREUPON, there is a pause.)

4 **THE COURT:** Mr. Johnson, what was your --
5 what was your response to the State requesting the
6 hand of one charge?

7 **MR. JOHNSON:** Your Honor, I believe the hand
8 of one needs, uh, testimony by somebody that they
9 actually concerted one another or as far as acting
10 in concert. We haven't had any testimony by anyone.
11 I guess primarily anybody present would be --
12 present who testified as far as action would be my
13 client. He didn't give any testimony that they
14 acted together.

15 **THE COURT:** All right. Mr. Marchant, any
16 response?

17 **MR. MARCHANT:** Of course, Your Honor, the
18 State's position is his client is the only person
19 that was there. Mr. Lemetrius and Mr. Tee have not
20 been found. It would be the State's position that
21 he did carry the gun away from the scene. He didn't
22 report it. He could be considered an accomplice to
23 Lemetrius firing shots at Officer Cobb and Officer
24 Lane. Therefore, the jury should consider he was an
25 accomplice, hand of one, hand of all.

1 **THE COURT:** It is unusual. I mean, the
2 defendant's really the only person who's testimony--

3 **MR. JOHNSON:** Your Honor, I think he's
4 arguing as far as inferences that can be made. That
5 testimony, I think they have somebody --

6 **THE COURT:** It has to be testimony that any
7 inference from the testimony could support it, could
8 support the charge requires that I do give them the
9 charge.

10 (WHEREUPON, there is a pause.)

11 **MR. JOHNSON:** Judge, if I may?

12 **THE COURT:** Yes, sir.

13 **MR. JOHNSON:** I, uh, -- it's my
14 understanding, and I'm sorry, I don't have the exact
15 case I want. But as I understand that in order for
16 you to charge accomplice liability. There at least
17 needs to be evidence presented of a common plan or
18 common design, common scheme. There has been no
19 evidence of any scheme, say for instance, to drive
20 the car away from officers and then shoot somebody.
21 There's been no evidence of that at all. The
22 evidence presented, even the one by my client sounds
23 like something -- if you believe my client and you
24 believe it to be related to accomplice liability,
25 then you also believe that this was not planned,

1 that this just kind of happened. I do believe a
2 common design or common scheme would be required
3 before you --

4 **THE COURT:** Prior knowledge is not
5 necessarily required. Mr. Marchant argues that he
6 didn't call the police and took the gun away from
7 the scheme to help conceal -- according to his
8 story, to help conceal someone else's guilt in it.
9 (Pause.)

10 I believe based on the defendant's testimony, I
11 am going to charge the hand of one/hand of all.

12 **MR. JOHNSON:** Your Honor, this is -- I guess,
13 uh, -- I know you asked, uh, can you send the charge
14 back and would both parties agree, I guess at this
15 point, we would not consent to it. I suppose Your
16 Honor can do whatever she wishes. But if you're
17 asking for our consent, we would not.

18 **THE COURT:** Okay. All right. Y'all ready to
19 begin with arguments?

20 Yes, sir.

21 **MR. MARCHANT:** The State's ready, Your Honor.
22 I just, for my benefit in the closing argument, we
23 would request, as Your Honor discussed yesterday,
24 sending the charge back. So since he is objecting,
25 I'm asking for it. I'm curious what you're going to

1 do so I can let them know if --

2 **THE COURT:** I only send it back if both sides
3 consent, so I won't send it back.

4 **MR. JOHNSON:** Your Honor, at this time, we
5 formally object to the accomplice liability charge,
6 the hand of one charge. I just want to put that --

7 **THE COURT:** Oh, yes. Your objection is
8 noted.

9 **MR. JOHNSON:** Yes, sir.

10 **THE COURT:** The objection is noted.

11 **MR. JOHNSON:** Thank you, Your Honor.

12 **THE COURT:** Mr. Marchant, you don't want to
13 open on law, do you?

14 **MR. MARCHANT:** No, Your Honor.

15 (WHEREUPON, the jury enters at approximately
16 2:14 p.m.)

17 **THE COURT:** All right. Ladies and Gentlemen,
18 we're now to the portion of trial in which the
19 attorneys will make their closing arguments to you.

20 Mr. Johnson?

21 **MR. JOHNSON:** Thank you, Your Honor. May it
22 please the Court?

23 **THE COURT:** Yes, sir.

24 **MR. JOHNSON:** Solicitor.

25 What if I told you guys that I saw a movie last

1 night called Independence Day? I'll tell you what
2 it is about. It has Samuel L. Jackson in it. And
3 he and John Travolta, they go to -- they work for
4 this guy named Marcellus Wallace. They go and --
5 they are pretty much gangsters. Their job is to
6 collect -- I think y'all see what I'm saying here.
7 I'm giving you a description of the wrong movie.

8 Descriptions matter. Descriptions are very
9 important. If there's anything I can tell -- do to
10 tell y'all that the movie I just described was
11 Independence Day? No. I can't tell you any
12 different and don't let them tell you any different.

13 Ladies and Gentlemen, in this case, there was a
14 description given. The description was quite clear
15 in a well lit lobby. You can look at the pictures
16 and you can see that. This person said they saw --
17 Officer Cruell said they saw this person with this
18 hat get in this car. Very particular. They want to
19 tell you different. Ladies and Gentlemen, don't let
20 them tell you any different.

21 Now, I'd like to go through some of the
22 charges. I'll start with the Failure to Stop. I'm
23 looking at my notes here, so I apologize if I look
24 down. In regard to the Failure to Stop, I guess the
25 first thing that we'd have to explain is my client's

1 presence in the car. Like I told you, he admits to
2 driving the car. He admitted to driving the car
3 prior to that day. Norman Pearson stated that he
4 was driving the car. My client admits that. Okay.
5 Now, we also talked about at the prior hearing, him
6 saying that obviously it was a stolen vehicle. He
7 admits to driving the vehicle. And that would
8 explain the conviction, now wouldn't it? So my
9 client's trying to be up-front. He did this thing
10 wrong.

11 Now, I know they try to make like that my
12 client may have said that he didn't know the vehicle
13 was initially stolen, but let me tell you this, how
14 do you think the car was driven? You have keys.
15 Keys to the car. You unlock it just like that. It
16 wasn't hot wired or nothing. Keys to the car. Why
17 wouldn't he believe that it was that person's
18 rightful car? I don't know how you steal a car that
19 has keys with it. If somebody wants to tell me how
20 to do that, I'll be a master criminal. How am I
21 going to steal somebody else's car and they not know
22 who I am and I have the keys?

23 Now, I guess the State is trying to say that he
24 was driving the car on that day. Uh, one of the
25 things they brought forth was the fingerprints.

1 What we know is they collected 26 fingerprints.
2 Nine were accounted for, 17 were not. He said they
3 plugged them into a database and then they compared
4 them to known samples, which was from my client.
5 Now, it came up there were 16 unaccounted for. What
6 we also know is that my client's fingerprints were
7 found on other parts in the car relative to the
8 driver's side? This is a car. I got a front door
9 and I got a back door. I got another back door and
10 I got a side passenger door. This is the passenger
11 side. This is the driver's side. Ladies and
12 Gentlemen, they found his prints over here. Ladies
13 and Gentlemen, they found his prints over here.
14 Somebody else was driving the car, Ladies and
15 Gentlemen. He got in the car with somebody else.
16 He wasn't always driving this vehicle. Why would
17 his prints be over here or back over there if he
18 wasn't going to drive -- if he wasn't riding in the
19 car at some point? So that supports that notion.
20 That supports that idea that he was all -- that he
21 also had ridden in the car and he wasn't just
22 driving it.

23 We also heard testimony from other people. I
24 already said Norman. We heard from Norman and even
25 from my client that Norman's cousin was in the car

1 too. Now, we heard from Pringle, as my client
2 called him T.P. He was in the car. The guy, Tron
3 testified. He said he'd never been in the car or
4 been around. And I'll talk about this later. He
5 been around it somehow. He didn't say how but he
6 had been around it. And Will Brockman stated that
7 he had seen it or something of that nature. So what
8 we know is you have a whole bunch of unsavory
9 characters around this car. That corroborates my
10 client's story. We have a whole bunch of idiots
11 around this car. A whole bunch of people doing
12 stupid stuff.

13 And finally -- and I'll come back to this.
14 I've said this initially. What we have from Officer
15 Cruell is that she saw somebody come down through
16 the lobby, six foot, 40 years old, long hair pulled
17 back into a pony tail maybe. Who was that?

18 Now, I guess I can kind of figure out what
19 happened with Officer Cruell because she stated
20 that, uh, she went back and looked up the picture
21 and decided that that person she saw was my client.
22 I guess all I can say is Officer Cruell aimed to
23 please. They caught this guy. Okay. Yeah. That
24 was him. But think about it. You know it's true.
25 I just came before you and described Pulp Fiction.

1 I told you it was Independence Day. You didn't
2 believe it. Don't believe this. Don't let them
3 tell you different.

4 Now, with regards to the, uh, Attempted Murder
5 times two on Officer Lane and Officer Cobb and what
6 goes along with that is Possession of a Weapon
7 During the Commission of a Violent Crime.
8 Obviously, somebody was shooting at them. They
9 obviously committed that Possession of a Weapon
10 charge. That's what -- that's what that means.
11 That means you're just not possessing a weapon.
12 It's possession of a weapon while you are shooting
13 at somebody. That's what the charge means. The
14 judge will tell you what that is, but I just wanted
15 to be clear in my own words what my interpretation
16 of the law is. The judge will tell you what it is.
17 I think you'll find it's pretty much consistent.

18 The first thing we know is -- I'd like to set
19 the background. Officer Cobb and Officer Lane --
20 first of all, I don't know who was shooting at him.
21 We don't know. Uh, there's other information that
22 they provide too. One is they don't know how many
23 people were down there. It's not like they can come
24 and tell you, no, there wasn't nobody else down
25 there. They can't do that. They can't do that.

1 Okay. So let's be clear on that. Let's be clear.
2 I even asked them the question. Couldn't there have
3 been somebody else down there? Yes. I mean, that
4 was the only possible logical answer to that
5 question. Couldn't somebody else be down there?
6 Yeah, of course.

7 Now, let's talk about something else on the
8 shooting because I think the evidence corroborates
9 my story. First of all, let's talk about the gun.
10 Now, Dr. Kandala testified that he tested this gun.
11 He found my client's DNA on it. He found two other
12 people's DNA on it. They found two other people's
13 DNA on it. First of all, what we know from my
14 client's testimony is that he had the gun. So we
15 expect his DNA to be on it. How else are you going
16 to hold a gun? So okay. We expect his DNA to be on
17 it. How else are you going to have a gun? You got
18 to hold the gun. You don't have any gloves, you got
19 to have a gun. But like I said, Dr. Kandala also
20 testified that two other people's DNA was on the
21 gun. How did it get there? I submit to you this
22 corroborates my client's story.

23 Now, what else do we have of the gun? We have
24 the magazine. Now, I asked Dr. Kandala did he test
25 the magazine for DNA. He did. Okay. Now, he found

1 three people's DNA on the magazine. They didn't
2 find my client's DNA on the magazine. How are you
3 going to shoot a gun without a magazine? How does
4 that work? Here's the magazine and here's the gun.
5 I mean, if you take the safety off and you start
6 pressing the button, ain't nothing coming out.
7 Ain't going to come out. Ain't no bullets. In
8 order to shoot a gun, you got to put the magazine in
9 there.

10 Think about how you got to put it in there
11 because I asked Armstrong. You take it like this
12 and you grip it and you stick it like this and you
13 stick it in the gun. You don't have to stick it
14 hard, but you got to stick it in. Your hand touches
15 it. So in order to get the magazine in the gun, you
16 got to grip the magazine and stick it in. Who's DNA
17 he said is on this gun? A major contributor and two
18 trace contributors. Major contributor is not my
19 client. It wasn't him. Okay. They don't know who
20 it is. I submit to you it corroborates my client's
21 story.

22 Another thing you have with regards to the
23 testimony on this is he said that the trace
24 contributor with regards to the gun could have been
25 this guy, who is the major contributor. I'm going

1 to ask y'all to remember that. He said that one of
2 the, uh, trace contributors here could be this major
3 contributor right here. We don't know who that
4 person is. I submit to you it corroborates with my
5 client's story.

6 Another thing I talked to Kandala about is how
7 DNA gets there or when it gets there. One of the
8 things that he can't tell you is how and when it
9 gets there. He can just tell you that it's there.
10 It's not as if he can say, oh, that DNA is on the
11 gun or Mr. Lowrance's DNA is on the gun. Therefore,
12 he shot the gun and did this and that. He can't do
13 that. That's not what he does. He testified to
14 that. That's not what he does.

15 Now, another thing we know is that we went over
16 these piles of clothes. I don't know which ones
17 they are. This is the one from the same shooting.
18 In it, they found my client's wallet. There are
19 some things peculiar about that that I'd like to
20 point out to you.

21 One of the things they didn't find was a room
22 key to the Comfort Inn. Who had the keys? They
23 found keys to the Quality Inn at the hotel. Who has
24 the keys to the Comfort Inn? How did he get in and
25 out of the room? I say somebody else had the keys.

1 Another thing that wasn't in there, found his birth
2 certificate and Social Security card. The most
3 important thing that wasn't in there was his
4 driver's license. Ladies and Gentlemen, if you have
5 a valid driver's license, if you have the right to
6 drive on this road, if your license is good, why you
7 going to leave it at the room if you intend on
8 driving? That don't make any sense. If I got a
9 good license, I'm going to use my license if I
10 intend on driving. Ladies and Gentlemen, that
11 doesn't make sense and don't let them tell you
12 different.

13 Now, we get through all the evidence and I told
14 you at the beginning you may hear these things and I
15 want to call your attention to the description and I
16 told you that I go last. That's the nature of the
17 things. The defense goes last. And we went last,
18 just like I told you. Made the statement going
19 through all this stuff with all these different
20 witnesses. I want to talk about that in a second.
21 But I told you we went last. Then my client's story
22 comes out. What I think is -- what he described his
23 actions were on that day, I think it explains a
24 whole lot of the evidence as it was. That's
25 something the State can't do. Allow me to explain.

1 First of all, when Detective Conroy was up,
2 what we do know is that in his police report, he
3 talked to Jose Caballero. Jose told him that he saw
4 the [REDACTED] Building. When he saw the [REDACTED] Building,
5 he saw the [REDACTED] Building. When he saw the [REDACTED]
6 Building, he saw two people. Six feet tall, black
7 male. One of them got long hair. The other one
8 didn't. We don't know Jose. I don't where Jose
9 came from. Jose said this. This didn't come out of
10 thin air. This is what this man told him. I'm not
11 making this up. He put this in his report.

12 You also heard a story about Tooten Redcap.
13 Somebody called them and said Tooten Redcap, they
14 did this. And they are the Camelot. They make a
15 phone call and don't even go over there. That's not
16 good police work. Just follow up on the lead.
17 Follow up on the lead.

18 That brings me to my next point. Even the
19 Solicitor did this with my client. Talked about the
20 prior hearing. He talked about prior testimony and
21 new witnesses. People had not testified before.
22 They are here now. So they know my client's story.
23 They got two choices. Corroborate it, prove it
24 right or prove him wrong. Ladies and Gentlemen, I'm
25 going to tell you this, they didn't try to prove him

1 right. They tried to prove him wrong. Did they do
2 that? Did they explain all the actions? Did they
3 explain all the people, all the various things? No.
4 They didn't even try. The guy, Tooten Redcap, first
5 of all, I don't know if I believe that, but it's a
6 lead. And then the other two people that Caballero,
7 which is, I think, probably the most credible piece,
8 independent witness, they didn't even bring it up, I
9 did. That's called hiding the ball. Brought in
10 various witnesses to say, oh, I saw the car. I
11 couldn't see inside it. I didn't know who it was.
12 What's the point in that? What's that supposed to
13 do? Then they say, oh, well, you can see towards --
14 kind of in the front but you can't see in the back.
15 I still don't even know how many people are in
16 there.

17 Another thing they did was a new test was done.
18 We're talking about the hat. Talking about the hat.
19 Dr. Kandala stated that after the prior hearing, he
20 tested a hat. Now, you see where the hat is
21 relevant when the K-9 guy stated that they used the
22 hat and they were going to find whoever was wearing
23 the hat because Officer Cobb said the person that
24 was shooting at them was wearing a hat at the time.

25 Now, here's what's interesting to me. What we

1 do know is my client was shot. We do know my client
2 passed out. We know that from the inactivity on the
3 cell phone and him being in the area. What we also
4 know is the dog didn't track to him. He ain't even
5 moving. We got a stationery object. He right
6 there. He is as unmovable as this sweatshirt right
7 there. The dogs track it. Then the dogs pass over
8 to another track they said. Now, that tracker
9 didn't come. They said they passed it over to the
10 sheriff's office. They didn't track my client
11 either. Who were they looking for? Could it
12 possibly be people that Jose Caballero saw? Is that
13 possible?

14 You also heard and I asked Conroy this. There
15 was a prior hearing. He is the lead investigator.
16 He, you know, before this trial, they prepared for
17 it. I prepared too. No -- nothing wrong with that.
18 He prepared for it. But he also heard almost 100
19 percent of the time the testimony was a little bit
20 different, little details. Just trying to change up
21 a little bit of stuff. Little bit of details to
22 help support. But like I said, no matter how much I
23 described about Pulp Fiction, it ain't Independence
24 Day. It ain't the same movie. It's just not. I
25 don't know any way to put more emphasis on it, it

1 ain't the same move. Don't let them tell you
2 different.

3 Now, the thing that I also think is important
4 to say is that -- now, I brought up the dog and they
5 brought up the perimeter. They made some effort to
6 say that there was a perimeter set up and there was
7 all the police officers and nobody saw anybody.
8 Okay. Obviously, somebody was there. This incident
9 happened. Somebody was there. K-9 tracked
10 somebody. Somebody was there. This happened unless
11 this is an immaculate bullet and it just went, you
12 know, and that's how this works. These were
13 immaculate shots. Officer Cobb wasn't shooting at
14 nobody. Somebody was there at some point despite
15 the fact that no one saw anybody. So I want to --
16 let's be clear about that. Somebody did see
17 somebody. We're talking about Caballero again. He
18 saw these two characters. He saw them walking away.

19 Now, one of the things I think you'll find is
20 the Solicitor may try to have his cake and eat it
21 too. Let me explain. He's probably going to try to
22 say that these people, Lemetrius and Tee, did not
23 exist. Okay. I think they did. I think the
24 evidence corroborated that they did. He's also
25 going to say also, well, if they did exist, then my

1 client's still in it because he was part of the
2 whole mess. You can't have it both ways. That's
3 not how stuff works. You can't -- they just
4 throwing up stuff against the wall and sit fits --
5 and seeing if it sticks. Or as some people call it,
6 throwing crap up against the wall and seeing if it
7 sticks. Ladies and Gentlemen, it's still crap.
8 Crap is crap. You can't just do that.

9 They've got a theory. Choose a theory. Either
10 they believe that these people existed or they
11 didn't. They try and do anything they can just to
12 find this man guilty. I'll tell you what, if they
13 would just check out the story. You heard there was
14 a prior hearing. Just check out the -- just check
15 out the story and come back strong. These people
16 don't exist. Put somebody up on the stand. We
17 checked it out. They don't exist. They didn't do
18 that. They didn't do that. They couldn't do that
19 for you. That's unacceptable. Y'all can't accept
20 that. That's not that hard. They've got databases
21 and all different stuff. Check it out. They might
22 suggest we check it out. But Ladies and Gentlemen,
23 my client don't have to prove himself innocent, plus
24 his story checks out. These people don't believe
25 him. They never did.

1 Think about this. Officer Cruell is the person
2 that sees that there's a suspect, right? She sees
3 him, right? The next day, she finds out somebody's
4 been charged. They didn't even ask her. They just
5 charged the man. They didn't ask her nothing. If
6 I'm the person with the original information,
7 shouldn't I be privy, shouldn't you ask me
8 something. Shouldn't I know something? Doesn't
9 that make sense?

10 Now, something else I want to go through that I
11 believe is pertinent. You know, the standard in
12 criminal court is important to consider. I'd be a
13 poor attorney if I didn't argue this for my client.
14 This is very important. We've all heard of the
15 reasonable doubt standard. We all know what it is.
16 They have to prove my client guilty beyond a
17 reasonable doubt. Okay.

18 Now, the standard is not really complex. The
19 judge is going to tell you what it is. But I want
20 to tell you what it is in relation to other types of
21 cases. At the bottom, you have preponderance of the
22 evidence. That says, oh, I think he did it. And
23 that's all you need. That's civil cases. Those are
24 civil cases. You can do that in civil cases.
25 That's more likely than not. That's 51 percent and

1 49 percent or 50.01 percent or 49.99. That's
2 enough.

3 In the middle there, you have something called
4 clear and convincing evidence. Clear and convincing
5 evidence is what you, say for instance, in family
6 court, take someone's children. Something of that
7 nature. Say someone's rights. That's more than
8 preponderance.

9 And up here in between certainty, you have
10 reasonable doubt. Now you don't have to be certain
11 now. That's not what the law requires. You don't
12 have to be absolutely certain. That's not what it
13 requires. But reasonable doubt, I think you will
14 find described as the type of doubt that causes
15 someone to hesitate to act, to hesitate to find
16 someone guilty.

17 Ladies and Gentlemen, if you have that
18 hesitation, you must give my client that benefit of
19 the doubt. I know you have it. Go back to the movie
20 thing again. There's no way -- there's no way --
21 there's no way they can tell you what they are
22 describing is the same person that is that man
23 sitting over there. They can't do it.

24 Ladies and Gentlemen of the jury, I'm going to
25 ask you at this time to find my client, Patrick Dean

1 Lowrance, not guilty of Failure to Stop, not guilty
2 of Attempted Murder times two and not guilty of
3 Possession of a Weapon During the Commission of a
4 Violent Crime. Don't let them tell you different.
5 You won't let me tell you different and don't let
6 them. Thank you.

7 **THE COURT:** Thank you, Mr. Johnson.
8 Mr. Marchant?

9 **MR. MARCHANT:** May it please the Court?

10 **THE COURT:** Yes, sir.

11 **MR. MARCHANT:** Mr. Johnson, Mr. Lowrance.

12 Good afternoon, Ladies and Gentlemen. As I
13 explained to you when we opened this case, there was
14 going to be a significant amount of evidence because
15 I had to walk through evidence from three different
16 crime scenes. We had evidence from the Comfort Inn
17 where this incident started with Officer Cruell,
18 Wenwood Road, which is the Berkeley Pointe Apartment
19 complex where Officer Lane and Officer Cobb were
20 shot at and then Mooremont Avenue, where the
21 defendant was apprehended. If you will, bare with
22 me. I will try to be as brief as I can. I've got
23 to touch on various parts of evidence throughout
24 each of these crime scenes.

25 I want to first start with you chronologically.

1 We're going to start at the Comfort Inn where you
2 heard the defendant testify that he stayed at the
3 Comfort Inn and that he had rented the room on the
4 night of October the 27th through October the 28th.
5 If you will recall this incident at the Comfort Inn
6 started with Officer Cruell was driving through the
7 parking lot, which she indicated by this blue line.
8 She told you that she saw the vehicle in question,
9 which ya'll seen several pictures of a Yukon backed
10 into a parking spot here. She went behind the
11 vehicle, ran the tag and the tag came back to a
12 Honda Accord. That raised her suspicion.

13 She then called Officer Lane. Officer Lane
14 came to the Comfort Inn and he testified, as shown
15 by the red line, where he believed the car to be
16 parked. Now, there are various photographs at the
17 Comfort Inn both inside and outside where you can
18 see Officer Lane and Officer Cruell's car that was
19 parked there on the day that we took the pictures as
20 was testified, which was December of this past year.

21 Now, if you will recall, there is a window here
22 in the lobby area. That window looks out into this
23 parking lot. Officer Lane told you that when he was
24 inside the Comfort Inn, he sat down at the table and
25 he was sort of keeping an eye on the car out in the

1 parking lot. He also testified that he never saw
2 anyone get into the vehicle. He told you that he
3 could see the passenger side of the vehicle only
4 from where he was.

5 Who was also in the Comfort Inn that morning?
6 Arva Irby. She told you that she was working that
7 concession, continental breakfast area. She kind of
8 knew what was going on. She was nosy. She was also
9 keeping an eye on that area of the vehicle while she
10 was cleaning up. She was the one that saw the car
11 pull away. Remember, she didn't ever see anyone get
12 into that vehicle. If you were to believe the
13 defendant and believe the testimony that he exited
14 the side door here, which we are not disputing at
15 all that there was a side door, they would have had
16 to walk over here. Him and Tee. They would have
17 had to get in the back seat and wait on Lemetrius
18 supposedly to come through the lobby.

19 Now, did Officer Lane tell you he ever saw
20 anyone cross that window and go to that vehicle?
21 Keep in mind two people coming across the vantage
22 point for Officer Lane and Arva Irby. Did either
23 one of them tell you they saw him? No. The person
24 that told you they saw somebody come through the
25 lobby was Officer Cruell. And there was no denying,

1 no getting any way around what her description was.
2 That was a black male, 40, could have been younger,
3 potentially had long hair. We've never disputed
4 that. That's what she thought she saw that morning.
5 Now, you seen the black hoodie in evidence. It's
6 evident the defendant was shot wearing that black
7 hoodie. You see the strings, the drawstrings that
8 pulled the hood tight.

9 Officer Cruell is in the lobby. He walks by.
10 Goes out the front door. Goes around this way to
11 get in the vehicle. The vehicle pulls off. Arva
12 Irby tells him the guy just got in the car and
13 pulled off. What did she tell you about from her
14 vantage point how many people she could see in the
15 car? One. She told you she saw one person in the
16 front seat. One. The vehicle comes around the
17 front of the building, does not come through the
18 driveway area, the overhang out front. If you will
19 recall, there's a black vehicle parked here in the
20 photographs we took. That vehicle was not there on
21 the day in question. Officer Lane is standing
22 outside front while Ms. Cruell is going to her
23 vehicle. He wanted to be sure that he could see
24 which way the vehicle turned when it got out to
25 Laurens Road because he knew that it was a long

1 drive. The vehicle drives in front of him and goes
2 up Laurens Road and takes a right. What does he
3 tell you? I can see in the front of the vehicle and
4 there's only one person. I didn't see anybody else,
5 one person.

6 What's also significant about what Ms. Irby
7 tells you? The person that I saw in the front seat
8 of that vehicle, I believe they had a hooded
9 sweatshirt on. Okay. There's testimony that they
10 get down I-85. They head up I-85. You can see the
11 video. It's very clear from the vehicle the blue
12 lights illuminate. You can see it flashing off your
13 car. You can see it bouncing off the road sign on
14 the right side of the road. The vehicle cuts across
15 three lanes of -- three lanes of traffic. It
16 increases speed and attempts to evade Officer
17 Cruell's efforts to stop the vehicle and then gets
18 off of 85 on Mauldin Road. It's clear as day. This
19 intersection, you can see that car run the red
20 light. You can also see when Officer Cruell gets up
21 to the top of that off ramp, he's got to slow down.
22 Why does she slow down? The light's red.
23 Unfortunately, at that point in time, the car was
24 able to pick up enough speed to get away. She ends
25 up terminating the pursuit, so does Officer Lane.

1 Then they get a call across the radio from
2 Christ Church. There were already several units
3 that responded to that area that morning because
4 they heard the call of their fellow officer. They
5 were going to help respond and see if they could be
6 of assistance.

7 What happens next? One thing I want y'all to
8 be clear about. What I'm telling you is the way I
9 remember things. What Mr. Johnson's telling you is
10 the way he remembers things. You need to take it
11 upon yourselves that what you remember is the way it
12 happened. This is what I recall happened from the
13 times of the officers responding from their
14 testimony. If you believe it to be different, you
15 need to be sure that you go with what you remember,
16 all right?

17 This is what I submit to you happened. The
18 date's 10/28. The call comes out. Officer Cruell
19 responds to the Comfort Inn. Around 9 a.m., she's
20 checking the parking lot. She tells you roughly 15
21 minutes later, Officer Lane shows up. They spend
22 five or ten minutes inside the lobby. The car pulls
23 away. It is very clear from Officer Cruell's in-car
24 video as well as her testimony on the stand that
25 that chase up 85 began at 9:31 a.m.

1 She pursues the vehicle. Eventually terminates
2 that pursuit up at the Hitachi plant. And she
3 begins to help the trucker. Officer Lane testified
4 he did the same and they helped that trucker back
5 out. She testifies at 9:39 she heard over the radio
6 a call from Christ Church about a suspicious person
7 in the area that may be matching the description
8 that they had.

9 What happens next? Officer Kellett. He shows
10 up. Remember he told you he came down this way,
11 Fairforest to Wenwood and he stopped at Christ
12 Church and he talked to the security officer. The
13 security officer informed him of the person, the
14 suspect being in the area. He proceeds down here to
15 where he has circled in green, Wenwood Road. That's
16 where he stopped and he got out with the person that
17 was jogging. He told you there was no doubt in his
18 mind that that person was exercising, had headphones
19 in and did not match the description that had gone
20 out over the radio. Keep in mind, what time are we
21 talking about? 9:39. Shots were fired at 9:48.

22 Now, Kellett gets out at 9:40. He spends a
23 minute or two with the fellow. Then he proceeds on
24 to the Berkeley Pointe Apartment complex. He then
25 testifies to you. That he was in this area, the

1 roundabout area when that "shots fired" call came
2 out. He pulls into the parking lot. I asked him to
3 indicate with that same green marker where did he
4 park. He told you he straddled this line, which is
5 a speed hump. He gets out of the vehicle. Goes and
6 takes the corner of the [REDACTED] Building. Was
7 communicating with Lane and Cobb about what's going
8 on. Did he tell you that he saw anybody out there
9 that morning other than law enforcement when this
10 incident occurred? Did he tell you that he saw
11 anybody running through the woods? Did he tell you
12 that he saw anybody walking down the sidewalk? Did
13 he tell you that he saw anybody around this
14 building? No. As a matter of fact, did any member
15 of law enforcement that responded. Did Fiedler tell
16 you? Did Cruell tell you? Did Cobb? Did Lane?
17 Did anybody see anybody out there that morning that
18 was not a resident of Berkeley Pointe?

19 What did the people at Berkeley Pointe tell
20 you? You heard from Ms. Taylor. Indicated here in
21 the yellow, she lives in this bottom floor apartment
22 of this building. Before the "shots fired" calls
23 came out, she walked down the sidewalk to talk with
24 her girlfriend outside of this building. She tells
25 you right about here is where that Yukon passed.

1 What does she tell you she saw inside? One person,
2 black male. She then leaves. Goes back to her
3 apartment.

4 She tells you she talked with Mr. Tucker. She
5 described him for you. It's obvious Mr. Tucker was
6 not here today. Excuse me. Mr. Tucker is a black
7 male. You heard from Mr. Mangle. He told you he's
8 a little taller than him, a little heavier than him
9 and he's got dreads. She tells you she talked to
10 him outside the apartment that day.

11 Mr. Mangle tells you he lived up here. This
12 apartment. He saw Officer Lane pull in that day.
13 He was going to talk to him about his car being
14 stolen. He was paying attention. At any point in
15 time did Mr. Mangle tell you that he saw anybody
16 that was not law enforcement or another resident
17 that he knew come or go from any of this area? No.

18 Had Officer Hammett come in. He tells you he
19 pulls in. Parks down here. Gets his dog out. He
20 comes around the building. Comes to the side where
21 Officer Cobb is. They come down. They clear the
22 stairwell so he can begin the search of this area.

23 He started tracking. He had a scent trail.
24 Why did he tell you he stopped that track? He knew
25 that there could be somebody down here playing in

1 the woods with a firearm that had fired what we know
2 now was nine shots at Officer Lane and Officer Cobb.
3 So for the safety of his fellow officers, he
4 stopped. He came back down and he started cross-
5 crossing. He started working that area. What did
6 he tell you? If my dog would have smelled another
7 track, it would have alerted me. Was there any
8 other track back there in the woods? No.

9 Now, if you believe the defendant, there were
10 three people there that day. How many tracks did
11 the dog handler who told you he had over 200 hours,
12 passed every certification if necessary, the dog
13 passed the same certifications for the county and
14 the city -- did they pick up on any other track?
15 No.

16 He tells you that at some point in time, his
17 dog tired out. He had to put it to rest for minute.
18 Later, the dog gained some time to rest. He comes
19 on the other side of Wenwood Road. And he starts a
20 track on the woodline here and he runs it down
21 towards Mauldin Road. Does he tell you he picks up
22 any track? No.

23 Officer Lane and Officer Cobb responded to this
24 area. They found the vehicle parked up here and
25 around and about. And you can see from the

1 pictures. What does Officer Cobb tell you about
2 that vehicle? The same vehicle that Officer Lane
3 and Officer Cruell saw at the Comfort Inn. If you
4 recall, Officer Cobb told you she switched over
5 channels so she could talk to Officer Cruell.
6 Officer Lane shows up. He identifies the car. How
7 does he identify? He identified both the radar
8 detector and the black air tree freshener that was
9 covering the vent. He told you he saw those items
10 at the Comfort Inn and he saw them again at Berkeley
11 Pointe. Why is that significant?

12 I find it extremely convenient when I asked the
13 defendant about his personal effects, which he
14 admitted were his down at the bottom of the
15 stairwell which he claims fit all into that bag that
16 there are five black air tree fresheners. But, oh,
17 no, these aren't his. I don't know how they got
18 there. Wallet's in there, Social Security card,
19 birth certificate, two pairs of shoes, lotion,
20 brush, clothes, phone charger. But the two things
21 in there that he says are not his, the air tree
22 fresheners and the ski mask. Convenient, ain't it?

23 Cobb tells you that she comes to the front of
24 this building. You see there are several pictures.
25 She gets over here, enters the walkway into the [REDACTED]

1 Building. She steps near the threshold. She gets
2 on her mic. She looks up. She's getting ready to
3 call out [REDACTED] so she could tell dispatch where she
4 is. She can't remember whether or not she got that
5 out of her mouth because what happened? She was
6 fired upon. What did she tell you she did? She
7 went into the breezeway, charged the attack and
8 returned fire. What is the description of the
9 person that she described? I can tell from the
10 muzzle flash and the gunshots that it was a black
11 man whom I believed to be wearing a black ball cap.
12 You recall Officer Hammett's testimony? What did he
13 start the track off? Black ball cap. Did he ever
14 find another track? No.

15 Officer Cobb gets in the stairwell. She
16 attempts to come back out to the front of the
17 building to see if she could see down to the ground
18 floor. At that point in time, she has her firearm
19 out. There's a second exchange of gunfire. Fire
20 between both her and the defendant. She then
21 retreats behind the stairwell again, drops her clip,
22 reloads and waits. What is the next thing that she
23 hears? More gunfire.

24 You've heard Officer Lane when he testified
25 that he came into the breezeway. He came around.

1 He was not sure where Cobb was. He did not want to
2 use his weapon for fear that he may strike her.
3 What happened when he stepped in the threshold of
4 that breezeway? Somebody on the steps -- just like
5 Officer Cobb told you. Somebody on the steps, black
6 male with a black hat. That's what Cobb tells you.
7 What does Lane tell you? I couldn't see. It was so
8 dark in there. What I saw was a silhouette from the
9 muzzle flash. How many people did they talk about
10 seeing when the shots were fired? One. One person.
11 They never saw anybody else.

12 If you were to believe the defendant's story,
13 he tells you he is on those steps when he gets shot.
14 Did Officer Cobb ever hear any of this arguing
15 that's going on? No. The defendant told you we
16 were out there arguing. I was upset with him
17 because he had run from the cops. Had he just
18 stopped, probably would have just gotten a speeding
19 ticket. Isn't it convenient that Officer Cobb can't
20 hear any of this? Isn't it convenient that the
21 defendant, he has the discovery and he's trying to
22 fill in these gaps? She never saw anybody. Lane
23 never saw anybody. You can see in the photograph
24 where the six or seven shell casings are that were
25 discharged from Officer Cobb's gun is alleged.

1 She told you this is the bottom floor and this
2 is the breezeway where Officer Cobb and Lane
3 entered. She gets pinned back here. Here is this
4 half wall, which you can see in the photographs.
5 She tells you she looks over here. What does she
6 see? Nothing. What does she hear? Nothing. If
7 you believe the defendant, they were still arguing.
8 The defendant claims that Tee, who he can not
9 describe of other than caramel or honey brown, a
10 little shorter than Lemetrius. And then Lemetrius
11 happens to have long hair, doesn't have a last name,
12 doesn't know where he's from, doesn't know where he
13 lives, doesn't know any place that they went
14 together, but it's his friend. He's in the car with
15 him. They are smoking weed. They are drinking.
16 But he doesn't know squat about him. Ladies and
17 Gentlemen, is that credible? Is it believable?

18 We can't find Lemetrius and Tee because they
19 don't exist. We'd love to know where they are.
20 We'd love to know who they are. They don't exist,
21 Ladies and Gentlemen. He's seen his discovery and
22 he has testified and trying to get you to believe
23 that the evidence that we're giving you today is not
24 sufficient. There's some fathom person or persons
25 out there that did this, not him.

1 Lane tells you he enters. He's fired upon a
2 couple of times. He's here. He slams up against
3 the wall, ends up backing out. He goes and he
4 covers the corner. Why does he cover the corner of
5 that building? He comes and covers the corner of
6 this building so he can see down here and he can see
7 up here if anybody crossed him. What did he testify
8 to? Did he ever see anybody that was not law
9 enforcement?

10 Officer Lane backs out to the corner there, if
11 you will. We've had what I would consider three
12 rounds of gunshots. The first round is the
13 defendant shooting several times at Officer Cobb and
14 her returning fire. She then goes and takes cover
15 behind the stairwell. She testified we came up this
16 way and there was various gunfire in between her and
17 the defendant again. She goes back behind the
18 stairwell, reloads. Lane comes in. There's more
19 fire on him.

20 What does Starr Taylor and Mangle tell you?
21 The cops were being shot at. Ladies and Gentlemen,
22 I'm getting -- what I'm getting to is Officer Cobb
23 stepped around the corner that day and she was
24 ambushed. She was ambushed by the defendant. What
25 was his intent? What other intent could there be

1 than to kill Officer Cobb? Why would you discharge
2 your semiautomatic, fully automatic weapon? When
3 you get back in the jury room, pick this thing up.
4 See how much it weighs. All right. Discharged this
5 at Officer Cobb twice. Two separate occasions and
6 then once at Lane. What other intent could their
7 possibly be?

8 What I also want you to pay attention to is
9 when I asked Sergeant Shaw where he collected
10 things, he said they were numbered and he put the
11 number of the placard next to the item of evidence
12 that he collected. James Armstrong, the firearm
13 examiner, came in. And what does he tell you? He
14 tells you Cobb's weapon was discharged 14 times.

15 Looking at State's 59, here are the 14 shell
16 casings that came from Officer Cobb's gun. She
17 fired 14 times that day. Where did all of the
18 projectiles go? We don't know because various parts
19 of those projectiles shattered. The only thing that
20 James Armstrong can tell you with certainty about
21 those projectiles is that some did not come from
22 either her gun or the defendant's gun. Which ones
23 does he tell you? DS-14, where was DS-14 located?
24 I would suggest to you that if you go look at the
25 pictures, DS-14 is out here on the walkway. What he

1 can tell you is that it did not come from Officer
2 Cobb's gun. He can tell you it was insufficient
3 quality but bare similar characteristics to this
4 gun.

5 Also, DS-41. That was the projectile that was
6 found in the closet downstairs where the defendant's
7 clothes are. He found that projectile that had
8 penetrated through. It is big enough and has
9 sufficient markings such that he is able to tell you
10 with certainty that it came from this gun.

11 And he also talked about and indicated a lot of
12 other pieces of evidence that were collected. You
13 can look at the pictures. You can see there is
14 stuff all over the place. There is no doubt there
15 was a gundown going on that day. Officer Cobb was
16 at fear for her life. She returned fire. She was
17 fired upon. I'm not trying to get you to believe
18 that she didn't return fire and there aren't
19 projectiles and shell casings that come from her
20 gun. But where are the ones that we know come from
21 the defendant? One is through this closet here.
22 The other one had to have traveled out of the
23 breezeway because it lands out here.

24 There's also the overhang Sergeant Shaw is
25 talking about where you can see one, two, three

1 marks. Told you those may or may not have been
2 ricochets because there was not enough information
3 to tell. But the direction of travel of those
4 bullets was towards the parking lot.

5 You've also seen -- you've also seen this door,
6 which is ■12. The door jam is pierced. You will
7 be able to see there's a projectile right through
8 it. The door is sliced open and the bullet bounced
9 off of the other side of the door frame. Again,
10 what was the intent of the defendant? There are so
11 many shots fired in that direction up the stairwell,
12 out the breezeway, exactly where Officer Cobb and
13 Officer Lane walked in.

14 Detective Conroy, as well as Detective Flavell,
15 showed up with several other officers. Conroy told
16 you there was roughly 70 officers out there between
17 his agency and other agencies in Greenville. It's
18 clear that the suspect got away. Remember, Hammett
19 told you he started tracking the track for about 45
20 minutes. He cleared that area before -- he cleared
21 that area before the county took over. The county
22 was unable to apprehend him. He wanted to be sure
23 there was no other threat back here. What does he
24 tell you? One trail, one track. Got to here. It's
25 obvious that the person headed the direction out of

1 the back of the apartment complex down near this
2 gulley and up here.

3 Why did he come down here? I submit to you
4 that when he gets down here, he can see all the cop
5 cars coming from either Mauldin Road or Fairforest.
6 He makes a u-turn. Starts heading this way. He
7 somehow gets out. There's one track. There's one
8 person there that day. Nobody else that's testified
9 on this stand, except the defendant, tells you about
10 anyone being out there. Nobody saw anything.
11 Nobody saw any person leave. Nobody saw any person
12 come from this vehicle.

13 Starr Taylor was in her apartment. She didn't
14 hear anybody arguing. She didn't see anybody out
15 there. What happened out there in the stairwell? I
16 submit to you this what happened. The defendant who
17 claims again that all of this stuff comes out of his
18 bag, I ask you to look at it back there in the jury
19 room. Is all that stuff in there? He tells you he
20 has it on his shoulder and he's walking down the
21 stairs when Lemetrius shoots him. He then places
22 his stuff down on the bottom floor.

23 You heard Sergeant Shaw testify about, I
24 believe it's State's 39. Look how the clothes are
25 found. They are not in a bag. I guess Lemetrius

1 took them. What comes out of that bag? The
2 defendant's birth certificate, his wallet, Social
3 Security card, pawn tickets. Sergeant Shaw also
4 talked about State's 38 and 37. That's a close up
5 of the clothes as they were found.

6 So I guess if you remember the defendant's
7 testimony, he took his shoes and put them in the
8 bottom of the bag and put all the other belongings
9 on top of it. Where are the shoes in this picture?
10 They are out to the side.

11 Sergeant Shaw then removed the upper clothing
12 to see if he could find any identification. He
13 finds the defendant wall -- the defendant's wallet.
14 And that information comes out of the wallet.
15 Conroy and Flavell tell you that they took that
16 Social Security card and that birth certificate and
17 they compared it to the Comfort Inn room. What was
18 the number that comes back? Dean Lowrance is
19 registered at room 4█.

20 They go back to the comfort room, the Comfort
21 Inn room. Flavell told you when he went back to the
22 Comfort Inn, he went into the manager's office.
23 They went down a hallway, got on the elevator, went
24 up to the fourth floor, turned right out of the
25 elevator. The room was down on the left. The

1 defendant testified and agreed with me that the room
2 was somewhere on this side of the building and it
3 looked at the pool.

4 What does Flavell tell you he found in the room
5 that day? He went in and found the defendant's
6 driver's license, some other key cards, some other
7 motels. Here's the Quality Inn receipt to a --
8 Quality Inn, not Comfort Inn, from September of
9 Evelyn Loaiza-Alvarez. Look at the spelling on
10 this. A print for Ms. Alvarez came out of the car.
11 This is a month before this incident occurred.

12 What is the vantage point from the room up
13 here? We're looking at the swimming pool. It
14 doesn't look out to the parking lot. Mr. Johnson
15 would have you believe that an individual would
16 never drive a vehicle without their driver's
17 license. Why didn't he have his driver's license?
18 What time did Cruell tell you the chase started?
19 9:31. The defendant would have you to believe that
20 he has gotten in the car to go over to some girl's
21 house who is evidently not his wife at 9:31 in the
22 morning. What time do motels typically close out a
23 room? Checkout is 11:00, 12:00, right? He leaves
24 his driver's license and all of his clothes in the
25 room. Why does he do that? He does it because he

1 ain't coming back. Why is he not coming back? He
2 ain't coming back because he comes down to the lobby
3 and he sees those officers and he says, oh, you know
4 what, I got to get the heck out of dodge.

5 He walks past Cruell. He goes outside. He
6 gets in the Yukon and he starts up to Laurens Road.
7 He gets off of Laurens. He goes up to 85. He
8 subsequently ends up at Berkeley Point. He would
9 have you believe that he's sitting in the back seat
10 of that vehicle watching a video. Did you see a
11 video playing on Officer Cruell's in-car camera?
12 Did you see any movement in the back seat? Did you
13 see any figures? Why not? There was nobody in the
14 back seat. He was by himself in the driver's seat.
15 He's got to get out of there and he left all of his
16 important stuff because he was not expecting to find
17 law enforcement down there. And you know what?
18 Frankly, law enforcement told you they didn't expect
19 the guy that was driving the stolen Yukon to come
20 through the lobby there. They were caught off guard
21 just like the defendant was. Remember, Lane and Ms.
22 Irby did not see anybody get in the car. Why not?
23 Cause no one else was in that car except the
24 defendant.

25 The defendant would have you believe that he

1 left the area, went down and laid in the woods for
2 several hours. He then goes over to Mooremont
3 Avenue and he's picked up very near Mooremont Avenue
4 by Mr. Brockman. What did Mr. Brockman tell you?
5 Better yet, what did Mr. Brockman not want to tell
6 you?

7 You heard Mr. Brockman had a conviction for
8 trafficking cocaine. Don't know what happened with
9 that offense. Maybe somebody snitched on him. The
10 one thing that he refused to talk about, the one
11 thing that he refused to acknowledge is the most
12 significant and the most important thing that the
13 defendant told him. Why? Why would he not tell
14 you? Because he don't want to be the one to snitch.
15 He don't want to be the one that's responsible.

16 The defendant told him A, B and C. Detective
17 Flavell took Mr. Brockman's statement that evening
18 at Mr. Brockman's house. It was fresh in Mr.
19 Brockman's mind and it was accurate. What does Mr.
20 Brockman tell Investigator Flavell? Mr. Brockman
21 says, and I quote, Pat told me he was shot. He told
22 me that he shot at the police and a lady shot at him
23 first. I then asked him about his prior testimony.
24 You've heard a whole lot about the prior testimony.
25 It's very evident that we had another hearing at

1 another point in time. What did the Court Reporter
2 transcribe in that prior hearing? Question from me,
3 what did he tell you about being shot? Verbatim as
4 transcribed by the Court Reporter, he told me he
5 shot at them; they shot at him first. Word for word
6 from the defendant's mouth. He shot at the police.
7 Mr. Brockman twice has told two different people.
8 He told Investigator Flavell. He told this court.
9 Two separate occasions.

10 Now, Mr. Pearson. He's Mr. Lowrance's cousin as
11 they described each other although there is no blood
12 relation. What did Mr. Pearson tell you? He told
13 you the defendant was at his house that evening
14 prior to this incident occurring. He stayed at the
15 Comfort Inn. How did he know he stayed at the
16 Comfort Inn? He said he called me from his cell
17 phone because his number popped up. His name was
18 programed into that phone. What did he tell you the
19 number was? It's the same number law enforcement
20 traced.

21 What does Mr. Pearson tell you about whether or
22 not he has seen the defendant with that gun before?
23 He tells you that he saw him the day before in that
24 Yukon and this gun, this gun is on the center
25 console. This is not a concealable weapon. Mr.

1 Pearson and Mr. Lowrance are relatives. They say
2 they are cousins. Again, it's not blood, but that's
3 the way they talk about each other. You heard me
4 ask Mr. Lowrance if there were any problems between
5 the two of them. No. Why would Mr. Pearson come in
6 here and tell you that he saw this gun if it didn't
7 happen? He did it because it's the truth.

8 He saw the defendant with it the day before.
9 He told you there was no one else in the car with
10 him. The defendant called Mr. Pearson when this
11 incident happened. What does he tell Mr. Pearson?
12 He tells him the police got behind me, not us, me.
13 And I ran from them.

14 The defendant never told anybody that has
15 testified in here that there were multiple people.
16 He told his family member, "I ran from the cops." It
17 was me, not us, not they, not them, not other -- any
18 other synonym you want to use. Me. What does
19 Brockman tell you? He told you Pat told him he shot
20 at the police.

21 They end up over at Mooremont Avenue. You've
22 heard Detective Flavell indicate that he found a
23 gun. We found a jacket and a shirt. There's blood
24 on the jacket and blood on the shirt that comes back
25 to the defendant. There's a bullethole that his

1 pierced the black hoodie on two occasions. It's
2 gone through -- I submit to you that the jacket was
3 folded over. It went through here once and through
4 here once and then went through the gray t-shirt,
5 which Officer Cobb told you she saw somebody in a
6 gray shirt at the Comfort Inn. The bullet went in
7 the left shoulder. He told you it's still there.

8 Flavell tells you that occurred at about 8:30
9 that evening. He then went to the hospital. Conroy
10 went to the hospital to check on the defendant. He
11 did not collect any evidence. Why? The bullet is
12 still in his shoulder. The defendant tells you the
13 bullet is still in his shoulder.

14 You've heard the testimony from Dr. Kandala
15 about swabbing the gun. This ain't something that
16 you're going to have and you're going to carry
17 around in your pocket. This is a street weapon.
18 It's probably been passed around numerous times by
19 numerous people in numerous places. But the
20 defendant had it that day.

21 What does Kandala tell you about where he
22 obtained the majority of the DNA that comes back
23 from Mr. Lowrance? He testified that he got him
24 from the handle and the trigger area. If you recall,
25 I asked the defendant multiple times how did you

1 carry it, how did you get it there. I don't know.
2 It was just on me. Pick it up. It's heavy. He's
3 being evasive. He's not being honest with you,
4 Ladies and Gentlemen. He's trying to give you some
5 story to get you to buy. It just doesn't make
6 sense. It doesn't fit the evidence.

7 The evidence is Officer Cruell was at the
8 Comfort Inn that morning. She saw a car, a Yukon.
9 It had an improper tag. It came back to a Honda.
10 She went inside the investigate. She sees the
11 defendant come through. The defendant goes outside,
12 gets in the vehicle, runs from her, flees from her
13 up 85. You can see the blue lights in the video,
14 Ladies and Gentlemen. He testified to you he saw
15 them.

16 Get off on Mauldin Road. Go to Berkeley
17 Pointe. He's in a stolen vehicle that he's been
18 previously convicted of. He gets into the breezeway
19 of the [REDACTED] Building. Cobb steps around the corner
20 just so she can tell dispatch where she is and she
21 is ambushed. Multiple shots at her. She returns
22 multiple shots. Then they engage in a second
23 exchange in the stairwell.

24 Lane comes around the corner. What happens to
25 him? He's shot at as well. Nine times. Nine times

1 this defendant shot at two officers for all they
2 knew as an improper tag on a vehicle. Why is he
3 shooting at them? He's shooting at them because he
4 knows he's rolling around in a stolen vehicle. He's
5 shooting at them because he knows he's out there
6 doing things he's not supposed to be doing.

7 Lemetrius didn't have the gun. He had the gun.
8 The defendant had the gun in the car. Probably had
9 some dope as well. He's running because he's doing
10 things that are against the law. And man, did he
11 take it to the extreme.

12 Ladies and Gentlemen, you will hear Judge
13 Verdin in a few minutes. She's going to go through
14 several charges with you, two counts of Attempted
15 Murder and Possession of a Weapon during the
16 Commission of a Violent Crime and Failure to Stop.
17 It's the State's position that we met the burden
18 necessary for you to go back and deliberate and
19 return a verdict of guilty. I submit to you there's
20 nothing else the Greenville Police Department can do
21 or bring to you here today to convince any further.
22 You have more than enough evidence that this
23 defendant is the one that shot at both Officer Lane
24 and Officer Cobb. He's the one that ran from
25 Officer Cruell.

1 The judge is going to tell you you don't have
2 to be certain by 100 percent. She's going to tell
3 you you have to be firmly convinced. I submit to
4 you, Ladies and Gentlemen, we are way past that
5 standard and that there is no doubt that exists in
6 this case that there was anybody out there at any
7 point in time other than the defendant. He is the
8 one that should be held accountable for this
9 offense. Again, I ask you to return a verdict on
10 all charges of guilty. Thank you.

11 **THE COURT:** Thank you, Mr. Marchant.

12 Mr. Foreperson, Ladies and Gentlemen of the
13 jury, you have seen and heard the evidence presented
14 as well as the arguments of counsel. It now,
15 therefore, becomes my duty and obligation to
16 instruct you on the law that is applicable in this
17 case. It will then be your duty and obligation to
18 begin your deliberations, through which process you
19 will decide the facts, apply the law as instructed
20 by the court and render fair and impartial
21 decisions.

22 It is your exclusive duty to determine what the
23 facts are. You do that based upon your own common
24 sense examination and evaluation of the testimony
25 and other evidence received during the trial of the

1 case. You twelve jurors will decide what weight,
2 value and effect that is to be given to any
3 particular testimony or other evidence received.
4 Your ultimate goal is to simply reach the truth in
5 this matter. And by doing so, you will have
6 fulfilled your obligation as jurors and that is to
7 give both the State and the defendant a fair and
8 impartial trial based upon the evidence presented
9 and the law applicable to this case.

10 In this case, the State of South Carolina
11 through the circuit solicitor has charged the
12 defendant with the criminal offenses known as
13 Failure to Stop for a Blue Light, two counts of
14 Attempted Murder and Possession of a Weapon during
15 the Commission of a Violent Crime. The allegations
16 charging the defendant with these crimes are set
17 forth in the indictments that have been previously
18 explained to you.

19 As I previously explained, the indictments are
20 not evidence in this case and may not be considered
21 by you as evidence against the defendant. The
22 indictments will be in the jury room with you but
23 serve only one purpose, and that is to serve as the
24 verdict forms on which the jury's unanimous decision
25 will be written.

Jury Charge

1 As to the charges set forth in the indictments,
2 the defendant has entered a plea of not guilty.
3 That plea of not guilty has therefore placed upon
4 the State the burden of proving the allegations that
5 are set forth in the indictments, the burden of
6 proving each of the essential elements of any crimes
7 charged and therefore proving the guilt of the
8 defendant to the satisfaction of you 12 jurors
9 beyond a reasonable doubt before a verdict of guilty
10 can be returned as to any indictment.

11 The burden is never upon a defendant to prove
12 that he is not guilty or to prove that he is
13 innocent because, in some cases, that might not be
14 possible. The burden is always upon the State
15 because they made the allegations, to prove the
16 defendant guilty beyond a reasonable doubt. You are
17 further instructed that it is a vital, important and
18 cardinal rule of law that every defendant in a
19 criminal trial, no matter how serious the offenses
20 might be for which he stands charged shall always be
21 presumed innocent of those charges. And that
22 presumption of innocence shall be with the defendant
23 from the moment of his arrest and throughout the
24 course of the criminal process and even throughout
25 the course of the actual trial.

1 The presumption of innocence shall be with the
2 defendant even as you go into the jury room to begin
3 your deliberations and that presumption of innocence
4 shall be with him there and be with him forever
5 unless you 12 jurors determine that he is no longer
6 entitled to that presumption of innocence. It is
7 only if, unless and until you are satisfied of the
8 defendant's guilt beyond a reasonable doubt that he
9 would no longer be entitled to that presumption of
10 innocence.

11 I remind you that during this trial, you and I
12 have certain duties to perform. As the trial judge,
13 it is my responsibility to preside over the trial of
14 this case and I also have the duty to rule on the
15 admissibility of the evidence offered during this
16 trial. You are to consider only the competent
17 evidence before you. If there was any testimony
18 ordered stricken from the record in this case during
19 this trial, you must disregard that testimony. You
20 are to consider only the testimony which has been
21 presented from this witness stand and any exhibits
22 which have been made part of the record in this case
23 and any stipulations of counsel.

24 I have the additional duty to charge you the
25 law applicable to this case. As the presiding

1 judge, I am the sole judge of the law of the case.
2 And it is your duty as jurors to accept and apply
3 the law as I now state it to you. If you already
4 have any idea as to what the law is or what the law
5 ought to be and it does not agree with what I tell
6 you now the law is, you must abandon this idea
7 because you are sworn to accept the law and apply
8 the law exactly as I state it to you.

9 In every case tried in this court before a
10 jury, the jury becomes the sole and exclusive judge
11 of the facts in a case. A trial judge can not
12 intimate, state, comment on or make any statement to
13 a trial jury about the facts in a case. Since you,
14 the jury, are the sole judge of the facts of this
15 case, you are not to infer from what I have said
16 during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise or anything
18 that I say now during the course of this instruction
19 to you that I have any opinion about the facts in
20 this case. I do not. The law does not allow me to
21 have an opinion about the facts in this case. This
22 is a matter solely for you, the jury, to determine.
23 As jurors, it is your duty to determine the effect,
24 value, weight and truth of the evidence presented
25 during this trial.

1 The State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. Some of
3 you may have served as jurors in civil cases where
4 you were told that it is only necessary to prove
5 that a fact is more likely true than not true, such
6 as by the greater weight or preponderance of the
7 evidence. In criminal cases, the State's proof must
8 be more powerful than that. It must be beyond a
9 reasonable doubt.

10 A reasonable doubt is a kind of doubt that
11 would make a reasonable person hesitate to act.
12 Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know
15 with absolute certainty. In criminal cases, the law
16 does not require proof that overcomes every possible
17 doubt.

18 If, based on your consideration of the
19 evidence, you are firmly convinced that the
20 defendant is guilty of the crimes charged, you must
21 find the defendant guilty. If, on the other hand,
22 you think there is a real possibility that the
23 defendant is not guilty, you must give the defendant
24 the benefit of the doubt and find him not guilty.

25 Facts and circumstances that merely place upon

Jury Charge

1 the defendant a grave suspicion of the crime charged
2 or that merely raises speculation or conjecture of
3 the defendant's guilt are not sufficient to
4 authorize a conviction of the accused.

5 There are two types of evidence which are
6 generally presented during a trial, direct evidence
7 and circumstantial evidence. Direct evidence is the
8 testimony of a person who claims to have actual
9 knowledge of a fact, such as an eyewitness. It is
10 evidence which immediately establishes the main fact
11 to be proved. Circumstantial is evidence is proof
12 of a chain of facts and circumstances indicating the
13 existence of a fact. It is evidence which
14 immediately establishes collateral facts from which
15 the main fact may be inferred. Circumstantial is
16 based on inference and not on personal knowledge or
17 observation.

18 The law makes absolutely no distinction between
19 the weight or value to be given to either direct or
20 circumstantial evidence. Nor is a greater degree of
21 certainty required of circumstantial evidence than
22 of direct evidence. You should weigh all the
23 evidence in the case. After weighing all the
24 evidence, if you are not convinced of the guilt of
25 the defendant beyond a reasonable doubt, you must

1 find the defendant not guilty.

2 Necessarily, you must determine the credibility
3 of witnesses who have testified in this case.
4 Credibility simply means believability. It becomes
5 your duty as jurors to analyze and to evaluate the
6 evidence and to determine which evidence convinces
7 you of its truth. In determining the believability
8 of witnesses who have testified in this case, you
9 may believe one witness over several witnesses or
10 several witnesses over one witness. You may believe
11 part of the testimony of a witness and reject the
12 remaining part of the testimony of that same
13 witness. You may believe the testimony of a witness
14 in its entirety or reject the testimony of a witness
15 in its entirety. You may consider whether any
16 witness has exhibited to you any interest, bias,
17 prejudice or other motive in this case. You may
18 also consider the appearance and manner of a witness
19 while on the witness stand. In other words, you are
20 to judge a witness' credibility in the same way you
21 would judge a person's credibility in your daily
22 life.

23 As I stated to you, the rules of evidence
24 ordinarily do not permit witnesses to testify to any
25 opinions or conclusions. An exception to this rule

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1 exists for witnesses we call expert witnesses, a
2 witness who by education and experience has become
3 an expert in some art, science, profession or
4 calling may state an opinion as to relevant and
5 material matter in which the witness claims to be an
6 expert and may also state the reasons for the
7 opinion. You should consider any expert opinion
8 received in evidence in this case and, like any
9 other evidence, give it the weight and value you
10 think it deserves. If you decide that the opinion
11 of an expert witness is not based on sufficient
12 education and experience or if you conclude that the
13 reasons given in support of the opinion are not
14 sound or that the opinion is outweighed by other
15 evidence, you may disregard the opinion entirely.
16 An expert witnesses' testimony is to be given no
17 greater weight than that of other witnesses simply
18 because the witness is an expert. Further, you are
19 not required to accept and expert's opinion even
20 though it is not contradicted.

21 In order to establish criminal liability,
22 criminal intent is required. For example, the
23 mental state required to be proven by the State for
24 a particular crime might be purpose, intent,
25 knowledge, recklessness or criminal negligence.

1 Criminal intent must be proven by the State beyond a
2 reasonable doubt. Criminal intent is always a
3 matter that must be determined by the jury from the
4 circumstances surrounding the situation. There is
5 no way to prove criminal intent to a mathematical
6 certainty. Civil law says that criminal intent may
7 be inferred from the circumstances shown to have
8 existed. This is how you make a determination of
9 whether or not the element requiring intent was
10 present. It is not necessary to establish intent by
11 direct evidence, but intent may be established by
12 inference in the same way as any other fact, by
13 taking into consideration the acts of the parties
14 and all the facts and circumstances of the case.

15 Criminal intent is a mental state of conscious
16 wrongdoing. It is up to you to determine what the
17 defendant intended to do based on the circumstances
18 shown to have existed. Criminal intent can arise
19 from an action or failure to act. It may arise from
20 negligence, recklessness or an indifference to duty
21 or to consequences that is considered by the law to
22 be the equivalent of criminal intent.

23 If a crime is committed by two or more people
24 who were acting together in committing a crime, the
25 act of -- the act of one is the act of all. A

1 person who joins with another to commit an unlawful
2 act is criminally responsible for everything done by
3 the other person which happens as a probable or
4 natural consequence of the acts done in carrying out
5 the common plan and purpose. If two or more people
6 were acting together, assisting each other in
7 committing the offense, the act of one is the act of
8 all or as it sometimes is said, the hand of one is
9 the hand of all. Prior knowledge that a crime is
10 going to be committed without more is not sufficient
11 to make a person guilty of that crime. Mere
12 knowledge that another person is going to commit a
13 crime, even if the defendant is present when the
14 crime is committed is not sufficient to convict the
15 defendant as a principle.

16 Guilt is a principle that is shown by actual or
17 constructive presence at the scene as a result of
18 prior arrangement. Therefore, a finding of a prior
19 arranged plan or common scheme is necessary for a
20 finding of guilt as a principle. The State must
21 prove beyond a reasonable doubt by competent
22 evidence the theory of the hand of one is the hand
23 of all. A principle in a crime is one who either
24 actually commits the crime or who is present aiding,
25 abetting or assisting in the committing of crime --

1 of a crime. When a person does an act in the
2 presence of and with the assistance of another, the
3 act is done by both. Where two or more acting with
4 a common plan or intent are present at the
5 commission of crime, it does not matter who actually
6 commits the crime. All are guilty. The hand of one
7 is the hand of all. Present at the commission of a
8 crime needs to be sufficiently near to aid and abet
9 and assist in the commission of a crime. However,
10 mere presence at the scene of a crime is not
11 sufficient to convict one as a principle on the
12 theory of aiding and abetting. Intent is also a
13 necessary element for there must have been a common
14 design or intent to commit the crime and the crime
15 must have been committed pursuant thereto with the
16 person aiding and abetting by some overt act.

17 Intent means intending the result which
18 actually occurs, not accidentally or involuntary.
19 Intent may be shown by acts and conduct of the
20 defendant and other circumstances from which you may
21 naturally or reasonably infer intent. The State
22 must prove these elements beyond a reasonable doubt.

23 As I stated to you before, mere presence at the
24 scene is not sufficient to prove someone guilty of a
25 crime. The defendant's presence where a crime is

1 being committed or a mere association with a person
2 who commits a crime does not make a defendant an
3 accomplice or an aider and abetter of the person
4 committing the crime. The burden is on the state to
5 prove every element of the crime charged. If you
6 find, after reviewing all the evidence, that the
7 State has proved the defendant was only present at
8 the scene of a crime and that they have not proved
9 beyond a reasonable doubt any other participation of
10 the crime, then you must find the defendant not
11 guilty. The law is that proof at the scene of a
12 crime is not sufficient to find someone guilty.

13 The defendant is charged with failing to stop
14 for a blue light. In order to prove this crime, the
15 State must prove beyond a reasonable doubt that the
16 defendant was driving a motor vehicle, that the
17 defendant was driving a motor vehicle on a road,
18 street or highway of this state, that the defendant
19 was signaled to stop by a law enforcement vehicle by
20 means of a siren or flashing light and that the
21 defendant did not stop.

22 In determining whether or not there are
23 mitigating circumstances which would justify the
24 defendant's failure to stop for a blue light, you
25 may consider actual road conditions, actual roadside

1 conditions, other conditions such as lighting and
2 weather, officer, driver and/or passenger safety and
3 any other circumstances you believe to reasonably
4 mitigate the alleged violation. An official signal
5 requiring a motorist to stop may be a siren or
6 flashing lights, but both are not required. An
7 attempt to increase the speed of the vehicle or in
8 some other manner avoid the pursuing law enforcement
9 when signaled by a siren or flashing light may be
10 considered as evidence of failure to stop for a blue
11 light. However, it is merely an evidentiary fact to
12 be taken into consideration by you along with all
13 the other evidence in the case and to be given the
14 weight you decide it should receive.

15 The defendant is also charged with two counts
16 of attempted murder. In order to prove this crime,
17 the State must prove the defendant attempted to kill
18 another person with malice aforethought either
19 expressed or implied. Malice is hatred, ill-will or
20 hostility towards another person. It is the
21 intentional doing of a wrongful act without just
22 cause or excuse and with an intent to inflict an
23 injury or under circumstances that the law will
24 infer an evil intent. Malice aforethought does not
25 require that malice exist for any particular time

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1 before the act is committed. Both malice must exist
2 in the mind of the defendant just before and at the
3 time the act is committed. Therefore, there must be
4 a combination of the previous evil intent and the
5 act.

6 Malice aforethought may be expressed or
7 inferred. These terms "expressed" and "inferred" do
8 not mean different kinds of malice but merely the
9 manner in which malice may be shown to exist. That
10 is either by direct evidence or by inference from
11 the facts and circumstances which are proved.

12 Expressed malice is shown when a person speaks
13 words which express hatred or ill-will for another
14 or when the person -- excuse me -- when the person
15 prepared beforehand to do the act which was later
16 accomplished. For example, lying in wait for a
17 person or any other acts of preparation going to
18 show that the deed was within the defendant's mind
19 would be expressed malice.

20 Malice may be inferred from conduct showing a
21 total disregard for human life. Inferred malice may
22 also arise when the deed is done with a deadly
23 weapon. A deadly weapon is any article instrument
24 or substance which is likely to cause death or great
25 bodily harm. Whether an instrument has been used as

1 a deadly weapon depends on the facts and
2 circumstances of each case. The following are
3 examples of instruments which may be deadly weapons:
4 a pistol, a shotgun, a rifle, a dirk, a dagger, a
5 knife, a slingshot, metal knuckles, a razor,
6 gasoline, a fire bomb, a Molotov cocktail and
7 lighter fluid. A gun may be a deadly weapon even if
8 it is not operating. If facts are proved beyond a
9 reasonable doubt sufficient to raise an inference of
10 malice to your satisfaction, this inference would be
11 simply an evidentiary fact to be considered by you,
12 the jury, along with other evidence in the case and
13 you may give it the weight you decide it should
14 receive.

15 A specific intent to kill is not an element of
16 attempted murder but there must be a general intent
17 to commit serious bodily injury. Intent means
18 intending the result which actually occurs, not
19 accidentally or involuntary. Intent may be shown by
20 acts and conduct of the defendant and other
21 circumstances from which you may naturally and
22 reasonably infer intent.

23 Evidence of the character of the act and
24 character of the instrument used, the manner in
25 which it was used, the purpose to be accomplished

1 and the resulting injuries may be considered in
2 determining the intent with which these acts were
3 committed. Intent may also be inferred when it is
4 demonstrated that the defendant voluntarily and
5 willfully commits and act, the natural tendency of
6 which is to destroy another's life.

7 The defendant is charged with Possession of a
8 Weapon during the Commission of a Violent Crime.
9 The State must prove beyond a reasonable doubt that
10 the defendant was in possession of a firearm or
11 visibly display what appeared to be a firearm during
12 the commission of a violent crime or the intent to
13 commit a violent crime. A firearm means any machine
14 gun, automatic rifle, revolver, pistol or any weapon
15 which will, is designed to, or maybe readily
16 converted to expel a projectile.

17 In order to find the defendant guilty of
18 possession of a weapon during the commission of a
19 violent crime or an attempt to commit a violent
20 crime, you must first find the defendant guilty of
21 either committing a violent crime or attempting to
22 commit a violent crime. Attempted murder is a
23 violent crime. In order to find the -- in order to
24 find the defendant guilty of possession of a weapon
25 during the commission of a violent crime, you must

1 first find the defendant guilty of attempted murder.
2 If you do not find the defendant guilty of attempted
3 murder, you can not find the defendant guilty of
4 possession of a weapon during the commission of a
5 crime. The State must prove beyond a reasonable
6 doubt that the weapon furthered, advanced or helped
7 in the commission of the crime.

8 Ladies and Gentlemen, your verdict must be a
9 unanimous one. Mr. Foreperson, when the jury agrees
10 on the verdict, you will write the verdict on the
11 back of the indictments and sign your name as the
12 foreperson. Then knock on the jury room door and
13 inform the bailiff that you have reached a verdict.
14 At that time, we'll receive you back in the
15 courtroom. I ask that you now return to your jury
16 deliberation room but do not begin deliberating
17 until you receive, uh, the indictments and all the
18 evidence in this case. That will be your signal to
19 begin deliberating. Thank you so much for your
20 service.

21 (WHEREUPON, the jury exits at approximately
22 3:47 p.m.)

23 MR. MARCHANT: No exception from the State,
24 Your Honor.

25 THE COURT: All right.

1 **MR. MARCHANT:** The one thing I would -- the
2 alternate went back to the jury room.

3 **THE COURT:** Yeah. Well, I'll take care of
4 her in just a second.

5 **MR. MARCHANT:** Thank you, Your Honor.

6 **THE COURT:** And your objection is noted. Is
7 there any additional objection to my charge on the
8 law?

9 **MR. JOHNSON:** No, ma'am, Your Honor.

10 **THE COURT:** All right. Thank you. All
11 right. All right. If y'all will, check and make
12 sure all the exhibits are here together. Just make
13 sure that our ones that were not entered don't go
14 back.

15 **MR. MARCHANT:** Yes, Your Honor.

16 **THE COURT:** Do y'all have any means for them
17 -- there's a video in this case. Do y'all have any
18 means for them to watch a video?

19 **MR. MARCHANT:** No, ma'am. Frankly, what we
20 did last time was brought them back out.

21 **THE COURT:** Okay. All right.

22 **(WHEREUPON, the jury deliberation begins at**
23 approximately 4:06 p.m.)

24 **(WHEREUPON, the Court resumes at approximately**
25 5:39 p.m.)

1 **THE COURT:** Everybody's here. They want to
2 watch the video.

3 **THE BAILIFF:** You want us to get it?

4 **MR. MARCHANT:** Yes, sir.

5 **THE COURT:** Will you ask her to get it, let
6 us bring it in?

7 **(WHEREUPON, there is a pause.)**

8 **(WHEREUPON, the jury enters at approximately**
9 5:46 p.m.)

10 **THE COURT:** It's my understanding that you
11 wanted to see the traffic video and we've got that
12 cued up for you.

13 **(WHEREUPON, State's Exhibit 1 is played for the**
14 jury.)

15 **THE COURT:** All right. Does anyone need to
16 see it again? (No response.)

17 All right then. I ask you to return to your
18 jury room and continue your deliberations.

19 **(WHEREUPON, the jury exits at approximately**
20 5:53 p.m. and jury deliberation continues.)

21 **(WHEREUPON, Court's Exhibit 1 is marked for**
22 identification purposes.)

23 **(WHEREUPON, the Court resumes at approximately**
24 6:07 p.m.)

25 **THE COURT:** We have a verdict. Is everybody

1 in? All right. (Pause.)

2 Before y'all bring them in, wait just one
3 second.

4 Will you step back outside one moment? I'm so
5 sorry.

6 I should have said this before. I know this is
7 an emotional case and it's been tried before. I
8 just want to be very, very clear that no matter
9 which way this case goes, and I have no idea which
10 way it will go, but I do not tolerate any kind of
11 outburst or anything in my courtroom period. I will
12 exercise the full measure of my contempt powers if I
13 have an outburst like that. This jury has taken
14 time away from their lives and have listened, I
15 think, as intently as any jury could have listened.
16 I'm just not going to put up with them having any,
17 uh, -- for them to have to deal with any kind of
18 outburst. All right.

19 (WHEREUPON, the jury enters at approximately
20 6:09 p.m.)

21 THE COURT: I understand that the jury has
22 reached a verdict. Is that correct?

23 THE JUROR: That is correct.

24 THE COURT: All right. Will you please hand
25 the indictments to the bailiff?

1 **(WHEREUPON,** the verdict forms are handed to the
2 Court.)

3 **THE COURT:** All right. The verdict forms
4 appear to be in order. If you will, publish them
5 please, Madam Clerk.

6 **THE CLERK:** Yes, Your Honor. Your Honor,
7 this is case number 2012-GS-23-1423, the State
8 versus Patrick Dean Lowrance indictment for Failure
9 to Stop for Blue Light. The verdict is guilty.
10 Signed, Foreperson, Hutch Persons. 2012-GS-23-1424,
11 indictment for Attempted Murder, the verdict is
12 guilty. Signed, Foreperson, Hutch Persons. 2012-
13 GS-23-1425, indictment for Attempted Murder, the
14 verdict is guilty. Signed, Foreperson, Hutch
15 Persons. 2012-GS-23-1426, indictment for Possession
16 of a Weapon During the Commission of a Violent
17 Crime, the verdict is guilty. Signed, Foreperson,
18 Hutch Persons.

19 If this each of your verdict, please raise your
20 right hand.

21 **(WHEREUPON,** each juror responds.)

22 **THE CLERK:** Thank you.

23 **THE COURT:** Ladies and Gentlemen, I speak on
24 behalf of both these attorneys involved in this
25 case. We thank you so much for your service in this

1 case. I'd like to speak to you before you leave, so
2 I'll ask you now to go back to your jury
3 deliberation room. I know there are some things
4 that you need to get, your phone and things like
5 that. But again, thank you so much for your
6 service.

7 (WHEREUPON, the jury exits at approximately
8 6:11 p.m.)

9 THE COURT: We'll come back and I'll hear
10 motions in a moment and I will also come back and do
11 sentencing. However, is there anything that we need
12 to take up before I let the jury go from the State?

13 MR. MARCHANT: Nothing from the State, Your
14 Honor.

15 THE COURT: Anything from the defense?

16 MR. JOHNSON: Nothing from the defense.

17 THE COURT: All right. I'll be back in just
18 a moment. I'm going to let them go and then we'll
19 move straight to sentencing.

20 (WHEREUPON, a short recess is taken.)

21 THE COURT: All right. We ready to move to
22 sentencing?

23 MR. MARCHANT: The State's ready, Your Honor.

24 THE COURT: I think I know plenty about the
25 facts of the case. Is there anything that you

1 wanted to bring to my attention particularly about
2 the facts?

3 **MR. MARCHANT:** Your Honor, nothing with
4 respect to the facts. You've heard them. The
5 jury's heard them. They've rendered their verdict.
6 His prior record, his significant prior record
7 anyway was this previous conviction in this case. I
8 believe he did have a misdemeanor or two conviction
9 out of Spartanburg county.

10 The State does have a position with respect to
11 sentencing. Officer Taci Cobb would like to address
12 the Court before Your Honor imposes sentence.

13 **THE COURT:** All right. What's the State's
14 position?

15 **MR. MARCHANT:** Your Honor, I typically
16 wouldn't do this, but I need to explain to you the
17 negotiations that Mr. Johnson and I have which
18 probably landed us here today. Mr. Lowrance is
19 accused of robbing the Wendy's on Mills Avenue near
20 Greenville Memorial Hospital approximately five days
21 before this incident. He went inside the Wendy's at
22 closing time. Attempted to get to the safe area.
23 Several employees -- the allegations anyway, Your
24 Honor, of several employees pulled out their
25 personal effects. Nothing of value was subsequently

1 taken. At that point in time though inside, uh, the
2 manager had actually been outside removing the
3 trash. She got in her car once she saw him go
4 inside and fled.

5 The gun that was used in this incident was used
6 in that incident as well. There were, uh, seven
7 rounds fired at that employee and the other
8 employee. So he has several other charges of
9 attempted murder at this time.

10 Prior to that date -- and that date was 10/23
11 of '11. He also has a pending charge on July 6 of
12 '11 of unlawful carrying of a pistol where he was
13 stopped with Mr. Pearson over in Mauldin. That case
14 originally was in PTI and is now pending with me.

15 **THE COURT:** Okay.

16 **MR. MARCHANT:** I tell you all that, Your
17 Honor, because negotiations between Mr. Johnson and
18 I reached a standstill. The State had offered to
19 resolve all these charges for a sentence of 25
20 years.

21 **THE COURT:** Uh-huh.

22 **MR. MARCHANT:** I told Mr. Johnson once we
23 proceeded to trial, of course, the negotiations were
24 off and it was all fair game. I can not tell the
25 Court at this point in time what the State's

1 position is going to be on the Wendy's case. I will
2 have to evaluate that. But I will tell you that the
3 negotiations that I had with Mr. Johnson is that I
4 assured him that by wrapping up all these charges,
5 the State would not elect to seek life without
6 parole. This conviction being the most serious
7 conviction for the attempted murder. He has the
8 attempted murder pending at the Wendy's. I'll
9 certainly have to reevaluate the State's position on
10 that case and decide whether or not we're going to
11 move forward.

12 So I believe that 25 years was a very fair
13 offer to resolve two shooting incidents. This is
14 one of the most unusual circumstances that I've seen
15 in the time that I've been here. A man took the
16 opportunity to take the lives of two officers,
17 primarily Officer Cobb who was unarmed at the time.
18 She did not have her firearm drawn. She did not
19 have her taser out. Nothing of defense did she have
20 removed from her duty belt. When she stepped into
21 that breezeway, she was ambushed. There's no other
22 way to describe it.

23 **THE COURT:** It's a curious set of facts.
24 There's just -- there's no getting into his head
25 about this.

1 **MR. MARCHANT:** She moves to the rear of the
2 building. Officer Lane comes across to attempt to
3 determine where she is. He's shot at as well. The
4 evidence presented was nine rounds over the course
5 of three different sets of exchange of gunfire.

6 The State's position is that this man no only
7 does not have any respect for human life, but for
8 law enforcement. It's the State's position that
9 somebody that is this careless and this reckless is
10 the most dangerous person that society has to deal
11 with. And for that reason, there's nothing I don't
12 think the court can do other than impose the maximum
13 sentence on these charges for the acts that he has
14 been convicted of by the jury here today.

15 **THE COURT:** All right. Yes, ma'am.

16 **OFFICER COBB:** Your Honor, I don't want any
17 pity on my part for what I'm about to say. But I
18 have suffered a lot from this and I view myself as a
19 strong person. I been in the military for 13 years,
20 law enforcement and things of that nature.

21 I suffered a lot of financial loss from them.
22 I went to the VA and I have compounded PTSD. I've
23 been diagnosed with Post-Traumatic Stress syndrome.
24 I don't want any pity on that. I've got my
25 medication. I'm on the right track and everything.

1 But like, uh, Mr. Marchant said, he has no
2 regard for anyone's life. For everything I've been
3 through, my children have been through, my family
4 have been through -- my children have nightmares
5 about this still. They found out about this. I
6 don't want anyone else to have to go through this.
7 He has no regard for those people at Wendy's. he
8 has no regard for my life, for any of these
9 officers' lives. He's a danger to society. Not
10 only would they loss their -- worse case scenario,
11 they would loss their lives. It's the traumatic
12 stress that they would get from something like this.

13 The financial loss because at the time I was
14 single. I was a single mother of three. I was put
15 on administrative duty for about a month. I lost
16 all my side jobs. I lost my vehicle in that
17 process. It got repossessed because of the fact
18 that I couldn't make my ends meet because I could
19 only be strictly on, you know, my hourly wage
20 instead of the side jobs that I relied on to catch
21 back up. I had to take a lot of unpaid time off. I
22 had no more leave left because of the fact that I
23 was not able to function as a police officer. I was
24 not able to make the decisions that I needed for
25 this job.

1 Like I said, I don't want a pity party. I just
2 want to reiterate the fact that no one else should
3 have to go through something, this that I've gone
4 through.

5 **THE COURT:** Well, I thank you, ma'am. And I
6 am so sorry for what you've gone through. But I
7 really admire you for the way that you've come back
8 from this and tried to get the help that you need to
9 get back on track about it. You are a brave woman.
10 Anything else from the State?

11 **MR. MARCHANT:** Nothing else from the State,
12 Your Honor.

13 **THE COURT:** Mr. Johnson?

14 **MR. JOHNSON:** Thank you, Your Honor.

15 **THE COURT:** And let me just start by saying,
16 Mr. Johnson and I say this to Mr. Marchant to, but I
17 just want to say for the record I don't think
18 anybody could have tried this case more vigorously.
19 You tried it in front of one jury and got a hung
20 jury. But I don't think anybody could have tried
21 this case more vigorously or better than you tried
22 it. I commend you for all your efforts on behalf of
23 your client.

24 **MR. JOHNSON:** Thank you, Your Honor. Just a
25 little bit to address what the Solicitor's said as

1 far as negotiations. I'm a defense attorney. Okay.
2 That's what I do. Okay. So these things are
3 relative. I understand, uh, what they are saying
4 that my client did and the jury's spoken at this
5 point. That's something we're dealing with. But
6 obviously, as far as negotiations are concerned, if
7 it were to be my opinion, just speaking on those
8 alone, I don't see how those are fair. There was no
9 negotiations really. It was 25. It was 25. There
10 was no negotiations. So I just want to make that
11 clear to the court.

12 **THE COURT:** I see.

13 **MR. JOHNSON:** Not to say that we were coming
14 back. No, it was 25. It was always 25.

15 As far as my client is concerned, I think you
16 heard a bit about his background. He also has a
17 wonderful family here that's standing behind him
18 there.

19 **THE COURT:** Here supporting him throughout.

20 **MR. JOHNSON:** Supporting him. Supported him
21 throughout. So I mean, somebody with a family like
22 that, and I'm speaking towards the sentence, if he
23 had the opportunity to be released, I do think
24 he'd have a good system, a good base about which he
25 could potentially land on his feet. I do think

1 that's important with regards to sentencing is if
2 somebody would have an opportunity to be
3 rehabilitated or would have the family or the
4 wherewithal to be able to overcome anything that
5 he's been found guilty of or pled guilty of for that
6 matter.

7 As he told you, he's college educated.
8 Although he's not with his wife, obviously, he's
9 been in jail. He's married. He does have a son. I
10 also ask you -- he's exercised his right to a trial.
11 I know there's always been a lot of people that they
12 know if you go to trial, you're going to get more
13 time than if you just pled guilty. I ask you not to
14 consider that.

15 **THE COURT:** I don't subscribe to that.

16 **MR. JOHNSON:** Yes, ma'am. Also like I said,
17 with a defense attorney, it's a relative thing. I
18 guess considering the jury has spoken and the jury
19 said he had done this, I supposed, uh, and his
20 position nobody is dead. I ask you to take that --

21 **THE COURT:** That's the only blessing here.

22 **MR. JOHNSON:** Yeah. I ask you to take that
23 into consideration as well. Your Honor, that's all
24 I have to say. I don't believe my client has much
25 to say.

1 **THE COURT:** Sure.

2 **MR. JOHNSON:** I think you heard from him. I
3 understand he told you about himself. You can look
4 at him and see his mannerisms and different things
5 of that nature. I'm not sure if his family has
6 anything they wish to say.

7 Do you?

8 **UNIDENTIFIED SPEAKER:** I'd just like to say--

9 **THE COURT:** Tell me your name please, ma'am.

10 **UNIDENTIFIED SPEAKER:** My name?

11 **THE COURT:** Yes, ma'am.

12 **UNIDENTIFIED SPEAKER:** I'm Patrick's mother.

13 **THE COURT:** Yes, ma'am.

14 **UNIDENTIFIED SPEAKER:** Patrick is not -- I
15 raised him. I was a single parent for years. I
16 raised him to the best of my ability, gave him a
17 good start. He went through high school, played
18 sports all during. High school basketball. I sent
19 him to college. Uh, Patrick just got on the wrong
20 track, hanging with the wrong people. I do know
21 that Patrick got on drugs. That does alter one's
22 character. But he's not a violent person. He never
23 has been. I still feel like he has potential. He's
24 a good boy. He just got on the wrong track with the
25 wrong people. So I hope you would take that into

1 consideration.

2 **THE COURT:** I will. I know you must be
3 absolutely heartbroken here today.

4 Anything else? Oh, yes, ma'am. I'm so sorry.

5 **UNIDENTIFIED SPEAKER:** Walisha Davis.

6 **THE COURT:** Yes, ma'am.

7 **UNIDENTIFIED SPEAKER:** I'm Patrick's older
8 sister. I been in his life since he was first
9 brought into this world. I watched him grow up.
10 I'm just devastated right now. As my mother said,
11 we come from a very strong Christian background.
12 It's just a situation where things were going on in
13 his personal life that he got involved with and with
14 the wrong crowd. But what I will say and want the
15 courts to know is that this is perhaps the trail of
16 his life for a short time in the 27 years of his
17 life. He's a young man, smart, with potential. I
18 just don't want to see his life wasted away in
19 prison. I guess I see this point in his life where
20 he's really on life support and whether or not the
21 plug is pulled where his life begins or what happens
22 at this point. I ask you just to allow him to live.
23 Allow him to have a second chance and to have a
24 second chance in life.

25 **THE COURT:** Thank you, ma'am.

1 Yes, sir.

2 **UNIDENTIFIED SPEAKER:** My name is Johnny
3 Davis.

4 **THE COURT:** Yes, ma'am. Yes, sir. I'm
5 sorry.

6 **UNIDENTIFIED SPEAKER:** I'm Patrick's uncle.
7 She's my sister. I'm the uncle. I hear all these
8 things about Patrick and it's just hard for me to
9 fathom for -- I heard his confession that he's done
10 some of those things that we never been a party to.
11 In our religious upbringing in the Pentecostal
12 Apostolic faith, we don't believe in even smoking,
13 let alone drugs and all this. Patrick was brought
14 up that way. I always known Patrick to be more of a
15 shy reserved following type.

16 In my mind and from what I've heard from some
17 of the fellows in the street, Patrick is actually
18 taking a hit right now for some other fellows. He
19 has been placed in a position that if he don't take
20 the fall, he'll probably be killed. He's gone
21 through some things that he's not even verbalizing
22 to us. He got mixed up, as my sister said, with the
23 wrong group. It is my profound believe that he
24 never fired a shot at anyone. I can't see him doing
25 it knowing him all of his life up until this past

1 few years or what have you. The word on the street
2 is he got involved with some wrong fellows. And if
3 he don't take the fall for it, he will take the fall
4 for it if he walk.

5 I don't know how that impacts your decision,
6 ma'am, but young people nowadays are just careless
7 with your life doing the wrong thing. There are
8 consequences when you do things like that. My heart
9 goes out to this young lady, the police officer that
10 was shot at, whoever shot at her. If it was
11 Patrick, I don't endorse that, ma'am. No, ma'am. I
12 don't want to carry any firing gun because I don't
13 want to be responsible for nothing like that if I
14 lose my temper or something. But I will ask that if
15 there's anything you can do beyond this point to
16 give him another chance, I would ask you.

17 I run a small appliance store. We'd be glad --
18 I've seen him take washing machines, dryers and tear
19 them down and rebuild them. Skills he have.
20 Getting mixed up with the wrong people is his
21 downfall. The penalty he should pay for that is the
22 rest of his life. I understand -- I respect the
23 police. I've trained police officers. I've been a
24 firefighter and an EMT. I've been involved in
25 society. But if there's anything you could do,

1 Judge, the family would appreciate it. Thank you
2 for the time being spent.

3 **THE COURT:** I thank you, sir, for being here.
4 Yes, sir.

5 **UNIDENTIFIED SPEAKER:** Ma'am, my name is
6 Lawyer Watson. I'm a pastor in Spartanburg, South
7 Carolina. I have the highest respect for the police
8 department. I do a lot of work with the Spartanburg
9 county and the city police department. I normally
10 have my coin. It's a pledge to pray for the police
11 officers and civil officers every day.

12 I am Patrick's cousin. He and my daughter are
13 a couple of months apart. He was really a part of
14 my family and extremely close to my daughter so much
15 so that one would think that they are sisters and
16 brothers. The situation that Patrick has found
17 himself in is really hard to us. We're not familiar
18 with that part of Patrick at all. It's very
19 surprising that we are here in this situation. But
20 his family, we love him. We continue to pray for
21 him. He does have a support system. We do ask for
22 the mercy of the court.

23 **THE COURT:** Thank you, sir, for being here.
24 Mr. Lowrance, you've got a wonderful family.
25 There's no doubt about that. I can't imagine what

1 they are going through right now. I will say that -
2 - I will say that throughout this trial, you
3 impressed me as being a very polite person and you
4 impressed me as being an intelligent person in my
5 conversations with you. Very much so. Even when I
6 had to speak with you about something on the stand,
7 you were apologetic and as kind as you'd be about
8 it. That was impressive to me.

9 I, like your family, have only seen one
10 snapshot of you, have only seen this part of you,
11 this person that you could be. But on the other
12 hand, there is evidently a very different side to
13 you, a very different side to you that shocks us all
14 and a side that I can not tolerate. I simply can
15 not tolerate a person who, in a situation like this,
16 or really any situation where they were merely
17 facing arrest, that's -- you know, it's no small
18 thing, but merely facing arrest -- uses that weapon
19 to fire two different -- on two different occasions
20 numerous bullets at two law enforcement officers.
21 We hear all about your family. We hear all about
22 your son and your wife. These people have families.
23 These people have families and they are not doing
24 this to hassle you. They are not doing this to get
25 rich. They are doing this because it's something

1 they feel called to do. And to think that this poor
2 woman has to go to the VA to be treated for
3 something that you did out of callus disregard and
4 meanness. And her children are suffering because of
5 what you did. It boggles the mind. It boggles the
6 mind.

7 I can't let that pass. I can't let that go. I
8 want to give you another chance. I want nothing
9 more. If I had some way to say Patrick Lowrance
10 will be a person who thinks of other people and not
11 himself and a person who doesn't pull a gun when he
12 thinks that -- whenever he wants to, if I thought I
13 had something that I could do to make you that
14 person tomorrow, I'd let you walk out this door.
15 But the simple fact of the matter is you can't be in
16 society, you can not be in society and do this
17 period.

18 How long has he served in jail already?

19 **MR. MARCHANT:** Your Honor, he was arrested
20 10/27 of '11. By my calculations, he's been in 443
21 days.

22 **THE COURT:** I don't punish anyone for ever
23 going to trial. It's your right to go to trial. I
24 don't hold that against you in any way. I take into
25 consider your very light record, very limited prior

1 record. That's another thing that boggles the mind.
2 It just boggles the mind that you did these things.
3 But, when it all comes down to it, if I take into
4 consideration the seriousness of what you did, it
5 was not just one shot, it was repeated shots. It
6 wasn't just at one officer, it was at two officers.
7 And you knew they were officers. When I take that
8 into consideration, the sentence of the court is 28
9 years, credit for 443 days time served. On the
10 other attempted murder, 28 years, 443 days time
11 served. That's concurrent. Five years, credit for
12 443 days on the weapons charge concurrent. And
13 three years on the Failure to Stop for a Blue Light,
14 credit for 443 days. I wish you the best of luck.

15 And ma'am, you are in our thoughts.

16 **MR. MARCHANT:** Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 **(WHEREUPON,** the proceedings conclude at
19 approximately 6:40 p.m.)
20
21
22
23

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 27th day of November, 2013.

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

Bakson

Teresa B. Johnson

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Patrick Dean Lowrance, #353834,
Full name and prison number (if any) of Applicant.)

2018-CP-23- 02514

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions, 305 E. North Street, Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-1423, 1424, 1425, 1426
 - (b) Two counts of attempted murder, failure to stop, and possession of a weapon
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) January 10, 2013: 2 terms of 28 years, 5 years and 3 years concurrent
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (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. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. April 12, 2017
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2017-UP-154
 - 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:

- (a) Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial.
 - (b) Ineffective assistance of counsel for failure to to properly preserve issues for appeal.
 - (c) Ineffective assistance of appellate counsel.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to conduct an independent investigationa and properly review the evidence with Applicant prior to his trial date.
 - (b) See appellate decision.
 - (c) Failure to raise all meritorious issues on appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (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? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

No.

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) PCR is the proper forum.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes.

(b) your trial, if any? _____

(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. Brian P. Johnson, 305 E. North Street, Ste. 123, Greenville, SC 29601

ii. David S. Jones, 111 Executive Point Blvd, Ste. D, Columbia, SC 29210

iii. Taylor Gilliam, Office of Appellate Defense, PO Box 11589, Columbia, SC

29211

(b) the proceedings at which each such attorney represented you:

i. Trial.

ii. Direct appeal.

iii. Direct appeal.

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

A new trial.

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

No.

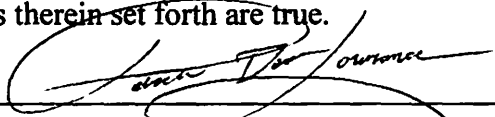
STATE OF SOUTH CAROLINA

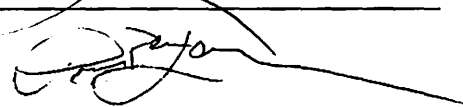
County of McCormick

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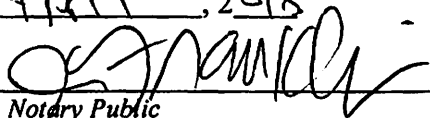
VERIFICATION

I, Patrick D. Lowrance, 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 05
day of April, 2018

 (L.S.)

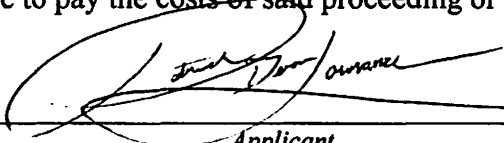
Notary Public

My Commission Expires: 12/16/2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Patrick D. Lowrance, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
05 day of April, 2018



Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEA
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Patrick Dean Lowrance, #353834	)	Case No.: 2018-CP-23-2514
	)	
Applicant,	)	
	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its return to the application for Post-Conviction Relief (PCR) filed on April 23, 2018, would respectfully show this Court:

I.

Patrick Dean Lowrance (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. In March 2012, Applicant was indicted for two counts of attempted murder (2012-GS-23-01424, 20120-GS-23-01425), possession of a weapon during the commission of a violent crime (2012-GS-23-01426), and failure to stop for blue lights (2012-GS-23-01423).

These charges arose from an incident occurring on October 28, 2011. During a lawful traffic stop in Greenville County, South Carolina, Applicant driving a silver 2005 GMC Yukon refused to yield or stop for blue lights. Applicant instead fled from police. During a further investigation it was discovered that this vehicle was stolen out of Spartanburg. Subsequently, Greenville police received calls of a suspicious person in the area. Two officers arrived at the scene and entered a breezeway of an apartment building where they encountered Applicant. Applicant then began shooting a firearm at both officers.

Applicant was represented by Brian Johnson, Esquire and John Crangle, Esquire. Applicant's case was prosecuted by Lucas Merchant, Esquire. On January 7, 2013, Applicant proceeded to trial before the Honorable Letitia H. Verdin and a jury. The jury found Applicant guilty as to all the indicted charges. Judge Verdin sentenced Applicant to imprisonment for three years for failure to stop for a blue light, twenty eight years for the attempted murder charges each to be run concurrently and five years for the possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. David S. Jones, Esquire and Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion. State v. Lowrance, Up. No. 2017-UP-154 (S.C. Ct. App. filed April 12, 2017). The remittitur was returned to the circuit court on April 28, 2017.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. "failure to properly prepare and investigate prior to trial"
 - b. "failure to properly preserve issues for appeal"
 - c. "failure to conduct an independent investigation and properly review evidence with applicant prior to his trial date"
2. Ineffective Assistance of Appellate Counsel
 - a. "failure to raise all meritorious issues on appeal"

Applicant seeks a new trial as relief.

Attached to this Return and incorporated by reference are the records from the Greenville County Clerk of Court, Applicant's records from the South Carolina Department of Corrections,

transcripts, appellate materials and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of

effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel and ineffective assistance of appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 7, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

PATRICK DEAN LOWRANCE,)
)
APPLICANT,)
)
-VS-)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

2018-CP-23-02514

TRANSCRIPT OF RECORD

OCTOBER 21, 2019
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

TAYLOR Z. SMITH
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
-----------	--------------------	-----------	-----------------

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** All right. Yes, sir.

2 **MR. SMITH:** Thank you, Your Honor. The next case is
3 Patrick Dean Lowrance versus the State, case number 2018-CP-
4 23-2514. Mr. Lowrance is confined to SCDC pursuant to orders
5 of committment by the Greenville County Clerk of Court.

6 In March 2018 he was indicted for two counts of attempted
7 murder, possession of a weapon during the commission of a
8 violent crime and failure to stop for blue lights. That
9 arises from an event that involved a flight from police and an
10 officer and then a shooting at two officers.

11 At trial he was represented by Mr. Brian Johnson and John
12 Crangle. And he was tried in front of Judge Verdin and a
13 jury. And, Your Honor, in this case he was originally tried
14 in front of a different judge. And I'm sorry, I don't have
15 his name in front of me. And that resulted in a conviction
16 and a mistrial. And then Mr. Lowrance was tried again shortly
17 after that. And the second trial is what we're here about
18 today.

19 **THE COURT:** Okay. And the convictions in that were? The
20 attempted murder ...

21 **MR. SMITH:** And the ---

22 **THE COURT:** Failure ---

23 **MR. SMITH:** --- possession of a weapon.

24 **THE COURT:** Possession of a weapon. So he got -- did he
25 get convicted of the failure to stop in the first trial?

1 **MR. SMITH:** That is correct, Your Honor.

2 **THE COURT:** Okay.

3 **MR. SMITH:** And in the second trial Judge Verdin
4 sentenced him to imprisonment for three years for -- no, I'm
5 sorry. The second trial he was imprisoned for three -- for
6 three years for failure to stop for a blue light, 28 for both
7 of the attempted murders running consecutively, and five for
8 possession of a weapon.

9 Actually, don't have in front of me the original offense
10 for which he was convicted of in the first trial. Although, I
11 could find it if Your Honor needs to know that.

12 **MR. ARIAIL:** It was -- he got three years imprisonment
13 suspended on the service of one year's probation for that
14 possession of a stolen motor vehicle in the first trial is
15 what I understand it to be.

16 **THE COURT:** Yeah. Okay.

17 **MR. SMITH:** So these three offenses were those for which
18 a mistrial was granted the first trial.

19 He did appeal. And Mr. David Jones perfected the appeal.
20 The Supreme Court -- or, I'm sorry. The Court of Appeals
21 affirmed it in an unpublished opinion. And a remittitur was
22 sent in April of 2017.

23 He since filed this application for post conviction
24 relief and raised the following issues; Failure of trial
25 counsel to prepare and investigate, failure of trial counsel

1 to preserve issues for appeal, failure to conduct an
2 independent investigation and properly review evidence with
3 Applicant prior to trial. And he raised the claim of
4 ineffective assistance of appellate counsel for failing to
5 raise all meritorious issues on appeal.

6 And, Your Honor, the State did move for a more definite
7 statement in its return. I have since asked Mr. Ariail for
8 some more information. And he's given me some this morning.
9 And I would just ask before we begin if we could clarify for
10 the record what the issues will be today.

11 **THE COURT:** All right. What are the claims you're
12 making?

13 **MR. ARIAIL:** Your Honor, a lot of the ones he's already
14 listed are kind of under that. The issues we would have would
15 be failure to go over discovery with him, interview witnesses,
16 failure to object to some statements in the second trial in
17 the closing statements, that he had a change of venue argument
18 that he wanted to discuss. There was an issue he is raising
19 with regards to accomplice liability.

20 I have had discussions with him in regards to plea deals,
21 and I don't -- he says he was never offered one. I need to
22 inquire as to if he was given one. Other items -- I think,
23 Your Honor, that pretty much is a synopsis of those. There
24 may be one other I can't remember, but I think that's about
25 it, Your Honor. And I've told -- I think I've kind of relayed

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

7

1 those to Taylor as much as I can.

2 (Pause)

3 **MR. ARIAIL:** I think that is the summary, Your Honor.

4 **THE COURT:** Okay. Call your first witness.

5 **MR. ARIAIL:** Sure, Your Honor. I'd call my client to the
6 stand, Your Honor, Mr. Lowrance.

7 **MADAM CLERK:** Please place your left hand on the Bible
8 and raise your right hand.

9 **Patrick Lowrance,** being
10 duly sworn testified as follows;

11 **MADAM CLERK:** Thank you. You may be seated.

12 **Direct Examination by Mr. Ariail:**

13 Q. Mr. Lowrance, state your name for the record.

14 A. Patrick Dean Lowrance.

15 Q. Okay. And I'm going to go back through a little bit of
16 the history in regards to your case. You, I guess, were
17 arrested for numerous charges that we've heard stated to the
18 Court, is that correct?

19 A. Yes, sir.

20 Q. Okay. And your counsel, you were appointed Mr. Johnson
21 and Mr. Crangle, is that correct?

22 A. Yes, sir.

23 Q. Okay. You had two attorneys in this case? Do you know

24 ---

25 A. Yes, sir.

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

8

1 Q. Okay. Do you know why they gave you two attorneys? Was
2 there any reason for that?

3 A. No, sir.

4 Q. Okay. So you had both of them representing you. And I'm
5 going to go through a little bit of discussion about their
6 representation. Did you deal with one more than the other or
7 both over the same time? How'd that work?

8 A. I dealt more with Mr. Johnson.

9 Q. Okay. And I think you might want to speak a little ---

10 A. Dealt more with Mr. Johnson, Mr. Brian Johnson.

11 Q. Okay. And Mr. Crangle, did you -- how many discussions
12 do you think you had with him in regards to this case?

13 A. Maybe like two.

14 Q. Okay. So Brian was pretty much the lead one in the case?

15 A. Yeah. That's who came to my attorney visits and
16 everything like that.

17 Q. Okay. So let's go back. When you were arrested in, I
18 guess, -- when were you incarcerated for these charges?

19 A. 10/28/2011.

20 Q. Okay. So then you were indicted on March 12 -- March
21 2012, is that correct?

22 A. I guess so.

23 Q. Yeah, okay.

24 A. Yes, sir.

25 Q. Well, after you were arrested did you ever get out on

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

9

1 bond?

2 A. No, sir.

3 Q. Okay. So there's no time that you were housed, I guess,
4 in the law enforcement center during that time, is that right?

5 A. After the first trial it was like 30 days, or 30 days or
6 something, 90 days or something before they took me back to
7 the second trial.

8 Q. Okay. So -- and we'll get to that in a second. But, I
9 mean, there was no time you got out on bond during this case?

10 A. No, sir.

11 Q. Okay. So, Mr. Johnson, when he was appointed as your
12 counselor, how long after did you meet with him in regards to
13 these charges?

14 A. I can't even recall. I think it was like weeks after
15 that.

16 Q. Weeks after it?

17 A. (Affirmative nod).

18 Q. Okay. Did you go -- when you met with him did he have
19 discovery? Did y'all go over the case?

20 A. It took a little while until -- til I got discovery or
21 whatever.

22 Q. Okay. And then did he bring it down, discuss it with
23 you?

24 A. Yeah, he brought it down. He just brung it to me in that
25 attorney visit.

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

10

1 Q. Okay. Did he leave it with you?

2 A. Yeah, he left it with me.

3 Q. Okay. So you had discovery and you saw what the -- what
4 the information they were going to use against you at trial,
5 is that right?

6 A. Yes, sir.

7 Q. Okay. Did you go over it with him?

8 A. Well, not like, you know, their role, you know what I'm
9 saying? It was just ---

10 Q. Okay. So y'all discussed it. Did you ask him questions
11 about it?

12 A. Yeah, I asked him questions.

13 Q. Okay. Did y'all -- did he tell you this is what they're
14 going to use against you when they go to trial?

15 A. Yeah, on certain things.

16 Q. Okay. Did you have -- do you think you had a complete
17 understanding of what they were going to try to use against
18 you when you went to trial on this matter?

19 A. Yeah.

20 Q. Okay. Did you raise any issues with him or ask him to do
21 anything during these conversations?

22 A. Like as far as like asking witnesses ---

23 Q. Right.

24 A. --- what they had already said that they had seen. Like
25 they had two more guys that they said that had actually did

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

11

1 it, you know what I'm saying? Nobody went to investigate
2 them, or go look for them, or ask them questions, or anything
3 like that.

4 Q. Okay. So -- and let me -- just so the Court understands.
5 There was two other individuals that you say were involved. I
6 guess their names were Meat and Tee, is that correct?

7 A. Demetrius and Tee.

8 Q. Okay. And Tee. Those were two others that you had
9 involved. Did you ask them to go have a conversation,
10 interview them and find out their -- what they knew about the
11 case?

12 A. Yes, sir.

13 Q. Okay. Did they do that?

14 A. No, sir.

15 Q. Okay. Did you tell them where they could be located or
16 found?

17 A. Yes, sir. I mean, tried -- they tried -- I told them
18 where they could, but, you know, nobody ever took a taking to
19 it to, you know, to go investigate that.

20 Q. Okay. And your position in this case is that one of
21 those was the one that did it and you were just there, is that
22 correct?

23 A. Yes, sir.

24 Q. Okay. So you had asked them to try to find them to get
25 their information about the case?

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

12

1 A. Yes, sir.

2 Q. Okay. Now I know we went through the discovery. Are
3 there other things that you told them I need you to accomplish
4 during your investigation of this?

5 A. I'm sorry. What was that?

6 Q. Were there other things you asked them to do?

7 A. Yes, sir.

8 Q. What were they?

9 A. Just as far as like investigating. They didn't
10 investigate nothing. They never interviewed any other
11 witnesses that, you know, was said in the motion of discovery,
12 you know what I'm saying? The State and everybody, see, they
13 never asked anything like that. They never gave me any
14 official help or nothing like that. That's how I felt.

15 Q. Okay. So when you say they didn't interview, who did you
16 want them to interview other than these two individuals?

17 A. It was more individuals in the motion of discovery that
18 they had said that, you know what I'm saying, that had blame
19 on it too, that had something to do with the situation. They
20 never went to look for any of them. You know what I'm saying?

21 Q. Okay. So there were others outside of these Meat and
22 Tee, Demetrius, that you wanted them to go talk to?

23 A. (Affirmative nod).

24 Q. Do you have names of them right now? Can you tell us ---

25 A. No. I mean, it was -- in the motion of discovery it was

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

13

1 at a -- in a specific hotel where they was supposed to had
2 took cover at or whatever, had ran to. Nobody ever went to
3 look for them, or you know what I'm saying, to check and see
4 if they did have anything to do with it.

5 Q. Okay. And there was a, I think a lady, I can't remember
6 her name, Iva, who was at the Comfort Inn. Is that one of the
7 ones you had asked them to talk to about?

8 A. Yes, sir.

9 Q. Okay. Were there others at that Comfort Inn where this
10 began that you wanted them to have a discussion with?

11 A. No. At the Comfort Inn I was trying to -- the officer
12 said she had seen me come through the lobby, and I had never
13 came through the lobby or whatever. That was really the
14 discussion about the Comfort Inn as far as her identifying me
15 or something.

16 Q. Okay. So you wanted them to go to find out a little more
17 information about the identification at the Comfort Inn?

18 A. Actually how the officer got, you know what I'm saying,
19 my identification. How she knew that it was me?

20 Q. Right. Now, as part of this I know one item that was
21 raised. You've had two trials, correct?

22 A. Yes, sir.

23 Q. Okay. The first one ended in a hung jury?

24 A. The first one was a mistrial.

25 Q. Okay. Mistrial. And as a result you were retried under

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14

1 the additional charges outside the possession of a stolen
2 vehicle, is that right?

3 A. Yes, sir.

4 Q. Okay. So in the first trial they had what we call a Neil
5 v. Biggers hearing, which was the identification. Do you
6 remember that?

7 A. No, sir.

8 Q. Do you remember the in-court identification that was done
9 by, I think it was, an Officer Cruell. Do you remember that?

10 A. Yes, sir.

11 Q. Okay. And do you remember anything in regards to, I
12 guess, them disputing it and tried to keep that out?

13 A. It was -- it was something about as far as how she got my
14 identification. I think she had went about it the wrong way
15 or something.

16 Q. Correct.

17 A. And that's all I can really recall.

18 Q. Do you remember having any discussions with them in the
19 second hearing, second trial why they didn't once again
20 preserve those objections or have a hearing in regards to that
21 same identification?

22 A. Yes, sir. But in that second trial the judge that was on
23 the trial told me that I couldn't say things about the first
24 trial or whatever. You know what I'm saying? She didn't want
25 me to refer back to the first trial or nothing like that.

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15

1 Q. Okay. Did you have a discussion with Mr. Johnson and Mr.
2 Crangle about, you know, about having another hearing about
3 that officer's statements or anything along those lines?

4 A. I can't recall.

5 Q. Okay. And you appealed this matter. And the one issue
6 you appealed was that, I guess, in-court identification, ---

7 A. Yes, sir.

8 Q. --- which was in the second hearing, is that correct?

9 A. Yes, sir.

10 Q. And you know the Court of Appeals came back and said that
11 it wasn't preserved for appeal. Do you remember that?

12 A. Yes, sir.

13 Q. Okay. And as a result is that one of your grounds that
14 you're raising that they should have -- they should have
15 preserved that in the second trial?

16 A. Yes, sir. Because neither one of the officers identified
17 me as being the shooter in the apartments or whatever that
18 they said everything took place at.

19 Q. Okay. Now, you raised to me a issue in regards to a plea
20 deal. Do you remember discussing that?

21 A. Yeah. I was never offered a plea deal. I was never
22 offered any kind of deal as far as anything assigned to it
23 like, you know, a plea for 15 years or anything like that.

24 Q. Okay. So nothing was ever brought to you ---

25 A. No, sir.

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

16

1 Q. Okay. Have you found anything subsequent to this that
2 you were given any type of plea deal that wasn't relayed to
3 you?

4 A. No. I've never -- I've never been offered anything like
5 ---

6 Q. Okay.

7 A. The only thing they have offered me was when the judge
8 sentenced me. That's what I got.

9 Q. So you're raising this just simply because you wanted to
10 get a plea deal, but you were never given one?

11 A. Yeah. I think I would have took a plea deal if I had
12 one.

13 Q. Okay. Did they tell you it's not their -- I mean,
14 they're not the ones that can give the plea deals. You
15 understand that?

16 A. I asked -- I think I had asked Brian about a plea deal,
17 but I think he said that they wasn't trying to get one or
18 something like that.

19 Q. Okay. So you don't know if they've done anything in
20 regards to that. You're just raising that because you wanted
21 a plea deal, is ---

22 A. Yes, sir.

23 Q. Okay. Now, you've raised to me in one of our
24 conversations some issue in regards to discussing with them a
25 change of venue. Do you remember?

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

17

1 A. Yes, sir. Because I was -- I felt I should have a change
2 of venue because so many people knew about it. And like
3 within the first trial and the second trial in picking the
4 jury they had to still go back and take certain people off of
5 the jury because they had found out that they was from the
6 area and did know things about the trial that was going on.
7 You know what I'm saying?

8 Q. Okay. So did you discuss that with him and ask him to do
9 that?

10 A. Yeah. Yeah, I asked him to try to get a change of venue,
11 but he said it wasn't able to be done.

12 Q. Okay. So they -- did they give any reasons why they
13 didn't think it could be done?

14 A. No.

15 Q. Okay. We've discussed in the second trial I think there
16 was a charge that you were concerned about, accomplice
17 liability or hand of one, hand of all. Do you -- you've got
18 some issues in regards to that?

19 A. In my first trial the judge gave the jury the
20 instructions of find me guilty beyond a reasonable doubt. And
21 then in the second trial the solicitor, you know what I'm
22 saying, said certain things that I believe led the judge to
23 give the instruction to the jury to say hands of one, hands of
24 all, which I don't see how I could have got -- there was
25 instructions that I don't even have any co-defendants.

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

18

1 Q. Okay. And I think -- did you have a discussion with your
2 attorneys about, I mean, you testified there were other people
3 involved, correct?

4 A. Yes, sir. I told them there was other people involved.

5 Q. Okay. Did you -- did y'all have a discussion that if you
6 testified and you go into that and bring that up, that might
7 be a charge that could come out of this based upon that
8 testimony?

9 A. I never knew that. You know what I'm -- because if that
10 would have been the case, then I would have just remained -- I
11 wouldn't have even said nothing.

12 Q. Okay. So you didn't -- you weren't aware that you could
13 potentially could have prejudiced yourself by ---

14 A. No, sir. I didn't even know I could do that.

15 Q. Okay. You've -- today have provided me a letter that you
16 put together with some questions in regards to -- I guess it
17 was Solicitor Marchant made some statements in closing about
18 you getting your discovery or reviewing -- what issues do you
19 have with that?

20 A. In the notes I gave to you, ---

21 Q. Right.

22 A. --- you know what I'm saying, it was over misconduct
23 because he told the jury that by me having my motion of
24 discovery that I was filling in the gaps or whatever, trying
25 to make them believe a certain thing, you know what I'm

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19

1 saying, when it was my right to have my motion of discovery.

2 Q. And I think you even say -- and I'll cite to it on the
3 transcript, page 657, lines 20 and 22. You state that your
4 attorney should have objected to him saying about your
5 discovery materials that he's trying to fill in these gaps.
6 Do you remember that comment?

7 A. That was -- that's in the transcript.

8 Q. So you think that was prejudicial to you and that they
9 should have objected to that?

10 A. Yes, sir. I believe that was misconduct on his part.

11 Q. Okay. And then you go on to say in transcript, page 658,
12 21 through 24, there's a statement, he's seen his discovery
13 and he's testified and trying to get you to believe that the
14 evidence that we're giving you today is not sufficient. That
15 was Mr. Marchant saying those statements ---

16 A. Yes, sir.

17 Q. Okay. So you think they should have objected to that as
18 being prejudicial to you?

19 A. Yes, sir.

20 Q. Okay. Did you -- did you discuss it with him afterwards
21 or did you have any conversations with him about that after he
22 raised that issue during his closing?

23 A. I had asked him -- really, once he had gave the jury
24 instructions, I was asking him about things like that like how
25 could he say hands of one, hands of all? But that's before I

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

20

1 even knowed that they could take my testimony, what I was
2 giving, to be able to use it against me.

3 Q. Okay. I've tried to go through and summarize the letter
4 as much as we can. Are there other things that you want to
5 raise out of this letter? I know -- I think we talked about
6 not be presented discovery and those items. Are there other
7 things that you want to bring up? I tried to summarize as
8 much as I could out of this.

9 A. That -- I just feel I wasn't given a fair trial because
10 they didn't give me a change of venue. You know what I'm
11 saying? He gave the jury instructions of hands of one, hands
12 of all. I don't have any co-defendants. You know what I'm
13 saying? That's what would make me have hands of one, hands of
14 all. It's a lot at the end of my notes, too. You know what
15 I'm saying?

16 Q. In this? And I ---

17 A. Yes, sir.

18 Q. Bear with me one second.

19 **MR. ARIAIL:** Your Honor, if I could have one second to
20 ---

21 **THE COURT:** Yeah.

22 **MR. ARIAIL:** --- talk to Mr. Smith about this.

23 (Pause)

24 Q. As part of this document put together you think your, I
25 guess counsel, you were prejudiced by this by them failing to

PATRICK LOWRANCE - CROSS-EXAMINATION BY MR. SMITH

21

1 make these objections ---

2 A. Yes, sir.

3 Q. --- and preserving this for you on down the road?

4 A. Yes, sir.

5 Q. Is that correct? So I'm just trying to provide --
6 there's a lot of stuff in these letters, but most of them
7 revolve around that, is that correct?

8 A. Yes, sir.

9 Q. Okay. Are there other things that you would like this
10 Court to be aware of -- because this is your day in court to
11 be able to do that that you think ---

12 A. What I want the Court to know is that none of the
13 officers identified me as being the shooter. You know what
14 I'm saying? And I want to state that I was not the shooter.

15 And I'm accused of attempted murder. And I don't
16 understand how can I be accused of attempted murder when
17 neither one of the officers identified me as being the
18 shooter. You know what I'm saying? And that's really all I
19 -- really all I have to come up with.

20 Q. Okay. That's good. And now I'm going to let you answer
21 some questions from Mr. Smith, okay?

22 A. Yes, sir.

23 **MR. ARIAIL:** I have no further questions, Your Honor.

24 **THE COURT:** All right.

25 **Cross-examination by Mr. Smith:**

PATRICK LOWRANCE - CROSS-EXAMINATION BY MR. SMITH

22

1 Q. Mr. Lowrance, you testified that you would have taken a
2 plea deal if you'd gotten one. Is that right?

3 A. Yes, sir.

4 Q. Okay. But you also testified that you didn't have
5 anything to do with this, that it was -- that these people
6 named Meat and Tee were the shooters.

7 A. Yes, sir.

8 Q. Okay. So you're saying you would have taken a plea offer
9 and said, yes, I was the one who attempted to kill these
10 police officers?

11 A. No. The reason why I said I would have took a plea deal
12 because this is my first time ever being incarcerated and
13 being that taking a plea would be lesser time as far as, you
14 know, the trouble that I was in at the time.

15 Q. Okay. So you'd have said, yeah, I did that, I tried to
16 kill them ---

17 A. No, I wouldn't have said that.

18 Q. So what -- what would you have pled to? The attempted
19 murder?

20 A. No. I wouldn't have pled -- I wouldn't have pled to the
21 attempted murder. They -- what I'm saying is they never came
22 -- y'all never gave me any option of anything. You know what
23 I'm saying? It was just I didn't have nothing -- I shouldn't
24 have even been charged with attempted murder because neither
25 one of the officers identified me as being the shooter.

PATRICK LOWRANCE - CROSS-EXAMINATION BY MR. SMITH

23

1 Q. Okay. So you would not have taken a plea offer for
2 attempted ---

3 A. For attempted murder, no.

4 Q. Okay. During your trial did Judge Verdin ask you did you
5 want to testify?

6 A. Yeah.

7 Q. Okay. And you told her you did?

8 A. Yes, sir.

9 Q. Okay. You're telling us you weren't aware at that time
10 that you could be cross-examined by the prosecutor in the
11 case?

12 A. I wasn't aware that my testimony could be taken and used
13 against me. I wasn't aware of that.

14 Q. Okay. So Judge Verdin didn't explain your trial rights
15 to you? You know, your right to remain silent. Is that what
16 you're saying?

17 A. Yeah, I was explained to that. You know what I'm saying?
18 But I wasn't explained as far as as I'm getting on the stand,
19 I'm testifying that you take my testimony and use it against
20 me.

21 Q. Okay. You testified earlier that there were some
22 witnesses at the Comfort Inn you wanted. Do you know any of
23 their names? Can you give me any information about them
24 today?

25 A. I can't even recall that because none of my lawyers or

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SMITH

24

1 anybody up here helped me investigate, to do an investigation
2 to find the witnesses that was already said.

3 Q. Okay. Those are all the questions I have. Thank you.

4 **MR. ARIAIL:** Nothing further, Your Honor. That is our
5 case, too. If I can have him come down.

6 **THE COURT:** Yeah, you can step down. I don't have any
7 ---

8 A. Yes, sir.

9 **THE COURT:** --- questions for you.

10 (Pause)

11 **THE COURT:** Okay. What you got?

12 **MR. SMITH:** Your Honor, the State would call Mr. John
13 Crangle.

14 **MADAM CLERK:** If you would, please place your left hand
15 on the Bible and raise your right hand.

16 **John Crangle,** being duly
17 sworn testified as follows;

18 **MADAM CLERK:** Please state your name for the record.

19 **MR. CRANGLE:** My name is John Crangle.

20 **MADAM CLERK:** Thank you. You may be seated.

21 **Direct Examination by Mr. Smith:**

22 Q. Okay. Mr. Crangle, can you tell me how long you've been
23 practicing law?

24 A. Yes. I've been practicing since November 13, 2012.

25 Q. Okay. How long have you been -- had you been practicing

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SMITH

25

1 at the time of this trial?

2 A. During his first trial I was not a licensed attorney. I
3 was just assisting Mr. Johnson in the case.

4 Q. Okay.

5 A. At the time of the second trial, that was January of
6 2013, so roughly two months. I was second chair in his case,
7 and Mr. Johnson was the primary attorney.

8 Q. Okay. Can you tell me how you became involved in the
9 case?

10 A. Mr. Johnson was on the contract, 608 -- or I think he was
11 actually on the part-time public defender list. And he was
12 preparing for trial and was -- at the time I wasn't licensed.
13 I didn't have any clients. So I told him on the first trial
14 I'd assist him and do legal research or help out with that,
15 with whatever matters he needed. And then during the second
16 trial, since I'd been a part of the first trial and I was
17 licensed, I assisted in the trial.

18 Q. Okay. How many times did you meet with Mr. Lowrance
19 during this trial?

20 A. During the first trial I had met with him -- the first
21 day of trial was the first day I met with him. During the
22 second trial I believe I met with him, again, during the date
23 of the -- during the time of trial. I didn't meet with him at
24 the detention center.

25 Q. Okay. So you met with him twice?

JOHN CRANGLE - DIRECT EXAMINATION BY MR. SMITH

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1 A. Yes.

2 Q. Okay. What happened during those two meetings?

3 A. Most of the time I was just with him with regards to Mr.
4 Johnson. During the time of the first trial on Monday morning
5 Mr. Johnson and Mr. Lowrance discussed a potential plea
6 negotiation of the case. Mr. Lowrance was never offered any
7 sort of plea arrangement other than an Alford of 25 years
8 active incarceration.

9 Mr. Johnson tried -- attempted to persuade him to enter
10 into a plea agreement, but Mr. Johnson, or excuse me, Mr.
11 Lowrance at the time of the trial turned down the plea offer
12 and went to trial in the first case. And during the second
13 case primarily the same situation as far as preparing for
14 trial. In between I did some investigation, did assist Mr.
15 Lowrance.

16 Q. Okay. To the best of your knowledge was there ever any
17 other plea offer except for this 25 years?

18 A. No, there was not.

19 Q. Okay. Can you tell me what kind of preparation both you
20 and Mr. Johnson did for this case?

21 A. At the beginning of the case for the first trial in
22 October, I can't speak to what Mr. Johnson did as I stated I
23 was kind of coming into that one late, just trying to help out
24 as much as possible and assist Mr. Johnson with whatever trial
25 things he needed.

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1 Preparing for the second trial, Mr. Johnson and I met and
2 strategized. And we met in December prior to his trial in
3 January of 2013. One of the major issues in the second trial
4 was the solicitor, Mr. Lucas Marchant, had notified us of a
5 potential witness. I believe her name was Ms. Irby, who was a
6 clerk at the motel that Mr. Lowrance was accused of staying
7 at.

8 During the first trial Mr. Lowrance, his testimony was
9 that there were three people total in the vehicle. And there
10 was evidence presented by the State that they saw one person
11 walking through the motel lobby with a hoodie approximately 35
12 to 40 years old. Our key issue in the defense was that Mr.
13 Lowrance was with them in the vehicle, he was not the shooter
14 and, therefore, he was not guilty of attempted murder.

15 Once the solicitor provided me the name and location of
16 the witness, I went and saw her with JC Starks, who is an
17 investigator with the public defender's office. JC and I sat
18 down and interviewed her and asked her questions about who she
19 saw getting into the vehicle. She stated that she was on her
20 break at the hotel and that she saw one person enter into the
21 SUV and drive away, which is a major issue in the case
22 because, obviously, we were alleging that there were three
23 people in the vehicle.

24 She testified in the second trial, and I cross-examined
25 her. That was the only witness I cross-examined. And I tried

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1 to look for inconsistencies with regards to her testimony as
2 far as being on break, maybe not paying attention the entire
3 time as to who was getting in the vehicle. But she was very
4 adamant that she watched him walk into the vehicle by himself,
5 whoever this individual was. And she did not identify -- the
6 main issue for her was she was identifying one person getting
7 into the vehicle and not three.

8 The other issue I did was in between Mr. Lowrance had
9 mentioned that there was a sketch made that was distributed to
10 the media with regards to the shooter. And I contacted the
11 Greenville Police Department to attempt to identify the
12 sketch. They indicated that a sketch was not prepared in this
13 case.

14 And then I also contacted the investigator's office with
15 the solicitor's office and asked them to look for the sketch.
16 They indicated that there was not a sketch made. They
17 indicated that if a sketch would have been made it would have
18 been made by South Carolina Law Enforcement Division.

19 I contacted South Carolina Law Enforcement Division and
20 spoke to the person who's in charge of that. And they
21 indicated that they keep records of every sketch that's made,
22 basically a case file, and that there was no sketch made in
23 this case. What we were trying to do is identify the sketch
24 that was identified would not have looked like Mr. Lowrance.
25 Q. Was that a sketch of a different armed robbery subject

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1 from another case or ...

2 A. He -- Mr. Lowrance stated that the media released a
3 sketch of him. And we were just trying to find that sketch of
4 the shooter.

5 Q. Okay.

6 A. But from my investigation, speaking with the Greenville
7 Police Department, the solicitor's office, and South Carolina
8 Law Enforcement Division, they indicated that no sketch was
9 made. So either a sketch was made and they didn't tell us
10 about it or there was no sketch made at all. It is my belief
11 that no sketch was made.

12 Q. Okay. Was that sketch ever used in the State's case at
13 trial?

14 A. No. We were searching for it for exculpatory purposes to
15 try and share that. We -- our goal was to introduce that
16 sketch to show that the sketch would not have matched Mr.
17 Lowrance.

18 Q. Okay.

19 A. And that that sketch would have been the shooter. But no
20 sketch was ever even provided to us. And through our
21 investigation no sketch existed.

22 Q. Okay. What other investigation did you do in the case?

23 A. Other than that, just reviewed the trial transcript for
24 the second trial, and prepared for cross-examining the
25 witness, and assisting Mr. Johnson in his preparation for the

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1 case.

2 Q. Okay. Did you ever hear when Mr. Lowrance asked for a
3 change of venue?

4 A. I did not.

5 Q. Okay. Did you ever hear Mr. Lowrance ask for some
6 investigation to be done about witnesses or suspects at
7 Comfort Inn?

8 A. We did. Mr. Johnson and I discussed that issue. The
9 main issue is that the two names provided to us were Meat and
10 Tee. And what I tried to do is I met with the clerk. I asked
11 her did you see anyone else? Her indication was no, that I
12 did not see anyone else enter into the vehicle.

13 We asked for names of witnesses. And, unfortunately,
14 Meat and Tee, I can't just go around Greenville and look for
15 gentlemen named Meat and Tee. That's the only investigation
16 we had. And without that information there's nowhere to begin
17 on that on just two street names, accordingly. So Mr. Johnson
18 and I discussed that, but I don't know how we're supposed to
19 research a gentleman by the name of Meat and a gentleman by
20 the name of Tee in Greenville County that has half a million
21 people.

22 Q. Right. Did he ever give you any other identifying
23 information other than that?

24 A. Not to me.

25 Q. Okay. Were you aware of anything in discovery that

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1 talked about these two other people, Meat and Tee?

2 A. No.

3 Q. Okay. Did Mr. Lowrance ever ask you or Mr. Johnson to
4 have a Neil v. Biggers hearing in the second trial?

5 A. Not -- not me personally. I can't speak to Mr. Johnson,
6 but not me. Like I said, during the second trial, Mr. Johnson
7 had successfully obtained a mistrial in the first case, and I
8 was trying to stay out of the way and assist in whatever way I
9 could. But I was definitely riding second chair in this
10 trial.

11 Q. Okay.

12 A. As it should have been, certainly.

13 Q: Tell me a little bit about what Mr. Lowrance was told as
14 far as his trial rights. In other words, what happens if you
15 testify.

16 A. He testified twice. He testified in his first trial and
17 also in his second trial. With regards to Judge John, I can't
18 speak directly. It would obviously be in the transcript. But
19 he -- during the first trial he was cross-examined by the
20 solicitor's office. Mr. Lucas Marchant had cross-examined him
21 and asked him questions and inconsistencies in his case.

22 What realistically happened was Mr. Marchant had never
23 heard Mr. Lowrance's side of the story in the first trial and
24 had not prepared for it. After Mr. Lowrance testified, Mr.
25 Marchant began researching and talking to investigators about

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1 trying to contradict Mr. Lowrance's testimony. And that's
2 where he found the witness that testified in the second trial.

3 And that's basically -- one of the key witnesses in the
4 case was her because it identified -- it contradicted Mr.
5 Lowrance's testimony that there were three individuals in the
6 car. Because in the first trial they couldn't -- they
7 identified someone walking through their hotel, but they
8 couldn't say who got in the car. And then she was the missing
9 link that showed someone walked through the hotel, one person
10 got in the car.

11 Q. Okay. Did any of the officers at the hotel ever testify
12 that they saw more than one person?

13 A. No.

14 Q. Okay. Did any of the officers at trial ever testify that
15 they saw anyone other than Mr. Lowrance at the apartment
16 complex during the shooting?

17 A. No. They -- the officer who was -- the primary
18 responding officer that was shot at testified that she saw one
19 person shooting. And then that was the only person she saw.

20 Q. Okay. Did Mr. Lowrance ever ask for a change of venue?

21 A. No, not to me.

22 Q. Okay. Tell me -- tell me a little bit about the evidence
23 in the case. What evidence did the State have?

24 A. The primary evidence of the State indicated Mr.

25 Lowrance's guilt was the fact that he was shot with a bullet

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1 and he was wounded. He ended up at his friend's house. And
2 there was a firearm that was recovered at that home that had
3 his DNA along with the DNA of another individual on the
4 trigger of the firearm. The ballistics matched the shooting,
5 and the casings, and the slugs that were located at the
6 incident scene which was at an apartment complex. And based
7 on that -- they also had fingerprint evidence, Mr. Lowrance's
8 vehicle or on the vehicle, the SUV.

9 This case began as basically an investigation into a
10 stolen vehicle. They ran the tag at a hotel. The tag came
11 back to another vehicle. The vehicle left in between while
12 they were searching. And then the vehicle fled from law
13 enforcement and pulled into an apartment complex.

14 And the original responding officer got separated from
15 the vehicle and a separate officer found the vehicle and then
16 a shooting occurred at that apartment complex. Mr. Lowrance
17 had his wallet and other identification in the vehicle that
18 was recovered, his Social Security card. His fingerprints
19 were on the vehicle.

20 His testimony -- he testified that he was in the vehicle,
21 but he was not the shooter, and that after he was shot he woke
22 up and that the gun was on his chest, and that that's why he
23 had the gun, and that he was scared, and he was adamant that
24 he was never the shooter in the case.

25 But law enforcement's position was there was only one

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1 shooter of the case and that Meat and Tee don't exist. And
2 then they supplemented that, obviously, in the second trial
3 with the witness who testified that she saw one person get in
4 the vehicle.

5 And there was -- there was never any question that Mr.
6 Lowrance was in the vehicle. He admitted that. The question
7 was who was the shooter?

8 Q. Okay. And so there was -- there was DNA evidence linking
9 Mr. Lowrance both to the vehicle and to the scene of the
10 shooting?

11 A. That's correct.

12 Q. Okay.

13 A. And there's physical evidence, too, in the sense that he
14 was shot with a bullet in the shoulder.

15 Q. Okay.

16 A. And he admitted that he had been shot by law enforcement.

17 Q. Okay.

18 A. His -- his defense was I was shot. I was not part of the
19 shooting, that Meat and Tee were involved, and they were the
20 primary shooters. And that's part of what the hand of one,
21 hand of all charge was.

22 It was a double edged sword from us because, you know,
23 hand of one, hand of all implicates him if he says he's merely
24 present. Although, there is mere presence that we can argue.
25 What it does do for Mr. Johnson in closing is it allows him to

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1 say the State believes that there were more than one person
2 there, which we wanted the jury to believe.

3 Q. Right.

4 A. Because the testimony was that there was only one person
5 getting into the vehicle.

6 Q. Okay. Was that -- you believe there's a strategic
7 benefit that you got from the hand of one, hand of all charge?

8 A. I believe so, but, obviously, Mr. Johnson was the one
9 closing the case.

10 Q. Okay. And you see that that may have been the case even
11 though Mr. Johnson did originally object to the hand of one,
12 hand of all charge?

13 A. Yes. I mean, we object to charges all the time and then
14 turn around and work with what you've got.

15 Q. Right.

16 A. That's what you have to do.

17 Q. Right. Okay. Tell me a little bit about the witnesses
18 who testified at trial who knew Mr. Lowrance personally.

19 A. I'd have to pull the trial transcript.

20 Q. Do you have a copy?

21 A. I don't have -- I'd like to have the official copy, if
22 that's what you're asking. I have a copy from the first
23 trial. I don't believe I have a copy from the second trial.

24 **THE COURT:** There you go.

25 A. Thank you, Judge.

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1 **THE COURT:** Yep.

2 (Pause)

3 Q. I believe the testimony of one of them starts at 384.

4 A. Yes, Mr. Norman Pearson. I was also looking at Mr.
5 Brockman, William Brockman. But the main thing between those
6 two witnesses was there were statements given to law
7 enforcement that Mr. Lowrance had called them and said, I've
8 been shot by law enforcement.

9 And I believe that he contacted Mr. Brockman and gave Mr.
10 Brockman a statement that Mr. Brockman then gave to law
11 enforcement basically saying something along the lines of law
12 enforcement got behind me. I punched it. She shot me. I'm
13 in the woods. Can you pick me up? And then that was one -- I
14 think that was Mr. Brockman that stated that. And then Mr.
15 Lowrance was eventually picked up and taken to a house. And
16 that's where the firearm was recovered.

17 Q. Okay. And tell me a little bit about the forms of
18 identification that Mr. Lowrance left behind at the scene.

19 A. At the scene I believe it was his Social Security card.
20 There was also, I believe, his driver's license, if I recall
21 from memory. There was some personal items that were located
22 in the bag that was from the hotel. There were some DVDs,
23 some clothes. I believe there was a toboggan or ski mask type
24 thing, too.

25 But as far as the vehicle was concerned, we were -- we

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1 were never going to argue that he wasn't in the vehicle. We
2 were going to argue that he was, one, not the driver, and,
3 two, that he was not the shooter.

4 Q. Okay. And if you look at page 657 of the transcript, 657
5 and 658, the solicitor makes a reference on line 21 of page
6 657.

7 A. Regarding the discovery?

8 Q. Right.

9 A. Yes.

10 Q. Do you recall that from trial or ...

11 A. I don't recall that line specifically. In trial Mr.
12 Johnson is the lead attorney, is in charge of all objections.
13 As a second chair, I don't make objections.

14 Q. Okay. Were you aware of the -- I suppose you were at the
15 first trial. So you were aware that the officer at the hotel
16 did make an in-court identification of Mr. Lowrance?

17 A. That's correct.

18 Q. Okay. What were the legal issues in that?

19 A. As far as the in-court identification?

20 Q. Right.

21 A. I'd have to go back and look at the first trial
22 transcript. Like I said, I wasn't primarily involved in that.
23 I was basically -- as a non-attorney at that point, I had
24 nothing to do with it. I was assumed as a lay witness.

25 Q. Okay.

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1 A. As an unlicensed attorney at the time, I should say. I
2 had passed the bar, but I hadn't gotten licensed.

3 Q. Okay.

4 A. Mr. Johnson would be the one you would want to discuss
5 that with.

6 Q. Okay. Thank you. I have no more questions.

7 **THE COURT:** Cross.

8 **MR. ARIAIL:** Thank you, Your Honor. May it please the
9 Court?

10 **Cross-examination by Mr. Ariail:**

11 Q. Mr. Crangle, how you doing today?

12 A. Doing well.

13 Q. Good. Want to go through -- so my understanding, you met
14 with Mr. Lowrance twice, is that correct?

15 A. That's correct.

16 Q. Okay.

17 A. Before -- during both of his trials here at the
18 courthouse.

19 Q. The first time you were still a law clerk. The second
20 time you had been admitted, but were sitting second chair, I
21 guess, is that correct?

22 A. That's correct. Yes, sir.

23 Q. Okay. So during those conversations with him -- I guess
24 those were on the day of trial, is that correct?

25 A. Yes. It would have been the Monday at trial and I

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1 believe throughout that week. I think his first trial was
2 three days. And then the second trial was either two or three
3 days. I can't recall.

4 Q. The first time -- I guess one of the conversations you
5 remember discussing a plea offer of 25 years, is that correct?

6 A. I believe them discussing -- I can't remember if they
7 were discussing an actual number.

8 Q. Okay.

9 A. I do remember vividly discussing Mr. Johnson, Mr.
10 Lowrance, and even Mr. Lowrance's family in the holding cell
11 downstairs discussing, hey, it's basically a straight-up plea.
12 We would ask for 15 from the judge. There's no guarantee in a
13 straight-up plea.

14 Looking at the file, the only offer from Mr. Marchant was
15 a global -- he had other charges pending, too, ---

16 Q. Right.

17 A. --- on an unrelated shooting at a Wendy's. And those
18 charges were ultimately dismissed. But it was a global
19 resolution offer of 25 years.

20 Mr. Lowrance indicated originally in his first trial that
21 he was going to plea. We came in front of Judge John. He
22 began the plea colloquoy. They asked him did you do it? He
23 said, no. Judge John said, thank you, please sit down, and
24 brought the jury out.

25 Q. Okay. So the second trial -- so, I mean, clearly he

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1 didn't plead guilty the first one. The second one did he --
2 did y'all have a discussion with him again about the plea
3 offer or anything at that second trial?

4 A. There was no negotiation from the solicitor's office or
5 changed it. I believe at that point we were kind of committed
6 to the -- I think Mr. Lowrance -- I don't recall making a
7 discussion of a plea negotiation after the first trial, before
8 the second one.

9 Primarily because we all felt good about our shot at the
10 second trial. We thought, well, we had hung them once, we can
11 probably -- we might be able to do it again. And I think Mr.
12 Lowrance was encouraged and, you know, we were as optimistic
13 as can be.

14 Q. Right.

15 A. Of course we told him about the witness that ---

16 Q. That was my -- yeah. I mean, was he aware that that was
17 -- Ms. Irby was now listed as a witness? I guess, had y'all
18 been provided the statement for her?

19 A. Yes. We were provided -- I believe we were provided --
20 if my recollection is correct, Mr. Marchant told us about the
21 witness. I don't know if he provided -- I don't ---

22 Q. Okay.

23 A. I don't recall seeing a statement from her. What I did
24 was -- Mr. Marchant told us, this is what she's going to say,
25 ---

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1 Q. Right.

2 A. --- this is her contact information. And then Mr. Starks
3 and I went and saw her.

4 Q. Got it.

5 A. And I told it to Mr. Johnson.

6 Q. And you relayed it to him. He knew -- did -- I guess,
7 were you with Mr. Johnson when he talked to Mr. Lowrance about
8 it?

9 A. I can't say that I was.

10 Q. Okay. But you at least relayed what you had found to Mr.
11 Johnson?

12 A. Yes. Yes. We discussed that.

13 Q. And I guess did you have any discussions with Mr. Johnson
14 about this is going to be detrimental to the case in these
15 ways? Or ---

16 A. Yes. We discussed the fact that she was adamant that one
17 person was getting into the car. But part of what -- our
18 counteract to that was was, well, they're pulling her out at
19 the last minute.

20 And we hammered her on cross-examination that there was a
21 prior trial, that you did not testify in this trial, that you
22 are now appearing kind of out of a hat at the solicitor's
23 whim, your discretion in trying to show -- and we were limited
24 somewhat in the second trial on what we could discuss from the
25 first trial.

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1 Q. Sure.

2 A. But we were trying to show this witness was a new witness
3 that had no prior testimony and that was honestly detrimental
4 to the State's case.

5 Q. And go back in reverse to your recollection of it, what
6 do you think the -- I mean, clearly we had two different
7 outcomes in two different trials. What do you believe, based
8 upon being a part of the trials, was the issue? I mean, they
9 got him convicted the second time. Do you think it was her
10 statement? Or do you think it was ---

11 A. I think it was partly her statement. I think Mr.
12 Marchant had prepared and knew what Patrick was going to --
13 Mr. -- excuse me, Mr. Lowrance was going to say.

14 Q. Right.

15 A. And, you know, as a defendant -- as a defendant, the only
16 advantage you have is you don't testify, and so the State
17 doesn't know your side of the story. Mr. Marchant knew his
18 side of the story and began -- and really built his direct
19 around what Mr. Lowrance was going to say.

20 Q. Okay.

21 A. And to try and counteract that. And, I mean, you try --
22 you try a case once, you get to know the witnesses, you know.
23 And so I think he had -- he'd gotten basically a free pass at
24 it, and so he was getting prepared for it.

25 Q. Were you present during any conversations that Mr.

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1 Johnson and Mr. Lowrance had about Mr. Marchant's going to be
2 prepared for you this time? You know, these are concerns I
3 have. This is why you shouldn't testify. Did he -- did you
4 -- were you present for any of those conversations?

5 A. I believe there was one at the detention center that I
6 was present for as far as that case, that we met with him and
7 said, hey, this is what's coming up for your trial. This is
8 the transcript. And here's a copy of the transcript so you'd
9 have it because you can't change your story, obviously.

10 Q. Sure.

11 A. But I don't think Mr. -- in my recollection, Mr. Lowrance
12 didn't seem -- he was feeling very positive about the case in
13 the sense that he felt you've done it once, we can do it
14 again.

15 Q. Okay.

16 A. And I don't think that even if we had said, hey, you
17 know, we told him about the witness, but ---

18 Q. Right.

19 A. --- at the same time, I don't think he would have pled
20 regardless. It really wouldn't have changed -- at that point
21 he's already gone through with the trial. So the acceptance
22 or responsibility is not as much there.

23 He's already spent the State's resources on one trial. I
24 think that the judge, whoever the trial judge is, is going to
25 give him a pretty substantial amount of time that Mr. Lowrance

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1 would not have been acceptable with.

2 Q. I'm just trying to figure, and maybe you can help me, is
3 clearly he knows I'm walking into a land mine here if I've got
4 a new witness that's coming out and is going to testify that
5 instead of three witnesses or three people, there's now one.
6 The crux of his testimony was I'm in a car with three people.
7 I was not driving. I was shot while I was in there. Was he
8 aware that, I mean, he's walking into that during his cross-
9 examination by Mr. Marchant?

10 A. Yes. And we reviewed all of that with him as far as
11 preparing for the case. But like I said, he had seen
12 basically what the State's case was ---

13 Q. Right.

14 A. --- the first -- the first trial. And there was never
15 any second offer. I mean, we were basically going to have to
16 either plea off the docket and get probably 20, 25 anyways or
17 try it and hope for the best.

18 Q. Right.

19 A. And, you know, ...

20 Q. In regards to this Neil v. Biggers question, I mean,
21 you're aware the Court of Appeals says the issue wasn't
22 preserved?

23 A. That's correct. Yes, sir.

24 Q. Any rulings in a previous mistrial are not preserved and
25 they've got to be brought up again. Did y'all -- what was the

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1 -- I guess the reasoning behind that was y'all thought y'all
2 had preserved them in the previous case, is that correct?

3 A. I can't speak to a strategic decision. I was not part of
4 -- the objections, like I stated, were done by Mr. Johnson.

5 Q. Okay. So ---

6 A. As second chair, I don't make -- I don't -- one attorney
7 makes one objection.

8 Q. Did y'all have any discussions in regards to that Neil v.
9 Biggers hearing in the second hearing?

10 A. I did not, ---

11 Q. Okay.

12 A. --- with Mr. Johnson.

13 Q. The sketch issue, you couldn't find the sketch or
14 anything that would have shown if there was another individual
15 or a different sketch done for the alleged shooter in this
16 case, is that correct?

17 A. That's correct.

18 Q. Okay. Now, accomplice liability, I know we discussed, I
19 guess, tell me if Mr. Johnson would be better to answer this.
20 The reasoning, I mean, discussions with Mr. Lowrance about
21 potential issues he could have by testifying and alleging
22 others are there. Was he aware that that could bring up the
23 accomplice liability charge or ---

24 A. I don't know the answer to that. You'd have to ask Mr.
25 Johnson.

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1 Q. Okay. Were there other witnesses he gave you to go out
2 and to be able to interview outside of these Meat and Tee that
3 we've discussed?

4 A. No.

5 Q. Okay. Did he give you any location, address, phone
6 numbers for those individuals?

7 A. No.

8 Q. Okay. I think there was a statement by Mr. Smith in
9 regards to he didn't ask y'all to make the Neil v. Biggers, I
10 guess, ask for a Neil v. Biggers hearing in the second case.
11 It's not his responsibility to do that, correct?

12 A. Yes.

13 Q. Okay. You didn't feel like there was any grounds to be
14 able to make the change of venue or do you -- I couldn't ---

15 A. I was never given a statement about change of venue.

16 Q. Okay. I'll ask Mr. Johnson in regards to that.

17 **MR. ARIAIL:** I have no further questions, Your Honor.

18 **THE COURT:** Anything else?

19 **MR. SMITH:** No, thank you.

20 **THE COURT:** All right. Thanks. You can step down.

21 **MR. SMITH:** Your Honor, may this witness be excused?

22 **THE COURT:** I don't know. I kind of like having him
23 around. But, yeah, any objections cutting him loose?

24 **MR. ARIAIL:** No objection, Your Honor.

25 **THE COURT:** Okay.

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1 **MR. SMITH:** Your Honor, the State would call Mr. Brian
2 Johnson.

3 **MADAM CLERK:** If you'll please place your hand on -- your
4 left hand on the Bible and raise your right hand.

5 **Brian Johnson,** being duly
6 sworn testified as follows;

7 **MADAM CLERK:** Please state your name for the record.

8 **MR. JOHNSON:** Brian Johnson.

9 **MADAM CLERK:** Thank you. You may be seated.

10 **Direct Examination by Mr. Smith:**

11 Q. Mr. Johnson, can you tell me how long you've been
12 practicing law?

13 A. Since 2006.

14 Q. Okay. And where are you working now?

15 A. I currently have my own law office.

16 Q. Can you tell me how you came to be involved in Mr.
17 Lowrance's case?

18 A. At this point in time, I believe upon the initial
19 appointment, I was still a member of the public defender's
20 office.

21 Q. Okay.

22 A. I didn't leave until March of 2012, I believe. But I was
23 still a member of the public defender's office, and I kept my
24 cases.

25 Q. Okay.

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1 A. Most of my cases.

2 Q. Can you tell me a little bit about just the procedural
3 aspect of this case with the first trial and the second trial?

4 A. Can you ask me a more specific question?

5 Q. Sure. Can you explain how Mr. Lowrance came to have two
6 trials?

7 A. Well, the first trial was mistried after the jury -- the
8 jury hung. And then the solicitor decided to put it on the
9 docket again. And so we had the second trial at that point.

10 Q. Okay. How much time passed between the two trials?

11 A. I think 90 days almost exactly.

12 Q. Okay. What was Mr. Lowrance's story to you about what
13 happened in this case?

14 A. Well, he always maintained that there were other people
15 who had done the shooting. I think we've heard of Meat and
16 Tee, although he said that he did not know their government
17 names. And so -- he did not know their government names.

18 Q. Okay. So what did he tell you about these two people?
19 What did he say their involvement was?

20 A. The extent to which I remember specifics, I don't.
21 However, it was maintained to me that it was -- it was one of
22 them who did the shooting rather than him. And that was the
23 important fact that I recall from that situation, he said he
24 didn't do the shooting, one of them did the shooting.

25 Q. Okay. Did he deny that he was there at the time of the

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1 shooting?

2 A. No, sir.

3 Q. Did he deny that he was in the van or SUV before the
4 shooting?

5 A. He did not deny that.

6 Q. Okay. What did you do to prepare and investigate in this
7 case?

8 A. Well, the -- as it relates to preparation, there were --
9 obviously we did good fact and bad fact analysis and went over
10 the discovery and pointed out the things that would be
11 favorable to him, the facts that would be favorable to him,
12 the facts that would not be favorable.

13 The actual plan -- we kind of prepared for trial at the
14 same time I encouraged Patrick to plea. So the actual plan
15 for the first trial was actually we were going to plead
16 guilty, and we started that process. Didn't make it through
17 it, but we did -- we had prepared enough that we could still
18 proceed. And, obviously, we got close, but not quite.

19 Q. So when you say you didn't make it through it, what do
20 you mean?

21 A. He started the plea process, and the judge was asking him
22 the questions then. I believe he asked him if you're pleading
23 guilty because you are, in fact, guilty? And he could not
24 make it through that part.

25 Q. Okay. Was there a plea offer there or was he pleading

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1 straight up?

2 A. Well, the State wanted 25, but we weren't going to ask
3 for 25. We were going to ask for, you know, as least as
4 possible. I didn't -- I thought 25 was too much for an
5 attempted murder. I mean, that's almost, you know, murder,
6 basically, if murder's 30. And so I felt that we could do
7 much better than that than 25. And so that's the chance we
8 were going to take.

9 Q. Okay. Was there any other plea offer other than that
10 one?

11 A. They refused because the police -- the police were
12 involved was my understanding, so they would not -- he would
13 not work with me there.

14 Q. Okay. But that was Mr. Lowrance that turned it down?
15 Decided not to plead guilty?

16 A. Well, during the plea.

17 Q. Okay.

18 A. During the plea the judge asked him a certain question
19 and sat him down quite quickly, so ...

20 Q. Okay. What kind of investigation did you do with regards
21 to these people nicknamed Meat and Tee?

22 A. Not much. Without any sort of government name I'm unable
23 to identify these people. I did do a general search of
24 Demetrius, for example, and Terrence to see if I could find
25 anything, but I just could not -- I could not find anything.

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1 Q. Okay. How did you settle on searches for Demetrius and
2 Terrence?

3 A. I mean, I grew up in the neighborhoods, too, and Meat is
4 Demetrius, and Tee is often Terrence.

5 Q. Okay.

6 A. So it's just, you know.

7 Q. So those are common nicknames for someone named Demetrius
8 and ---

9 A. Yeah. Yes. And I'm sure I ran a couple of others.
10 Just, you know, I didn't -- I'm not going to tell you that I
11 did an extensive search, but I tried to see if there was
12 anyone locked up, you know, in jail or in any, you know,
13 public index search and things of that nature to see what I
14 could find.

15 Q. Okay. What other information did Mr. Lowrance give you
16 about these two people other than those nicknames?

17 A. I don't -- I honestly don't remember.

18 Q. Okay. Do you remember -- was there anything in discovery
19 about someone named Demetrius or Terrence or Meat and Tee?

20 A. Not that I can recall.

21 Q. Okay. What's your general process for looking for
22 witnesses or co-defendants? Do you have ---

23 A. Well, we had a investigator. And when Mr. Crangle was
24 involved, he helped with that situation as well. Obviously,
25 if there is a person, you know, and if I know a name, then

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1 it's easier to -- like if his name was Demetrius Smith, then
2 that would have been -- that would have been easy or easier.
3 I ain't going to say easy, but that -- had a string that we
4 could pull, ---

5 Q. Right.

6 A. --- and you could see what's at the end of the string.
7 But without that, I couldn't do that.

8 Q. Did you explain this to Mr. Lowrance that you couldn't
9 find these people?

10 A. Yeah, he knew. Yeah.

11 Q. Okay. What did he say about that?

12 A. I mean, we had a decent relationship. We didn't -- we
13 didn't squabble about it.

14 Q. Okay. Were you aware of any other people in discovery
15 who the State considered suspects?

16 A. I mean, the description they gave of him wasn't -- a
17 description was not Patrick. And, you know, so that was one
18 thing that we had. Long hair pulled back into a ponytail, and
19 that was not Patrick. So ...

20 Q. Okay. How many times did you meet with Mr. Lowrance?

21 A. I can't tell you specifically. In my folder -- in my
22 folder I stopped documenting right before the first trial.
23 But we met -- we met all the time. I documented -- there was
24 discovery taken to him by my investigator first, and then I
25 went to see him later. We met a couple of times about the

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1 different bond hearings.

2 He came over here with jail sign-ups, which is where they
3 -- the solicitor's office brings defendants over so you can
4 more easily discuss it with them and potentially sign them up
5 to plea. And that's where we went over plea offers. And I
6 went down to the jail before both trials to discuss the case
7 with him.

8 Q. Okay. So you can't give a reasonable estimate or ---

9 A. No, I can't.

10 Q. Don't know? Okay. When you met with him did you go over
11 the discovery?

12 A. Yes. I do -- I have it documented, actually, that we
13 went over -- we specifically went over the discovery.

14 Q. Okay. Did he ask you questions about ---

15 A. Yes, absolutely.

16 Q. Did you answer them?

17 A. Yes, sir.

18 Q. Okay. What were his questions about it, if you remember?

19 A. Well, the primary things, we went over. Like I said, we
20 did the good facts and the bad facts. I have the notes from
21 -- I actually have the notes from the preparation on that. So
22 we went over what would be favorable for him and what would be
23 -- the facts that were not favorable. So we actually went
24 over the case and those details.

25 Q. All right. What -- and is that something you prepared

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1 with him?

2 A. Yes.

3 Q. Okay. What were the bad facts in the case?

4 A. Found his fingerprints in the car. His fingerprints was
5 on the ammo box. The gun that he was found with was confirmed
6 used in the shooting by Armstrong. His DNA was on the gun.
7 His blood was at the scene. There was a duffle bag left with
8 his information in it. And then he had a couple of friends
9 who testified against -- that were going to testify against
10 him.

11 Q. Okay. And what would have been the subject -- what would
12 those witnesses have said?

13 A. Pearson -- hold on, because I've got the notes. Pearson
14 -- Pearson told -- said that Patrick called him and said he
15 needed a ride and he was running from the police. Brockman
16 said that he saw him walking down -- walking down the street.
17 He said the officers shot at him, but he never said anything
18 about, obviously, shooting back.

19 Q. And you mentioned earlier that there were fingerprints in
20 the car. That was the car that led the police on a chase?

21 A. Yeah. And -- but -- they actually didn't find his prints
22 on the driver's side, on the steering wheel or anything. And
23 that was actually one of the good facts we went over.

24 Q. All right.

25 A. Because it was his position that he wasn't the one that

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1 was doing that.

2 Q. Okay. And you testified that his fingerprints were on
3 the box of ammo. Where was the box of ammo found?

4 A. I can't recall. I think it may have been in -- either in
5 the car or the hotel room. I can't recall.

6 Q. Okay. And do you remember where on the gun his
7 fingerprint was found?

8 A. Multiple places, but the worst thing was that they found
9 it on the trigger.

10 Q. Okay. The witness who testified from Comfort Inn, what
11 was her testimony about seeing someone in the car?

12 A. Well, she said that she only saw one person get in the
13 car. Obviously, we had the first trial. And that was the
14 first time anyone heard Patrick's story. So it was a
15 situation where they prepared to try to poke holes in his
16 story. And so her identifying this one person -- her --
17 having a witness that actually saw one person get in the car
18 tended to -- they were trying to discredit it.

19 Q. Okay. And she testified she saw one person. Did she say
20 where in the car that one person was sitting?

21 A. I can't recall. But if -- I mean, the assumption was
22 they saw -- she saw him get into the driver's.

23 Q. Okay. Did Mr. Lowrance ever give you any names other
24 than Meat and Tee?

25 A. No, sir.

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1 Q. Okay. Tell me a little bit about the officer's
2 identification of Mr. Lowrance.

3 A. So what she said basically was that she didn't know who
4 shot at her. But then what happened was her testimony was
5 that an officer called her and told her we got the guy.

6 And after that she looked him up -- she looked up on, I
7 guess, on the internet on like the news -- or I can't believe
8 it was -- it was the news or it was a jail screen. She did
9 one or the other.

10 And when she did that she said, oh, yeah, that's the guy.
11 And so we thought that that was, you know, basically it made
12 the identification unreliable, thought it was impermissibly
13 suggestive.

14 Q. Did she testify that she had been -- I'm sorry. Give me
15 just a moment, please.

16 (Pause)

17 A. What she specifically said at trial was he wasn't
18 apprehended that night, a search ensued in the City -- is
19 continued inside City limits that day. We went back to the
20 law enforcement center and completed our reports.

21 The next day on shift we were informed that he had been
22 apprehended. I was given the name of the Defendant. And I
23 looked up a recent photograph, and I did immediately identify
24 as the male who I saw walk by us in the Comfort Inn the day
25 before and subsequently signed warrants. So the fact that she

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1 was told that the person who did it had been apprehended and
2 then she was given a name, then she looked up a photograph and
3 then identified him, but was not able to identify him before.

4 Q. Okay. Was -- so correct me if I'm wrong, but she did not
5 testify that someone had given her the name and said this is
6 the guy?

7 A. Well, ---

8 Q. If you'd like, I could show you the ---

9 A. Well, what she may have said specifically and what -- and
10 what we thought -- I mean, I don't see how somebody could say,
11 yeah, I got the guy, you know, say I got the guy. That's what
12 -- that's what they told her.

13 And so from the transcript -- from the portion I just
14 read, that's what they told her. It's like we were informed
15 that he had been apprehended. That tells me that we arrested
16 the guy who shot at you. And then she was given the name.
17 And she was given the name and told that we got him. And so
18 based on what I could tell -- I don't know, I felt that that
19 was pretty much leading a horse to water.

20 Q. Okay.

21 **MR. SMITH:** Your Honor, may I approach?

22 **THE COURT:** Sure.

23 **MR. SMITH:** Okay.

24 Q. And I'm going to show you here, if you would please
25 verify that this is the trial transcript from Mr. Lowrance's

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1 second trial.

2 A. Sure.

3 Q. Okay. And if we'll look here on page 119, starting at
4 about line 9, when we get down here how does she say she was
5 told about this in line 16 through 18?

6 A. She says the Defendant's name or suspect's name in the
7 case that shot at Taci and Charles, that he was apprehended in
8 Greenville County. And his name was Patrick D. Lowrance.

9 Q. Okay. And that -- she's saying that was the -- a suspect
10 was arrested in the shooting, not from the police chase,
11 necessarily?

12 A. Yeah, I -- I mean, I guess it's just a matter of
13 interpretation. But, yeah, we're reading the same thing.

14 Q. Okay. All right. Just clarifying. In the first case
15 Judge John did deny that suppression to -- did deny the motion
16 to suppress the in-court identification, ---

17 A. Correct.

18 Q. --- right? Okay. Let's talk about the change of venue.
19 Did Mr. Lowrance ever ask you for a change of venue?

20 A. We may have discussed that in passing. I don't, you
21 know, I -- I would have shot that down pretty quickly. We
22 weren't -- we weren't going to be able to -- we're not going
23 to move this case. We weren't going to have that.

24 Q. Tell me your thoughts on that. Why -- why would you have
25 shot that down quickly?

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1 A. Well, it's just -- got in my training. You know, I don't
2 think I -- I don't think I had ever seen it done. And the
3 question is whether or not he'd get a fair trial. And I don't
4 know. I mean, especially after the first trial, I think it's
5 obvious that we can kind of get treated fairly. It's just a
6 matter we lost the second time.

7 Q. Okay. Was Mr. Lowrance -- did you ever tell him that,
8 you know, if he testified he could be subject to cross-
9 examination?

10 A. He knew he could be subject to cross-examination.

11 Q. Okay. In this trial you objected to Judge Verdin's
12 charging the jury with hand of one, hand of all. Why did you
13 object to that?

14 A. Well, I didn't think that the State put in any evidence
15 to really support that sort of charge. Obviously if the jury
16 tended to believe that there were other people who committed
17 this, then that would put Patrick at risk for also being --
18 being potentially found guilty of the same crime that they had
19 committed.

20 Q. Um-hum (affirmative).

21 A. And so I did not want that in. After -- after it
22 happened, you just kind of roll with it. But, yeah, at that
23 point in time I didn't want it in.

24 Q. When you say roll with it, what do you mean?

25 A. Well, you know, once the judge makes a ruling you have no

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1 choice but to, you know, respect that ruling and then you deal
2 with it. You know, if the jury tended to believe someone else
3 shot at the police officer other than Patrick, I'm -- I'm on
4 my way -- I'm on my way to creating the doubt that Patrick did
5 it. So that's -- I perceive that as a good thing as well.

6 Q. Okay. During closing when the solicitor mentioned twice
7 that Mr. Lowrance had discovery, do you recall that
8 independently?

9 A. I didn't until we discussed it today.

10 Q. Okay. At the time did you think that was something you
11 should object to?

12 A. Well, no, I didn't consider objecting to it. I thought
13 that the solicitor spent a great deal of time on issues that
14 probably were detrimental -- with helping me rather than
15 hurting me. Just spending a whole lot -- lot of time on
16 Patrick's story rather than the stuff that were positives to
17 his case. And I thought that the more -- the more that he
18 tried to discredit Patrick in that way, the better for us.

19 Q. Okay. Did you see any specific harm in the solicitor's
20 referencing the fact that Mr. Lowrance had discovery?

21 A. I mean, I could -- in hindsight, we lost, so I guess I
22 could kind of see it. But at the time I didn't feel -- I
23 didn't feel it warranted an objection.

24 Q. Okay. Was there any sort of investigation Mr. Lowrance
25 asked you to do that you didn't do?

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1 A. No. I felt we were good there. We were on the same
2 page.

3 Q. Okay. Thank you.

4 **MR. SMITH:** No more questions, Your Honor.

5 **THE COURT:** All right. Mr. Ariail.

6 **MR. ARIAIL:** Thank you, Your Honor. May it please the
7 Court?

8 **THE COURT:** Yep.

9 **Cross-examination by Mr. Ariail:**

10 Q. Mr. Johnson, how you doing today?

11 A. Doing well.

12 Q. Do you still have that trial transcript in front of you?
13 I think it's ---

14 A. I don't have it in front of me. I have some of it -- I
15 had pulled ---

16 **THE COURT:** There you go.

17 A. Okay.

18 **THE COURT:** You can borrow mine.

19 A. I had pulled ---

20 **THE COURT:** Don't mess it up.

21 A. Yes, sir.

22 **THE COURT:** All right.

23 Q. On page 119, I want to go back real quick, this is where
24 we're talking about the in-court identification issue.

25 A. Yes, sir.

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1 Q. Lines 21 through 25. This is the, I guess, Officer
2 Cruell or Deputy Cruell, she testifies after that. She says,
3 I went out to my car to my computer and checked the record's
4 database for photographs, and I pulled up this -- up his
5 picture. And I immediately recognized him as the same male
6 that had walked by myself and Officer Lane the day before in
7 the Comfort Inn. You got that?

8 A. Yes, sir.

9 Q. Was that, I mean, I guess your basis for this argument
10 was it was suggestive that she had gone out and particularly
11 pulled it up without looking at others ---

12 A. That's correct.

13 Q. --- other photos around it?

14 A. It seemed like to me they told her that this guy did it.

15 Q. Okay.

16 A. Yeah.

17 Q. My -- and you've read the Court of Appeals' issue. I
18 mean, clearly, number one, you raised it with Judge John and
19 then it was not raised again in the trial with Judge Verdin.
20 Do you remember that?

21 A. (Affirmative nod).

22 Q. Okay. Do you believe this issue was a -- was a major
23 issue, I guess, in the case regarding her identification with
24 him in court?

25 A. Well, I -- as I recall, we were -- those evidentiary

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1 issue -- and I don't know that I found it specifically -- and
2 I thought we were to respect the rulings from the prior trial
3 on those issues. That was my understanding of it.

4 I also thought that I preserved it when I guess I had
5 not. But I thought, you know, the close of evidence I
6 preserved all my objections and things of that nature. I
7 thought that that preserved it, but apparently not.

8 Q. And I understand that. And the Court of Appeals said
9 that those ones weren't preserved. Do you believe, I mean,
10 based on this and based upon having a new judge and a new day
11 that, you know, if -- if that was kept out, then what impact
12 do you believe it would have had on the case if she wasn't
13 able to testify about him being at the Comfort Inn?

14 A. I mean, this was a bad -- it was a bad fact.

15 Q. Right.

16 A. It was a bad fact.

17 Q. Okay. And then you explained to him that was one of the
18 bad facts that could be used against him and, you know, what
19 could lead to her being able to, you know, come in and testify
20 about that, is that correct? Y'all had a discussion about
21 that?

22 A. Yeah, we had a discussion about that.

23 Q. Okay. And he understood -- I know he's gone through and
24 y'all've discussed discovery. Do you believe he had a
25 understanding, a complete understanding of all the bad facts

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1 and all the issues that could come into trial if he tried
2 this?

3 A. I think so.

4 Q. Okay. I mean, y'all did it twice, so ...

5 A. Yes, sir.

6 Q. I mean, clearly in the second one he would have known --
7 he would have watched it the first time to see what was coming
8 out?

9 A. Yes, sir.

10 Q. Okay. Did he, I mean, he clearly testified in the second
11 one. Did y'all have a discussion about, well, here are things
12 Mr. Marchant is going to be able to bring up because now he
13 knows what you're going to testify about?

14 A. We had a discussion about that, and, specifically, Ms.
15 Irby, obviously, happened.

16 Q. Right.

17 A. So that was the more tangible thing. But, yeah, I mean,
18 we had an understanding that Lucas was going to be more
19 prepared this time.

20 Q. Right. I mean, I guess what I'm trying to figure out is
21 he's wanting to testify this second time around. I mean, it'd
22 be my view, I mean, it's going to be extremely risky for him
23 to be able to testify knowing we've got new witnesses, we've
24 lost a in-court identification issue, and Lucas Marchant,
25 who's a skilled solicitor, is going to be ready for your

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1 cross-examination the second time around.

2 Was he, I guess, was he adamant about testifying or was
3 he, you know, I'm trying to figure why he'd want to do that.
4 That's putting himself into a real big pickle, if you ask me.

5 A. I guess I can't ...

6 Q. Well, I guess what I'm asking you, and maybe I didn't
7 state it the right way, is there was no question in his mind
8 he wanted to be able to testify, I guess?

9 A. Yeah, he wanted to testify.

10 Q. Okay. And he knew all that information could be coming
11 out during his testimony?

12 A. Well, I don't know that we discussed everything
13 specifically, but we definitely went over that Lucas was going
14 to be prepared, and I did the best I could. You know, I did a
15 -- I actually have a second good fact, bad fact.

16 Q. Right.

17 A. So I have one for the first one, and I have a second one.

18 Q. Yeah.

19 A. And we talked -- so we went over kind of of the details
20 of, you know, now that this is out, this is what we dealing
21 with now.

22 Q. Yeah, it didn't get any better.

23 A. No. No.

24 Q. It probably was going to be you got a new witness and
25 you've got a solicitor that's going to be adequately prepared

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1 for him. I'm just trying to figure if he said anything to you
2 during those conversations, well, you know, this is why I want
3 to testify because it seems to me that he'd want to hold off
4 -- I don't want to put myself in that mix. Did y'all remember
5 any of the conversations he had?

6 A. I think we just tried -- we tried to get -- because of
7 the first time I thought he did a really good job, testimony,
8 ---

9 Q. Um-hum (affirmative).

10 A. And it probably got him to where we got close, to be
11 honest with you.

12 Q. Yeah.

13 A. And so I don't think we really ever considered --
14 obviously, it was his decision. But I don't -- I think we
15 just tried to get him ready.

16 Q. Okay. And you went over and I know you discussed these
17 bad facts. I mean, it was from fingerprints in the car, to
18 the ammo box, to the gun that was in his possession. He was
19 well aware of all these items and had seen them twice during
20 this case?

21 A. Yes, sir.

22 Q. Okay. The plea in the second trial -- was there ever a
23 plea offer or any discussions about trying to get him to plead
24 to these new -- these four remaining charges?

25 A. The solicitor never came off of 25.

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1 Q. So it was pretty much a straight-up plea?

2 A. Well, yeah. I mean, it was a straight-up plea in the
3 sense that I was not going to -- I was always going to ask for
4 less than 25.

5 Q. Sure. Sure. You were going to ask for less, but for
6 some reason, I guess, he didn't want to plead in that second
7 trial because it had failed in the first one. I mean, he
8 didn't want to -- he didn't want to admit guilt in the first
9 one. Was there any change that you thought, okay, well, he
10 could plead and we could probably do better in the second
11 trial?

12 A. Well, I did have discussions with Mr. Marchant about it
13 because we had hung the jury. So, you know, generally if you
14 have a situation like that, you can do a little bit better.

15 Q. Sure.

16 A. But he -- he did not entertain it.

17 Q. Okay. Was there a discussion with him about this -- I
18 know we've got the Comfort Inn witness who now says she saw
19 one person getting in the driver's seat. Did y'all ever have
20 a discussion -- did y'all, you know, go through, well, maybe
21 she didn't see the two others get in the car or try to combat
22 that at trial somehow?

23 A. Well, Mr. Crangle did all the -- pretty much all the
24 investigation there and reported back to me. And Mr. Starks
25 with our office, he pretty much handled that issue as it

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1 relates to the new witness.

2 Q. Okay.

3 A. But, yeah, we had discussions about how were we going to
4 handle it.

5 Q. Now I'm trying to -- if he doesn't testify, then, I
6 guess, the issue in your second case is you've got a witness
7 that says we've got one person getting in a car. You've got
8 Brittany Cruell who's going to testify she saw him in the
9 Comfort Inn. She's the officer over there. So then you
10 really don't have an argument in regards to blaming it on
11 somebody else unless he testifies, I guess. Is that ---

12 A. I mean, so if, for example, he never testified ---

13 Q. Yeah.

14 A. --- and that witness, you know, is not as big as what she
15 became when he did testify, ---

16 Q. Right.

17 A. --- so it was done in anticipation.

18 Q. Was he -- was he aware that if you testify, then that
19 witness becomes, I mean, exponentially bigger because she's
20 contradicting what you were saying, I guess?

21 A. Well, I mean, we knew that this witness was there for
22 him, ---

23 Q. Right.

24 A. --- specifically in his testimony.

25 Q. Sure.

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1 A. Yeah.

2 Q. Okay. And he -- he was well aware this was what she was
3 going to say, and this is what could happen if you testify in
4 regards to that?

5 A. We knew that she was there -- we discussed that she was
6 there for him to defeat his testimony, ---

7 Q. Right.

8 A. --- that there were more people in the car.

9 Q. Right. And it appears that the solicitor's office or,
10 you know, officers went out and found her after the fact to be
11 able to present her at the second trial?

12 A. Correct.

13 Q. Okay. If you'll bear with me one second.

14 (Pause)

15 Q. And you explained to him this accomplice liability, hand
16 of one, hand of all issue that could come up or ---

17 A. I don't -- I don't know that we really discussed that. I
18 became aware of it -- that Lucas was going to do that during
19 trial. And I was surprised the judge let it in.

20 Q. Okay.

21 A. I don't know that we had a whole lot of discussions on
22 the hand of one being a new charge.

23 Q. Okay. These statements by Lucas -- I know you indicated
24 in the closing argument about his discovery. You didn't make
25 an objection to those at that time. Were you concerned it

BRIAN JOHNSON - REDIRECT EXAMINATION BY MR. SMITH

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1 would draw attention to it or what was your reasoning for not
2 objecting to those?

3 A. Well, the more that he talked about Patrick's story the
4 more he gave credence to it in my opinion, like the more it
5 created doubt. That's how I saw it. At the time I didn't
6 think that I should have objected to it, but I, you know, we
7 lost.

8 Q. I understand. I mean, hindsight's 20/20.

9 A. Yes, sir.

10 Q. I got you. I understand that. But you didn't see
11 anything at that time that said, well, this is -- I need to
12 object to this?

13 A. No, sir. No, sir.

14 Q. And you felt like he was adequately informed of all the
15 facts, and the issues, and the elements that would be -- had
16 to be presented at trial?

17 A. Yes, sir.

18 Q. Okay.

19 **MR. ARIAIL:** Your Honor, I have no further questions.

20 **MR. SMITH:** Just a few, Your Honor.

21 **THE COURT:** Yeah, okay.

22 **Redirect examination by Mr. Smith:**

23 Q. Mr. Johnson, if Mr. Lowrance hadn't testified, how would
24 you had dealt with the fact that the State had lots of
25 forensic and physical evidence? Like his blood at the scene?

BRIAN JOHNSON - REDIRECT EXAMINATION BY MR. SMITH

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1 The bullet in his shoulder? In other words, how does the
2 defense explain that without his testimony?

3 A. That's a very good question. I thought his testimony was
4 crucial if -- if he -- if we were going to win, he needed to
5 explain -- somebody needed to explain those things.

6 Q. Okay. Those things being his fingerprint on the trigger?

7 A. Um-hum (affirmative). Yes, sir.

8 Q. Okay. His ID and his Social Security card at the scene?

9 A. Yes, sir.

10 Q. Et cetera, et cetera?

11 A. Yes, sir.

12 Q. And his friend's statements that he told them he had been
13 involved in the shooting?

14 A. Yes, sir.

15 Q. Okay. Had been shot at, at least?

16 A. Yes, sir.

17 Q. Okay. That's all I have.

18 **MR. SMITH:** Thank you, Your Honor.

19 **THE COURT:** They didn't charge accomplice liability in
20 the first trial?

21 A. Not that I can recall.

22 **THE COURT:** Okay. But the evidence in the second trial
23 that put accomplice liability on the table was the testimony
24 of your client.

25 A. Correct.

BRIAN JOHNSON - RECROSS-EXAMINATION BY MR. ARIAIL

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1 **THE COURT:** Okay.

2 **MR. ARIAIL:** Your Honor, if I could ask one follow-up on
3 your question, if that would be okay?

4 **THE COURT:** What?

5 **MR. ARIAIL:** I just want to ask him why he believed or
6 what the issue with accomplice liability in the first case ...

7 **Recross-examination by Mr. Ariail:**

8 Q. Why they didn't charge it in the first case from your
9 understanding?

10 A. I think they were surprised.

11 Q. Did they ask for it?

12 A. Not that I can recall. I'd have to look at the
13 transcript to be sure.

14 Q. Okay.

15 **MR. ARIAIL:** I have no further questions, Your Honor.

16 **THE COURT:** Did you mess up my transcript?

17 A. Oh, no, sir, I did not mess up your transcript.

18 **THE COURT:** All right. That's good. Thank you.

19 A. Yes, sir.

20 **THE COURT:** All right. You can step down.

21 A. Thank you.

22 **THE COURT:** All right. Anything else?

23 **MR. SMITH:** Yes, Your Honor. I've got one more witness.

24 But may Mr. Johnson be excused?

25 **THE COURT:** Yeah, I guess so.

1 **MR. JOHNSON:** Thank you, Judge.

2 **MR. SMITH:** The State wants to call David Jones.

3 **THE COURT:** How long is this going to be? Do we need to
4 take a break? That's all I'm -- how long is he going to be?

5 **MR. ARIAIL:** Five minutes?

6 **THE COURT:** Well, it's up to you ---

7 **MR. ARIAIL:** I mean, I -- he's ---

8 **MR. SMITH:** Ten. Ten.

9 **THE COURT:** Ten. All right.

10 **MADAM CLERK:** Place your left hand on the Bible and raise
11 your right hand.

12 **David Jones,** being duly
13 sworn testified as follows;

14 **MADAM CLERK:** Please state your name for the record.

15 **MR. JONES:** David S. Jones.

16 **MADAM CLERK:** Thank you.

17 (Pause)

18 **THE COURT:** Okay. Have at it.

19 (Pause)

20 **THE COURT:** Are there any questions of this witness?

21 **MR. SMITH:** Well, I do have some, but I may not depending
22 on if ---

23 **MR. ARIAIL:** I'm trying to find -- I think I can ---

24 **THE COURT:** Oh, all right.

25 (Pause)

1 **MR. ARIAIL:** Your Honor, I just spoke with my client in
2 regards to it, and Mr. Jones helped with the appeal in regards
3 to it. We're not raising any issues in regards to the appeal.
4 The only issue we have on the appeal was not preserving the
5 issue about the in-court identification, which would have not
6 been Mr. Jones, it would have been with Mr. Johnson and Mr.
7 Crangle. So from my understanding of my client, we don't have
8 any issues in regards to ---

9 **THE COURT:** No complaints about that?

10 **MR. ARIAIL:** Yeah. He's never spoke with him and he
11 didn't have any issues. And I've asked him, I said -- not
12 that he hadn't spoken with him, but there are no issues that
13 he can tell me that appellate counsel didn't raise or he has
14 an issue with in this case.

15 **MR. SMITH:** Well, it is a pled allegation, Your Honor,
16 but if they're saying they're not going forward on that, I ---

17 **THE COURT:** You're abandoning that issue.

18 **MR. ARIAIL:** I think I'm abandoning and withdrawing any
19 issues in regards to appellate representation. We're not
20 abandoning anything else in regards to the preserving of the
21 issue for ---

22 **THE COURT:** For failure to raise the issue at trial.

23 **MR. ARIAIL:** Correct. And I think my client -- I can ask
24 him that if you want to, Your Honor, to be able to make sure
25 that's what he wants to do, but he's told ---

1 **THE COURT:** Yeah, do it. You're under oath.

2 **Direct Examination by Mr. Ariail:**

3 Q. You understand you're still back under oath?

4 A. Yeah.

5 Q. In regards to your claim about appellate issues not being
6 raised, one of the things is they're, you know, put up
7 evidence showing that they did what they needed to do on your
8 appeal, you understand that?

9 A. Yes, sir.

10 Q. Okay. You're not saying that appellate counsel, Mr.
11 Jones, or anybody else who represented you during this time,
12 has done anything wrong in regards to appealing ---

13 A. I'm not saying that.

14 Q. Okay.

15 **MR. ARIAIL:** That's it, Your Honor.

16 **THE COURT:** So you want to abandon that issue?

17 A. I didn't even ever know that this was a issue, Your
18 Honor, with him. I thought the appeal was done and over. The
19 only thing I knew that I was coming for today was the PCR. I
20 didn't know that they ---

21 **THE COURT:** Well, ---

22 A. --- had anything to do with my direct appeal.

23 **THE COURT:** It's a potential claim on a PCR is the
24 failure of appellate counsel to ---

25 A. Okay.

PATRICK LOWRANCE - DIRECT EXAMINATION BY MR. ARIAIL

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1 **THE COURT:** --- rise to an objective standard of
2 competence. But you're abandoning that?

3 A. Yes, sir. I thought -- this is my first time ever even
4 being in trouble. I didn't even know ---

5 **THE COURT:** Okay.

6 A. --- anything about that.

7 **THE COURT:** Okay. All right. Anything you want to ask
8 him?

9 **MR. SMITH:** Your Honor, I have no questions if they're
10 abandoning the issue.

11 **THE COURT:** Okay. Thanks. Hope you had a nice drive.

12 **MR. JONES:** Thank you, Your Honor.

13 **MR. ARIAIL:** I did talk to him. And I thought he was
14 going to participate by phone if we needed him. I'm sorry you
15 had to come up here.

16 **MR. JONES:** I don't recall speaking with you, sir.

17 **MR. ARIAIL:** You don't? It might have been somebody else
18 on a different case.

19 **MR. JONES:** Yes, sir.

20 **THE COURT:** There's an army of them down there, Mr.
21 Ariail.

22 **MR. ARIAIL:** What's that?

23 **THE COURT:** There's an army down there now.

24 **MR. ARIAIL:** I know there is. I'm telling you what, they
25 just come out of everywhere.

CLOSING ARGUMENTS - MR. ARIAIL

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1 **THE COURT:** Okay. All right. Anything else?

2 **MR. SMITH:** That's the State's case, Your Honor.

3 **THE COURT:** Anything in reply?

4 **MR. ARIAIL:** No, Your Honor.

5 **THE COURT:** Anything you want to tell me? What you got?

6 **MR. ARIAIL:** For a short response?

7 **THE COURT:** No, I mean, just for closing -- I mean, why
8 would I grant this?

9 **MR. ARIAIL:** Well, Your Honor, the main issue, and I
10 think you see it, is that the failure to preserve that in-
11 court identification. I think that was a -- from reading the
12 Court of Appeals, and I know Mr. Johnson and Mr. Crangle might
13 not have been aware, but any type of mistrial in the previous
14 case, you've got to bring those objections up.

15 I think there's no question that from the testimony
16 elicited it was suggested and there could have been a
17 different ruling in the second case based upon that testimony.
18 It was not raised, and as a result, I think it adversely
19 affected him in regards to, you know, having to have a, you
20 know, an officer to identify ---

21 **THE COURT:** What was wrong with the identification?

22 **MR. ARIAIL:** Well, the wrong with the identification, it
23 was -- I mean, she went to her computer, she pulled it up, and
24 she specifically concentrated on that one individual.

25 **THE COURT:** This was a witness in a shooting.

CLOSING ARGUMENTS - MR. ARIAIL

1 **MR. ARIAIL:** Correct. Who did not know the ---

2 **THE COURT:** The witness ---

3 **MR. ARIAIL:** --- individual.

4 **THE COURT:** --- in the shooting who voluntarily on their
5 own went and did research, correct?

6 **MR. ARIAIL:** Yep. And the research she did was pulling
7 it directly off the database knowing he had already been
8 arrested. I mean, that's different than -- the way I see it
9 is, I mean, they present to her six different photos to be
10 able to make that decision. I mean, she knew ---

11 **THE COURT:** Nobody presented it to her.

12 **MR. ARIAIL:** I understand that. She just pulled it up
13 herself.

14 **THE COURT:** Right.

15 **MR. ARIAIL:** And so what I'm saying is that was an issue
16 which should have been raised again in regards to it. I
17 understand that Judge John overruled that and denied that in
18 the first hearing.

19 I don't know the difference in what was presented at the
20 first hearing versus the second, but just based on mine, they
21 didn't preserve it. And I think that's an issue that would
22 allow him relief in this matter.

23 The other items, Your Honor, I think we've discussed
24 pretty much, you know, most of them.

25 **THE COURT:** Failure to investigate?

1 **MR. ARIAIL:** Failure to investigate. Discovery, I think
2 he's been presented those.

3 Accomplice liability, I'm concerned a little bit in
4 regards to whether or not he was fully aware of what his
5 testimony could do in regards to bringing accomplice liability
6 into play. I know that strategy-wise his attorneys said they
7 had to prove those things to be able to defend him in this
8 case, and he thought that was his best option. I don't know
9 if he was fully advised of that based upon the testimony
10 that's been presented.

11 The other item, the discovery question presented by Mr.
12 Marchant in closing, I believe, was prejudicial and putting
13 the burden back on him. And, you know, ---

14 **THE COURT:** Well, he -- he testified.

15 **MR. ARIAIL:** I understand. He's got the right to be able
16 to go over his -- what he did between the first and second
17 trial. I just think there should have been an objection in
18 regards to that.

19 Other than that, Your Honor, I think those are the main
20 issues. And I think the other one, we kind of set forth. And
21 you can kind of see what we ---

22 **THE COURT:** Change of venue?

23 **MR. ARIAIL:** Change of venue.

24 **THE COURT:** Nothing -- I just -- there's nothing ---

25 **MR. ARIAIL:** Okay.

CLOSING ARGUMENTS - MR. SMITH

1 **THE COURT:** --- been presented to show that that's
2 worthy. Mr. Smith.

3 **MR. SMITH:** Your Honor, in reply, I don't dispute that
4 the objection to the officer's in-court identification was not
5 preserved. The Court of Appeals clearly found that that was
6 not preserved. I would just argue prejudice on that.

7 The standard for it to be suppressed would be that if the
8 -- that there has to be a suggestive out-of-court
9 identification procedure. And there were simply no suggestive
10 procedure at all in this case.

11 The first -- the officer who made the identification was
12 an officer who responded to the stolen car scenario at a hotel
13 and then loses Mr. Lowrance in a police chase. The officer
14 who was shot at at the apartment complex was a different
15 officer altogether.

16 The next day at work when Officer -- the first officer
17 shows up at roll call, she hears that this guy's been arrested
18 in this apartment complex shooting, makes a connection on her
19 own and does her own research. And she says, yep, that's the
20 guy that I chased yesterday.

21 So there's -- there's simply no suggestive procedure
22 here. She just did her own investigation. So I don't think
23 that that would have been a meritorious issue on appeal.

24 As far as the investigation, I think the information from
25 both attorneys was that they did investigation and also had an

CLOSING ARGUMENTS - MR. SMITH

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1 investigator who worked with them. It seemed like they tried
2 to track down these two people, Meat and -- Tee ---

3 **THE COURT:** Meat and three -- Meat and Tee.

4 **MR. SMITH:** --- as well as they could. These are street
5 names.

6 **THE COURT:** Fortunate to have Mr. Johnson as his attorney
7 who could interpret what the -- what those names might be.

8 **MR. SMITH:** Right. And I think he -- he did the best he
9 could under these situations. And I'll say that Mr. Lowrance
10 to this day still doesn't have any more information about
11 those people that he gave them back then.

12 As far as the -- let's see what else we have. The
13 accomplice liability, it seemed like that arose naturally at
14 trial from his -- Mr. Lowrance's testimony. And I'll point
15 out that the defense did object to that and tried to keep that
16 out. And then once it came in, they just tried to argue the
17 best they could with that.

18 And you heard Mr. Crangle's testimony that then they --
19 then at that point, you know, they were thinking, well, let's
20 try to make it seem like someone else did it, and maybe the
21 jury'll think, well, Mr. Lowrance isn't involved at all.

22 And as far as whether he was properly informed about his
23 testimony, you know, Judge Verdin questioned him. The
24 attorneys testified that they explained to him what would
25 happen at trial. I'll point out that this was his second

CLOSING ARGUMENTS - MR. SMITH

1 trial on these charges, so he knew he'd get cross-examined,
2 you know, knew the solicitor would argue based off the facts
3 of the case at trial.

4 The difference here being that, you know, the solicitor
5 knows his testimony, but the attorneys testified that Mr.
6 Lowrance made his own decision, he wanted to testify. He was
7 riding high because he had had a mistrial in his first trial.
8 So as far as that, I think he was, you know, knew there was a
9 risk in testifying.

10 But you also heard from the testimony that -- from an
11 attorney that he didn't really have an option in this case
12 because there was so much physical evidence. They had DNA,
13 blood, he had a bullet in his shoulder, the gun was found at
14 his home with his fingerprint on it, you know, some of his
15 friends testified that he told them he had been involved in
16 the shooting. I don't see how you can defend him in this case
17 without his testimony.

18 And Mr. Johnson agreed that that was -- that they were in
19 a pickle with that. So I think that covers it all, Your
20 Honor. If I have missed one, I apologize. But those are --
21 those were ---

22 **THE COURT:** Okay.

23 **MR. SMITH:** --- are the more serious issues, I think.

24 **THE COURT:** Okay. Well, Mr. Lowrance -- Lowrance? How
25 do you say it?

RULING BY THE COURT

1 **MR. LOWRANCE:** Lowrance.

2 **THE COURT:** Lowrance?

3 **MR. LOWRANCE:** Yes, sir.

4 **THE COURT:** I'm going to deny your application. I don't
5 -- I think from the testimony presented, the attorneys
6 investigated, worked hard. You had two trials to get ready
7 for this.

8 I don't find that there's any evidence presented to
9 justify me to consider a failure to request a change of venue.
10 There's just nothing been presented for that. Only your
11 testimony that you thought everybody knew about it.

12 And with respect to the accomplice liability, that was a
13 result of your own testimony. And they did object to it.
14 There was a legal ruling that was made by the trial court.

15 And I would point out that there is overwhelming
16 evidence, guilt in this case, the physical evidence, the
17 fingerprints, the identification, the bullet -- your bullet
18 wound.

19 And the failure to object to the identification, I don't
20 find that there was -- that that would rise to the level that
21 would -- even if identification had been -- a charge had been
22 given, that it would rise to the level of changing a jury's
23 mind in the case based on the amount of other evidence.

24 So I'm going to deny it. I'm going to ask the State to
25 prepare a proposed order. And I do wish you the best of luck.

RULING BY THE COURT

1 Where are you? Where do they have you?

2 MR. LOWRANCE: McCormick.

3 **THE COURT:** McCormick? Okay. Well, in any event, I wish
4 you the best of luck. All right. Thank you.

5 **MR. SMITH:** Do you have a time-line on that order, Your
6 Honor?

7 THE COURT: As soon as practicable.

8 (Hearing Ended at 11:57 am)

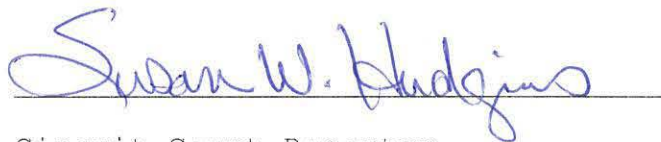
9 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 21st day of October 2019.

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

April 28, 2020



Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Patrick Dean Lowrance, #353834,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-23-2514

ORDER OF DISMISSAL

FILED
CLERK OF COURT
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

2020 FEB 18 AM 9:20

This matter comes before the Court by way of an application for post-conviction relief filed by Patrick Dean Lowrance (Applicant) on April 23, 2018. The State (Respondent) made its return on September 7, 2018. An evidentiary hearing was convened before the undersigned at the Greenville County Courthouse on October 21, 2019. Applicant was present and was represented by R. Mills Ariail, Jr., Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Brian P. Johnson, Esquire, John V. S. Crangle, Esquire, and David S. Jones, Esquire. Following a thorough review of the record in its entirety and the testimony and evidence presented at the PCR hearing, this Court finds Applicant has failed to meet his requisite burden of proof and denies his application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. During its March of 2012

term, the Greenville County Grand Jury indicted Applicant for two counts of attempted murder (2012-GS-23-1424; -1425), possession of a stolen motor vehicle (2012-GS-23-1422), the possession of a weapon commission of a violent crime (2012-GS-23-1426), and failure to stop for blue lights (2012-GS-23-1423). Applicant was represented by Brian P. Johnson, Esquire. Assistant Solicitor Lucas C. Marchant of the Thirteenth Circuit Solicitor's Office prosecuted the cases. On October 8, 2012, through October 11, 2012, Applicant proceeded to a jury trial with the Honorable Steven H. John, presiding. At the conclusion of that trial, the jury convicted Applicant of possession of a stolen vehicle, but was unable to reach a unanimous verdict as to the remaining offenses. Judge John declared a mistrial as to the indictments for attempted murder, possession of a weapon during the commission of a violent crime, and failure to stop for blue lights. Judge John sentenced Applicant to a suspended sentence of imprisonment for three years, one year of probation, with credit for time served, ordered Applicant undergo random drug and alcohol testing and complete seventy-five hours of public service employment or maintain full-time employment.

Johnson filed a timely notice of appeal on Applicant's behalf. Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense – Division of Appellate Defense perfected Applicant's appeal, arguing Judge John erred in denying Applicant's motion for a directed verdict as to possession of a stolen vehicle due to the insufficiency of the evidence the vehicle was stolen. The South Carolina Court of Appeals affirmed in an unpublished opinion, citing State v. Lowrance, Op. No. 2014-UP-439 (S.C. Ct. App. filed December 3, 2014) (per curiam) (citing State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013) (holding an appellate court must find the trial court properly submitted the case to the jury if there is any

direct evidence or substantial circumstantial evidence that reasonably tends to prove the defendant's guilty). The Remittitur was issued on December 19, 2014.

On January 7, 2013, the State called Applicant to trial again for the indictments for which Judge John had declared a mistrial. Johnson again represented applicant, as did John V. S. Crangle, Esquire. Applicant was tried by a jury with the Honorable Letitia H. Verdin presiding. At the conclusion of that second trial, the jury convicted Applicant as indicted on all counts. Judge Verdin sentenced Applicant to concurrent terms of imprisonment for twenty-eight years for the two attempted murders, five years for possession of a weapon during the commission of a violent crime, and three years for failure to stop for a blue light.

Johnson again filed a timely notice of appeal on Applicant's behalf. David S. Jones, Esquire,¹ perfected Applicant's appeal, arguing Judge Verdin erred in finding a law enforcement witness's identification of Petitioner was of sufficient reliability so as to be presented to the jury. The South Carolina Court of appeals affirmed Applicant's convictions in an unpublished opinion, finding the issue had not been preserved for appellate review. State v. Lowrance, Op. No. 2017-UP-154 (S.C. Ct. App. filed April 12, 2017) (per curiam). The Remittitur was issued on April 27, 2017.

¹ Jones has since become an Assistant Attorney General at the South Carolina Attorney General's Office.

CURRENT PROCEEDING

On April 23, 2018, Applicant, filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of trial counsel;
 - a. Failure to prepare and investigate for trial;
 - b. Failure to preserve issues for appeal;
 - c. Failure to conduct an independent investigation and properly review evidence with Applicant before trial; and
2. Ineffective assistance of appellate counsel;
 - a. Failure to raise meritorious issues on appeal.

Respondent filed a return on September 11, 2019, requesting that an evidentiary hearing be held regarding Applicant's allegations. At the start of the evidentiary hearing before this Court on October 21, 2019, Respondent requested that Applicant specify for the record the grounds upon which he would move forward. Applicant specified that he would move forward upon the following claims only: (1) that trial counsel was constitutionally ineffective for failing to review discovery with Applicant, (2) failing to move to change the venue, (3) failing to object to the trial court's jury instruction on accomplice liability, and (4) failure to preserve issues for appellate review. Although the application for post-conviction relief claimed that Applicant had been afforded the ineffective assistance of appellate counsel and Jones was present as a witness, Applicant affirmed that he did not have any complaints against Jones and wanted to waive any claim against his appellate counsel. This Court finds that Applicant affirmatively waived any claims regarding the ineffective assistance of appellate counsel. This Court further finds that any allegations other than these specifically identified by Applicant at the start of his hearing have been waived and they will not be addressed herein.

Testimony at PCR Hearing

Applicant first testified at the PCR hearing on his own behalf. He testified Johnson and Crangle had been appointed to represent him in his second trial, although he did not know why two attorneys had been appointed. He dealt with Johnson mostly and talked with Crangle on two occasions. He testified he was arrested in October of 2011 and was never released on bond. He testified his second trial took place approximately thirty days after his first. He testified he met with Johnson and discussed the discovery in the case, with Johnson leaving the discovery with Applicant. He testified he was aware of the evidence the State had against him. He did not believe Johnson's review of discovery with him was thoroughly done, however. He testified he was able to ask Johnson and Crangle questions during their meetings, and testified he had a good understanding of the State's evidence against him. He testified he asked his attorneys to question two individuals with the nicknames of "Meat" (Meat) and "Tee" (Tee), whom he testified were his companions when he left the Comfort Inn. He testified he told Johnson and Crangle how to contact these two people, but that no one ever went to that location to talk to Meat and Tee. He testified he also wanted his attorneys to talk to other witnesses who were at the Comfort Inn. He testified he could not remember whether he asked his defense attorneys to request that Judge Verdin conduct a hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972). He testified he was never offered a plea deal and that he would have accepted it had one been offered. He testified he wanted a change of venue but that his attorneys told him that the venue could not be changed. He testified the trial court gave a jury instruction on the "hand of one, hand of all" because the State had argued it during his closing argument. He testified he would not have mentioned Meat and Tee during his testimony at trial if he had known at the time that the trial court would instruct the jury on accomplice liability as a consequence. He testified he did not know his testimony could

be used against him at trial. He believed that his attorneys should have objected to the State's reference during trial to Applicant's having received discovery. On cross-examination, Applicant testified he could not provide any information to this Court about Meat and Tee other than their nicknames. He testified he wanted the PCR court to know that he was completely innocent.

He testified he has been practicing law since November of 2012, being licensed and sworn in as a member of the South Carolina Bar approximately two months before Applicant's second trial. He testified he was Johnson's second chair during Applicant's second trial. He testified he was present for Applicant's first trial; however, his role was that of a law clerk as he was not yet a licensed attorney at that time. He testified his first meeting with Applicant was on the first day of Applicant's initial trial. He did not see Applicant again until Applicant's second trial. He testified Johnson had an investigator working for him in preparation for trial. He testified Applicant was offered a global plea deal from the State before the first trial in which Applicant would be required to plead guilty in exchange for a recommendation from the State that Applicant be sentenced to imprisonment for twenty-five years, but that Applicant rejected that offer. He testified Applicant did not want to enter plea negotiations after the conclusion of his first trial because Applicant was confident that he would be acquitted at the second trial since the first trial had resulted in four mistrials, and testified Crangle and Johnson likewise were excited at the results from the first trial. He testified the State did not make any additional plea offers after Applicant rejected that initial plea offer. He testified Applicant told them before the second trial of a potential witness named Irby who was at the Comfort Inn. Crangle testified he met this witness who told him she saw one man get into a car at the Comfort Inn and drive away. He testified this witness's statement contradicted Applicant's testimony from his first trial about the events that supposedly happened at the Comfort Inn. He testified Applicant told him to find a

police sketch of the man who had supposedly been involved in the shooting, which Applicant claimed to him to have seen in the media. He testified he tried unsuccessfully tried to find such a police sketch, going so far as to inquire about it with the Greenville County Sheriff's Department, the Thirteenth Circuit Solicitor's Office, and the South Carolina Law Enforcement Division. He testified he did not object to the Solicitor's comment during closing argument that Applicant had received discovery because he did not feel he was authorized to do so since he was second chair at trial, deferring to Johnson. He testified he believes the second trial resulted in convictions because the State had been able to uncover a new witness to testify Applicant was alone when he left the Comfort Inn and because the State was able to prepare for Applicant's testimony about Meat and Tee since the solicitor had heard Applicant's testimony at the first trial.

He testified did not know whether Applicant was aware of accomplice liability. He testified he was never involved in any discussions about a change of venue.

Johnson testified as a witness at the PCR hearing. He testified he has been practicing law since 2006, and is now in private practice, although he was working as a public defender at the time of Applicant's two trials. He did not remember the specific number of meetings he had had with Applicant, and quit keeping track of them after the first trial began. He remembered there being about ninety days between the two trials. He testified Applicant told him that two individuals named Meat and Tee were the ones who had shot at the police officers, but that Applicant admitted to being in the car during the car chase and to being at the apartment complex where the shooting occurred. He testified he was not able to locate Meat or Tee, although he searched for them in local arrest records, the public index, and Applicant's discovery. He testified he believed Meat to be a nickname for "Demetrius" and Tee to be a

nickname for "Terrence", but his search of those names was similarly unfruitful. He testified he tried to get more information from Applicant about the two men whom Applicant claimed were the shooters, but Applicant did not know anything about the two other than their nicknames, and Applicant was unaware of their legal names. He testified he and his investigator could have done more to find the two men and question them if they had had more information from Applicant to go on. He testified he did a "good fact, bad fact" analysis with Applicant, and explained the evidence in the case that supported Applicant's story and the evidence that pointed towards Applicant's guilt. He testified he did not object to the State's comment in closing argument that Applicant had received discovery because he did not think the comment was objectionable or harmed Applicant's defense. He testified he believes in hindsight that he should have objected to the comment since Applicant was convicted because he would have wanted Applicant to have every chance at an acquittal at trial. When asked to explain the damaging evidence the State had against Applicant, he testified police found Applicant's fingerprints in the car that led officers on a chase and were found on the pistol recovered from under Applicant's bed, Applicant's blood was found at the scene of the shooting at the apartment complex, and the officers at the scene of the shooting did not see multiple parties enter or exit the complex as Applicant claimed.

On cross-examination, Johnson testified he believed he had preserved his objection to a law enforcement witness's identification of Applicant, and testified the identification was harmful to Applicant's defense. He testified he told Applicant that the State would be more prepared to counter Applicant's defense during the second trial as the solicitor had been present for Applicant's surprise testimony about Meat and Tee during the first trial. He testified it was Applicant's decision to testify in the second trial and he and Crangle tried to prepare Applicant to testify. He testified the State did not offer any plea deals other than a recommendation for a

twenty-five-year sentence. He testified his investigator and Crangle looked into the new witness from the Comfort Inn, which was found in between the two trials. He testified the new witness was obviously called at trial to contradict Applicant's testimony that Meat and Tee were in the car. He testified he does not think he and Applicant discussed accomplice liability, and that he was surprised that Judge Verdin allowed the jury instruction on "hand of one, hand of all." He testified he hoped the instruction's impact would be lessened if it caused the jury to doubt that Applicant was the actual shooter, contrary to the State's assertion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624,

625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the

wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Trial Counsel was constitutionally ineffective for failing to review discovery with Applicant.

Applicant argues that Johnson and Crangle were constitutionally ineffective because they failed to review discovery with him. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged

conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

The testimony of both Johnson and Crangle indicated that they had investigated and prepared for both of Applicant's trials. Although it is not this Court's task to evaluate the performance of counsel during Applicant's initial trial, the reality that Applicant's second trial, which was called a few months after the initial trial, concerned offenses that had been tried in the initial trial gives this Court justification to take notice of the cumulative nature of the investigation done by counsel for the two trials. Johnson's testimony at the PCR hearing indicated he had searched for the two men whom Applicant blamed for the crimes, analyzed the value of distinct pieces of evidence in the prosecution's case, discussed with Applicant the evidence harmful and helpful to his defense, and worked with Applicant to prepare for his testimony at trial. Crangle testified at the hearing that he had met with a witness before trial in order to gauge whether the witness would provide testimony at trial harmful or helpful to the defense.

Applicant testified at the PCR hearing that he met with Johnson and discussed the discovery in the case, with Johnson leaving the discovery with Applicant. He testified he was aware of the evidence the State had against him. He did not believe Johnson's review of discovery with him was thoroughly done, however. He testified he was able to ask Johnson and Crangle questions during their meetings, and testified he had a good understanding of the State's evidence against him.

This Court finds counsel adequately reviewed the evidence and discovery with Applicant, and adequately prepared for trial. The testimony from the two attorneys demonstrates that they conducted a thorough investigation in the matter, review the evidence with Applicant, and made

Applicant aware of the strengths and weaknesses of his defense. Applicant himself admits that Johnson reviewed discovery with him, but argues that the Johnson's efforts here were not adequate. Applicant, though, has failed to present any evidence indicating that he would have gained any benefit from additional discovery review with his attorneys and has failed to show any prejudice he has suffered from not having even more time spent in trial preparation. The South Carolina Supreme Court has found a similarly unsupported allegation of inadequate discovery review wanting. See Jackson v. State, 329 S.C. 345, 353, 495 S.E.2d 768, 772 (1998) (finding the PCR court erred in finding counsel ineffective for failing to "adequately and sufficiently meet with the Applicant and permit the Applicant to fully participate in the defense" because Jackson failed to present any evidence of benefit he would have accrued had counsel done more preparation and failed to establish that any lack of preparation on the part of counsel prejudiced him) (citations omitted). This Court finds Applicant has failed to demonstrate Johnson and Crangle were constitutionally ineffective for failing to review discovery with Applicant because he has failed to show any deficiency in the performance of counsel and any resulting prejudice. This allegation is denied and dismissed with prejudice.

Trial counsel were constitutionally ineffective for failing to move to change the venue of Applicant's trial.

Applicant argues his attorneys were constitutionally ineffective for failing to move for a change of venue. This Court finds Applicant has not presented any evidence that supports his allegation; on the contrary, Applicant testified only that he wanted a change of venue and that his attorneys said it could not be done.

In State v. Patterson, 324 S.C. 5, 12-14, 482 S.E.2d 760, 763-64 (1997), the South Carolina Supreme Court considered whether a trial court had abused its discretion in denying a

defendant's motion to change the venue, and held the court had not done so, agreeing with the trial court that the public's passions were not so strong so as to justify a believe that the voir dire responses of the jurors were not trustworthy. In Patterson, the defendant was a young, black male being tried in Lexington County for the murder and armed robbery of a sixty-five-year-old, white man. Id. at 11-12, 482 S.E.2d at 763. Patterson argued he was entitled to a change of venue because jurors in Lexington County had a racial bias against black defendants and he would suffer prejudice at trial due to unfavorable pre-trial publicity from a newspaper article that ran statewide on the morning of the opening day of Patterson's jury selection. Id. at 12-14, 482 S.E.2d at 763-64. In analyzing Patterson's argument, our Supreme Court noted Patterson had not presented any evidence about the details of the cases, juries, or aggravating and mitigating circumstances involved in the cases he used to support his claim of the racial bias of jurors in Lexington County and the trial court had questioned potential jurors sufficiently to uncover those with prior knowledge about the case or bias against Patterson. Id.

Similarly, Applicant has failed to present evidence that would support the argument that he was entitled to a change of venue. Applicant has not shown that there was any negative pre-trial publicity that could have influenced his jurors. Applicant's mere wish to be tried elsewhere has fallen far short of the burden required to show that his defense attorneys should have sought such a change. Furthermore, Applicant has made no attempt to show how counsels' failure to move for a change of venue caused him to suffer any prejudice at trial. Even if Applicant did request that Johnson and Crangle seek a change of venue, he has not shown any reason that they would have been obligated to move for a change upon his request.

This Court finds Applicant has failed to demonstrate Johnson and Crangle were constitutionally ineffective for failing to move for a change of venue because he has failed to

show any deficiency in the performance of his attorneys and any resulting prejudice. This allegation is denied and dismissed with prejudice.

Trial Counsel was constitutionally ineffective for to object to the trial court's instruction the jury on accomplice liability.

Applicant argues his trial counsel should have objected to the trial court's instructing the jury on accomplice liability when the instruction was not warranted based upon the evidence presented at trial. During the charge conference, the State requested a jury instruction on accomplice liability because Applicant's testimony was that he was merely present at the scene of the shooting. Tran. 622. Johnson disagreed with the request, arguing that there had not been any testimony at trial that Applicant participated in the crimes with another. Tran. 622, 625-27. The trial court overruled Applicant's objection to the instruction, and informed the parties that it would charge the jury on accomplice liability. Tran. 627. Before closing arguments began and the trial court charged the jury, Johnson against objected to the inclusion of an instruction on accomplice liability. Tran. 628. The trial court charged the jury as follows:

If a crime is committed by two or more people who were acting together in committing a crime, the act of – the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose. If two or more people were acting together, assisting each other in committing the offense, the act of one is the act of all or as it sometimes is said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed without ore is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed is not sufficient to convict the defendant as a principle.

Guilt is a principle that is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilty as a principle. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principle in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in the committing of a

crime – of a crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. Present at the commission of a crime needs to be sufficiently near to aid and abet and assist in the commission of a crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principle on the theory of aiding and abetting. Intent is also a necessary element for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

...

The burden is on the [S]tate to prove every element of the crime charged. If you find, after reviewing all the evidence, that the State has proved the defendant was only present at the scene of the crime and that they have not proved beyond a reasonable doubt any other participation of the crime, then you must find the defendant not guilty.

Tr. 682-84.

After the jury was charged, the trial court asked if there were any additional objections to its instructions, and Johnson answered in the negative. Tran. 691.

Applicant has failed to demonstrate that Johnson's failure to further argue the jury instruction was improper after the jury was charged caused him to suffer prejudice. When an issue was unpreserved for appellate review, a PCR court must examine whether the applicant suffered prejudice from the lack of preservation by analyzing the merits of the issue and considering whether the applicant has established that the outcome would have been different had the issue been preserved. See Milledge v. State, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018) (instructing that the PCR court is to evaluate prejudice when considering an applicant's claim that counsel failed to preserve an issue for appellate review by viewing "the trial court's ruling through the same lens that would be applied on appeal . . .") (citation omitted); see also McHam v. State, 404 S.C. 465, 474-82, 746 S.E.2d 41, 46-50 (2013) (holding the PCR court

erred in finding counsel was not deficient in failing to preserve an issue for appellate review but agreeing with the PCR court that McHam failed to establish prejudiced because the Fourth Amendment claim failed on the merits), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). When an appellate court is reviewing a trial court's jury instructions for error, it must consider the instructions as a whole "in light of the evidence and issues presented at trial." Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011) (citation omitted).

When one is determining whether an accomplice liability charge is warranted, "the question is whether there is any evidence that another co-conspirator was the shooter and [Applicant] was acting with him when the" crime occurs. Id. at 237, 712 S.E.2d at 439 (citing State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000)). The theory of "hand of one, hand of all" provides that:

[O]ne who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.

Barber v. State, 393 S.C. 232, 236-37, 712 S.E.2d 436, 439 (2011) (citing State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010)).

Here, the trial court gave an accurate instruction to the jury on accomplice liability. See State v. Condrey, 349 S.C. 184, 195, 562 S.E.2d 320, 325 (S.C. Ct. App. 2002) (finding the trial court eliminated the danger of juror confusion by cautioning jury that a defendant's mere presence at a crime scene did not prove guilt). The trial court's instruction was warranted based upon the evidence presented at trial. Applicant testified at trial that he was with "Meat" and "Tee" when the shooting at the police officers began, having been with them earlier at the Comfort Inn and in the Yukon. Tran. 564, 568-72, 575. He testified he was standing in a breezeway at the Berkeley

Pointe apartment complex with Meat and Tee, that Meat was holding a pistol, and that Meat began firing in the officers' direction. Tran. 575-78. He testified Meat asked him to take the gun since police had seen Meat's face but had not seen Applicant's, and acknowledged he took the weapon with him when he left the scene. Tran. 581-82. While being cross-examined by Johnson, a law enforcement witness testified a witness at the scene of the shooting said he had observed two black males leaving the apartment complex quickly, one of whom had long, braided hair. Tran. 534.

The State did not argue that Applicant was guilty under a theory of accomplice liability; rather, the State argued that Applicant was the shooter and that there were no other participants. The State argued Applicant was the only person in the Yukon. Tran. 652-53. The State pointed out that the police dog did not discover multiple tracks leaving away from the scene of the shooting at the apartment complex. Tran. 654. The State noted the police could not hear anyone arguing at the apartment complex, despite Applicant's testimony that he and Meat and Tee were arguing with one another in the open air. Tran. 657. The State pointed out that the police testified they saw only one person in the breezeway during the shooting. Tran. 657. The State specifically argued that Meat and Tee do not exist, and that Applicant made them up in order to shift the blame for his crimes to someone else. Tran. 658-59. In conclusion, the State argued that the evidence established that Applicant "[was] the one [who] shot at Office Lane and Officer Cobb. He's the one [who] ran from Officer Cruell." Tran. 672. In contrast, Johnson argued that Meat and Tee were responsible for the crimes, and that Applicant was merely present. Johnson argued Applicant was a passenger in the Yukon, with someone else driving. Tran. 631. Johnson argued a law enforcement witness had misidentified Applicant as the man walking through the hotel lobby before the car chase began. Tran. 632-33. Johnson argued the police were not able to testify to

the number of people in the breezeway of the apartment complex during the shooting. Tran. 633-34. Johnson argued Applicant's testimony about Meat and Tee was corroborated by the fact that he was not found to have been in possession of the keys to his room at Comfort Inn, which indicated that one of his companions had them. Tran. 636-37. Johnson argued he believed Meat and Tee did exist, even though the State argued that they did not. Tran. 641.

Applicant has failed to show that there is a reasonable likelihood that the outcome of trial would have been different had Johnson preserved his objection to the trial court's instruction on accomplice liability. This Court finds the instruction was proper; even if it was not proper, when viewed in connection with the instructions as a whole and in light of the arguments made by the parties at trial, which did not allege Applicant acted in concert with Meat or Tee or someone else in leading police on a chase and firing at them with a firearm. The State's theory was that Applicant was the sole perpetrator of the crimes, and Johnson's argument was that Meat and Tee were responsible, not Applicant.

This Court finds that neither Johnson nor Crangle was constitutionally ineffective for failing to preserve for appellate review the trial court's jury instruction on accomplice liability because Applicant has failed to demonstrate that there is a reasonable likelihood that Applicant would have prevailed on the merits had either done so. This allegation is denied and dismissed with prejudice.

Trial Counsel was constitutionally ineffective for failing to preserve issues for appellate review.

Applicant argues his defense attorneys were constitutionally ineffective for failing to preserve for appellate review the objection to the trial court's finding a law enforcement witness's identification of Applicant was of sufficient reliability so as to be presented to the jury.

During Applicant's first trial, which resulted in a mistrial, the first trial court conducted a hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972), in order to ascertain whether it was proper for a law enforcement witness to make an in-court identification of Applicant. The State, Johnson, and the court questioned the witness in camera. The court found the in-court identification was proper and denied Johnson's motion to suppress. At the start of Applicant's second trial, Johnson attempted to renew his objections from Applicant's first trial, which resulted in a mistrial. The second trial court indicated it believed it was bound by the evidentiary rulings made by the presiding judge in the first trial. Johnson did not move to suppress during the witness's in-court identification of Applicant in the second trial, request a Biggers hearing, or otherwise object to the identification. When Applicant argued on appeal afterwards that the trial court erred in allowing the in-court identification, the South Carolina Court of Appeals found the issue had not been preserved for appellate review. State v. Lowrance, Op. No. 2017-UP-154 (S.C. Ct. App. filed April 12, 2017) (per curiam) (citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].")).

When an issue was unpreserved for appellate review, a PCR court must examine whether the applicant suffered prejudice from the lack of preservation by analyzing the merits of the issue and considering whether the applicant has established that the outcome would have been different had the issue been preserved. See Milledge, at 380, 811 S.E.2d at 804; see also McHam, at 474-82, 746 S.E.2d at 46-50. An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012); State v. Dukes, 404 S.C. 553, 557-58,

745 S.E.2d 137, 139 (Ct. App. 2013). A witness's subsequent in-court identification is inadmissible “if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from “unnecessarily suggestive” police procedures. Biggers, 409 U.S. at 198-99; Liverman, 398 S.C. at 138, 727 S.E.2d at 426; Traylor, 360 S.C. at 81, 600 S.E.2d at 526. If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. Id. at 557-58, 745 S.E.2d at 139. The defendant bears the burden of proving the identification procedure was impermissibly suggestive. Id. at 561, 745 S.E.2d at 141 (“Our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive.”).

If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless “so reliable that no substantial likelihood of misidentification existed.” Liverman, 398 S.C. at 138, 727 S.E.2d at 426. The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007); Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36. When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator

at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's 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 crime and the confrontation. Turner, 373 S.C. at 127, 644 S.E.2d at 697; Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36.

A procedure cannot be suggestive where it was not “made under suggestive circumstances arranged by law enforcement.” Liverman, 398 S.C. at 134, 727 S.E.2d at 423 (emphasis added). At trial, the identifying witness was a law enforcement officer who decided of her own accord to look up Applicant’s photograph. Tran. 119-20. Her testimony was that no one presented her with the photograph or asked her to make the identification. Instead, she remembered the person she saw in the hotel lobby before the police chase began and sought out a photograph of the individual who was later arrested to see if he was that person she had seen. Tran. 119-21. There was nothing suggestive about this process because it was not arranged by law enforcement. The South Carolina Supreme Court has affirmed a trial court’s finding that an identification procedure was not unduly suggestive precisely because it was not the result of “an act by the police of a suggestive manner.” Dukes, 404 S.C. at 562, 745 S.E.2d at 142. In Dukes, the officer suggested the witness look at photographs in a “photo book” to see if he could identify the person who shot the victim. Id. at 556, 745 S.E.2d at 138. However, when the officer got up from the table to get the book, the witness saw other photographs in a file the officer left on the table and identified the defendant from one of the photographs in the officer’s file. Id. The Supreme Court focused on the witness’s testimony that the officer “did not present the photos to [the witness] or instruct him to choose one.” Id. The trial court concluded the identification procedure was not impermissibly suggestive because: “It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was

any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner.” Dukes, 404 S.C. at 562-63, 745 S.E.2d at 142. Here, there likewise was not an act by the police of a suggestive manner. Since there was evidence to support the first trial court’s decision, that court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. Dukes, 404 S.C. at 563, 745 S.E.2d at 142.

This Court need not consider the second prong of Biggers. Id. Nevertheless, this Court finds there was also sufficient evidence to support a conclusion that the out-of-court identification was reliable under the totality of the circumstances. The witness testified she observed Applicant for approximately one minute in a well-lit hotel lobby and “immediately recognized” him when she looked at his photo. Tran. 105-08, 121. The witness had a good opportunity to view Applicant as he passed her. Her attention was likely heightened because she was investigating a possible stolen vehicle. Tran. 97. The witness gave a partially accurate description of the person, identifying him by both gender and race. Although she said he looked to be around forty years of age, she also said he might have been younger. Tran. 106. Finally, the identification was made only one day after the crime. Under the totality of the circumstances, Officer the witness’s out-of-court and in-court identifications were both reliable. Therefore, the second trial court properly admitted the identification testimony.

Even if the witness’s identification of Applicant was improper, this Court finds Applicant has failed to demonstrate that there is a reasonable likelihood that the outcome of his trial would have been different had the identification testimony not been heard by the jury. The witness’s identification placed Applicant at the Comfort Inn before the police chase began, but Applicant admitted at trial through his own testimony that he was at the hotel before the chase, in the Yukon during the case, and at the apartment complex at which the police were subjected to

gunfire. The other evidence against Applicant was significant. Police found Applicant's wallet, social security card at the scene of the shooting at the apartment complex, found Applicant's driver's license in a room registered to "Dean Lowrance" at the Comfort Inn, discovered Applicant was suffering from a gunshot wound when they arrested him after the shooting, found Applicant's fingerprints on a box of cartridges in the Yukon, found Applicant's DNA on the weapon used in the shooting, and found Applicant's blood at the scene of the shooting and on the sweatshirt Applicant was wearing at the time. In light of all this, it is not likely that the witness's identification of Applicant was the man she saw in a hotel lobby before the car chase began had any appreciable effect on the jury's verdict, particularly when Applicant admitted to being at the hotel.

This Court finds neither Johnson nor Crangle was constitutionally ineffective for failing object to the law enforcement witness's identification of Applicant as the man who she saw in the hotel lobby. Applicant has failed to demonstrate that either attorney should have objected to the testimony as it was proper identification testimony. Applicant has failed to demonstrate that the objection would have been successful and that there is a reasonable likelihood that the outcome of his trial would have been different had his attorneys objected. This Court finds that, even if Applicant's attorneys had properly objected and preserved the issue for appellate review, Applicant would not have been successful on appeal. This allegation is denied and dismissed with prejudice.

CONCLUSION

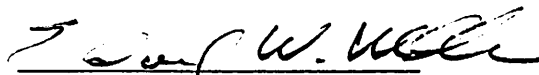
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that, if the applicant wishes to seek appellate review and is represented by post-conviction relief counsel, that counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief is dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14th day of February, 2020.


EDWARD W. MILLER
Presiding Judge

Breamille, South Carolina.

Copy mailed to
Attorney <u>General / Mills Arizal</u>
on <u>2</u> / <u>18</u> / <u>2020</u>

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

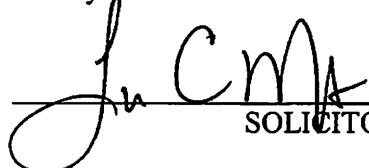
At a Court of General Sessions, convened on
County present upon their oath:

MAR 20 2012

the Grand Jurors of Greenville

That PATRICK DEAN LOWRANCE did in Greenville County, on or about the 28th day of October 2011, willfully, knowingly, and unlawfully commit the offense of failure to stop for a law enforcement vehicle in that the said defendant while driving on a road, street or highway of the State did intentionally fail to stop when signaled to do so by a law enforcement vehicle using blue lights and/or siren. This is in violation of §56-05-0750 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

B V Cruell

Greenville Police Department

10/29/2011

ARREST WARRANT NUMBER
M802908

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

[Signature]
person of Grand Jury

VERDICT

GUILTY

[Signature]
Foreperson of Petit Jury

Date: 1-10-13

DOCKET NO. 2012-GS-23-
LCM

001423

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2012

THE STATE

vs.

PATRICK DEAN LOWRANCE

Indictment for

0065

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750

RECEIVED

MAR 01 2012

Clerk of Court
Greenville County

ENTERED
ACCT

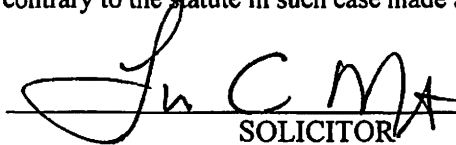
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MAR 20 2012 the Grand Jurors of Greenville
County present upon their oath:

That PATRICK DEAN LOWRANCE did in Greenville County, on or about the 28th day of October
2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Officer Taci Cobb
by means of shooting her with a handgun. This is in violation of § 16-03-0029 of the South Carolina
Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D P Garrison

Greenville Police Department

10/29/2011

ARREST WARRANT NUMBER
M802899

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Person of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 1-10-13

DOCKET NO. 2012-GS-23-001024
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2012

THE STATE

vs.

PATRICK DEAN LOWRANCE

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

MAR 01 2012

Clerk of Court
Greenville County

ENTERED
ACCT. 134

1231

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

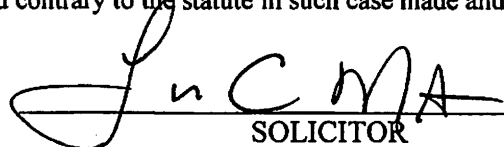
At a Court of General Sessions, convened on
County present upon their oath:

MAR 20 2012

the Grand Jurors of Greenville

That PATRICK DEAN LOWRANCE did in Greenville County, on or about the 28th day of October 2011, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Officer Charles Lane by means of shooting him with a handgun. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D P Garrison

TC

Greenville Police Department

10/29/2011

ARREST WARRANT NUMBER
M802900

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. [Signature]
FOREMAN GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

GUILTY

Or M [Signature]
Foreperson of Petit Jury

Date: 1-10-13

DOCKET NO. 2012-GS-23-
LCM

001425

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2012

THE STATE

vs.

PATRICK DEAN LOWRANCE

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

ENTERED
ACCT. *124*

RECEIVED

MAR 01 2012

Clerk of Court
Greenville County

1233

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on

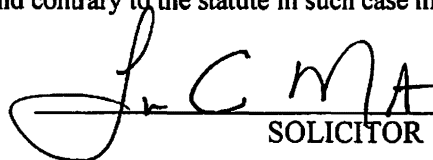
MAR 20 2012

the Grand Jurors of Greenville

County present upon their oath:

That PATRICK DEAN LOWRANCE did in Greenville County, on or about the 28th day of October, 2011, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Attempted Murder (X2). This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D P Garrison

TZ

Greenville Police Department

10/29/2011

ARREST WARRANT NUMBER
M802901

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Person of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 1-10-13

DOCKET NO. 2012-GS-23-
LCM

001426

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March TERM 2012

THE STATE

vs.

PATRICK DEAN LOWRANCE

Indictment for

0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

RECEIVED

MAR 01 2012

Clerk of Court
Greenville County

ENTERED
ACCT

1235

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Patrick Dean Lowrance

AKA:

Race: BLACK Sex: M Age: 27

DOB: 1-1-1985 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Duncan, SC 29334

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Traffic, Failure To Stop For Blue Light

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301423

A/W#: M802908

Date of Offense: 10/28/2011

S.C. Code § : 56-05-0750(B)(1)

CDR Code #: 0065

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

SC Bar# 72742

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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ 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. 443 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (03/2011)

Presiding Judge: SHLJudge Code: 2162Sentence Date: 1-10-2013

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Patrick Dean Lowrance

AKA:

Race: BLACK Sex: M Age: 27

DOB: 12-11-1985 SS#: [REDACTED]

Address:

City, State, Zip: Duncan, SC 29334

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder/Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301424

A/W#: M802899

Date of Offense: 10/28/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

72742
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 28 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ 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. 443 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

— days/hours Public Service EmploymentObtain 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: —☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: 1 Johnson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2012Sentence Date: 1-10-2013

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Patrick Dean Lowrance

AKA:

Race: BLACK Sex: M Age: 27

DOB: 12-1-1985 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Duncan, SC 29334

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301425

A/W#: M802900

Date of Offense: 10/28/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas

SC Bar# 72742

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 28 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ 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. 443 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

_____ 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: T. Johnson

SCCA/217 (03/2011)

Presiding Judge: JHL

Judge Code: 2167

Sentence Date: 1-10-2013

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Patrick Dean Lowrance

AKA:

Race: BLACK Sex: M Age: 27DOB: 1985 SS#: Address: City, State, Zip: Duncan, SC 29334DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marchant, Lucas72742
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 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. 443 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301426A/W#: M802901Date of Offense: 10/28/2011S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS
 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 Fund
 Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2162Sentence Date: 1-10-2013

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

V.

PATRICK DEAN LOWRANCE,

APPELLANT

APPELLATE CASE NO. 2013-000320

FINAL BRIEF OF APPELLANT

David S. Jones
Private Appointed Counsel (pro-bono)

Law Office of David S. Jones
111 Executive Point Blvd., Ste. D
Columbia, SC 29210
803-250-6345

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEYS FOR APPELLANT

RECEIVED
APR 01 2016
RESPONDENT
SC Court of Appeals

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Was Officer Cruell's single-photo identification of Mr. Lowrance after being given his name as a suspect so unduly suggestive and unreliable that allowing Officer Cruell to identify Mr. Lowrance to the jury violated Mr. Lowrance's right to due process of law under Neil v. Biggers and State v. Moore?

STANDARD OF REVIEW

"In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court. Generally, the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such, or . . . prejudicial legal error. However, an eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law." State v. Moore, 343 S.C. 282 at 288, 540 S.E.2d 445 (2000) (internal citations omitted).

STATEMENT OF THE CASE

Patrick Dean Lowrance was indicted on five charges on March 20, 2012. (R. pp. 1-8). The charges included possession of a stolen motor vehicle, failure to stop for blue lights, two counts of attempted murder (of Taci Cobb and Charles Lane), and possession of a weapon during the commission of a crime. (R. pp. 1-8). Mr. Lowrance was first tried on all five charges on October 8-11, 2012. Prior to the commencement of that trial, Judge John conducted evidentiary hearings, including a hearing pursuant Neil v. Biggers as to whether Officer Cruell would be permitted to identify Mr. Lowrance to the jury as the man she saw walking through the hotel lobby shortly before the shooting. (R. pp. 10-11). Judge John ruled that the identification would be allowed, and Officer Cruell did identify Mr. Lowrance to the jury. (R. pp. 22-23, 37). That jury convicted Mr. Lowrance on the charge of possession of a stolen motor vehicle, and did not reach an agreement on the remaining charges. (R. p. 123). Mr. Lowrance was sentenced to "three years, suspended, placed on probation for one year", and given credit for time served. (R. p. 123).

Mr. Lowrance was retried on the remaining four charges on January 7-10, 2013. Judge Letitia Verdin adopted Judge John's pretrial evidentiary rulings as *res judicata*, and noted at the conclusion of the trial that all previous motions were preserved. (R. p. 126). Officer Cruell identified Mr. Lowrance to the jury at this trial also. (R. p. 160). That jury convicted Mr. Lowrance on all four remaining charges. (R. p. 607). Mr. Lowrance was sentenced to twenty-eight years for each murder charge, and five years for the weapons charge, all running concurrently; and three years for the failure to stop charge. (R. p. 624). Mr. Lowrance was given credit for time served. He now appeals those convictions.

STATEMENT OF FACTS

On October 28, 2011, Officer Brittany Cruell, of Greenville City Police, was conducting a routine patrol through the parking lot of the Comfort Inn located on Laurens Road in Greenville, SC when she discovered that a Chevy Tahoe in the parking lot bore a license plate registered to another vehicle. (R. p. 30). Officer Cruell entered the lobby of the hotel with Officer Charles Lane and asked the staff about the vehicle. (R. p. 30). While she was speaking with the staff, a man walked through the lobby. 10/8/12 Tr. p. 79, line 25. Officer Cruell described "just briefly" seeing an "older" black male wearing a grey shirt with "longer hair." (R. pp. 13-16). Officer Lane did not observe this man. Shortly after this man passed through the lobby, the Chevy Tahoe left the parking lot, and Officer Cruell pursued it. (R. pp. 31-32). Once on the interstate, Officer Cruell put on her flashing blue lights. (R. p. 33). Instead of stopping, the driver of the Tahoe exited the road and increased speed to the point where Officer Cruell ceased pursuit. (R. p. 35).

Officer Taci Cobb later located the same Tahoe in the parking lot of a nearby apartment building, announced it on the radio, and Officer Lane responded to her call. (R. p. 35). Officers Cobb then entered the breezeway of the apartment building, where she was fired upon from the top of the stairs with a 9mm handgun. (R. p. 45). Officer Cobb returned fire. (R. p. 46). Officer Lane came to assist Officer Cobb, and also was fired upon. Neither of the officers was actually hit by any of the shots fired. Moreover, neither of the officers was able to clearly see the shooter. (R. p. 49). Officer Cobb testified that the stairwell was dark, and the most that she was able to determine from the muzzle flashes was that shooter was a black male. (R. pp. 46-55). This shooter apparently left the building without being apprehended.

A subsequent investigation located personal items belonging to Patrick Dean Lowrance at the hotel and in a duffel bag at the apartment building. (R. pp. 58-64). Mr. Lowrance later

surrendered to the police without incident when he was located at a friend's house on the evening of the day of the shooting. (R. pp. 65-68). It is not clear from the transcript how the police located Mr. Lowrance. Mr. Lowrance had suffered a gunshot wound in his shoulder, and a 9mm handgun was located in the bedroom of the house where Mr. Lowrance was found. (R. pp. 69-72). Officers later determined that the Chevy Tahoe had been stolen. Forensic tests found Mr. Lowrance's fingerprints on the Chevy Tahoe, and on items inside. (R. pp. 73-76). Tests also found his DNA on the exterior of the handgun used in the shooting, but not on the magazine containing bullets stored inside the grip of the handgun. (R. pp. 77-84).

The day after the shooting, Officer Cruell was given Mr. Lowrance's name as a suspect in the shooting. (R. p. 18). Without any other instruction, and apparently without any other officers present, Officer Cruell used a computer to view a mug shot of Mr. Lowrance. (R. p. 19). No lineup was conducted and no other photographs were viewed. (R. pp. 21-22). Based on viewing this single photograph, Officer Cruell testified that she identified Mr. Lowrance as the black male whom she briefly observed walking through the hotel lobby the day before. (R. pp. 20-22).

Mr. Lowrance testified at both trials in his own defense. He described for the jury how he had recently associated with new friends following his marital separation, one of whom was known to Mr. Lowrance by his street name, "Meat;" apparently a shortened version of "Lametrius." (R. p. 480). Mr. Lowrance testified that he had ridden in the Chevy Tahoe, believing that Lametrius owned the vehicle. (R. pp. 487-488). Mr. Lowrance testified that he had been staying at the hotel and had a party the night before with several friends, including Lametrius. (R. p. 485). Mr. Lowrance testified that he had been smoking marijuana during that party. (R. p. 486). Mr. Lowrance's testimony also described how it was Lametrius who walked through the lobby to the vehicle which he appeared to own, drove it from the hotel, and fled from the blue lights. (R. pp.

488-491. Mr. Lowrance testified that he was in the car with Lametrius and another man at the time, but that Lametrius drove. (R. pp. 488-491). Mr. Lowrance testified also that he was at the scene of the crime when Lametrius shot at the officers. (R. pp. 494-496). Mr. Lowrance was shot in the exchange, fled the building, and lay in the woods behind the apartment building. (R. pp. 496-497. Mr. Lowrance described how he lost consciousness for several hours after Lametrius walked by him, and placed the handgun with Mr. Lowrance. (R. p. 498-499). Mr. Lowrance regained consciousness later in the evening, contacted a friend, and was taken to the house where he later surrendered to police. (R. pp. 500-503).

ARGUMENT

The Court below committed prejudicial error and deprived Mr. Lowrance of due process of law by finding that Officer Cruell's identification of Mr. Lowrance was sufficiently reliable to be presented to the jury, pursuant to Neil v. Biggers. Under Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972), if an identification of a suspect is found to be suggestive, that identification should be kept from the jury unless it is sufficiently reliable under the totality of the circumstances. As our state's Supreme Court explained in State v. Moore, Biggers sets out a two-pronged approach where the court first considers "whether the identification process was unduly suggestive"; and if so, the court then considers "whether the . . . identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Moore, 343 S.C. 282 at 287, 540 S.E.2d 445 (2000). This is a mixed question of fact and law for the trial judge, who should not allow a suggestive identification to reach the jury unless the judge finds it to be sufficiently reliable. Id. at 288, 289, 540 S.E.2d at 447.

An identification of a suspect by a witness who is presented one option, absent a line-up, is almost certainly unduly suggestive. As stated by our Supreme Court, "[s]ingle person show-ups are

particularly disfavored in the law." State v. Moore, 343 S.C. at 287, 540 S.E.2d at 448. Other courts have described single person show-ups as "inherently suggestive," Jefferson v. State, 206 Ga.App. 544, 425 S.E.2d 915, 918 (1992), and "widely condemned," Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed. 2d 1199 (1967).

Reliability is determined by a totality of the circumstances test, where the court considers "the opportunity of the witness to view the criminal at the time of the crime, the witness's degree or attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." Neil v. Biggers, 409 U.S. at 199, 93 S.Ct. at 382.

In this case, although the court below did mention factors relating to both prongs, the court did not explicitly rule on the two separate prongs, and instead simply found that the in-court identification would be allowed. That decision constitutes reversible error, because Officer Cruell's identification was both unduly suggestive and unreliable, and Mr. Lowrance was prejudiced by her identification to the jury.

Officer Cruell's single-photograph identification of Mr. Lowrance as the man she saw in the hotel was unduly suggestive. Officer Cruell only identified Mr. Lowrance from a single mug shot, of a person who does not match the description in her police report, the day after the crime was committed after being told that he was in custody related to the shooting and the possession of the stolen vehicle. (R. pp. 20-22). She personally sought out this photograph only after being given Mr. Lowrance's name, and located Mr. Lowrance's photograph by searching for it by name - no other possibilities were considered, offered, or provided. There was no line-up of other possible suspects. (R. pp. 21-22). No other officers were present to oversee the process; nor were there any other controls over the suggestiveness of the identification. (R. pp. 21-22). Officer Cruell simply

was given a name, found a photograph, and concluded that Mr. Lowrance was the man she briefly observed walking past her the day before while she was speaking with someone else.

In addition to being unduly suggestive, Officer Cruell's single-photograph identification was unreliable. Officer Cruell only observed the man whom she later identified as Mr. Lowrance as he was walking through the hotel lobby. (R. p. 13). Officer Cruell testified that she paid attention "just briefly" at most, but also testified that she first testified that while she conversed with hotel staff, she "[got] a glimpse of him" for "five minutes," but later said that she was only able to observe this man for "maybe about a minute." By her own testimony officer Cruell "didn't pay a lot of attention to him." (R. p. 145). The behavior displayed by that man at the time of his exit was not criminal in nature and was so mundane that officer Cruell "barely noticed him" and her partner didn't notice him at all. (R. p. 145). The description by Officer Cruell of that unknown man correctly describes Mr. Lowrance in only one characteristic - his race. Officer Cruell never had "the opportunity . . . to view the criminal at the time of the crime" nor any reason to pay attention to someone leaving a hotel lobby in the morning. Neil v. Biggers, 409 U.S. at 199, 93 S.Ct. at 382. Therefore, Officer Cruell did not have a good opportunity to view the man walking past her, and her identification is unreliable.

As to the accuracy and certainty of her description, Officer Cruell's report stated that she had observed a man that might have had "longer" hair, and maybe pulled his hair back "in a ponytail," but agreed with defense counsel that Mr. Lowrance did not have long hair when she identified him as the man she saw. (R. pp. 145-169.) Furthermore, Mr. Lowrance admits that he had been smoking marijuana before he left the hotel, but Officer Cruell makes no mention of smelling it when the man walked by her. (R. p. 486). Officer Cruell surely has been trained on the smell of marijuana, and would likely have taken the opportunity to question someone who smelled like they had recently

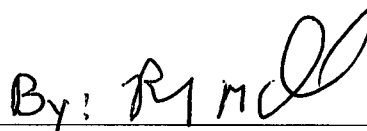
been smoking it. Taken together with the suggestiveness of Officer Cruell's identification, the court below should have concluded that the process was so suggestive and open to mistake that Officer Cruell's identification of Mr. Lowrance as the man walking through the lobby should have been kept from the jury.

The Court's erroneous decision to allow Officer Cruell's identification prejudiced Mr. Lowrance because the identification directly contradicted Mr. Lowrance's defense that he did not possess the stolen vehicle, that he was not the driver who failed to stop for the blue lights, and that he did not shoot at the police officers. Mr. Lowrance's testimony described for the jury how he had recently associated with new friends following his marital separation, one of whom was known to Mr. Lowrance by his street name, "Meat;" apparently a shortened version of "Lametrius." (R. p. 480). Mr. Lowrance testified that he believed that Lametrius owned the vehicle that turned out to be stolen. (R. pp. 487-488). Mr. Lowrance's testimony also described how it was Lametrius who walked through the lobby to the vehicle which he appeared to own, drove it from the hotel and fled from the blue lights, and shot at the officers. (R. pp. 488-496). Although Mr. Lowrance's DNA was found on the pistol, he described for the jury how he received it from Lametrius only after the shooting and while he was laying in the ground and bleeding. (R. pp. 498-499). Officer Cruell was the only witness who identified Mr. Lowrance as the man who walked through the hotel lobby. Without her identification of Mr. Lowrance to the jury as the man who walked through the lobby, the jury likely would have given more weight to Mr. Lowrance's testimony concerning the presence of another driver and shooter. Therefore, Mr. Lowrance was prejudiced by the erroneous admission of Officer Cruell's identification, and his convictions should be reversed and remanded for a new trial.

CONCLUSION

Because Officer Cruell's prejudicial identification of Mr. Lowrance was unduly suggestive and unreliable pursuant to State v. Moore and other authority cited above, Mr. Lowrance respectfully asks this Court to reverse his conviction and remand for a new trial, with a ruling that the identification is inadmissible as a matter of law.

Respectfully submitted,

By: 

David S. Jones
Private Appointed Counsel (pro-bono)

ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEYS FOR APPELLANT

This 1st day of April, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**RECEIVED**Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge

APR 01 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

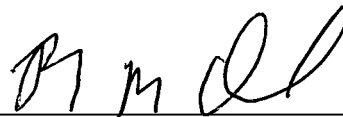
PATRICK DEAN LOWRANCE,

APPELLANT

APPELLATE CASE NO. 2013-000320

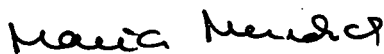
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Record on Appeal in the above referenced case has been served upon Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of April, 2016.

ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of April, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

ORIGINAL 1253

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2013-000320

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THE STATE, ...RESPONDENT

v.

PATRICK DEAN LOWRANCE, ...APPELLANT.

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether Appellant's claim that the trial court committed prejudicial error and deprived him of due process of law in failing to suppress Officer Cruell's in-court identification testimony is preserved for appellate review where Appellant failed to object to the identification by way of a pretrial motion at his second trial and also failed to object when the testimony was offered at either trial. Additionally, even if preserved, whether the trial court properly admitted the out-of-court photo identification where it did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed.

STATEMENT OF THE CASE

Appellant was indicted at the March 2012 term of the grand jury for Greenville County for possession of a stolen motor vehicle (2012-GS-23-1422), failure to stop for a blue light (2012-GS-23-1423), two counts of attempted murder (2012-GS-23-1425 & - 1426), and possession of a weapon during the commission of a violent crime (2012-GS-23-1427). He was represented by Brian Johnson, Esquire, and John Crangle, Esquire, of Greenville. (R.p.124).¹ On October 8-11, 2012, Appellant proceeded to trial by jury pursuant to which he was found guilty of possession of a stolen vehicle. The trial court declared a mistrial on the four remaining charges because the jury was unable to reach a verdict. Appellant was sentenced by the Honorable Steven H. John to three years' imprisonment suspended upon the service of one year's probation. Appellant timely filed a notice of appeal and his conviction was affirmed by this Court. State v. Lowrance, Op. No. 2014-UP-439 (S.C. Ct. App. filed December 3, 2014).

On January 7-10, 2013, Respondent (the State) retried Appellant on the four charges for which he had been granted a mistrial. He was again represented by Mr. Johnson and Mr. Crangle. (R.p.124). At the conclusion of the second jury trial he was found guilty as charged. Appellant was sentenced by the Honorable Letitia H. Verdin to twenty-eight (28) years' concurrent imprisonment for each count of attempted murder, five (5) years' concurrent imprisonment for possession of a weapon during the commission of a violent crime, and three (3) years' concurrent imprisonment for failure to stop for a blue light. (R.p.605-p.624). He timely filed a notice of intent to appeal his

¹ Because Appellant was subsequently retried on several of the original charges following a mistrial, all references to the transcript from the first trial will include the date, while references to the transcript of the second trial, which is the subject of the current appeal, will not.

convictions and subsequently submitted a brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

In his opening statement at the second trial, the solicitor briefly described the events leading to the charges that were levied against Appellant. On October 28, 2011, Officer Brittany Cruell of the Greenville City Police Department was checking license plates at the Comfort Inn parking lot on Laurens Road when she came across a 2005 GMC Yukon with the wrong tag, one that was registered to a Honda Accord. Suspicious the vehicle might be stolen, she radioed dispatch for backup. Officer Charles Lane responded to the hotel and while Cruell and Lane were in the lobby speaking to management, the vehicle left the parking lot. The officers went to their respective patrol vehicles but Cruell was the first one out of the parking lot and began a solo pursuit. She followed the Yukon onto I-85 towards Atlanta and activated her blue lights during the chase, but terminated her pursuit after the car increased speed, attempted to evade her, and eventually exited the highway and ran a red light. (R.p.127-p.129).

Officer Taci Cobb was on patrol in the area and several minutes after Cruell terminated her pursuit, Cobb located the Yukon at the Berkeley Point apartments. As she stepped out of her car and attempted to call in the specific address where she had stopped, she was fired upon. Cobb charged towards the threat and returned fire before getting pinned in the stairwell. Following a second exchange of gunfire, Appellant was struck in the left shoulder. Officer Lane arrived at the apartments just in time to hear the first exchange of gunshots. When he heard the second exchange he reported to dispatch that shots had been fired and tried to assist. As Lane approached the breezeway he was fired

upon as well, so he backed out and tried to clear the building. Appellant fled into the woods and was not located until later that evening when he was apprehended at a friend's house. The gun used to fire at Cobb and Lane was found with Appellant. (R.p.129-p.133).

First Trial – Neil v. Biggers²

Following jury selection at Appellant's first trial, Appellant's counsel advised Judge John he wanted to make a pretrial challenge to Officer Cruell's in-court identification of Appellant. He argued it would constitute a violation of his due process rights based on the undue suggestiveness of the identification. Judge John said they should probably conduct a Neil v. Biggers hearing. (R.p.11, line 16-p.12, line 20). The State then called Officer Cruell to the stand. She testified she was in the "wide open" lobby of the Comfort Inn and was able to view Appellant for about five minutes as he walked past, only a few feet away. She described the lighting in the hotel as being the same as in the courtroom. Cruell did not have a conversation with Appellant and said she just briefly paid attention to him; however, she noted he was the only other person in the lobby besides herself, Lane, and the hotel employees. She described Appellant as a black male, about thirty years old, wearing a gray shirt and revised her estimate to say she had observed him for only about one minute rather than five. Cruell testified that the following day, after Appellant was arrested, she looked up a picture of him and recognized Appellant as the same person she saw in the hotel the day before. She then made an in-court identification. (R.p.12, line 21-p.18, line 7). On cross-examination, Cruell was asked to review her incident report and read the description she gave of the man in the hotel. She had written: "A male walked by with longer hair. He looked to be

² Neil v. Biggers, 409 U.S. 188 (1972).

about thirty-five or forty years old, but could have been younger of age, wearing a gray shirt.” (R.p.19, lines 14-16).

After hearing arguments, Judge John found he did not have enough information to rule on the suggestiveness of the procedure and asked Appellant’s counsel to put Cruell back on the stand. Under further cross-examination by Appellant and questioning from the trial judge, Cruell explained that when she came in for her shift the day after the incident someone at the station told her Appellant had been arrested. Of her own accord, she looked up the photographs of Appellant from the detention center database and identified him as the man from the Comfort Inn. Cruell testified nobody told her the person who was arrested was the same person she saw at the hotel; however, when she saw the photograph she “immediately recognized him.” The trial judge recited the relevant factors from Neil v. Biggers and ruled: “I do find in this, taking all of those factors and the facts described, that I will allow the in-court identification of the defendant by the witness.” Ultimately, the jury was sworn and the case proceeded to trial. (R.p.20, line 1-p.27, line 25). Following brief preliminary instructions from the court and opening statements, Officer Cruell was called to testify in the State’s case in chief. She described seeing Appellant in the hotel lobby and then identifying him from the photograph following his arrest, and she then made an in-court identification. Appellant did not object to or otherwise challenge this testimony in any way. (R.p.32-p.41).

Second Trial - Pretrial Matters

On January 7, 2013, the trial judge commenced proceedings in Appellant’s retrial. The solicitor noted there were several pretrial matters that could be handled right away.

He announced that the parties were agreeable to adopting Judge John's pretrial rulings from the previous trial, including the ruling "with respect to . . . the Biggers hearing." The solicitor asked Appellant's counsel if he had stated things accurately and Appellant's counsel replied: "As I understand it, res judicata applies." The trial judge stated: "I think I am bound by his [Judge John's] prior rulings unless there's something materially different about this trial. All right." (R.p.125, line 1-p.126, line 25). Appellant did not object to or otherwise challenge the trial judge's ruling that she was somehow bound the evidentiary rulings from the first trial, even though there had been a mistrial. Appellant also did say he was attempting to renew or seeking to preserve any particular challenge or objection that had been raised in the first trial. Instead, the parties proceeded to jury qualification, jury selection, opening statements, and the presentation of evidence at the second trial.

Second Trial – Testimony of Officer Brittany Cruell

Officer Cruell was the first witness to take the stand on behalf of the State. She described the events of October 28, 2011, explaining that she was working patrol and checking license plates on vehicles in a Comfort Inn parking lot when she came across a 2005 silver GMC Yukon that had the wrong tag. She tried to check the vehicle identification number (VIN) in the windshield but it was covered by an air freshener. Concerned the vehicle might be stolen, Cruell called Officer Lane to meet her and help with further investigation. They went inside to ask the hotel clerk if he or she knew who was driving the vehicle or had a record of a person who had registered the tag in question. Using a series of photographs, Cruell described the layout of the hotel and parking lot. She testified that while talking to the hotel clerk she noticed a black male walk by her.

Cruell said she “just barely noticed him,” but knows he had a gray shirt on at the time. She testified he “looked to be older, maybe about 40,” but said could have been younger, and commented she did not pay a lot of attention to him. Cruell testified she thought his hair was longer and could have been pulled back. She said the inside of the hotel had florescent lighting like the courtroom, and that she “looked at him in the face.” (R.p.134-p.146).

Cruell went on to describe her pursuit of the Yukon after it left the hotel, as well as her subsequent response to the scene of the shootout involving Cobb and Lane. (R.p.146-p.157). She then testified in regard to reporting to roll call the following day when she learned Appellant had been arrested. Cruell testified she went to the computer in her patrol car and checked the records database for photographs of Appellant. She said she “immediately recognized him as the same male that had walked by myself and Officer Lane the day before in Comfort Inn.” (R.p.157-p.158). Cruell testified no one told her to look at the database before she looked at the photographs and repeated her comment that she “immediately recognized him as the same male that was at the Comfort Inn.” Cruell then made an in-court identification of Appellant. (R.p.158-p.160). Both the out-of-court and in-court identifications were made without objection.

Second Trial - Other Evidence

After Officer Cruell finished testifying, the State presented testimony from an Arva Irby, an employee in the Comfort Inn on the morning of the incident who alerted Officers Cruell and Lane when the Yukon was leaving the parking lot. (R.p.170-p.173). The State then elicited testimony from Officers Cobb and Lane, the two officers who

were the victims of the attempted murder charges. Cobb responded to a “BOLO”³ call from officer Cruell in regard to the vehicle that fled from the Comfort Inn. She located a vehicle that looked like a match at a nearby apartment complex and confirmed the license tag number with Cruell. Cobb got out of her car and began walking up the sidewalk toward the apartment building when she saw a muzzle flash and heard at least two gunshots. She saw a person standing on the stairwell and was able to tell it was a black male because she briefly saw his face from the muzzle flash. Cobb drew her service weapon, began returning fire, and took cover. She exchanged shots with the gunman in two distinct bursts, but did not return fire the third time she heard him shooting. At some point Cobb was joined by Officer Lane but could not tell if he fired his weapon. Cobb did not see anyone leave the building after the shooting stopped. (R.p.174-p.194).

Officer Lane responded to Cruell’s initial request for assistance at the Comfort Inn. He first looked at the GMC Yukon in the parking lot and noticed the air freshener covering the VIN as well as a radar detector on the dashboard. Lane then went inside with Cruell where he heard a hotel employee say the person who drives that car just walked out. He noticed a male driver as the vehicle drove away and, after telling Cruell the direction that vehicle was going, got in his own patrol car and attempted to join her in pursuit. Shortly after terminating the chase, Lane responded to a call about a suspicious person in the same general area where they lost track of the vehicle. He drove through nearby apartment complexes and discovered Cobb’s car parked in front of an apartment building near the GMC Yukon he had seen at the Comfort Inn. It had the same air freshener, same radar detector, and same vehicle tag. After he got out of his car, Lane heard two exchanges of gunfire between Cobb and the shooter, drew his weapon, and

³ “Be on the look-out.”

began calling for Cobb. Lane did not fire his weapon because he did not know if Cobb might be in his line of fire. He saw a silhouette of the person shooting at Cobb, but never saw a face or anything specific about that person. (R.p.195-p.211).

During the subsequent investigation the police found a duffle bag in the apartment complex breezeway which held a wallet with Appellant's health card, social security card, and his pawn shop ticket inside. They then went to the Comfort Inn and searched a room that had been registered to "Dean Lowrance." There the police found a backpack with Appellant's driver's license. The police tracked down Appellant and arrested him at a friend's house where they discovered a firearm and a sweatshirt with what appeared to be a bloodstain. Appellant was suffering from a gunshot wound and was taken to the hospital. (R.p.212-p.223; p.224-p.233; p.234-p.247; p.248-p.258; p.259-p.260; p.261-p.300; p.301-p.303; p.334-p.342).

The police processed the GMC Yukon for fingerprints and DNA. They also processed the gun and sweatshirt, as well as bullet casings and droplets of blood found at the scene, and a box of ammunition found in the vehicle. A qualified fingerprint expert was able to identify Appellant's fingerprints on the box of ammunition and several places on the exterior of the vehicle. A qualified expert in forensic DNA analysis was able to identify Appellant as the major DNA contributor on the gun found at the place of Appellant's arrest, and as the source of the blood on the sweatshirt and the ground where the shootout took place. A qualified expert in firearms identification was able to match numerous shell casings as having been fired by either Cobb's service weapon, or the gun discovered after Appellant's arrest. (R.p.303-p.333; p.343-p.359; p.375-p.379; p.380-p.388; p.389-p.400; p.417-p.423; p.424-p.450; p.451-p.468; p.469-p.470).

Norman Pearson testified he and Appellant were like cousins and had grown up together, and that on the morning of the incident he received a phone call from Appellant. Appellant said he needed a ride because he had run from the police and had been shot. Pearson testified he saw Appellant with the magazine from the gun the day before the incident. (R.p.360-p.375). William Brockman testified he and Appellant are neighborhood acquaintances and that on the day of the incident he picked up Appellant from the side of the road to give him a ride. Appellant was wearing a black hoodie and had a bullet hole in his shoulder. (R.p.401-p.416).

Motion for a Directed Verdict

After the State rested, Appellant moved for a directed verdict on all charges. The following exchange then occurred between Appellant's counsel and the trial judge.

Mr. Johnson: And I'd like to renew any and all prior objections, Your Honor. I think I should say this. A lot of things in the previous trial that I didn't say anything in this trial because I understand res judicata applied.

The Court: Yes, sir.

Mr. Johnson: Therefore, Your Honor, I'd like to preserve any objections there as well.

The Court: They are so preserved. Your objections are noted for the record and reiterated for the record and denied.

(R.p.471, line 7-p.473, line 22). After hearing from the solicitor in response, the trial court then denied the motion for a directed verdict. (R.473, line 23-p.474, line 6).

Defense Case, Closing Arguments, Jury Charge, and Verdict

Appellant testified in his own defense. He admitted sometimes driving the Yukon but claimed the vehicle belonged to his friend "Meat." Appellant also admitted being in the car with Norman Pearson but claimed he did not know there was a gun in the car. He

testified he stayed at the Comfort Inn the night before the incident with Meat and “Tee” but denied walking through the lobby of the hotel before they left in the Yukon.

Appellant claimed he and Tee left through the side door and that Meat must have walked through the lobby. He described Meat as being about 6’2 with long hair. He claimed Meat was driving when they left the Comfort Inn and that he argued with Meat about stopping the car when the police were in pursuit. Appellant admitted he was present during the shootout, but provided an explanation for each piece of forensic evidence presented by the State and maintained he did not do anything wrong. (R.p.475-p.538).

After the defense rested, the State advised the court it would have no reply. The jury was excused and after a brief discussion of the proposed jury charges, the trial judge asked: “Oh, and you renew all your previous motions and your motion for directed verdict as well?” Counsel replied: “I guess I should do that.” The judge said: “Okay. They are noted for the record and preserved. I respectfully deny. Thank you.” (R.p.538, line 9-p.541, line 17).

Next, the parties made closing arguments. Appellant’s counsel began his argument by attacking the identification of Appellant made by Officer Cruell. He argued Cruell was merely aiming to please her fellow officers by claiming the person arrested was the person she saw in the lobby of the Comfort Inn. (R.p.542-p.559). In his response, the solicitor made a detailed argument laying out the mountain of incriminating evidence connecting Appellant to the crimes. Though he briefly mentioned Cruell’s identification of Appellant, he admitted the description in her incident report did not precisely match Appellant’s actual appearance. (R.p.559-p.587).

Thereafter, the trial judge charged the jury on the applicable law including the burden of proof, the presumption of innocence, the roles of the judge and jury, reasonable doubt, direct and circumstantial evidence, credibility of witnesses, expert witnesses, criminal intent, accomplice liability, mere presence, and the elements of the charged crimes. No particular charge was given in regard to identification evidence. Appellant did not take exception to or object to the jury charge. (R.p.587-p.604).

At the conclusion of the jury trial Appellant was found guilty as charged. He was sentenced by the trial judge to twenty-eight (28) years' concurrent imprisonment for each count of attempted murder, five (5) years' concurrent imprisonment for possession of a weapon during the commission of a violent crime, and three (3) years' concurrent imprisonment for failure to stop for a blue light. (R.p.605-p.624).

ARGUMENT

I.

Appellant's claim that the trial court committed prejudicial error and deprived him of due process of law in failing to suppress Officer Cruell's in-court identification testimony is not preserved for appellate review because Appellant failed to object to the identification by way of a pretrial motion at his second trial and also failed to object when the testimony was offered at either trial. In addition, even if preserved, the trial court properly allowed the identification because the out-of-court lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed.

Appellant argues the trial court committed prejudicial error and deprived him of due process of law by finding Officer Cruell's identification was sufficiently reliable to be presented to the jury. This argument is not preserved for appellate review because Appellant failed to make any pretrial motion to suppress the identification at his second trial and because Appellant failed to object to the identification evidence when it was offered to the jury at either his first or second trial. Furthermore, even if Appellant's pretrial objection from his first trial was sufficient to preserve this issue for appeal, there was ample evidence supporting the circuit court's decision where: (1) the out-of-court photo identification did not result from unduly suggestive police procedures; and (2) under the totality of the circumstances the out-of-court identification was so reliable that no substantial likelihood of misidentification existed. Finally, any error in the admission of Officer Cruell's identification testimony was harmless given the cumulative nature of the evidence under Appellant's theory of defense and given the other overwhelming evidence of Appellant's guilt. For all of these reasons, Appellant's challenge to Officer Cruell's identification testimony should be dismissed and his convictions should be affirmed.

Issue Preservation

Initially, Appellant's argument is not preserved for review because Appellant failed to seek an in camera hearing on the in-court identification at his second trial. A mistrial is the equivalent of no trial and leaves the cause pending in the circuit court. State v. Woods, 382 S.C. 153, 158, 676 S.E.2d 128, 131 (2009); State v. Smith, 336 S.C. 39, 43, 518 S.E.2d 294, 296 (Ct. App. 1999). Thus, a court ruling as to admissibility and competency of testimony during a trial which is later declared a mistrial results in no binding adjudication of the rights of the parties. Woods, 382 S.C. at 158, 676 S.E.2d at 131; Keels v. Powell, 213 S.C. 570, 572, 50 S.E.2d 704, 705 (1948); Smith, 336 S.C. at 43, 518 S.E.2d at 296. "Because a mistrial is the equivalent of no trial, the trial judge could not rely on any evidentiary rulings from the nugatory proceeding." Smith, 336 S.C. at 43-44, 518 S.E.2d at 296. Thus, despite defense counsel's mistaken belief that res judicata applied in regard to the pretrial evidentiary rulings from his first trial, and the trial judge's mistaken belief that she was bound by Judge John's prior evidentiary decisions, the effect of the hung jury and the mistrial on the charges which are the subject of the second trial was to render the first trial nugatory. By failing to move to suppress Officer Cruell's identification at the second trial, failing to request a Neil v. Biggers hearing at the second trial, or otherwise failing to object to the identification, Appellant waived any right he had to challenge the out-of-court identification procedure or the in-court identification on appeal, and the issue is not preserved for appellate review.

In addition, Appellant's argument is not preserved for review because Appellant failed to object when the identification evidence was presented to the jury at either his first or second trial. Generally, a motion in limine seeks a pretrial evidentiary ruling to

prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012); State v. Burton, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997). “However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection.” State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). Additionally, if the trial court clearly indicates its ruling is final rather than preliminary, the issue is preserved for appellate review. State v. Wiles, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009); Atieh, 397 S.C. at 647, 725 S.E.2d at 733.

In the instant case, Appellant failed to preserve any challenge to the identification evidence for appellate review. Before the jury was sworn in the first trial, the trial court held a Neil v. Biggers hearing regarding the reliability of Cruell’s out-of-court identification of Appellant and the admissibility of the identification testimony the State was considering offering at trial. The trial judge issued a preliminary ruling finding the identification process was not unduly suggestive and that the identification itself was reliable. Following an introductory jury charge and opening statements, the State called Officer Cruell to the stand to tell the jury about her investigation at the Comfort Inn and

her pursuit of the GMC Yukon. During Cruell's testimony, the State sought to elicit the identification evidence addressed in the trial court's pretrial ruling. Cruell proceeded to describe her out-of-court identification of Appellant and then she made an in-court identification of Appellant. Appellant did not object to or otherwise attempt to renew any his pretrial challenge to Cruell's identification. Similarly at the second trial, Appellant did not object to or otherwise attempt to renew any previous challenge to Cruell's identification testimony when it was offered to the jury.

Because Appellant did not make a contemporaneous objection to any identification evidence elicited during trial in the jury's presence, he failed to preserve any issue related to the trial court's pretrial rulings on the identifications by Cruell. See State v. Turner, 373 S.C. 121, 126, n.1, 644 S.E.2d 693, 696 (2007) (finding the issue regarding an in-court identification was not preserved when the appellant objected pre-trial to a suggestive identification procedure and again during trial to the procedure but never objected to the subsequent in-court identification). Therefore, this issue is not preserved for further review. To the extent this Court finds the identification issue was properly preserved, the State submits it is nevertheless without merit.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission of evidence is within the sound discretion of the circuit court. State v. Simmons, 384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App. 2009). Accordingly, a circuit court's decision to allow the in-court

identification of an accused will not be disturbed on appeal absent an abuse of discretion or prejudicial legal error. Id.; State v. Govan, 373 S.C. 552, 556, 643 S.E.2d 92, 94 (Ct. App. 2007). “To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.” State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Discussion / Analysis

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012); State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). A witness's subsequent in-court identification is inadmissible “if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from “unnecessarily suggestive” police procedures. Biggers, 409 U.S. at 198-99; Liverman, 398 S.C. at 138, 727 S.E.2d at 426; Traylor, 360 S.C. at 81, 600 S.E.2d at 526. If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and

the court does not need to consider the second prong. State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). The defendant bears the burden of proving the identification procedure was impermissibly suggestive. Id. at 561, 745 S.E.2d at 141 (“Our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive.”).

If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless “so reliable that no substantial likelihood of misidentification existed.” Liverman, 398 S.C. at 138, 727 S.E.2d at 426. The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007); Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36. When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's 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 crime and the confrontation. Turner, 373 S.C. at 127, 644 S.E.2d at 697; Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36.

In the instant case, Cruell testified at the original Neil v. Biggers hearing that she looked up the photographs of Appellant from the detention center database of her own

accord and identified him as the man from the Comfort Inn. Cruell testified nobody told her the person who was arrested was the same person she saw at the hotel and that when she saw the photograph she “immediately recognized him.” Judge John recited the relevant factors from Neil v. Biggers and ruled: “I do find in this, taking all of those factors and the facts described, that I will allow the in-court identification of the defendant by the witness.” (R.p.20, line 1-p.27, line 25). This finding constituted a finding that the identification procedure was not unnecessarily suggestive and that finding is clearly supported by the record. Appellant simply failed to carry his burden of proving the identification procedure was impermissibly suggestive.

On appeal, Appellant argues the circumstances of his case are similar to a single person show-up. He states: “An identification of a suspect by a witness who is presented one option, absent a line-up, is almost certainly unduly suggestive.” (Brief of Appellant, p.8). Appellant goes on to argue that because Cruell identified him from a single mug shot after being told he was in custody, because no other possibilities were considered, offered, or provided, and because there was no line-up of other possible suspects, the procedure employed was unduly suggestive. (Brief of Appellant, p. 9). However, this argument misses the point. A procedure cannot be suggestive where it was not “made under suggestive circumstances arranged by law enforcement.” Liverman, 398 S.C. at 134, 727 S.E.2d at 423 (emphasis added).

Here Cruell, who happens to be a police officer, chose to look up Appellant’s photo on her own. Nobody presented her with the photo or asked her to make the identification. Instead, she remembered the person she saw in the hotel lobby and sought out a photo of the individual subsequently arrested to see if he was that person she had

seen. There is nothing suggestive about this process because it was not arranged by law enforcement. Indeed, this Court has affirmed a trial court's finding that an identification procedure was not unduly suggestive precisely because it was not the result of "an act by the police of a suggestive manner." Dukes, 404 S.C. at 562, 745 S.E.2d at 142. In Dukes, the officer suggested the witness look at photographs in a "photo book" to see if he could identify the person who shot the victim. Id. at 556, 745 S.E.2d at 138. However, when the officer got up from the table to get the photo book, the witness saw other photographs in a file the officer left on the table and identified the defendant from one of the photographs in the officer's file. Id. This Court focused on the witness's testimony that the officer "did not present the photos to [the witness] or instruct him to choose one." Id. The trial court concluded the identification procedure was not impermissibly suggestive because: "It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner." Dukes, 404 S.C. at 562-63, 745 S.E.2d at 142. Here, there likewise was not an act by the police of a suggestive manner. Since there was evidence to support the first trial court's decision, that court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. Dukes, 404 S.C. at 563, 745 S.E.2d at 142.

Likewise, to extent she relied upon the ruling from the first trial, the second trial judge did not err in allowing Cruell to make an in-court identification of Appellant as the man who walked through the lobby of the Comfort Inn before the chase. Consequently, this Court should affirm the trial court's ruling and need not consider the second prong of Biggers. Id. To the extent this Court disagrees, the State submits there was also

sufficient evidence to support a conclusion that the out-of-court identification was reliable under the totality of the circumstances.

Appellant argues the identification made by Cruell was not reliable because she testified she paid attention “just briefly” and “didn’t pay a lot of attention to him.” Although Cruell’s description in the incident report was not one hundred percent consistent with Appellant’s appearance in the booking photographs she viewed, Cruell testified she observed Appellant for approximately one minute in a well-lit hotel lobby and “immediately recognized” him when she looked at his photo. Cruell had a good opportunity to view Appellant at the time he walked past. Her attention was likely heightened because she was investigating a possible stolen vehicle. Cruell gave a partially accurate description of the person, identifying him by both gender and race. Although she said he looked about 40, she also said he might have been younger. Cruell then testified she was certain she had made a correct identification from the photo. Finally, the identification was made only one day after the crime. Under the totality of the circumstances, Officer Cruell’s out-of-court and in-court identifications were both reliable. Therefore, the trial court did not abuse its discretion in denying Appellant’s motion to suppress the identification testimony, and Appellant’s convictions should be affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55,

625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Here, the State submits any error in the admission of the identification evidence from Cruell was harmless, cumulative to other evidence under his theory of defense, and not prejudicial. The identification by Cruell merely placed Appellant at the Comfort Inn before the police chase, evidence which was cumulative to and corroborated by Appellant’s own testimony. He admitted he was at the hotel before the chase, in the Yukon during the chase, and present during the shootout after the chase. See State v. Simmons, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) (“We note that, under certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable.”). Appellant admitted he was present both in his testimony and in his closing argument to the jury. (R.p.286, line 18-p.287, line 6). See State v. Kirkpatrick, 320 S.C. 38, 43, 462 S.E.2d 884, 888 (Ct. App. 1995) (“The erroneous admission of the key evidence was harmless inasmuch as Kirkpatrick admitted he rented the U-Haul in question and bought a lock, with two keys,

to put on it. Thus, the evidence of the key linking Kirkpatrick to the U-Haul was merely cumulative.”). Because the challenged identification evidence was cumulative to other properly-admitted evidence, any error in the admission of that identification evidence was completely harmless and could not have affected the result at trial. See Singleton, 395 S.C. at 14-15, 716 S.E.2d at 336 (finding harmless error in the admission of identification testimony where two co-conspirators testified against Singleton and identified him as a participant in the robbery). Furthermore, despite Appellant’s creative explanations at trial, the forensic evidence alone constituted overwhelming evidence of his guilt. Finally, the propriety of Appellant’s conviction is reinforced by the other protections he was afforded at trial, including his Sixth Amendment right to confront the eyewitness, his right to the effective assistance of an attorney who attempted to expose the flaws in Cruell’s testimony during cross-examination and during opening and closing arguments, and the constitutional requirement that the State prove Appellant’s guilt beyond a reasonable doubt. Liverman, 398 S.C. at 142-43, 727 S.E.2d at 428. For all of these reasons, Appellant’s convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentences of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
April 14, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2013-000320

THE STATE,.....

v.

PATRICK DEAN LOWRANCE,..... APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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Attorney General

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 14, 2016

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2013-000320

THE STATE,.....RESPONDENT

v.

PATRICK DEAN LOWRANCE,.....APPELLANT.

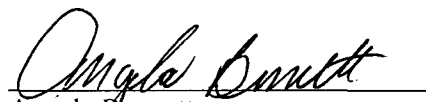
PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated April 14, 2016, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 14th day of April, 2016.


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**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.

Patrick Dean Lowrance, Appellant.

Appellate Case No. 2013-000320

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2017-UP-154
Submitted February 1, 2017 – Filed April 12, 2017

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and
Appellate Defender Taylor Davis Gilliam, both of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor William Walter Wilkins,
of Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Woods*, 382 S.C. 153, 158, 676 S.E.2d 128, 131 (2009) ("A

mistrial is the equivalent of no trial and leaves the cause pending in the [trial] court."); *id.* ("It leaves the parties 'as though no trial had taken place.'" (quoting *Grooms v. Zander*, 246 S.C. 512, 514, 144 S.E.2d 909, 910 (1965))); *State v. Smith*, 336 S.C. 39, 43-44, 518 S.E.2d 294, 296 (Ct. App. 1999) ("Because a mistrial is the equivalent of no trial, the trial [court] could not rely on any evidentiary rulings from the nugatory proceeding."); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 693-94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."); *id.* (providing appellant's issue was not preserved because "[t]he defense objection was very broadly made, and not contemporaneous to the . . . [alleged] error").

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.